

PROCUREMENT DIVISION



May 28, 2009

Ref: P-44-09 Construction Manager @ Risk Services for The New Berlin Road/Yellow Bluff Road Intersection Improvement

Dear Consultant:

The Department of Public Works of the City of Jacksonville, Florida, will require the services of a consultant/firm to provide the referenced services. Enclosed is a copy of the Request for Proposal.

In order to establish a list of qualified, interested and available people, this letter is being directed to you. If interested in providing the specific services, please provide the City with the following:

- A) ONE (1) ORIGINAL AND TWO (2) COPIES of your proposal, unless additional copies are otherwise requested in the Request for Proposals, specifically stating your interest and any other specific information or statements called for in the enclosed Request for Proposals.
- B) Complete information about your firm and staff qualifications.
- C) A list of projects which indicate specific background and experience in the program area being considered.
- D) A quotation of proposed rates, fees or charges and other detailed cost proposal or cost breakdown information, if applicable.
- E) Please note: copies of the firm's financial statement (if required), may be submitted in THREE (3) sealed envelopes, each envelope clearly labeled "Pursuant to Section 119.071(1)(c), Florida Statutes, the document contained herein is exempt from the mandatory disclosure requirements of the Florida Public records Law. Accordingly it is not Subject to Public Inspection." Include your firm's name and the number of the project as shown above. In certain cases (roads and public works projects) may not be subject to the Public Records Law.

Please note:

- 1) Section 126.110 of the Purchasing Code requires that a public official who has a financial interest in a bid or contract 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 proposer.

DEPARTMENT OF CENTRAL OPERATIONS

117 W. Duval Street, Suite 335 | Jacksonville, FL 32202 | Phone: 904.630.1184 | Fax: 904.630.2151 | [www.coj.net](http://www.coj.net)

- 2) 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 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 consultant 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.
- 3) Collusion: The Proposer, by affixing his signature to this proposal agrees to the following: "Proposer certifies that this proposal is made without any previous understanding, agreement or connection with any person, firm, or corporation making a bid for the same service; and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action."

Any questions regarding this RFP should be submitted via e-mail to Alex Baker at [abaker@coj.net](mailto:abaker@coj.net) no later than 3:00 PM EST on Tuesday, June 9, 2009.

Your proposal must clearly bear the RFP number (P-48-09) and must be received no later than 4:00 p.m. Friday, June 19, 2009, and directed to:

City of Jacksonville  
Department of Procurement  
Attn: Professional Services Specialist  
117 West Duval Street, Suite 335  
Jacksonville, FL 32202

Your package/proposals must be date and time stamped upon receipt. If it "appears" in our offices after the deadline and there is no date/time stamp, it will be rejected. Allow sufficient time to go through security check in order to obtain your visitor's pass.

Yours very truly,

*Michael Clapsaddle*  
Chief of Procurement Division  
Chairman, Professional Services  
Evaluation Committee

MC: ab

cc: Subcommittee Members  
Council Auditor

**REQUEST FOR PROPOSALS**

**RFP P-44-09**

**CONSTRUCTION MANAGER AT RISK SERVICES FOR  
THE NEW BERLIN ROAD/YELLOW BLUFF ROAD INTERSECTION IMPROVEMENT**

**CITY OF JACKSONVILLE, FLORIDA**

**05-09-2009**

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## REQUEST FOR PROPOSALS

RFP P-44-09

### CONSTRUCTION MANAGER AT RISK SERVICES FOR THE NEW BERLIN ROAD/YELLOW BLUFF ROAD INTERSECTION IMPROVEMENT CITY OF JACKSONVILLE, FLORIDA

#### I. GENERAL INFORMATION:

Owner: City of Jacksonville  
Operator: Right of Way and Grounds Maintenance Division  
Location: Jacksonville, Florida

##### A. Equal Business Opportunity Program.

It is an official policy of the City of Jacksonville to encourage the maximum participation of Jacksonville Small and Emerging Businesses (JSEB) in its contract awards based upon availability. It is the City's intent in adopting this program to reflect the philosophy with regard to enhancing participation of JSEBs in all areas of procurement.

**Note: JSEBs participating on City projects must be certified as a JSEB with current status with the City's Equal Business Opportunity Office.**

These projects have been designated to be under the Equal Business Opportunity Program and established a **20% Participation goal** with any combination of JSEB certified businesses.

##### B. Ex-parte Communication Prohibited

The City believes that any ex-parte communication concerning the solicitation, evaluation, and selection process denies all CONSTRUCTION MANAGERS submitting proposals fair, open, and impartial consideration. Adherence to procedures which ensure fairness is essential to the maintenance of public confidence in the value and soundness of the important process of public procurement of professional services. Therefore, during the solicitation, evaluation, and selection process, any ex-parte communication between a CONSTRUCTION MANAGER, its employees, agents, or representatives, and the City, its members, employees, agents, legal counsel, or representatives, other than the City's below-named project manager is strictly prohibited. Failure to observe this requirement shall result in rejection of a CONSTRUCTION MANAGER's proposal. For purposes of this section, the term "ex-parte communication" shall mean any oral or written communication relative to this solicitation, evaluation, and selection process, which occurs outside of an advertised public meeting, pursuant to Section 286.011, Florida Statutes. This requirement shall not prohibit:

1. Meetings called or requested by the City and attended by CONSTRUCTION MANAGERS for the purpose of discussing this solicitation, evaluation, and selection process, including, but not limited to, substantive aspects of this RFP;
2. The addressing of any elected or appointed governing authority of

- the City at public meetings advertised and conducted pursuant to, and in compliance with, Section 286.011, Florida Statutes;
3. The filing and prosecution of a written protest to any proposed award to be made pursuant to this solicitation, evaluation, and selection process, which filing and prosecution shall give notice to all CONSTRUCTION MANAGERS. Protest proceedings shall be limited to open public meetings, with no ex-parte communication outside those meetings;
  4. Contacts with elected officials of the City.

## II. PROJECTS' DESCRIPTION:

The CONSTRUCTION MANAGER will be an integral member of the Project Team consisting of the Architect/Engineer and other consultants as required. Generally, it will be the responsibility of the CONSTRUCTION MANAGER to integrate the design and construction phases, utilizing his skill and knowledge of general contracting to develop schedules; prepare project construction cost estimates; study labor conditions; and, in any other way deemed necessary, contribute to the development of the project (s) during the pre-construction/design phase. During the construction phase, the CM will be responsible for constructing the project under the Guaranteed Maximum Price (GMP) inclusive of all construction services therein.

Upon selection of the Construction Management firm and approval by the City, an initial contract will be developed to allow the successful CM to begin pre-construction services as soon as possible after contract award.

Subsequently, and in accordance with the terms and conditions of this RFP, an amendment to the CM contract is anticipated to be issued for full construction services upon acceptance by the OWNER and approval by the OWNER of the GMP for the total project.

For the purposes of this RFP and subsequent contractual requirements definitions of terms used in the solicitation are as follows:

- A. **Construction Manager (CM)** means an individual, a partnership, corporation or other legal entity, which is authorized under Chapter 489, Florida Statutes, to engage in contracting as a certified or registered general contractor, or which has a certified or registered general contractor as its qualifying agent.
- B. **Construction Manager Delivery** means a method of construction whereby a prime contractor (CONSTRUCTION MANAGER) is selected on the basis of qualification as provided herein to furnish consulting services including cost estimating, construct ability and value engineering reviews, overall management and coordination of the construction process, and assume full contractual responsibility for the construction of the project in its entirety. The CM's services on the project shall be compensated by a negotiated fee, which includes only direct management costs, overhead, and profit. Reference is also made to Florida Statute 287.055.
- C. **Guaranteed Maximum Price (GMP)** means an amount negotiated with the CM which includes the CM fee, general conditions and the direct cost of all elements of the construction as determined by competitive bids to select the major subcontractors. The CM will be subject to a post construction audit of financial and work records. The total amount paid to the CM for the complete construction of the project is the CM fee plus the actual cost of materials and work performed, or the negotiated GMP, whichever is less.
- D. **Designer (Architect/Engineer)** means an individual, a partnership, corporation or other legal entity, which is authorized under Florida Statutes, to engage in deliver of professional design/engineering services as a registered architect, or which as registered architect/engineer or which has a registered architect/engineer as its

qualifying agent. This entity is responsible for the overall project design.

- E. **Project Team** means the group, including the primary principal firm, user group, public entity and associated sub-consultants. These entities include the OWNER, the Architect, Engineer and the CONSTRUCTION MANAGER and any and all sub-consultants and major subcontractors associated directly with this project.

Commencement of services for this project is subject to budget approval by the OWNER and the City of Jacksonville.

A detailed Scope of Services defining the exact performance requirements and schedule for completion of the project will be developed during negotiations with the selected CONSTRUCTION MANAGEMENT FIRM to establish terms of the agreement for professional services and CONSTRUCTION MANAGEMENT FIRM's fee.

Section X, Selection Criteria, of this RFP lists the ten (10) criteria upon which grading and selection of CONSTRUCTION MANAGEMENT FIRM will be based.

### **III. CONSTRUCTION MANAGER SELECTION:**

The selection and contracting with a CONSTRUCTION MANAGER for these services will be in accordance with Part 3 of Chapter 126, otherwise known as the Purchasing Code, of the Jacksonville Ordinance Code; Part 3 as provided in Section X hereof. The firm selected under P-24-09 to provide the design services for this project will not be eligible to submit on this solicitation.

### **IV. MINIMUM REQUIREMENTS OF CONSTRUCTION MANAGER:**

1. Must be certified or registered under Florida Statutes as a general contractor, or otherwise be legally authorized to perform the construction management services sought in this RFP.
2. Experience in providing Construction Management Services on a project of similar size and complexity.
3. Adequate and available resources (including bonding capacity) to enter into a Construction Management Contract with a GMP in the range of \$11,000,000.
4. A commitment to comply with all requirements of the City of Jacksonville Equal Business Opportunity Program in the execution of this project by meeting or exceeding the goals set forth in this RFP.
5. The CM firm must have at least ten (10) years experience planning, scheduling, tracking, and status reporting using Primavera Suretrak for complex projects.
6. Safety and Workers' Compensation Experience
  - a) Workers' Compensation Experience Modification Rate (EMR) of less than 1.0 for Contractors' current insurance. EXPERIENCE MODIFICATION RATES (EMR).
  - b) Documented Recordable Incidence Rate (RIR) of 5.0 or less.
  - c) Documented Lost Time Incidence Rate (LTIR) of 1.0 or less.
7. CONSTRUCTION MANAGER is required to have a Jacksonville office in order to respond to this RFP.
8. The services to be performed by the CONSTRUCTION MANAGER are shown at Attachment C. This attachment will be the basis of fee proposals, which will be requested following selection of a CONSTRUCTION MANAGER.

**Note** - Should the proposer elect to self perform any elements of construction work on these projects, pre-qualification under the City of Jacksonville Purchasing Code will be required prior to the performance of any work. Pre-qualification is required of all prime contractors who perform construction in the City of Jacksonville. **By electing to self-perform, proposers are notified that their role changes from that of**

purely professional services (which does not require pre-qualification) to one of construction services which does, in fact, require pre-qualification on work valued at greater than \$250,000.

**V. BUDGET:**

No firm dollar amount for services to be performed under this RFP has been established, at this time. Commencement of services for this project is subject to budget approval.

**VI. TIMING:**

The selected CONSTRUCTION MANAGER should anticipate beginning work on this project no later than ten days from issuance of Notice to Proceed. The actual production schedule for the project will be established during negotiations with the selected CONSTRUCTION MANAGER.

**VII. CITY OF JACKSONVILLE PROJECT MANAGER:**

The Project Manager for this project will be David D. Hahn, P.E., Manager, Paving and Drainage Design Section. However, the proposer's attention is directed to ATTACHMENT H - SOLICITATIONS SILENCE POLICY. In accordance with this policy, requests for information, which may be needed during preparation of a response to this RFP, must be submitted, in writing, to Alex Baker in Procurement Division, no later than 10 days before the Proposals are due (See Section XXIV).

**VIII. FURNISHED DOCUMENTS:**

A project exhibit is included in this RFP as Attachment **G**.

During preparation of a response to this RFP, the following material is available for review by prospective CONSTRUCTION MANAGERS in the Office of the Paving and Drainage Design Section, Edward Ball Building, 10<sup>th</sup> Floor, 214 North Hogan Street. A copy of such documents will be furnished to the selected CONSTRUCTION MANAGER, if so requested.

- A. Plans and Specifications for a previously completed similar project.
- B. City Standard Details, Standard Specifications, Land Development Procedures Manual and City Standard Contract Documents.
- C. Any other information available in the City's records which pertain to this project.
- D. The CONSTRUCTION MANAGER accepts the responsibility for the accuracy of any information furnished and ultimately incorporated into its services.

**IX. FEE SUBMITTAL:**

See requirements set forth in Section X, Selection Criteria I.

**X. SELECTION CRITERIA:**

The Professional Services Evaluation Committee shall determine qualifications, interest and availability by reviewing all written responses received that express an interest in performing these services, and, when deemed necessary, by conducting formal interviews of selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determinations shall be based upon the following criteria, and respondents are requested to provide, as a minimum, the information listed under each criterion. Failure to provide adequate information on any criterion will result in lower scores and could

result in rejection of the proposal as non-responsive. The response to each of the criterion will be evaluated relative to other responses received and awarded a score of one (1) through the maximum points allowed. Please note that 10 points is the maximum for all categories except "H" **Ability to design an approach and work plan to meet the project requirements** which has a twenty (20) point maximum. Respondents are encouraged to arrange their responses in a format that will offer ready review and evaluation of each criterion.

Unless there is a clear statement that the CONSTRUCTION MANAGER is a joint venture, it will be assumed the firm shown on the transmittal letterhead will be the prime CONSTRUCTION MANAGER with whom the Owner would contract and all other firms shown as team members would be subcontractors.

Joint Venture proposals (including those submitted in accordance with Section XX) will be scored in categories C, E, F, and G by totaling each firm's individual score multiplied by the corresponding percentage of participation in the respective joint venture.

**A. Competence, including technical education, licensure and training, experience in the kind of project being undertaken, availability of adequate personnel, the extent of repeat business of the persons and, where applicable, the relationship of construction cost estimates to actual costs on previous projects. (10 Points maximum score)**

Provide written documentation which demonstrates that the CONSTRUCTION MANAGER meets all of the Minimum Requirements of CONSTRUCTION MANAGER contained in Section IV of this RFP.

Provide a photocopy of a current license issued by the State of Florida Department of Professional Regulation, or other written documentation which authorizes the CONSTRUCTION MANAGER in accordance with Florida Statutes to perform the services required by this RFP.

Provide an organizational chart of the proposed construction management organization showing the number of staff for each element, and indicate if the person will be located on the project site or in the home office. List personnel filling key management positions. Such personnel should include the Project Executive, Project Manager, Superintendent(s), Assistant Superintendent(s), Quality Management Supervisor, Cost Management Supervisor, Safety Officer and other key personnel who may be required.

Specify percentage of time to be committed to this project during both the pre-construction and construction phases.

Note where these key personnel are located (i.e., local office in what geographical location, main headquarters in what geographical location, etc.).

Note which of the following items (under headings of Pre-Construction and Construction) will be handled by which key person; in addition, please identify the person who will handle overall management of this project.

- (1) Pre-Construction: Design review, Constructability issues, cost model/estimates, schedule, value engineering, and procurement; and
- (2) Construction: Coordination of subcontractors, Safety, Quality control/inspection, shop drawing review, change order review, claims resolution, schedule control and payment approval.

Discuss the extent of repeat business the CONSTRUCTION MANAGER has achieved.

This section of the CONSTRUCTION MANAGER's proposal shall be limited to five (5) pages.

**B. Recent, current and projected work load. (10 Points maximum score)**

Provide number and size of projects currently being performed in the project office, personnel assigned thereto and stage of completion of such projects, status of each project relative to completion schedules, reasons for any delayed projects, and projected personnel availability. Discuss ability of firm to execute multiple concurrent projects and contracts given its current workload.

This section of the CONSTRUCTION MANAGER'S proposal shall be limited to two (2) pages.

**C. Financial responsibility. (10 Points maximum score)**

Provide form of business, i.e., proprietorship, partnership, corporation; years in business; changes in ownership; bank references; any other information the applicant may wish to supply to verify financial responsibility. A Dunn and Bradstreet Rating reflecting the Firm's Financial Strength (5A to HH) and Composite Credit Appraisal (1-4) scores or a financial statement including a balance sheet for the most recently completed Fiscal Year must be submitted in order to score maximum points in this criterion. Attach a letter of intent from a surety company indicating the applicant's bondability for this project. The surety shall acknowledge that the firm may be bonded for this project. The surety company must be licensed to do business in the State of Florida, must have a Best Rating of "A", and a required financial size of "Class VI".

Complete financial information is required for every joint venture partner.

This section of the CONSTRUCTION MANAGER'S proposal shall be unlimited.

**D. Ability to observe and advise whether plans and specifications are being complied with, where applicable. (10 Points maximum score)**

Describe ability and experience of CONSTRUCTION MANAGER and assigned personnel in observing and monitoring construction projects, ensuring that construction is proceeding in accordance with the contract documents (i.e., plans and specification and associated references). Discuss quality assurance/quality control systems employed by CONSTRUCTION MANAGER.

Evaluation of this criterion will also consider the CONSTRUCTION Manager's ability to interpret specification as evidenced by the preparation of a response to this RFP.

This section of the CONSTRUCTION MANAGER'S proposal shall be limited to three (3) pages.

**E. Past and present record of professional accomplishments for City Agencies and others. (10 points maximum score)**

Provide list of completed projects similar in scope to projects under consideration previously performed by CONSTRUCTION MANAGER with references to include owner's contact person with their contact information. Describe any outstanding accomplishments of the CONSTRUCTION MANAGER that relate to the specific services being sought. Submit any letters of commendation or awards which reflect the

professional accomplishments, claim history and safety record of the CONSTRUCTION MANAGER.

Responding to this evaluation criterion necessitates that proposers include statements of their past and present record of professional accomplishments or performance:

- (i) on projects undertaken for the Jacksonville Aviation Authority, JEA, Jacksonville Port Authority, Jacksonville Transportation Authority, Duval County Public Schools and the City of Jacksonville and its various "using agencies," which is defined in the Jacksonville Ordinance Code as "a department, division, office, board, agency, commission or other unit of the City and an independent agency required by law or voluntarily requesting to utilize the services of the Procurement Division; and
- (ii) on projects undertaken with others that are similar in nature to the size and scope of professional services and / or work required for the project solicitation herein. Respondents are requested to state with specificity whether or not, within the past five years, they have provided the scope of services contemplated herein within the State of Florida.

List only those projects where the CONSTRUCTION MANAGER was the prime CONSTRUCTION MANAGER (not a subconsultant). Provide a self-assessment of the CONSTRUCTION MANAGER 's performance on each project. The City may use existing Project Performance Evaluations for CONSTRUCTION MANAGERS who have performed previous work for the City in this evaluation.

This section of the CONSTRUCTION MANAGER's proposal shall be limited to six (6) pages.

**F. Proximity to the project involved. (10 Points maximum score)**

Disclose location of the CONSTRUCTION MANAGER's corporate headquarters. If the CONSTRUCTION MANAGER's corporate headquarters are located in Jacksonville, no further information is required under this criterion and maximum points will be awarded.

If the corporate headquarters are not located in Jacksonville, please indicate whether CONSTRUCTION MANAGER maintains a branch office in Jacksonville. If so, please indicate how long the Jacksonville branch office has been in existence and the number of qualifying employees in the branch office. (Note: Qualifying employees are those who are assigned to the Jacksonville office and have lived in the Jacksonville area for the previous twelve (12) months).

If the CONSTRUCTION MANAGER's corporate headquarters are not located in Jacksonville and the CONSTRUCTION MANAGER does not maintain a Jacksonville branch office, the response should so clearly state.

The selected CONSTRUCTION MANAGER will be required to verify its location by furnishing, prior to execution of an Agreement, a photo-copy of a current Occupational License issued by the Tax Collector of Duval County.

A local office is not required in order to respond to this RFP, but one must be established prior to execution of a contract. The CONSTRUCTION MANAGER's Project Manager must be available locally during the duration of the project.

This section of the CONSTRUCTION Manager's proposal shall be limited to three (3) pages.

**G. Past and present demonstrated commitment to small and minority businesses and contributions toward a diverse market place. (10 Points maximum score)**

This evaluation criterion is intended to solicit responses from proposers that indicate their past and present commitment to minority, women-owned, small, and emerging businesses. More specifically, responses to this evaluation criterion should include, without limitation, statements that document the proposer's:

1. Commitment to diversity among the directors, officers, members and/or employees that make up its firm;
2. Commitment to diversity within its community and beyond;
3. Commitment to and/or utilization of minority, women-owned, small and emerging business for the project solicitation in question.

This section of the CONSTRUCTION MANAGER's proposal shall be limited to two (2) pages.

**H. Ability to design an approach and Work Plan to meet the project requirements, where applicable. (20 Points maximum score)**

Describe the CONSTRUCTION MANAGER's understanding of this project, its methodology in construction, and any potential problems areas it may have identified, together with proposed solutions. This concept should explicitly address how the CONSTRUCTION MANAGER's plans to address fast tracking and phased construction, in terms of concurrent design and construction due to schedule, execution of phased construction packages and management of simultaneous construction of the Project. Describe any innovative materials, equipment, or techniques your firm specializes in or has used to achieve success on previous work that could possibly be used to enhance quality, save time, or reduce costs. The CONSTRUCTION MANAGER is to provide his preliminary plan that, as a minimum, addresses the construction schedule with milestones, logistics in site staging and storage, ideas in fast tracking and construction sequencing.

Provide a descriptive narrative, developed in response to the RFP, as to your firm's approach to the following items including, but not limited to, all information noted below:

- i. Value Engineering: Describe the process by which your firm performs value engineering so as to achieve an appropriate balance between costs, aesthetics, and function. Provide a sample value engineering report from one (1) of the projects submitted as a reference in paragraph A - Competence. In addition, provide a summary as to this value engineering effort inclusive of total number of items studied, total dollar value, total number of accepted items, and total corresponding value of the accepted items.
- ii. Cost Estimating: Provide the cost estimate format used on one of the completed project and describe how this cost estimate was developed and the timing of its updates during design. Also, summarize the accuracy of this cost estimate by comparing it with the projects actual construction cost. Discuss the estimating methodology to be used on this project for cost estimate.
- iii. Project Tracking/Reporting: Describe your firm's approach and procedures for project tracking and reporting including scheduling, accounting, etc. Be explicit in your description of cost forecasting and tracking. Describe software used. Provide examples of a progress report including schedule tracking cost control and reporting, and show how the cost estimate tracks to the accounting and invoicing.

- iv. Schedule and Staffing Plan: Provide a schedule and staffing plan for the value engineering and constructability section of the pre-construction services with specific personnel.
- v. GMP preparation and negotiation to include recommended time frame. Provide the anticipated point in the project schedule that the CM expects to be able to provide a final GMP for the project.
- vi. Critical trade/material procurement: Provide your perception of those long lead time items, which will require special attention during procurement.
- vii. Project Schedule: Provide a construction schedule, using Primavera software, and based on the project information provided in the RFP, that demonstrates the CM's understanding of this project program. The schedule should demonstrate construction segments that can be phased and, if appropriate, fast tracked.
- viii. Subcontractor/bid procurement: Provide your plan for procuring subcontractors and bids.

This section of the CONSTRUCTION MANAGER's proposal shall be limited to ten (10) pages.

**I. An overall willingness to meet both schedule and budget requirements for the project. (10 Points maximum score)**

In an effort to remain consistent with Chapter 287, Florida Statutes, responding to this evaluation criterion necessitates that a proposer include statements and references demonstrating that the proposer met both time and budget requirements on projects of similar size and scope that were completed by the proposer within the past three years and that the proposer is meeting both time and budget requirements on projects of similar size and scope that are currently being performed by the proposer ("Reference Projects"). As part of its response to this evaluation criterion, the proposer:

- 1. must submit an expressed statement of its overall willingness to meet both time and budget requirements for the project in question; and
- 2. should submit, without limitation, project narratives, schedules, cost and fee summaries and owner references for any Reference Projects. Any Reference Project which has been completed or for which construction is underway will segregate and identify any design or construction management related schedule or budget impacts. Design schedule and budget information will include both the original and the current or completed schedule and cost data.

During contract negotiations, successful proposers will be required to provide a Schedule of Proposed Rates on the forms provided as Attachment "A". Such rates and costs will be used in the negotiation of fees and shall remain in effect throughout the length of the contract, except - **at the sole discretion of the City** - such rates may be adjusted when an amendment to the original agreement is being negotiated; provided any increases in rates shall not exceed actual increases in the appropriate index (CPI or PPI) for the service being provided since the date of the Original Agreement (Contract). Any allowable rate adjustments for subconsultants shall also follow this procedure.

Schedule A if provided in the RFP for information only. **Do not return a completed form with your proposal.**

Proposed overhead rates shall conform to Federal Acquisition Regulations as established by a governmental audit or certified to by a Certified Public Accountant. Profit rate shall be applied only to direct labor plus overhead. No markup or profit shall be paid on non-labor related

job costs, reimbursables or on services provided by subconsultants or others.

This section of the CONSTRUCTION MANAGER'S proposal shall be limited to three (3) pages.

- J. The volume of current and prior work performed for using agencies shall be considered a minus factor, with the objective of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. (10 Points Maximum Score)**

Using the format provided in Attachment D, submit a list of all local City of Jacksonville government projects on which Consultant has been awarded fees during the past five (5) years. Include only those in which CONSTRUCTION MANAGER was the prime consultant (do not delete fees paid to subconsultants or others). Such list shall include work for the City of Jacksonville and its Using Agencies which are the Jacksonville Children's Commission, the Jacksonville Economic Development Commission, the Duval County Housing Finance Authority, and the Jacksonville Transportation Authority. If the Consultant has not performed work for any of these agencies during the past five (5) years, the response should so clearly state.

Failure to provide complete and accurate information will result in lower score on evaluation. Failure to list amounts of all fees may result in rejection of proposal as non-responsive.

*(Remainder of this Page intentionally left blank)*

**XI. INDEMNIFICATION AGREEMENT:**

The City will require the following indemnification to be made part of the contract Agreement entered into with the selected Consultant:

1. The Consultant , and without limitation, its officers, directors, employees, members, partners, agents, affiliates, sub-consultants, contractors, subcontractors and representatives, (individually or collectively referred to as the "Indemnifying Parties"), shall hold harmless, indemnify, and defend the City, including without limitation, its officers, directors, members, representatives, affiliates, agents and employees, successors and assigns (individually or collectively referred to as the "Indemnified Parties") and shall reimburse the Indemnified Parties from and against:
  - 1.01. General Tort Liability, including without limitation any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including, but not limited to reasonable attorney fees) to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Indemnifying Parties, and other persons employed or utilized by the Indemnifying Parties in the performance of this Agreement or the work or services performed thereunder; and
  - 1.02. Environmental Liability, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or in connection with (a) the Indemnifying Parties' actions or activities that result in a violation on any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to the Indemnifying Parties' activities, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with this Agreement by the Indemnifying Parties at any time on or prior to the day and year first above written, or (c) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Indemnifying Parties. The City will be entitled to control any remedial action, any proceeding relating to an environmental claim; and
  - 1.03. Intellectual Property Liability, including without limitation any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees), arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right, and will pay all costs (including, but not limited to attorney's fees and court costs), damages, charges, and expenses charged to the Indemnified Parties by reason thereof. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure for the Indemnified Parties a license, authorizing the continued use of the Service or

product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the City, so that the Service or product is non-infringing; and

- 1.04. Violation of Laws Liability, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, rules or regulations, by the Indemnifying Parties or those under their control; and
  - 1.05. Liability from Breach of Representations, Warranties and Obligations, including with out limitation any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) which may be incurred by, charged to or recovered from any of the foregoing, arising directly or indirectly out of (a) any breach of any representation or warranty made by the Indemnifying Parties in connection with this Agreement or in any certificate, document, writing or other instrument delivered by the Indemnifying Parties pursuant to this Agreement or (b) any breach of any covenant or obligation of the Indemnifying Parties set forth in this Agreement or any other any certificate, document, writing or other instrument delivered by the Indemnifying Parties pursuant to this Agreement.
2. The indemnifications in Section 1, are separate and apart from, and are in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This indemnification in Section 1 shall extend for any claims arising in whole or part from a breach of ACCURACY OF WORK section of this Agreement. This Section, relating to indemnification, shall survive the term of this Agreement, and any holdover and/or contract extensions thereto, whether such term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

*(Remainder of this Page intentionally left blank)*

## **XII. INSURANCE REQUIREMENTS:**

The CONSTRUCTION MANAGER shall procure and maintain, at its sole expense, during the term of this project, insurance of the types and in the minimum amounts stated below:

| <u>Schedule</u>                 | <u>Limits</u>                   |
|---------------------------------|---------------------------------|
| Workers' Compensation           | Florida Statutory Coverage      |
| Employer's Liability (including | \$100,000 Each Accident         |
| Appropriate Federal Acts)       | \$500,000 Disease Policy Limit  |
|                                 | \$100,000 Each Employee/Disease |
| Commercial General Liability    | \$1,000,000 Each Occurrence     |
| Premises-Operations             | \$2,000,000 Aggregate           |
| Products-Completed Operation    |                                 |
| Blanket Contractual Liability   |                                 |
| Independent Contractors         |                                 |

(The City of Jacksonville shall be named as an additional insured under all of the above Commercial General Liability coverage.)

|                                     |                 |
|-------------------------------------|-----------------|
| Auto Liability                      | \$1,000,000 CSL |
| All autos-owned, hired or non-owned |                 |

|                        |             |
|------------------------|-------------|
| Professional Liability | \$1,000,000 |
|------------------------|-------------|

(Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date equal to at least the first date of this agreement and with a three year reporting option beyond the Annual expiration date of the policy.)

|                 |           |
|-----------------|-----------|
| Valuable Papers | \$100,000 |
|-----------------|-----------|

(Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may, at its sole option, require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.)

Said insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City. Such insurance shall be written by an insurer with an A.M. Best Rating of A X or better. Prior to commencing any work on the project, Certificates of Insurance approved by the City's Division of Insurance and Risk Management evidencing the maintenance of said insurance shall be furnished to the CITY. The certificates shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until thirty (30) days after receipt of written notice by the CITY. Anything to the contrary notwithstanding, the liabilities of the CONSTRUCTION MANAGER under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Neither approval nor failure to disapprove insurance furnished by the CONSTRUCTION MANAGER shall relieve the CONSTRUCTION MANAGER from responsibility to provide insurance as required by contract.

*(Remainder of this Page intentionally left blank)*

### **XIII. PROMPT PAYMENT TO SUBCONTRACTORS AND SUPPLIERS:**

**A. GENERALLY** - When Contractor receives payment from CITY for labor, services, or materials furnished by subcontractors and suppliers hired by the contractor, the contractor shall remit payment due to those subcontractors and suppliers within **10 days** after the contractor's receipt of payment. When a subcontractor receives payment from a contractor for labor, services, or materials furnished by subcontractors and suppliers hired by the subcontractor, the subcontractor shall remit payment due to those subcontractors and suppliers within **7 days** after the subcontractor's receipt of payment. Nothing herein shall prohibit a contractor or subcontractor from disputing, pursuant to the terms of the relevant contract, all or any portion of a payment alleged to be due to another party if the contractor or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The contractor or subcontractor must pay all undisputed amounts due within the time limits imposed by this section

**B. JACKSONVILLE SMALL AND EMERGING BUSINESS ENTERPRISE PARTICIPATION** - Notwithstanding Chapter 126, Part 6 of the Jacksonville Ordinance Code (the "Code"), Contractor 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 CITY under the applicable contract within seven (7) business days after Contractor's receipt of payment from CITY (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 Contractor, Contractor shall provided to CITY, with its requisition for payment, documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's from all prior payments that Contractor has received from CITY. Contractor shall not unreasonably withhold payments to certified JSEB's if such payments have been made to the Contractor. If Contractor withholds payment to its certified JSEB's, which payment has been made by CITY to Contractor, Contractor shall return said payment to CITY. Contractor shall provide notice to CITY 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 CITY and said subcontractor or supplier within five (5) calendar days after Contractor's receipt of payment from CITY. Contractor 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 the City as liquidated damages. Continued failure to adhere to this clause may be cause for termination.

**C. THIRD-PARTY LIABILITY** - The Prompt Payment requirements hereunder shall, in no way, create any contractual relationship or obligation between CITY and any subcontractor, supplier, JSEB, or any third-party or create any CITY liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of its contractual obligations to CITY. As a result of said breach, the CITY, without waiving any other available remedy it may have against Contractor, may: (i) issue joint checks; and (ii) charge Contractor a 0.2% daily interest penalty or penalties specified in Chapter 126 of the Code for JSEB's and Chapter 218, Florida Statutes, for non-JSEB's, whichever greater.

*(Remainder of this Page intentionally left blank)*

#### **XIV. CONFLICT OF INTEREST**

Section 126.111 of the Purchasing Code requires that a public official who has a financial interest in a bid or contract 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 proposer (Attachment B).

#### **XV. 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 CONSTRUCTION MANAGER, contractor, supplier, subcontractor, or subconsultant 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

#### **XVI. CONFORMITY TO APPLICABLE LAWS**

The 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 Agreement are to be performed by a Subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

#### **XVII. CONTINGENT FEES PROHIBITED**

The CONSTRUCTION MANAGER must warrant that it has not employed or retained a company or person, other than a bona fide employee or subcontractor, working in his employ any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of making a contract with the City.

#### **XVIII. TRUTH IN NEGOTIATION**

The CONSTRUCTION MANAGER understands and agrees that execution of the Agreement shall be deemed to be a 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 Agreement, such certificate being required by Section 287.055, Florida Statutes. Pursuant to such certificate, the 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 the CONSTRUCTION MANAGER agrees that the compensation hereunder shall be adjusted to exclude any significant sums where the City 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 Agreement.

#### **XIX. AUDIT PROVISIONS**

Chapter 126.109 of the Purchasing Code: A person providing capital improvements, contractual services, supplies or professional services with a value in excess of eight thousand dollars, computed on a cumulative basis for all the transactions during a fiscal year of the City, and purchased by the

City pursuant to a method of purchase other than by formal competitive bid, unless otherwise provided herein, shall agree and be deemed to have agreed by virtue of doing business under contract with the City to allow access and examination at all reasonable times by the Council Auditor or any duly authorized representative of the Council Auditor to business records directly pertinent to the transaction until the expiration of three years after final payment pursuant to the transaction. No examination shall be conducted until the Council Auditor has made a recommendation to the Council President that the examination should or, in the alternative, should not be conducted and until the Council President has approved the conducting of the examination.

## **XX. ETHICS PROVISION FOR PROFESSIONAL SERVICES**

The City will require the following ethics provision clause to be made part of the contract Agreement entered into with the selected CONSTRUCTION MANAGER for these services:

### **"ETHICS PROVISION FOR PROFESSIONAL SERVICES**

The CONSTRUCTION MANAGER, by affixing its signature to this contract, represents that it has reviewed the provisions of the Jacksonville Ethics Code contained in Chapter 602, Jacksonville Ordinance Code, and the provisions of the Purchasing Code contained in Chapter 126, Jacksonville Ordinance Code."

## **XXI. JOINT VENTURE SUBMITTALS**

In addition to the above-stated definition, a formal Joint Venture Enterprise means an association of two or more business enterprises acting as a prime contractor and performing or providing services on a contracting opportunity in which each joint venture partner combines property, capital, efforts, skills, and/or knowledge. Joint Ventures must be qualified as such under Florida law.

The following procedures shall apply with respect to Jacksonville Small Emerging Businesses (JSEB) certified Joint Ventures. A Joint Venture shall be considered a certified JSEB for the purposes of award of a contract when at least one Joint Venture Partner is a certified JSEB, which has been properly certified pursuant section 126.606. The certified JSEB Joint Venture Partner shall be responsible for a clearly defined portion of the work to be performed, share in the Ownership, control, management responsibilities, risks, and profits of the Joint Venture Enterprise. The certified JSEB Joint Venture Partner's portion of the contract must be assigned a commercially reasonable dollar value. The portion of the certified JSEB Joint Venture Partner's work, materials, equipment or services shall be set forth in detail from the work, materials, equipment or services to be furnished by the non-certified Business Enterprise Joint Venture Partners. The certified JSEB Joint Venture Partner business participation shall equal or exceed twenty-five percent (25%) of the total dollar value of the joint venture. The non-certified business enterprise Joint Venture Partners shall set forth in detail the management, technical and entrepreneurial assistance and skills that they are providing the certified JSEB Joint Venture Partner.

- A. A Joint Venture must submit an application for approval prior to the bid opening or receipt of proposals for each project. The joint venture shall be certified by the same process as required for certification of JSEB's as specified in section 126.606. Joint venture certification shall be given only on a bid-by-bid basis.
- B. The Procurement Department maintains lists of available certified JSEB's and non-certified business enterprises seeking to participate as joint ventures.

CONSTRUCTION MANAGERS may submit proposals as Certified Joint Ventures on the published due date of receipt of proposals without having obtained prior

certification from the City as a joint venture. Proposers submitting as a joint venture, however, must submit their application for certification as a joint venture by the bid opening date forth herein. Applications may be obtained from the Procurement Department, 117 West Duval Street, Suite 335, Jacksonville, Florida 32202. Failure to meet the application deadline for certification as a joint venture may deem the proposal non-responsive. In no event will a contract be awarded to a firm, which applied as a joint venture, but failed to receive certified status during the proposal review/interview period, if interviews are held.

#### **XXII. CONTRACT FORM**

Attached, as (Attachment E), is the Contract that will be used by the City of Jacksonville to contract for the services covered by this request. Submittal of a proposal confirms that the CONSTRUCTION MANAGER accepts the terms of this document and will contract with the City using this form. In the event of a conflict between the contract and the RFP the RFP will govern but only to the extent of the conflict.

#### **XXIII. PROTEST PROCEDURES**

See Attachment F.

#### **XXIV. PROPOSAL SUBMISSION**

Please submit one (1) original and two (2) copies of the proposal to:

City of Jacksonville  
Procurement Division  
Attn: Professional Services Specialist  
117 W. Duval Street, Suite 335  
Jacksonville, Florida 32202

**Proposals must be delivered on or before 4:00 PM EDT, Friday, June 19, 2009. Late proposals will not be accepted.**

**In accordance with ATTACHMENT H - SOLICITATIONS SILENCE POLICY, any questions regarding the RFP should be submitted in writing to the City's Buyer, Alex Baker, at the above address or via email to [abaker@coj.net](mailto:abaker@coj.net) no later than 3:00 PM EDT on Friday, June 9, 2009.**

*(Remainder of Page Left Intentionally Blank)*

**ATTACHMENT A (1 of 1)**

NAME OF CONSULTANT \_\_\_\_\_

Contract Number \_\_\_\_\_

**SCHEDULE OF PROPOSED RATES**

**(NOTE: THIS IS FOR INFORMATION ONLY. DO NOT SUBMIT WITH PROPOSAL)**

1. Average hourly direct labor rates (without Fringe Benefits)

Project Manager (Responsible Professional) \$\_\_\_\_\_ hr.

Design Engineer or Architect (Registered) \$\_\_\_\_\_ hr.

Designer or Technician (Non-Registered) \$\_\_\_\_\_ hr.

Drafter or CADD Operator \$\_\_\_\_\_ hr.

Field Inspector \$\_\_\_\_\_ hr.

Clerical (Typist, Word Processor,  
Document Assembly, etc.) \$\_\_\_\_\_ hr.

2. Total Overhead Rate (to be applied to Direct Labor:) \_\_\_\_\_%

3. Profit Rate (to be applied to Direct Labor plus Overhead) \_\_\_\_\_%

4. Cost of 4-man survey crew per 8 hour day (If applicable) \$\_\_\_\_\_

5. Other Direct Project Costs per Unit (please specify)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. Estimated percentage of total fee to be performed by subconsultants \_\_\_\_\_%

7. Please provide any other relevant rates that may apply to this project including average direct hourly labor rates for other categories of proposed personnel

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT B (1 of 2)**

**CONFLICT OF INTEREST CERTIFICATE**

Request for Proposals No. \_\_\_\_\_

Proposer must execute either Section I or Section II hereunder relative to Florida Statute 112.313(12). Failure to execute either Section may result in rejection of this bid proposal.

**SECTION I**

I hereby certify that no official or employee of the City or independent agency requiring the goods or services described in these specifications has a material financial interest in this company.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name of Official (Type or Print)

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City, State, Zip Code

**SECTION II**

I hereby certify that the following named City official(s) and employee(s) having material financial interest(s) (in excess of 5%) in this company have filed Conflict of Interest Statements with the Supervisor of Elections, 105 East Monroe Street, Jacksonville, Duval County Florida, prior to receipt of proposals.

|               |                            |                         |
|---------------|----------------------------|-------------------------|
| _____<br>Name | _____<br>Title or Position | _____<br>Date of Filing |
|---------------|----------------------------|-------------------------|

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Print Name of Certifying Official

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City, State, Zip Code

**ATTACHMENT B (2 of 2)**

**PUBLIC OFFICIAL DISCLOSURE**

Section 126.112 of the Purchasing Code requires that a public official who has a financial interest in a bid or contract 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. Please provide disclosure, if applicable, with bid.

Public Official \_\_\_\_\_

Position Held: \_\_\_\_\_

Position or Relationship with Bidder: \_\_\_\_\_

*(Remainder of this page intentionally left blank)*

## ATTACHMENT C

### SECTION 5 EQUAL BUSINESS OPPORTUNITY PROGRAM PARTICIPATION PERCENTAGE PLAN FOR JACKSONVILLE SMALL AND EMERGING BUSINESS

#### A. POLICY

It is an official policy of the City of Jacksonville to encourage the maximum participation of Jacksonville Small and Emerging Businesses (JSEBs) in its contract awards based upon availability. It is the City's intent in adopting this program to reflect the philosophy with regard to enhancing participation of JSEBs in all areas of procurement.

**Please be advised that, in order to be counted toward meeting the participation percentage goal defined herein, all JSEBs shall be certified by the City in accordance with Ordinance Code 2004-602 AT THE TIME OF PROPOSAL OPENING.**

At the time of proposal opening, proposers shall include documentation with their proposal that indicates good faith efforts, as outlined in the Good Faith Efforts categories of Section J, herein, in the event proposers: (i) are unable to obtain proposals from JSEB subcontractors that equal or exceed the percentages established in the participation goals; or (ii) otherwise desire to demonstrate their "good faith" efforts performed in their attempt to meet the participation percentage goal whether or not said goal is met.

#### B. JSEB OBLIGATION

Proposers are required to make all efforts reasonably possible to ensure that Jacksonville Small and Emerging Businesses have a full and fair opportunity to compete for performance on this project. Contractors shall not discriminate on the basis of race, ethnicity, national origin or gender in the award and performance of the work under this contract.

#### C. ELIGIBILITY

1. To be considered eligible for contract award, the Contractor shall include with the proposal/proposal an original Form 1(Schedule of Subcontractor/Subconsultant Participation), showing:
  - a. Total percentage of JSEB work or procurement that the Prime Contractor intends to award;
  - b. The identification of the JSEB as being a subcontractor, service organization, manufacturer, or supplier;

In addition, each JSEB certified subcontractor must submit to the prime contractor a Letter of Intent (Form 2) **(see Section 3 of specification documents)** to perform a specific task related to the project for which he or she is licensed to perform and has been certified by the City in that category. The Letter of Intent must include the JSEB sub contractors' name, the scope of work to be performed, the Minority Business Enterprise ethnic category and the percent of the work to be performed. **Copies (or faxes) of the original Letters of Intent signed by the JSEB subcontractors or suppliers must be submitted with the proposal.** The Schedule of Subcontractor/Subconsultant Participation and the Letter of Intent

must match and be identical. Failure to submit the letter of intent within 48 hours of the scheduled proposal opening will make the proposal non-responsive and will be cause for rejection.

2. In the event the company submitting the proposal is unable to obtain proposals from JSEB subcontractors that equal or exceed the percentages established in the participation goals, documentation must be included with the proposal that indicates good faith efforts as stated in Good Faith Efforts, Section J.
3. The JSEB must be subcontracted in the area that the JSEB is certified by the City or licensed by the State Professional Regulatory Board.

**D. COMPLIANCE**

**All those submitted proposals or subcontractors participating in this project are hereby notified that failure to fully comply with the City's JSEB policy as set forth herein shall constitute a breach of contract which may result in termination of the contract or such other remedy as deemed appropriate by the Owner. Such penalties as outlined in Section 126.201 of Ordinance 2004-602-E will apply.**

**E. PARTICIPATION GOALS**

The following goals apply to this contract and submissions of a proposal by prospective contractor shall constitute full acceptance of all conditions outlined in the proposal documents or proposals.

The attainment of JSEB participation goals established for this contract will be: (i) based upon JSEBs certified by the City AT THE TIME OF PROPOSAL OPENING in accordance with Ordinance Code 2004-602; and (ii) measured as a percentage of the total dollar value of the contract or in the case of alternates the percentage is calculated on the base proposal for the purpose of the award, we however, expect the contractor to meet or exceed the stated goals when the alternates are awarded. The goals established for this contract are:

**20 % PERCENT TO BE PERFORMED BY CITY CERTIFIED JSEBs AT THE TIME OF PROPOSAL OPENING (ANY COMBINATION)**

**F. CONTRACT AWARD**

The City proposes to award the contract to the responsive, responsible proposer submitting a reasonable proposal provided the proposer has met the goals for JSEB participation or, if failing to meet the goals, the proposer made an acceptable good faith effort to meet the JSEB participation goals as established herein. Proposers are advised that the City has sole discretion and authority to determine if any proposer has made a "Good Faith Effort." The City reserves the right to reject any or all proposals submitted. The City will have absolute discretion to reject any proposal or exclude a prospective proposer from submitting a proposal who has been non-responsive to JSEB program requirements without satisfactory justification accepted by the Chief of Procurement and Supply.

**G. SUBCONTRACT CLAUSE**

1. All proposers hereby agree to incorporate JSEB participation, policy, goals, conditions and instructions in all agreements that offer JSEB participation subcontracting opportunities.
2. If a change order presents further subcontracting opportunity beyond current subcontracting, the prime contractor should make positive efforts to further include JSEB participation.
3. The JSEB prime contractor shall perform at least 25% of the total amount of the work to be performed under this Contract with its own workforce. Subletting of any Work under this Contract shall not relieve the JSEB prime contractor of its full responsibility for the proper and timely performance and for its selection of Subcontractor (s).

**H. POST AWARD REQUIREMENTS**

After the award of the contract, failure on the part of the successful contractor to subcontract with JSEBs at a percentage level equal to or higher than stated on Form 1, may put the contractor in violation and is subject to penalties outlined in Ordinance 2004-602.

**I. PAYMENT OF SUBCONTRACTORS**

Prime contractors shall certify in writing that ALL subcontractors and suppliers have been paid for work and materials from previous progress payments received (less any Retainage) prior to receipt of any further progress payments. Failure to comply with the requirements of this section may result in penalties including without limitation those outlined in Ordinance 2004-602.

**J. GOOD FAITH EFFORTS**

Proposers who fail to meet the stated JSEB participation goals set forth in Section “E” above are required to submit with their proposal all efforts that would demonstrate a “Good Faith Effort” in the solicitation of subcontractors to meet the JSEB participation goals on this project.

The following categories, without limitations, may be utilized in considering Good Faith Efforts as outlined in Ordinance 2004-602:

- (1) A contact log showing the name, address, and contact number (phone or fax) used to contact the proposed certified subcontractors, nature of work requested for quote, date of contact, person making the effort;
- (2) The description of work for which a quote was requested;
- (3) The amount of the quote given, if one was obtained;
- (4) The list of divisions of work not subcontracted and an explanation why not; and
- (5) Subcontractor information as requested by forms developed by the Department.

**NOTE: The City will investigate and verify information submitted in determining Good Faith Effort, and will compare the same with the performance of other proposers’ attempts to meet the participation goals defined herein.**

**K. EXCLUSIONARY AGREEMENTS**

Agreements between any proposer and a JSEB in which the JSEB promises not to provide subcontracting quotations to other proposers are prohibited, and may result in both the proposer and the JSEB being subject to the penalties outlined in Ordinance Code 2004-602.

**L. JOINT VENTURE SUBMITTALS**

For Capital Improvement, contractors submitting as Joint Venture, must be certified as a joint venture at the time of proposal opening. Applications may be obtained from the Department of Procurement, 117 West Duval Street, Suite 335, Jacksonville, FL 32202. Failure to meet the application deadline for certification as a Joint Venture will deem the proposal non-responsive.

**M. SUBSTITUTIONS**

In the event the successful proposer / contractor wishes to make a substitution of a JSEB subcontractor or wishes to self-perform or supplement the work of a JSEB subcontractor, the proposer / contractor shall:

1. Submit satisfactory written proof of “noncompliance” to the Chief of Equal Business Opportunity/Contract Compliance. (The term “noncompliance” is defined as facts and circumstances that substantially demonstrate a material breach by the subcontractor of the contract between it and the successful contractor)
2. Take no action until all information submitted has been reviewed and approved by the Chief of Equal Business Opportunity/Contract Compliance.
3. Substitute of a certified JSEB performing the same work, as the subcontractor being replaced.

**N. JSEB MONTHLY REPORT**

A completed JSEB Monthly Report (See Form 3) will be included with each pay request. Contractors are required to maintain records of the JSEB Monthly Reports for three (3) years.

**O. CALCULATION OF JSEB PARTICIPATION**

1. Credits toward the JSEB goal for Majority Proposer will be based on the percentage of work actually performed by JSEBs.
2. If a certified JSEB submits a proposal as a prime contractor, he/she can meet the designated goal.
3. Subject to the requirements of Ordinance 2004-602, credit towards the JSEB goal allowed for joint venture with JSEB will be equal to the same percentage as the percentage of ownership and control of the JSEB participants in the joint venture. The eligibility of a JSEB joint venture will be determined on a project-by project basis. A joint venture must be certified as a JSEB joint venture at the time of proposal opening in order for the participation of the JSEB partner to be counted towards the JSEB goal requirement. The JSEB partner’s share in the ownership, control, management responsibilities, risks and profits of the joint venture must be at least twenty-five percent (25%) and the JSEB partner must be responsible for a clearly defined portion of the work to be performed.
4. The EBO office will accept participation from certified JSEB companies that are certified at the time of proposal opening, and that are immediately subordinate to subcontractor and sub-consultants, toward meeting percentage goals.
5. The EBO office will accept 100% of purchase price for materials from JSEB suppliers towards meeting JSEB percentage goals.

**P. PENALTIES**

Severe penalties, including without limitation those outlines in Ordinance 2004-602, may apply to non-compliance with the Equal Business Opportunity Program and other violations of applicable federal, state and local laws statutes, ordinances, rules and regulations.

**FORM 1**  
**SCHEDULE OF SUBCONTRACTOR/SUBCONSULTANT PARTICIPATION**

Name of  
Proposer: \_\_\_\_\_

Project Title: \_\_\_\_\_

Proposal Number: \_\_\_\_\_ Total Base Proposal  
Amount (if applicable): \_\_\_\_\_

**\*Please list all JSEBs first**

| Full Company Name | JSEB<br>Classification<br>(African-American,<br>Women, Asian<br>Native American or<br>Hispanic) | Type of Work to be<br>Performed | Total Contract<br>Value or<br>Percentage |
|-------------------|-------------------------------------------------------------------------------------------------|---------------------------------|------------------------------------------|
| _____             | _____                                                                                           | _____                           | _____                                    |
| _____             | _____                                                                                           | _____                           | _____                                    |
| _____             | _____                                                                                           | _____                           | _____                                    |
| _____             | _____                                                                                           | _____                           | _____                                    |
| _____             | _____                                                                                           | _____                           | _____                                    |
| _____             | _____                                                                                           | _____                           | _____                                    |
| _____             | _____                                                                                           | _____                           | _____                                    |
| _____             | _____                                                                                           | _____                           | _____                                    |
| _____             | _____                                                                                           | _____                           | _____                                    |

Attach additional list of subcontractors/sub-consultants as needed

| CONSULTANT/SUBCONTRACTOR/SUPPLIER TOTAL VALUES |       |
|------------------------------------------------|-------|
| African-American Participation Total           | _____ |
| Hispanic-American Participation Total          | _____ |
| Native-American Participation Total            | _____ |
| Asian-American Participation Total             | _____ |
| Woman Participation Total                      | _____ |

The undersigned will enter into a formal Agreement with the JSEB Suppliers/Consultants/Subcontractors identified herein for work listed in this schedule conditioned upon execution of a contract with the City of Jacksonville. Under penalties of perjury I declare that I have read the foregoing conditions and instructions and the facts are true to the best of my knowledge and beliefs.

Signature of  
Proposer: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**FORM 2**  
**LETTER OF INTENT**  
**TO PERFORM AS A SUBCONTRACTOR or SUB-CONSULTANT**

---

(Name of JSEB Supplier/Consultant/Subcontractor)

Name of Project: \_\_\_\_\_ Bid Number: \_\_\_\_\_

**JSEB GROUP STATUS:**

- ☐ African-American
- ☐ Woman Business Owner
- ☐ Asian-Americans
- ☐ Hispanic-Americans
- ☐ Native-Americans

I, the undersigned, understand that the price below is representative of my intent to perform the scope of work stated below. I further understand that this price is subject to increase or decrease due to the City of Jacksonville bid requirements. All work must meet the City of Jacksonville bid specifications.

\*Scope of Work

\*Total Percent of work to be performed or materials to be supplied, including Sales Tax

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\$ \_\_\_\_\_

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Signature of JSEB

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Title

---

Date

\*Scope of Work and Price are covered under Base Bid only.

**This form must be used for Letter of Intent.**

**FORM 3**  
**CITY OF JACKSONVILLE**  
**EQUAL BUSINESS OPPORTUNITY PROGRAM**  
**CONSULTANT AND CONTRACTOR'S MONTHLY REPORT**

PRIME CONTRACTOR NAME: \_\_\_\_\_ PROJECT TITLE: \_\_\_\_\_

PROFESSIONAL SERVICES NO. \_\_\_\_\_ - OR - CITY PROPOSAL NO.: \_\_\_\_\_

CURRENT CONTRACT TOTAL AMOUNT \$ \_\_\_\_\_ CITY CONTRACT NO. \_\_\_\_\_

| INVOICE INFORMATION                                  |                  |                                                                                                                                                     |                             |                           |                 |
|------------------------------------------------------|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|---------------------------|-----------------|
| INVOICE NO.: _____                                   |                  | CURRENT INVOICE \$: _____                                                                                                                           |                             |                           |                 |
| FOR PERIOD ENDING DATE: _____                        |                  | CUMULATIVE INVOICED \$: _____                                                                                                                       |                             |                           |                 |
|                                                      |                  | CONTRACT % COMPLETE: _____                                                                                                                          |                             |                           |                 |
| CONTRACT GOAL TRACKING                               |                  |                                                                                                                                                     |                             |                           |                 |
| JSEB GOAL \$: _____                                  |                  | JSEB GOAL %: _____                                                                                                                                  |                             |                           |                 |
| PRIOR MONTH CUMULATIVE JSEB \$: _____                |                  |                                                                                                                                                     |                             |                           |                 |
| PRIOR MONTH CUMULATIVE NON-JSEB \$: _____            |                  | <div style="border: 1px dashed black; padding: 5px;"> <b>FORMULA FOR CURRENT MONTH %:</b><br/> <b>CUMULATIVE \$ / CUMULATIVE \$ INVOICED</b> </div> |                             |                           |                 |
| CUMULATIVE JSEB \$: _____                            |                  | CUMULATIVE JSEB %: _____                                                                                                                            |                             |                           |                 |
| CUMULATIVE NON- JSEB \$: _____                       |                  | CUMULATIVE NON- JSEB %: _____                                                                                                                       |                             |                           |                 |
| JSEB SUBCONTRACTORS TO BE PAID FROM THIS INVOICE     |                  |                                                                                                                                                     |                             |                           |                 |
| COMPANY NAME                                         | FEDERAL I.D. NO. | ZIP CODE                                                                                                                                            | JSEB/JSEB TYPE <sup>1</sup> | TYPE OF WORK <sup>2</sup> | \$ THIS PAYMENT |
|                                                      |                  |                                                                                                                                                     |                             |                           |                 |
|                                                      |                  |                                                                                                                                                     |                             |                           |                 |
|                                                      |                  |                                                                                                                                                     |                             |                           |                 |
|                                                      |                  |                                                                                                                                                     |                             |                           |                 |
| Use Sheet 2 if additional lines are needed.          |                  |                                                                                                                                                     |                             |                           | <b>TOTAL</b>    |
| NON-JSEB SUBCONTRACTORS TO BE PAID FROM THIS INVOICE |                  |                                                                                                                                                     |                             |                           |                 |
| COMPANY NAME                                         | FEDERAL I.D. NO. | ZIP CODE                                                                                                                                            | Type                        | TYPE OF WORK <sup>2</sup> | \$ THIS PAYMENT |
|                                                      |                  |                                                                                                                                                     | N/A                         |                           |                 |
|                                                      |                  |                                                                                                                                                     | N/A                         |                           |                 |
|                                                      |                  |                                                                                                                                                     | N/A                         |                           |                 |
|                                                      |                  |                                                                                                                                                     | N/A                         |                           |                 |
| Use Sheet 3 if additional lines are needed.          |                  |                                                                                                                                                     |                             |                           | <b>TOTAL</b>    |

<sup>1</sup>JSEB (Jacksonville Small Emerging Business) / JSEB (Minority Business Enterprise) TYPES: AA: African-American; WBE: Woman; HA: Hispanic-American, ASA: Asian-American, NA: Native-American

<sup>2</sup>TYPE OF WORK: Examples: Catering, Clerical, Consulting, Engineering, Hauling, Janitorial, Masonry, Site Clearing, Technical Support, etc...

| FOR CITY OF JACKSONVILLE USE ONLY |              |                                               |                 |
|-----------------------------------|--------------|-----------------------------------------------|-----------------|
| DATE PROCESSED                    | DOCUMENT NO. | INDEX CODE – SUBOBJECT - PROJECT NO. - DETAIL | \$ THIS PAYMENT |
|                                   |              |                                               |                 |
|                                   |              |                                               |                 |

- Notes:
- THIS MONTHLY FORM MUST BE COMPLETED AND SUBMITTED WITH ALL REQUESTS FOR PAYMENT AND FINAL PAYMENT.
  - Contractor shall attach to this form a typewritten explanation of any differences in JSEB/JSEB participation from original contract commitment.

**ATTACHMENT D (Page 1 of 1)**

**VOLUME OF LOCAL GOVERNMENT WORK  
WITHIN THE LAST FIVE YEARS**

Please list the original contract amount, plus total of any amendments in the year they were executed.

| PROJECT DESCRIPTION   | FY04<br>Oct03-Sep04 | FY05<br>Oct04-Sep05 | FY06<br>Oct05-Sep06 | FY07<br>Oct06-Sep07 | FY08<br>Oct07-Sep08 |
|-----------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
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|                       |                     |                     |                     |                     |                     |
| <b>YEARLY TOTALS:</b> |                     |                     |                     |                     |                     |

ATTACHMENT E

(Project Name)

**EXCEPT AS SPECIFICALLY PROVIDED HEREIN**  
**IN CASE OF A CONFLICT BETWEEN THE PROVISIONS IN THE RFP AND THIS MODEL, THE PROVISIONS**  
**OF THIS MODEL SHALL GOVERN**

AGREEMENT BETWEEN CITY AND CONSTRUCTION MANAGER

PROJECT NO: P-??-09

PROJECT NAME AND LOCATION: New Berlin Road/Yellow Bluff Road Intersection Improvement

CONSTRUCTION MANAGER: (Name of Constr. Management Firm)

ARCHITECT-ENGINEER: (Name of Architect-Engineer Firm)

CITY: City of Jacksonville  
Department of Public Works  
214 N. Hogan Street, 10<sup>th</sup> Floor  
Jacksonville, Florida 32202

**AGREEMENT  
BETWEEN THE CITY OF JACKSONVILLE  
AND  
\_\_\_\_\_  
FOR  
\_\_\_\_\_**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the CITY OF JACKSONVILLE, a municipal corporation in Duval County, Florida (hereinafter referred to as the "CITY") and \_\_\_\_\_; a corporation authorized to do business in the State of Florida at \_\_\_\_\_ (hereinafter referred to as the "CONSTRUCTION MANAGER"); for \_\_\_\_\_ (hereinafter referred to as the "Project").

**WITNESSETH:**

WHEREAS, the CITY prepared a Request for Proposals (P-\_\_-09) for the Project and solicited proposals from interested firms; and

WHEREAS, the CONSTRUCTION MANAGER submitted a proposal to the CITY and was selected by the CITY as the best and most qualified applicant; and

WHEREAS, the CITY and the CONSTRUCTION MANAGER have negotiated mutually satisfactory terms for the execution of such services; now therefore

**IN CONSIDERATION** of the premises and of the mutual covenants and agreements hereinafter contained, the CITY hereby engages the CONSTRUCTION MANAGER for Professional Services for the Project in accordance with the following:

**SECTION O**

**0.1 INCORPORATION OF RECITALS**

The above stated recitals are true and correct and, by this reference, are incorporated

**ARTICLE 1  
THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT**

The CONSTRUCTION MANAGER accepts the relationship of trust and confidence established between itself and the Owner by this Agreement. The CONSTRUCTION MANAGER covenants with the Owner to demonstrate high performance in the industry to its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. 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 the Owner.

- 1.0 Period of Service – This Agreement shall be effective upon execution by the Mayor of the City of Jacksonville and shall continue and remain in effect thereafter until \_\_\_\_\_ or earlier termination as provided in Article 14 hereof unless otherwise extended by amendment.
- 1.1 The Construction Team The CONSTRUCTION MANAGER, the Owner and the Architect-Engineer, called the "Construction Team", shall work during design and through final construction completion and shall be available thereafter should additional services be required. The Architect-Engineer will provide leadership during the Preconstruction Phase with support from the CONSTRUCTION MANAGER and the CONSTRUCTION MANAGER shall provide leadership to the Construction Team on all matters relating to construction.
- 1.2 Extent of Agreement – This Agreement for the (Project Name) represents the entire Agreement between the Owner and CONSTRUCTION MANAGER for construction management services. When drawings, specifications and other descriptive documents defining the work to be included under a construction authorization are complete, they shall be identified in the construction authorization issued by the Owner. When drawings, specifications, construction documents, and other descriptive documents defining the work to be included in the Guaranteed Maximum Price (GMP) are 60% complete, an Amendment to the Agreement shall be signed by the Owner and CONSTRUCTION MANAGER, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of this GMP Amendment by the Owner, the CONSTRUCTION MANAGER shall obtain three (3) sets of dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer, shall acknowledge on the face of each document of each set that it is the set upon which the GMP is based and shall send one set of the documents to the Owner along with the GMP proposal, while keeping one set for itself and returning one set to the Architect-Engineer.

This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and CONSTRUCTION MANAGER.

1.3 Definitions:

Architect-Engineer – (Name of Architect-Engineer Firm)

Construction Authorization – The term Construction Authorization shall mean a written work order based on a defined scope of work excluding CONSTRUCTION MANAGERS fees as specified in Article 8, prepared by the Owner and issued to the CONSTRUCTION MANAGER. Construction Authorizations shall be used prior to the date of the GMP Amendment and all work performed pursuant to Construction Authorizations shall be included in the GMP.

CONSTRUCTION MANAGER – (Name of Construction Management Firm)

Estimate - The CONSTRUCTION MANAGER's latest estimate of probable project construction cost.

Cost Authorization Amendment – The term Cost Authorization Amendment shall mean a Cost Proposal for any Individual Design Phase accepted by the Owner in writing in its sole discretion, which amendment shall become a part hereof upon Owner's and CONSTRUCTION MANAGER's execution of the same and shall at a minimum establish the Cost for an Individual Phase, confirm and/or amend the substantial and final completion dates, and the drawings and specifications applicable to the Individual Phase. The Cost Authorization Amendments are not separate Guaranteed Maximum Prices and shall be included as a component of the GMP Amendment. Liquidated Damages will be established separately for the entire project and not as a part of each Individual Phase.

Cost Authorization Proposal – The term Cost Authorization Proposal shall mean a proposal for completing an Individual Phase that shall include a proposed cost for that phase and confirm the proposed substantial and final completion dates.

Cost Authorization Assumptions and Clarifications – The term Cost Authorization Assumptions and Clarifications shall mean the CONSTRUCTION MANAGER's Assumptions and Clarifications underlying the CONSTRUCTION MANAGER's Cost Authorization Proposal.

Final Completion – As defined in paragraph 2.4(10)(i).

Final Payment – As defined in paragraph 12.2.

GMP (Guaranteed Maximum Price) Amendment – The term GMP Amendment shall mean a GMP Proposal for the project accepted by the Owner in writing in its sole discretion, which amendment shall become a part hereof upon Owner's and CONSTRUCTION MANAGER's execution of the same and shall at a minimum establish the GMP, the substantial and final completion dates, the amount of liquidated damages, and the drawings and specifications applicable to the Project. The GMP Amendment shall include all Cost Authorization Amendments. In the event of any conflict between the provisions of the Contract Documents, the decreasing order shall be executed Amendments (including Assumptions and Clarifications), exhibits, this Agreement, and Request for Proposal and the CONSTRUCTION MANAGER's Proposal, in order.

GMP Proposal – The term GMP Proposal shall mean a proposal for completing the Project which shall include a proposed GMP, confirm the proposed substantial and final completion dates and confirm the liquidated damages.

GMP Assumptions and Clarifications – The term GMP Assumptions and Clarifications shall mean the CONSTRUCTION MANAGER's Assumptions and Clarifications underlying the CONSTRUCTION MANAGER's GMP Proposal.

Owner - The City of Jacksonville, or those persons designated by the City of Jacksonville to act in its behalf. The entity that will occupy, use and own the project upon substantial completion is the City of Jacksonville. The funds with which the compensation of the Architects, Engineers, CONSTRUCTION MANAGERS, etc. will be paid are under the control of the Department of Public Works. All duties of the Owner hereinafter shall be performed by the City of Jacksonville Department of Public Works.

Phase – That work specified in sequential design package plans and specifications required by the "fast track" design/construction process in order to meet owner specified project completion requirements. "Fast track" means

the breakdown of project work elements into discrete work elements, which can be designed sequentially in order that construction may proceed before the total design is complete.

Purchase Order - An accounting document generated by the Owner provided to a contractor or vendor. The terms and conditions of the contract documents, except as expressly and clearly modified by the CITY, shall be incorporated in any purchase order.

Project - The Project is the total work to be performed under this Agreement.

Project Manager - The person designated by the Owner to provide direct interface and performance oversight for all members of the project team (Architect-Engineer and CONSTRUCTION MANAGERS) with whom the Owner has a direct contractual relationship. The Project Manager is responsible to insure contract compliance throughout the project delivery process.

Substantial Completion - The term Substantial Completion as used herein shall mean that point at which the Work, or designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy for its intended purpose.

- 1.4 Owner's Construction Budget: Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget includes all CONSTRUCTION MANAGER fees, costs of the work and CONSTRUCTION MANAGER's GMP contingency as defined in Articles 8 and 9. This acknowledgement of the Owner's budgeted funds is not to be construed as the CONSTRUCTION MANAGER's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

## **ARTICLE 2 CONSTRUCTION MANAGER'S SERVICES**

The services to be provided by the CONSTRUCTION MANAGER shall include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

### **2.1 Project Information Reporting**

#### **2.1.1 General:**

- (1) Commencing immediately after contract award, the CONSTRUCTION MANAGER shall implement and shall utilize throughout the life of this Contract all subsystems of the Project Information Reporting. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner monthly and shall accompany each pay request. All reports shall be submitted electronically by direct transmission to be followed by hard copy with accompanying disks, if requested.
- (2) If requested by the Owner, the CONSTRUCTION MANAGER shall conduct a comprehensive workshop in Jacksonville for participants designated by the Project Manager and additional seminars as required to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's use and understanding of the project information system; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner, procedures for accomplishing the management control aspect of the Project.
- (3) The report shall be described in terms of the following major subsystems: narrative reporting, on a monthly basis; schedule control, on a monthly basis; cost control, and estimating, project accounting, accounting and payment, and action reports.
- (4) CONSTRUCTION MANAGER shall use a Project Management System approved by the Owner in the performance of their work.

#### **2.1.2 Narrative Reporting Subsystem**

- (1) The CONSTRUCTION MANAGER shall prepare written reports as described hereunder. All reports shall

be in 8 1/2" X 11" format.

- (2) The Narrative Reporting Subsystem shall include the following reports upon request:
- a) A Monthly Executive Summary which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations.
  - b) A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
  - c) A Monthly Scheduling Narrative summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
  - d) A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
  - e) A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.
  - f) Daily Reports shall be created during the construction phase describing events and conditions on the site. A visitor's log recording visits by the Architect, Consultants, Owner, Inspectors and all visitors shall be maintained. This log shall include, name and who represented, phone number, date, time of arrival and departures.
  - g) A monthly Minority Business Enterprise report during the construction phase summarizing the participation of certified minority subcontractors/material suppliers for the current month, and project to date. The report shall include the names, addresses, and dollar amount of each certified MBE participant.
  - h) All CONSTRUCTION MANAGER and subcontractor daily reports.
- (3) The reports outlined in subsection (2)(a) through (e) above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and others designated by the Owner with the monthly pay application in such formats as requested by Owner. Additional copies of the report outlined in subsection (2)(a) shall be bound separately and distributed monthly as directed by the Owner..
- (4) The CONSTRUCTION MANAGER shall maintain the above Daily Reports at a site available to the Owner. A copy, bound, of the complete Daily Reports shall be submitted to the Owner at the conclusion of the project, and, as with other Project documentation, may be requested earlier by the Owner without waving any right to obtain this data at project conclusion.

#### 2.1.3 Schedule Control Subsystem

- (1) Master Project Schedule - Upon award of this Contract, the CONSTRUCTION MANAGER shall submit a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project, and must be approved by the Owner. Such approval by the Owner shall not constitute acceptance for the purposes of relieving the CONSTRUCTION MANAGER of its construction and scheduling responsibilities on the project.
- (2) Construction Schedule And Requirements For Overtime Work For Projects With Construction Costs In Excess of \$5,000,000. Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed, the CONSTRUCTION MANAGER shall prepare and submit to the Owner a construction schedule in quadruplicate graphically depicting the activities contemplated to occur showing the sequence in which each such activity occurs and duration (dates of commencement and completion, respectively) of each such activity. The Owner shall determine whether the construction schedule developed and submitted by the CONSTRUCTION MANAGER is acceptable. Failure of the CONSTRUCTION MANAGER to develop and submit a construction schedule shall be sufficient grounds for the Owner to find the CONSTRUCTION MANAGER in breach of Contract and to avail himself of available remedies. Following development and submittal of the construction schedule, the CONSTRUCTION MANAGER

shall, at the end of each calendar month occurring thereafter or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work. Each such update and/or revision to the construction schedule shall be submitted to the Owner as required by the Owner. Failure of the CONSTRUCTION MANAGER to update, revise and submit the construction schedule shall be sufficient grounds for the Owner to find the CONSTRUCTION MANAGER in breach of Contract.

- (3) The CONSTRUCTION MANAGER shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:

(a) Pre-Bid Schedules (Subnetworks) - The CONSTRUCTION MANAGER shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors, and shall establish milestones keyed to the overall master schedule.

(b) Subcontractor Construction Schedules (Subnetworks) - Upon the award of each sub-contract, the CONSTRUCTION MANAGER shall jointly with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules, required inspections, and required tests.

(c) Commissioning/Occupancy Schedule - The CONSTRUCTION MANAGER shall develop a detailed plan, inclusive of punch lists, final inspections, performance testing, maintenance training and turnover procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Commissioning/Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy, and be approved by the Owner or its designee.

- 2.1.4 Cost Control Subsystem - The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other project costs, will not exceed the maximum total project budget. Requirements of this subsystem requires the CM to provide updated cost estimates for each design phase..

- 2.1.5 Project Accounting Subsystem - The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and includes the following reports which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element.

- (1) Costs Status Report presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- (2) A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
- (3) A Detailed Status Report showing the complete activity history of changes in the work for each item in the project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates, and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.
- (4) A Cash Flow Diagram showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

- (5) A Job Ledger shall be maintained as necessary to supplement the operation of the project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

2.2 Project Manual - Upon award of contract CONSTRUCTION MANAGER shall contribute to the development of an integrated project policy and procedures manual.

2.3 Pre-Construction Phase

- (1) Review and Recommendations - The CONSTRUCTION MANAGER shall familiarize himself thoroughly with the evolving plans and specifications and shall follow the development of design from Preliminaries through Working Drawings. He shall make recommendations in his capacity as CONSTRUCTION MANAGER with respect to the selection of systems and materials, and cost reducing alternatives including assistance to the Architect-Engineer and Owner 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. He shall furnish known pertinent information as to the availability of materials and labor that will be required. He shall submit to the Owner and Architect-Engineer such comments as may be appropriate concerning construction feasibility and practicality. He shall call to the Project Manager's and the Architect-Engineer's attention any defects in the design, drawings and specifications or other documents that he discovers. He 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 City's Project Manager.
- (2) Review Reports - Within 30 days after receiving the Construction Documents for each phase of the project, the CONSTRUCTION MANAGER shall perform a specific review thereof, focused upon factors of a nature encompassed in Paragraph (1) above and on factors set out in Paragraph (5). Promptly after completion of the review, he shall submit to the Owner with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as he may deem appropriate, and all actions taken by the Architect-Engineer with respect to the previous report, any comments he may deem to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(5).

At the completion of the CONSTRUCTION MANAGER's review of the plans and specifications, except only as to specific matters as may be identified by appropriate comments pursuant to this section, the CONSTRUCTION MANAGER shall conduct a review consistent with sound industry practice, without assuming any architectural or engineering responsibility or liability, to assure the Owner that the plans and specifications are consistent, practical, feasible, and constructible. The CONSTRUCTION MANAGER shall also conduct a review consistent with sound industry practice to determine that the work described in the plans and specifications for the various trades is constructible within the scheduled construction time.

- (3) Long Lead Procurements - The CONSTRUCTION MANAGER shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies). When each item is identified, the CONSTRUCTION MANAGER shall notify the subcontractors, the Owner and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. As soon as the Architect-Engineer has completed drawings and technical specifications and the CONSTRUCTION MANAGER has obtained approval, the CONSTRUCTION MANAGER shall prepare invitations for bids. The CONSTRUCTION MANAGER shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise the Owner and Architect-Engineer of any problems or prospective delay in delivery.
- (4) Separate Contracts Planning - The CONSTRUCTION MANAGER shall review the design with the Architect Engineer and make recommendations to the Owner and to the Architect-Engineer with respect to dividing the work in such manner as will permit the CONSTRUCTION MANAGER to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, minority business participation and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
- (5) Interfacing - The CONSTRUCTION MANAGER shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead

items, the separate construction subcontracts and the general conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate Subcontractors. Without assuming any design responsibilities of the Architect-Engineer, the CONSTRUCTION MANAGER shall include in the reports required under Article 2.3(2) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted. Nothing in this Agreement shall be construed to require the CONSTRUCTION MANAGER to detect any design errors or omissions of the Architect, nor shall this Agreement be construed to relieve the Architect-Engineer of its responsibility for such errors or omissions as may be found in the design.

- (6) Job-Site Facilities - The CONSTRUCTION MANAGER shall arrange for all job-site facilities necessary to enable the CONSTRUCTION MANAGER to perform its respective duties. Tangible personal property, otherwise referred to as job-site facilities, include but are not limited to such things as trailers, toilets, typewriters, computers and any other equipment necessary to carry on the project. The method of acquiring such job-site facilities, which are planned to become the property of the Owner at the conclusion of the project, shall be evaluated based on cost over the life of the project. Owning versus leasing shall be considered by the CONSTRUCTION MANAGER, with the selection being made given the least expensive method over the life of the Project.. The CONSTRUCTION MANAGER shall present his evaluation with recommendation to the Owner for approval. When the CONSTRUCTION MANAGER wishes to supply job-site facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such job-site facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

For all such facilities purchased which may become the property of the owner at the conclusion of the project, the CONSTRUCTION MANAGER shall maintain ownership responsibilities of such facilities until the project conclusion. Reimbursement for cost of such equipment will be made in the month in which equipment is acquired at the documented purchase price. At that time, the CONSTRUCTION MANAGER shall provide the owner with a complete inventory for each unit of equipment and will add the equipment to a consolidated inventory of all such owner property. The inventory shall describe the equipment and identify the purchase price, inventory "tag" number (Any equipment valued in excess of \$750.00 must be tagged), location of tag, serial number, model number and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his designee.

The CONSTRUCTION MANAGER is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the owner, the owner may refuse acceptance of the equipment if the owner determines in its sole discretion that the equipment has not been properly cared for by the CONSTRUCTION MANAGER or that such acquisition would not otherwise be in the best interest of the Owner. In such event, the CONSTRUCTION MANAGER will be reimbursed for such item in accordance with Article 9.2(4) hereof.

- (7) Weather Protection - The CONSTRUCTION MANAGER shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. He shall submit to the Construction Team his recommendations as to needed requirements of this nature and as to the contract or contracts in which they should be included.
- (8) Market Analysis and Stimulation of Bidder Interest
- (a) The CONSTRUCTION MANAGER shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the project; he shall make analysis as necessary to determine and report on availability of labor, material, equipment, potential bidders, potential minority business enterprise bidders, and possible impact of any shortages or surpluses of labor or material, and in light of such information obtained, make recommendations as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
- (b) Within 30 days after receiving Notice to Proceed, the CONSTRUCTION MANAGER shall

submit a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the CONSTRUCTION MANAGER shall submit to the Owner a list of potential bidders. The CONSTRUCTION MANAGER shall seek to stimulate bidder interest in the local market place and identifying and encouraging bidding competition.

- (c) The CONSTRUCTION MANAGER shall carry out an active program of stimulating interest of qualified contractors and suppliers in bidding on the work and of familiarizing those bidders with the requirements of this project.

## 2.4 CONSTRUCTION PHASE

- (1) CONSTRUCTION MANAGER's Staff - The CONSTRUCTION MANAGER shall maintain sufficient off-site support staff, and competent full time staff at the Project site to coordinate, inspect and provide general direction of the work and progress of the subcontractors and shall provide no less than those personnel during the respective phases of construction that are set forth in Exhibit "A" to this agreement. No changes in personnel shall be made without written approval from the Owner, which approval shall not be unreasonably withheld.
- (2) Lines of Authority – The CONSTRUCTION MANAGER shall establish and maintain lines of authority for his personnel and provide this information to the Owner and Architect-Engineer. The Owner and Architect-Engineer may attend meetings between the CONSTRUCTION MANAGER and his Subcontractors, however, such attendance shall not diminish either the authority or responsibility of the CONSTRUCTION MANAGER to administer the Subcontractors.
- (3) Schedule, and Project Manual Provisions – The CONSTRUCTION MANAGER shall continue to update scheduling information, coordination of milestones, coordination of subcontractor work and delivery of materials in order to adhere to the project schedule.
- (4) Solicitation of Bids
  - (a) Without assuming responsibilities of the Architect-Engineer, and unless waived in writing by the Owner, the CONSTRUCTION MANAGER shall prepare invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, and for Subcontractor contracts. Such invitations for bids shall be prepared in accordance with Chapter 126, Part 2 of the Procurement Code and the following guidelines:
    - 1. All Contracts may be entered into by the CONSTRUCTION MANAGER with the firm that meets the criteria set forth in this Agreement, under the concurrence of the Owner. Awards will be made to the lowest responsive bidder. Responsive bidder is defined as meeting all requirements outlined in this Agreement and the RFP.
    - 2. The CONSTRUCTION MANAGER shall request a minimum of three (3) written quotations from pre-certified bidders for all purchases, rentals, or leases for \$12,000.00 or more. These quotations shall be entered on a bid tabulation sheet and such tabulation sheet shall be submitted to the Owner, the Project Manager, the Minority Business Enterprise (MBE) representative, and the Safety Manager for review and approval.
    - 3. For all solicitations greater than \$100,000, the following criteria are established:
      - (a) Pre-bid conferences must be held.
      - (b) Projects will be advertised for at least 21 days prior to bid opening and five days prior to any scheduled pre-bid conference.
- (5) Bonds
  - a. The CONSTRUCTION MANAGER(s) shall furnish Performance and Payment Bonds as security for the faithful performance under the Contract Documents. The Bonds shall be in an amount at least equal to the Contract price, in the form provided in these Contract Documents, and with a surety that is acceptable to the City's Division of Insurance and Risk Management.
  - b. Performance and Payment Bonds shall accompany the executed Contract Agreement when the

CONSTRUCTION MANAGER(s) returns it to the City. Said Bonds and Agreement shall be furnished to the City within ten (10) days after notification of Contract Award.

c. Prior to execution of the Contract Agreement, the City may require the CONSTRUCTION MANAGER(s) to furnish other Bonds, in such form and with such sureties as it may require. The premiums shall be paid for by the CONSTRUCTION MANAGER(s); subsequent thereto, it shall be paid by the City, except as specified in the following Sub-Paragraph.

d. If any surety upon any bond furnished in connection with the Contract Documents becomes unacceptable to the City, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by the City, the CONSTRUCTION MANAGER(s) shall, at its own expense, promptly furnish such additional security as may be required from time to time to protect the interests of the City and of persons supplying labor or materials in the prosecution of the work contemplated by this Contract.

e. Should the CITY elect to implement an alternative bonding program, the CM and its subcontractors will be required to cooperate in its implementation with all savings resulting therefrom accruing to the City.

- (6) Quality Control - The CONSTRUCTION MANAGER shall contribute to the development of a quality control program, and comply with that program, in conformance with industry standards and contract documents acceptable to the Owner, to assure quality control of the construction. He shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work.
- (7) Subcontractor Interfacing - The CONSTRUCTION MANAGER shall be the single point of interface with all its subcontractors and all of its agents and representatives. He shall negotiate all change orders, field orders and request for proposals with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order in writing from the Owner. However, when health and safety are threatened, the CONSTRUCTION MANAGER shall act immediately to reduce, and if possible, to eliminate the threat to health and safety. He shall also carefully review all shop drawings and then forward the same to the Architect-Engineer for review and actions. The Architect-Engineer will transmit them back to the CONSTRUCTION MANAGER who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The CONSTRUCTION MANAGER shall maintain a suspense control system to promote expeditious handling. He shall request the Architect-Engineer to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a suspense control system to promote timely response. He shall advise the Owner and Architect-Engineer when timely response is not occurring on any of the above.
- (8) Permits - The CONSTRUCTION MANAGER shall secure all necessary construction-related permits..
- (9) Job Site Requirements
- (a) The CONSTRUCTION MANAGER shall provide for each of the following activities as a part of his Construction Phase fee:
1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions.
  2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
  3. Implement labor relations management for a harmonious, productive project. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
  4. Implement a safety program for the project to meet JEA Certification and OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
  5. Implement a quality control program as developed under Article 2.4(6) hereinabove and coordinate the services of independent testing laboratories and threshold inspector to ensure

conformance to contract requirements.

- (b) The CONSTRUCTION MANAGER shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
  - 1. Miscellaneous office supplies that support the construction efforts which are consumed by his own forces.
  - 2. Travel to and from his home office to the project site as the project requires.
  - 3. Incidental printing for internal use and supplementary printing of required bidding documents and shop drawings.
- (10) Job Site Administration - The CONSTRUCTION MANAGER shall provide as part of his direct cost items, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
  - (a) Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering including direct tax saving purchases and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Review and implement revisions to the Schedule. Monitor and promote safety requirements. In addition, regular project status meetings will be held between the architect, owner and CONSTRUCTION MANAGER either biweekly or monthly, whichever is designated by the Owner.

Use the job site meeting as a tool for preplanning of work, enforcing schedules, resolving design issues, and establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.
  - (b) Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures for submittal and transmittal to the Architect-Engineer of such drawings for action, and closely monitor their submittal and approval process.
  - (c) Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors.
  - (d) Payments to subcontractors - Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments. All financial documents and records shall be maintained pursuant to reasonable accounting practices designed to afford the Owner the ability to have the documents audited with the minimum of cost and disruption.
  - (e) Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer.
  - (f) Reports and Project Site Documents - Record the progress of the project. Submit reports in accordance with paragraph 2.1. Reports will highlight to the Owner issues requiring owner action in sufficient time to permit the Owner to exercise all available options. Such reports will accompany monthly invoices.
  - (g) Subcontractor's Progress - Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
  - (h) Substantial Completion - Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract

documents so that the Owner can occupy or utilize the Work for its intended use. When the Owner considers the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the CONSTRUCTION MANAGER shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected along with letter from the CONSTRUCTION MANAGER to the Owner stating that the work in the CONSTRUCTION MANAGER's estimation is substantially complete. The CONSTRUCTION MANAGER shall proceed promptly to complete and correct items on the complete punch list to be compiled by the Owner, including work items identified by the Owner, Architect, Owner and CONSTRUCTION MANAGER. Failure to include an item on such list does not alter the responsibility of the CONSTRUCTION MANAGER to complete all Work in accordance with the Contract Documents. Upon receipt of the CONSTRUCTION MANAGER's list, the Owner together with the Architect, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the CONSTRUCTION MANAGER's list, which is not in accordance with the requirements of the Contract Documents, the CONSTRUCTION MANAGER shall, as a condition of Substantial Completion, complete or correct such item upon notification by the Owner. The CONSTRUCTION MANAGER shall then submit a request for another inspection by the Owner and Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, having received the approval of the Architect and the Owner, the Architect will prepare the Certificate of Substantial Completion which shall establish responsibilities of the Owner and CONSTRUCTION MANAGER for security, maintenance, heat, utilities, damage to the Work and insurance and shall fix the time with which the CONSTRUCTION MANAGER shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of the issuance of the Substantial Completion Certificate for the Work or the designated portion thereof unless expressly provided for otherwise in the Certificate.

- (i) Final Completion - Monitor the Subcontractor's performance on the completion of the project and provide notice to the Owner that the work is ready for final inspection. Secure and transmit to the Owner all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books including the Final Completion form.
- (j) Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade subcontractors.
- (k) Record Drawings - During the progress of the work, the CONSTRUCTION MANAGER shall require the plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of drawings the locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed as shown on the contract drawings. The CONSTRUCTION MANAGER shall also record all drawing revisions that have been authorized by change order that effect wall or partition locations, door and window locations and other template changes. The routing of conduit runs shall be shown on these drawings. At Substantial Completion, CONSTRUCTION MANAGER shall provide a complete set of Record Drawings.

Each drawing shall be noted "Record Drawings" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract drawings the sheets shall not be disturbed except as noted above.

The CONSTRUCTION MANAGER shall review the completed record drawings and ascertain that all data furnished on the drawings are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work, the CONSTRUCTION MANAGER shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this project.

- (11) Administrative Records - The CONSTRUCTION MANAGER will maintain at the job site, unless agreed to otherwise by the Owner, on a current basis, all project files and records. The project records shall be available at all times to the Owner for reference, review or copying.
- (12) Owner Occupancy - The CONSTRUCTION MANAGER shall provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the project. He

shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the subcontractors, "on line" in accordance with Contract documents.

He shall conduct the CONSTRUCTION MANAGER's preliminary punch list inspection and coordinate the completion of all punch list work to be done with Owner occupancy requirements in mind.

He shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in accordance with Contract documents. He shall coordinate operational training, in equipment use for building operators.

He shall secure required guarantees and warranties, assemble, and deliver same to Owner in accordance with sub-paragraph below.

He shall continuously review "Record" Drawings and mark up progress prints to provide as much accuracy as possible.

The Owner may not occupy or take control of the project until the above items discussed in this paragraph have been completed and the "Substantial Completion" requirements specified in paragraphs 2.4(10)h and 2.4(10)j have been completed to the Owner's satisfaction excluding the requirements for final completion and a warranty inspection ten (10) months after Owner Occupancy.

- (13) Warranty - Where any work is performed by the CONSTRUCTION MANAGER's own forces or by subcontractors under contract with the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER shall warrant that all materials and equipment included in such Work will be new except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and specifications. With respect to the same Work, the CONSTRUCTION MANAGER further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year 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 trade sections of the Specifications or offered by suppliers. This Warranty excludes remedies for damage or defects cause by abuse, neglect, modifications not executed by the CONSTRUCTION MANAGER, improper or insufficient maintenance, improper operation, and normal wear and tear. The CONSTRUCTION MANAGER shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. Also, the CONSTRUCTION MANAGER shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection ten (10) months after the date of Final Completion. This collection of warranties shall be incorporated into a Project Warranty Manual including all product warranty information in general, and the following warranties specifically: roofing, floor covering, curtain wall, audio visual equipment, mechanical, electrical, and plumbing systems and equipment and sound equipment.

### **ARTICLE 3 CITY'S RESPONSIBILITIES**

- 3.1 Owner's Information - The Owner shall provide information that it possesses regarding his requirements for the project.
- 3.2 Owner - The Owner shall designate a representative who shall be fully acquainted with the project and shall define the lines of Owner authority to approve Project Construction Budgets, and notify the CONSTRUCTION MANAGER of approved changes in Project. He shall render decisions promptly and furnish information expeditiously.
- 3.3 Program Manager Agreement – NOT APPLICABLE TO THIS PROJECT.
- 3.4 Architect-Engineer Agreement - The Owner shall retain an Architect-Engineer for design and to prepare construction documents for the project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the CONSTRUCTION MANAGER.
- 3.5 Site Survey and Reports - The Owner shall provide the site survey and investigative reports describing the physical

characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.

- 3.6 Approvals and Easements - The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.7 Legal Services - The Owner shall furnish such legal services as may be necessary for obtaining any approvals or easements and such auditing services as he may require.
- 3.8 Drawings and Specifications - The CONSTRUCTION MANAGER will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.
- 3.9 Cost of Surveys & Reports - The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense.
- 3.10 Project Fault Defects - If the Owner becomes aware of any fault or defect in the Project or non-conformance with the drawings and specifications, he shall give written notice thereof to the CONSTRUCTION MANAGER.
- 3.11 Funding - The Owner shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the CONSTRUCTION MANAGER that sufficient funds will be available and committed for the cost of each part of the Project. The CONSTRUCTION MANAGER shall not commence any work, unless authorized in writing by the Owner.
- 3.12 Lines of Communication - The Owner and Architect-Engineer shall communicate with the subcontractors or suppliers only through the CONSTRUCTION MANAGER while such method of communication is effective in maintaining project schedules and quality.
- 3.13 Lines of Authority - The Owner shall establish and maintain lines of authority for his personnel and shall provide this definition to the CONSTRUCTION MANAGER.

#### **ARTICLE 4 INSPECTION**

Code Inspections - All projects require detailed code compliance inspections during construction in disciplines determined by the City of Jacksonville Department of Public Works. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing, general building, audio-visual, communications, and information management systems.

Inspection personnel will be provided by the CITY., Names, titles, addresses, and phone numbers of the inspectors will be provided to the CONSTRUCTION MANAGER.

The CONSTRUCTION MANAGER shall notify the appropriate inspector(s), no less than 24 hours in advance, that the work is ready for inspection and before the work is covered up. Work not inspected and approved prior to cover-up shall be uncovered for inspection when directed by the Inspection Section. All costs for uncovering and reconstruction shall be borne by the CONSTRUCTION MANAGER. However, the CONSTRUCTION MANAGER shall not be required to pay for uncovering and reinspection unless that portion of the work is covered contrary to Owner's or Architect's request, contrary to requirements specifically expressed in Contract Documents or, if the work requested to be uncovered proves not to be defective.

All inspections shall be made for conformance with the applicable building codes, compliance with drawings and specifications, and quality;

Cost for all reinspections of work found defective and subsequently repaired shall be borne by the CONSTRUCTION MANAGER provided that the defect uncovered is not a design error or omission.

#### **ARTICLE 5 SUBCONTRACTS**

- 5.1 Definition - A subcontractor is a person or organization who has a direct contract with the CONSTRUCTION

MANAGER to perform any of the work at the site. Nothing contained in the Contract Document shall create any contractual relation between the CITY or Architect-Engineer and any subcontractor.

5.2 Proposals - Subject to Article 9 and, in accordance with Article 2.4(4), the CONSTRUCTION MANAGER shall request and receive proposals from subcontractors and suppliers and will award those contracts to the lowest responsive and responsible bidder which is also in the best interests of the Owner after he has reviewed each proposal and is satisfied that the subcontractor is qualified to perform the work.

5.3 Required Subcontractors' Qualifications and Subcontract Conditions.

5.3.1 Subcontractual Relations - By an appropriate written agreement, the CONSTRUCTION MANAGER shall require each subcontractor to the extent of the work to be performed by the subcontractor, to be bound to the CONSTRUCTION MANAGER by the terms of the Contract Documents, and to assume toward the CONSTRUCTION MANAGER all the obligations and responsibilities which the CONSTRUCTION MANAGER by these Documents, assumes toward the Owner and the Architect-Engineer. Said agreements shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the CONSTRUCTION MANAGER shall require each Subcontractor to enter into similar agreements with his Sub-subcontractor. Copies of all contracts shall be provided to the Owner.

The CONSTRUCTION MANAGER shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3 and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors.

5.3.2 Subcontract Requirements

- (1) On all subcontracts where the bid exceeds \$100,000, the CONSTRUCTION MANAGER will require subcontractors to provide a 100% performance bond and a 100% labor and material payment bond from a surety company authorized to do business in the State of Florida by the Department of Insurance. .
- (2) On all subcontracts where the bid exceeds \$100,000.00, each subcontractor must submit a completed experience questionnaire and financial statement in accordance with the CONSTRUCTION MANAGER's requirements. The subcontractors' financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract.
- (3) Subcontractor experience - The subcontractor must have successfully completed no less than two projects of similar size and complexity within the last five years, or demonstrate a plan for successfully accomplishing the work.
- (4) Supervision - The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical and roofing) included in the subcontract. In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two years within the last five years. The subcontractor shall include a resume of experience for each employee identified by him to supervise and schedule his work.
- (5) All subcontracts shall provide:
  - a. Limitation of Remedy - No damages for delay or disruption.  
That the subcontractor's exclusive remedy for delays or disruptions in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time. This clause shall be inapplicable for active interference.

In the event of a change in the work the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 10% for overhead and 5% for profit by any subcontractor at any tier which actually performs the work. Any higher

tier subcontractor is limited to 5% overhead and profit on such changes.

Each subcontract shall require the subcontractor to expressly agree that the foregoing constitute the sole and exclusive remedies for delays and changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses or additional compensation.

- b. Each subcontract shall require that notice of any claims by subcontractor for delay or additional cost must be submitted to CONSTRUCTION MANAGER within seven days (7) time in the format in which the CONSTRUCTION MANAGER must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims. Within twenty one (21) days, such claim must include a time impact analysis as a justification for any equitable time or price adjustment and a subcontractor's refusal to provide such a timely analysis shall be considered a failure of a conditions precedent to advance the claim in any future litigation.

- 5.4 Responsibilities for Acts and Omissions - The CONSTRUCTION MANAGER shall be responsible to the Owner for the acts and omissions of his employees and agents and his subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the CONSTRUCTION MANAGER.
- 5.5 Subcontracts to be provided. Upon request, the CONSTRUCTION MANAGER shall include a copy of each subcontract, including the general supplementary conditions, in the Project Manual.

## **ARTICLE 6**

### **SCHEDULE, TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 6.1 At the time a Guaranteed Maximum Price (GMP) is established, as provided for in Article 7, a Project Substantial Completion date, for completion of the project shall also be established by the CONSTRUCTION MANAGER and Owner. The CONSTRUCTION MANAGER agrees to complete the construction in accordance with the agreed upon substantial completion date and final completion date. The CONSTRUCTION MANAGER acknowledges that failure to complete the project within the construction time set forth in the approved schedule will result in damages to the Owner.  
  
If the Substantial Completion date is beyond the date agreed upon for reasons other than the fault of the Owner, a sum for each day beyond the Substantial Completion date will be assessed as liquidated damages (in the amount of \$1,000.00 per calendar day) and not as a penalty) against the CONSTRUCTION MANAGER, but in no event more than \$250,000 in total, it being agreed by the parties that the precise amount of damages is not capable of calculation, and the parties desire to specifically agree upon the liquidated damages as provided herein. The construction manager specifically waives the right to allege that the liquidated damages assessed are a penalty. Assessment for Liquidated Damages will be the Owner's sole remedy in the event of delay.
- 6.2 Warranties called for by this Agreement or by the Drawings and Specifications shall commence on the Date of Substantial Completion.
- 6.3 The parties each waive consequential damages as to claims against each other. The provision for the waiver of consequential damages shall be inserted into subcontractor's documents.

## **ARTICLE 7**

### **GUARANTEED MAXIMUM PRICE (GMP) FOR CONSTRUCTION**

- 7.1 When the Owner determines that construction documents are sufficiently complete to establish the scope of work for the project or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer and CONSTRUCTION MANAGER upon execution of this Agreement, which is to be used only as a guide in developing the specifications and plan data necessary to establish a Guaranteed Maximum Price, or at such time thereafter designated by the Owner, the CONSTRUCTION MANAGER will establish and submit in writing to the Owner for his approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner for the construction cost of the project or designated part thereof. Such Guaranteed Maximum Price will be subject to modification for changes in the project as provided in Article 10. However, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 9, plus the CONSTRUCTION MANAGER's fees or the GMP,

whichever is less when the work is complete. This paragraph is subject to the provisions of paragraph 9.3.

- 7.2 At the time of submission of a Guaranteed Maximum Price, the CONSTRUCTION MANAGER will verify the time schedule for activities and work which were previously adopted pursuant to this agreement and used to determine the CONSTRUCTION MANAGER's cost of work. In addition to the cost of work, a GMP will include an agreed upon sum as the CONSTRUCTION MANAGER's Contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction that are not otherwise the basis for a Change Order. The CONSTRUCTION MANAGER will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Owner, reflected in the Project Manual and displayed monthly in the report. The Owner shall verify the actual costs. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

If bids are received above the applicable line item in the GMP the deficiency will be taken from the contingency, however such events shall not be cause to increase the GMP.

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the CONSTRUCTION MANAGER reserves the right to perform that portion of the work with the Owner's approval as acknowledged by the Owner or negotiate for its performance for the specified line item lump sum amount or less.

- 7.3 The GMP will only include those taxes in the costs of the project, which are legally enacted at the time the GMP is established.
- 7.4 When the project is bid and 100% of the Subcontracts have been executed, the contingency within the GMP may be decreased upon mutual agreement between the Owner and CONSTRUCTION MANAGER. This paragraph is subject to the provisions of paragraph 9.3.

## **ARTICLE 8 THE CONTRACT SUM**

- 8.1 In consideration for the performance of the contract, the Owner agrees to pay the CONSTRUCTION MANAGER the Contract Sum, which is the lesser of the GMP amount (as amended pursuant to this Agreement) or the combination of all of the following:
- 8.1.1 The Cost of the Project, as defined in Article 9;
- 8.1.2 The CM Fee, as defined in section 8.2;
- 8.1.3 The GC Field Support Costs, as defined in section 8.3;  
plus the GC Reimbursable Costs, as defined in section 8.4.
- 8.2 The CONSTRUCTION MANAGER's Fee is intended to compensate the CONSTRUCTION MANAGER for the time of its personnel assigned to the Project, its corporate overhead and to provide a profit to the CONSTRUCTION MANAGER. The CM Fee shall be a lump-sum amount of \_\_\_\_\_, subject to increase based on changes in the Work as provided in section 10.1. Such changes shall be priced in accordance with the rates provided in Exhibits A and F.
- 8.3 The GC Field Support Costs are intended to compensate the CONSTRUCTION MANAGER for its out-of-pocket expenses directly related to field support functions on the project, other than the Cost of the Project and the CM Fee. Refer to Exhibit G for the itemized estimate of the expenses, along with the incremental monthly cost to extend the estimated duration shown in the exhibit. The GC Costs shall be a lump-sum amount of \$138,336.00, based on the durations shown in Exhibit G, subject to increase based on changes in the Work as provided in section 10.1. Such changes shall be based on actual cost, without mark-up.
- 8.4 The Construction GC's Reimbursable Costs are intended to compensate the CM for its out-of-pocket expenses directly related to expendable items, recurring rentals and utilities, and minor and professional services associated with the project. The Construction GC's Reimbursable Costs shall be an allowance of **\$TBD**, as detailed in Exhibit

H, subject to increase or decrease based on changes in the Work as provided in section 10.1. Such changes shall be based on actual cost, without mark-up.

- 8.5 The Contract Sum shall be paid pursuant to monthly statements as provided in Article 12. Any balance of the Contract Sum shall be paid at final completion.

## **ARTICLE 9 COST OF THE PROJECT**

- 9.1 Definition - The term Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction services and paid by the CONSTRUCTION MANAGER which are not included in Article 8. Such costs shall include the items set forth below in this Article.

9.2 Direct Cost Items –

- (1) Wages paid for labor (as opposed to wages paid to management or supervisory personnel) in the direct employ of the CONSTRUCTION MANAGER in the performance of his work under Agreement times a multiplier to cover fringe benefits.
- (2) Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
- (3) Payments due to subcontractors from the CONSTRUCTION MANAGER or made by the CONSTRUCTION MANAGER to subcontractors for their work performed pursuant to contract under this Agreement.
- (4) Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work, cost on such items used but not consumed which may be turned over to the Owner at the end of the project and cost less salvage value on such items used but not consumed which remain the property of the CONSTRUCTION MANAGER. For those items to be turned over to the Owner at the end of the project, Article 2.3(6) shall apply.
- (5) Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the CONSTRUCTION MANAGER or other, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the CONSTRUCTION MANAGER's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
- (6) This item intentionally left blank.
- (7) Sales, use, gross receipts, intangible tax on receivables (less billings on profit included in such receivables) or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the CONSTRUCTION MANAGER is liable.
- (8) The cost of corrective work is contained within the GMP. It must be noted that contingency funds consumed during construction reduce the cost savings incentive to the CONSTRUCTION MANAGER as noted at paragraph 9.3., unless the cost of correction is recoverable from insurance, subcontractors, or surplus.
- (9) Intentionally left blank.
- (10) Intentionally left blank.
- (11) Costs for trash and debris control and removal from the site.
- (12) Cost incurred due to an emergency affecting the safety of persons and property.
- (13) All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the CONSTRUCTION MANAGER's fees as set forth in Article 8.

- (14) If approved by the Owner, the 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.
- (15) Transportation greater than 100 miles from the site for those personnel employed directly for the project, not including relocation expenses. Such transportation must be approved in advance by the Owner, and may not exceed the limits established by Florida Statutes 112.061.
- (16) Costs of all reproductions used for bidding or information purposes required by the project to directly benefit the project.
- (17) Costs for watchman and security services for the project.
- (18) Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel. Also, costs for adequate storage and parking space.
- (19) Costs for such temporary facilities during construction, as approved by the Owner, including temporary water, heat, power sanitary facilities, telephones, radios and computers with software.
- (20) Cost for any job 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.
- (21) Cost of utilizing a computer aided design and drafting application (CADD) for record drawings as described in Article 2.4(10)(k). 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 Owner when completed, together with two sets of blue line or black line prints for review and certification.
- (22) Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

- 9.3 Incentives/Savings Programs – The savings under the CONSTRUCTION MANAGER’s GMP Contingency shall revert to the Owner and the CONSTRUCTION MANAGER on the following basis: 75% to Owner and 25% to CONSTRUCTION MANAGER.

## ARTICLE 10 CHANGES IN THE WORK

- 10.1 Amendments Orders - The Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, the GMP, and the Construction Completion Date, being adjusted accordingly. All changes in the Project not covered by the GMP contingency must be authorized by an amendment signed by the Owner before the change is implemented.
- 10.1.1 Amendment - A written order on an approved change order form to the CONSTRUCTION MANAGER, signed by the Owner issued after the execution of this Agreement, authorizing a change in the Project, the GMP, the CONSTRUCTION MANAGER's fee, or the Construction Completion date. Each adjustment in the GMP resulting from an amendment shall clearly separate the amount attributable to the Cost of the Project. Execution of an amendment by the CM serves as a waiver and an accord and satisfaction of all issues related to the work identified in the amendment.
- 10.1.2 Subject to there being a legal basis to do so, the increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project shall be determined in one or more of the following ways:
  - (1) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Owner;
  - (2) By unit prices stated in the Agreement or subsequently agreed upon;
  - (3) By the actual changes in the Cost of the Project, the GC Reimbursable Costs or GM Fee

(4) By the method provided in Subparagraph 10.1.3.

- 10.1.3 If none of the methods set forth in Clause 10.1.2 is agreed upon, the CONSTRUCTION MANAGER, provided he receives a written order signed by the Owner, 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, the Owner will establish an estimated cost of the work and the CONSTRUCTION MANAGER shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 10.1.2 above, the CONSTRUCTION MANAGER shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 9. The amount of decrease in the Guaranteed Maximum Price to be allowed by the CONSTRUCTION MANAGER to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
- 10.1.4 If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the CONSTRUCTION MANAGER, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.
- 10.1.5 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Construction Completion date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.

## 10.2 Claims for Additional Cost or Time

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16.

If the CONSTRUCTION MANAGER is delayed or disrupted at any time in the progress of the work by any active interference of the Owner or the Architect-Engineer, and CONSTRUCTION MANAGER is not responsible for any concurrent delay and such delay or disruption extends the project completion date, the Substantial Completion date shall be extended by Change Order. The CONSTRUCTION MANAGER must include time impact analysis justifying any request for equitable price and time extension and is limited to the actual direct costs as set forth in Article 8. For any other delay or disruption, the CONSTRUCTION MANAGER's sole remedy is an equitable time extension.

Only delays or disruptions which are determined to extend the critical path for the schedule for constructing the project will result in a time extension. Neither the Owner nor the CONSTRUCTION MANAGER shall be considered to own the schedule float time.

No Owners representative has the authority to allow or require constructive acceleration; actual acceleration shall only be compensable upon specific written approval by the Owners representative after receipt of an acceptable time impact analysis and evaluation of a recovery schedule that would reasonably justify such action.

10.3 Minor Changes In The Work The Director of Public Works Department, will have the authority to direct field modifications not involving an adjustment of Guaranteed Maximum Price (GMP) and not inconsistent with the intent of the plans and specifications. Field modifications shall be effected by amendment. Field modifications shall be recommended by the Project Manager and approved by the Director of Public Works. Field modifications which affect the GMP contingency must be specifically itemized and reported in the monthly narrative described in Article 2.1.2(2)(d). The cumulative sum of all such field modifications and the remaining GMP contingency balances shall also be presented.

## 10.4 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 Article 10.

## **ARTICLE 11 DISCOUNTS AND PENALTIES**

- 11.1 All discounts for prompt payment shall accrue to the Owner to the extent the Cost of the project is paid directly by the Owner or from a fund made available by the Owner to the CONSTRUCTION MANAGER for such payments. To the extent the Cost of the Project is paid with funds of the CONSTRUCTION MANAGER, all cash discounts shall accrue to the CONSTRUCTION MANAGER. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Project. All penalties incurred due to fault of the CONSTRUCTION MANAGER for late payment of cost of the project will be paid by the CONSTRUCTION MANAGER.

## **ARTICLE 12 PAYMENTS TO THE CONSTRUCTION MANAGER**

- 12.0 Payments/Maximum Indebtedness – The Owner will pay the CONSTRUCTION MANAGER in increments proportional to satisfactory completion, for all services actually, timely and faithfully rendered, as follows:
- (1) For the budget for the New Berlin Road & Yellow Bluff Road Intersection Improvements, an amount with a maximum budget ceiling not-to-exceed \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), as detailed in Exhibits \_\_\_\_\_ and \_\_, attached hereto and, by this reference, made a part hereof; provided however, of the above stated budget ceiling, only \_\_\_\_\_ AND 00/100 DOLLARS (\$ \_\_\_\_\_) shall be encumbered because \_\_\_\_\_ AND 00/100 DOLLARS (\$ \_\_\_\_\_) shall be available, in the City Treasury, for the Owner to directly purchase construction materials, identified by the CONSTRUCTION MANAGER, as part of the direct purchase tax saving program as detailed in Exhibit "\_\_\_", attached hereto and, by this reference made a part hereof;
  - (2) The Owner's maximum indebtedness for budget ceiling and direct purchases, as specified in Sub-section (1), of this Section 12.0; shall be an amount not-to-exceed \_\_\_\_\_ AND 00/100 DOLLARS (\$ \_\_\_\_\_).
  - (3) The amounts established in this Agreement may be subject to adjustment upon establishment of the Guaranteed Maximum Price and associated rates. These amounts may not be increased without a bilaterally negotiated written amendment to this Agreement, specifically increasing the Owner's maximum indebtedness.
- 12.1 Monthly Statements - The CONSTRUCTION MANAGER shall submit to the Owner a statement along with the cost reports required under Article 2.1.5, showing in detail all monies paid out, cost accumulated or costs incurred on account of the Cost of the Project during the previous period and the amount of the CONSTRUCTION MANAGER's fees due as provided in Article 8. This data shall be attached to the Partial Pay Request. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At 50% completion, the Owner may approve a reduction of the retainage from 10% to 5% at his discretion.. Retainage shall not be withheld on services or fees set forth in Article 8 and purchase orders for materials purchased by the CONSTRUCTION MANAGER. Failure to pay the CONSTRUCTION MANAGER the undisputed portions of an invoice within the time required by Fla. Stat. Section 218 shall, upon three business days written notice, entitle CONSTRUCTION MANAGER to suspend work until payment is made.
- 12.2 Final Payment - Final payment constituting the unpaid balance of the Cost of the Project and the CONSTRUCTION MANAGER's fee, shall be due and payable after the Owner has accepted occupancy of the project, provided that the Project be then finally completed, that the CONSTRUCTION MANAGER has verified by his signature that he has completed all items specified and that this Agreement has been finally performed. However, if there should remain work to be completed, the CONSTRUCTION MANAGER and the Owner shall list those items prior to receiving final payment and the Owner may retain a sum equal to 200% of the estimated cost of completing any unfinished work and portion of the CONSTRUCTION MANAGER's retainage, provided that said unfinished items

are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to CONSTRUCTION MANAGER, monthly, the amount retained for each incomplete item after each of said items is completed. The CONSTRUCTION MANAGER shall also provide to the Owner as-built drawings as a condition precedent to receipt of Final Payment.

- 12.3 Payments to Subcontractors - The CONSTRUCTION MANAGER shall promptly, within 15 days after receipt of payment from the Owner, pay all the amount due subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete, and based on CONSTRUCTION MANAGER's evaluation of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from 10% to 5% thereafter. If there should remain items to be completed, the CONSTRUCTION MANAGER and Owner shall list those items required for completion and the CONSTRUCTION MANAGER shall require the retainage of a sum equal to 200% of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items likewise listed separately. Thereafter, the CONSTRUCTION MANAGER shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

- 12.4 Payments for Materials and Equipment - Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at the site or another location subject to prior approval and acceptance by the Owner on each occasion. If a Tax Savings Purchase Program is put in place by the Owner, procurements by the Owner will be credited against payments using a process to be detailed in the Program Authorization. As a condition of payment, the CONSTRUCTION MANAGER shall produce receipts signed by a CONSTRUCTION MANAGER representative for stored materials as his property, specifically identifying the material, the cost, the location of storage. Material shall be stored in a location approved by the CITY, which locations shall be insured and bonded, if not stored at the Project site.
- 12.5 Withholding Payments to Subcontractors - The CONSTRUCTION MANAGER shall not unreasonably withhold payments to subcontractors if such payments have been made to the CONSTRUCTION MANAGER.

### **ARTICLE 13 INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION**

- 13.1 Indemnification - The CITY will require the following indemnification clause to be made part of the Contract agreement entered into with the selected CONSTRUCTION MANAGER(s):

The CONSTRUCTION MANAGER(s), its employees, agents and subcontractors shall indemnify and hold harmless the CITY (including its directors, officers, employees, representatives and agents), the Program Management firm, the Engineer, the Architect, and the Design Consultant against and, from all liabilities, damages, losses, costs and expenses, of whatsoever kind or nature, including, but not limited to, loss, damage, injury (whether personal or corporeal), liability cost or expense, reasonable attorney's fees, reasonable expert witness fees and court costs, (all of which are collectively referred to as "Damages") to the extent such Damages are caused by the negligence, recklessness or intentional wrongful conduct of the CONSTRUCTION MANAGER(s) and/or persons employed or utilized by the CONSTRUCTION MANAGER(s) in the performance of this Agreement. Without limiting the foregoing, the above indemnification provision extends to Environmental Impact Claims.

"Environmental Impact Claim" is defined as claims, suits, judgements, costs, losses, expenses (including attorney's fees) which arise out of, are related to, or are based on the actual or threatened dispersal, discharge, escape, release or saturation of chemicals, liquids, gasses or any other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or water course, (c) objects, or (d) any tangible or intangible matter, whether sudden or not.

This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This indemnification by the CONSTRUCTION MANAGER(s) shall

extend for any claims arising in whole or part from a breach of the accuracy of work definition provided below, provided, however, that the Owner is not aware, presently, of any hazardous material on the project site. Articles 10.3 through 10.5 of the AIA Document A201, General Conditions of the Contract for Construction, most recent Edition are herein incorporated by reference.

### 13.2 ACCURACY OF WORK

The CONSTRUCTION MANAGER(s) 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 the CONSTRUCTION MANAGER(s) or subcontractors without additional compensation. Acceptance of the work by the CITY shall not relieve the CONSTRUCTION MANAGER(s) 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 the CONSTRUCTION MANAGER(s) under this Agreement, the CONSTRUCTION MANAGER(s) shall confer with the CITY for the purpose of interpreting the information furnished and/or to correct any errors and/or omissions made by the CONSTRUCTION MANAGER(s). The CONSTRUCTION MANAGER(s) shall prepare all drawings or data to correct its errors and/or omissions without added compensation, even though final payment may have been received therefor.

The CONSTRUCTION MANAGER(s) shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the CONSTRUCTION MANAGER(s)'s breach of contract or its performance of any of the services furnished under this Agreement.

### 13.3 Insurance

The amounts and types of insurance required should be reasonably commensurate with the hazards and magnitude of the undertaking, but in no event of lesser amount nor more restrictive than the limits of liability and schedule of hazards described herein. Insurance requirements should be tailored to the type of construction or operations contemplated.

The CONSTRUCTION MANAGER(s) and/or its subcontractors/subconsultants shall procure and maintain during the term of this project, insurance of the types and in the minimum amounts stated below:

**(NOTE: The selected CONSTRUCTION MANAGER must be the policy holder for those coverages denoted with an \*\*\*)**

| <u>Schedule</u>                                                                                                                                                                                                            | <u>Limits</u>                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| ***Workers' Compensation<br>Employer's Liability (including<br>Appropriate Federal Acts)                                                                                                                                   | Florida Statutory Coverage<br>\$100,000 Each Accident<br>\$500,000 Disease Policy Limit<br>\$100,000 Each Employee/Disease |
| ***Commercial General Liability, including<br>Premises-Operations<br>Products-Completed Operation<br>Blanket Contractual Liability<br>Independent Contractors<br><br>Severability of Interest<br>Watercraft, if applicable | \$1,000,000 Each Occurrence<br>\$2,000,000 Products/CompOps Aggregate                                                      |
| ***Umbrella/Excess Liability                                                                                                                                                                                               | \$10,000,000 Combined Single Limit<br>and Aggregate                                                                        |

(Umbrella/Excess Liability coverage will be no more restrictive than the underlying Commercial General Liability policy)

(The City of Jacksonville, the Program Management firm and the Design Consultant shall be named as an additional insured under all of the above Commercial General Liability and Umbrella/Excess Liability coverage. Commercial General Liability and Umbrella/Excess Liability Coverage will be provided on an occurrence basis only. Products-Completed Operations coverage will be maintained for a period of not less than three years after contract expiration.)

\*\*\*Auto Liability \$1,000,000 CSL  
All autos-owned, hired or non-owned

Professional Liability \$1,000,000

**Note:** Umbrella or Excess Liability policies may be used to obtain the total limits of liability required to meet the required limits of coverage stated above. Evidence of such coverage should clearly demonstrate the underlying coverages/policies that are included.

Valuable Papers \$100,000  
**(To be provided by the CONSTRUCTION MANAGER  
naming the CITY as additional insured.)**

Builder's Risk: The CITY may elect to provide Builder's Risk coverage under an CITY Controlled Insurance Program in order to maximize savings to the CITY. In the event the CITY chooses not to obtain Builders' Risk Coverage, the CONSTRUCTION MANAGER shall be responsible to maintain a Builder's Risk policy with the coverage limit being equal to 100% of completed value of the project. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. No deductible greater than \$10,000 shall be permitted. Named insured's shall be CONSTRUCTION MANAGER and the City of Jacksonville.

Depending upon the nature of any aspect of this project and its accompanying exposures and liabilities, the CITY may, at its sole option, require additional insurance coverages in amounts responsive to those liabilities which may or may not require that the CITY also be named as an additional insured.

Said insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the CITY. Such insurance shall be written by an insurer with an A.M. Best Rating of AX or better. Prior to commencing any work on the project, Certificates of Insurance approved by the CITY's Division of Insurance and Risk Management evidencing the maintenance of said insurance shall be furnished to the CITY. The certificates shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until thirty (30) days after receipt of written notice by the CITY.

Anything to the contrary, notwithstanding the liabilities of the Consultant under this Agreement, shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverages. Neither approval nor failure to disapprove insurance furnished by the CONSTRUCTION MANAGER(s) shall relieve the CONSTRUCTION MANAGER(s) or its subcontractors from responsibility to provide insurance as required by the Contract.

Prior to award of Contract, the CONSTRUCTION MANAGER(s) shall present a letter (or other written statement) from its Insurance Agent affirming:

- (1) That the Agent has personally reviewed the insurance requirement of the Contract Documents, and
- (2) That the Agent is able (having proper market) to provide the coverages and limits of liability required on behalf of the CONTRACTOR.
- (3) The CM will provide the CITY a copy of an endorsement or rider reflecting the CITY as a named insured party. Failure to provide such documentation may not be construed as a waiver of this condition.

In the event any part of the work to be performed hereunder shall require the CONSTRUCTION MANAGER(s) or its Subcontractors to enter, cross or work upon or beneath the property, tracks, or right-of-way of a railroad or railroads, the CONSTRUCTION MANAGER(s) shall, before commencing any such work, at its expense, procure and carry liability or protective insurance coverage in such form and amounts as each railroad shall require.

The original of such policy shall be delivered to the railroad involved, with copies to the CITY and the

CONSTRUCTION MANAGER(s) shall not be permitted to enter upon or perform any work on the railroad's property until such insurance has been furnished to the satisfaction of the railroad. The insurance herein specified is in addition to any other insurance which may be required by the CITY and shall be kept in effect at all times while work is being performed on or about the property, racks, or right-of-way of the railroad.

#### **ARTICLE 14**

#### **TERMINATION OF THE AGREEMENT AND CITY'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION**

- 14.1 Termination by the CONSTRUCTION MANAGER - If all work on the project is suspended for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the CONSTRUCTION MANAGER, or if the Project should be stopped for a period of sixty (60) days by the CONSTRUCTION MANAGER, for the Owner's failure to make payments thereon, then the CONSTRUCTION MANAGER may, upon seven days written notice to the Owner, request payment for all work executed, the CONSTRUCTION MANAGER's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, and demobilization cost only incurred by the CONSTRUCTION MANAGER.
- 14.2 Owner's Right to Perform CONSTRUCTION MANAGER's Obligations and Termination by Owner for Cause.
- (1) If the CONSTRUCTION MANAGER fails to perform any of his material obligations under this Agreement including any obligation he assumes to perform work with his own forces, the Owner may, after seven (7) days written notice during which period the CONSTRUCTION MANAGER fails to perform such obligation, make good such deficiencies or satisfy the Owner of the appropriateness of its response. The GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the CONSTRUCTION MANAGER's Construction Phase Fee shall be reduced by an amount required to manage the making good of such deficiencies. If the contract balance is insufficient the Owner may seek recovery against the CONSTRUCTION MANAGER and /or its surety.
  - (2) If the CONSTRUCTION MANAGER is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workers or proper materials and fails to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls 30 days or more behind schedule) which has been adopted by the Construction Team, or if he fails to make payment when due to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise materially breaches any provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the CONSTRUCTION MANAGER and his surety, if any, seven (7) days written notice, during which period CONSTRUCTION MANAGER fails to commence to cure the violation, terminate the employment of the CONSTRUCTION MANAGER and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONSTRUCTION MANAGER, and may finish the Project by whatever method he may deem expedient. In such case, the CONSTRUCTION MANAGER shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the CONSTRUCTION MANAGER or have an action against the CONSTRUCTION MANAGER or its surety.
  - (3) If the CONSTRUCTION MANAGER refuses to allow Owner access to all documents, papers, letters, or other material made or received by the CONSTRUCTION MANAGER in conjunction with this Agreement, then the Owner may, without prejudice to any right or remedy and after giving the CONSTRUCTION MANAGER and his surety, if any, seven (7) days written notice, during which period CONSTRUCTION MANAGER still fails to allow access, terminate the employment of the CONSTRUCTION MANAGER and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the CONSTRUCTION MANAGER, and may finish the project by whatever method he may deem expedient. In such case, the CONSTRUCTION MANAGER shall not be entitled to receive any further payment until the Project is finished nor shall he be relieved from his obligations assumed under Article 7. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the CONSTRUCTION MANAGER (excluding

monies owed the CONSTRUCTION MANAGER for subcontract work).

14.3 Termination by Owner without Cause

- (1) If the Owner terminates this Agreement other than pursuant to Article 14.2(2) or Article 14.2(3), he shall reimburse the CONSTRUCTION MANAGER for demobilization costs and any unpaid Cost of the Project due him under Article 9, plus that part of the unpaid balance of the Construction Phase Fee in an amount as will increase the payment on account of his fee to a sum which bears the same ratio to the Construction Phase Fee as the Cost of the Project, including a reasonable profit, at the time of termination bears to the Guaranteed Maximum Price, if established, otherwise to the Owner's Construction Budget. The Owner shall also pay to the CONSTRUCTION MANAGER fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. In case of such termination of Agreement the Owner may further assume and become liable for obligations, and commitments that the CONSTRUCTION MANAGER has previously undertaken or incurred in good faith in connection with said Project. The CONSTRUCTION MANAGER shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the CONSTRUCTION MANAGER under such obligations or commitments. The Owner does not assume any responsibility for liabilities of the CONSTRUCTION MANAGER relating to issues that were in dispute between the CONSTRUCTION MANAGER or any Contractor or and any subcontractor or supplier existing prior to termination.
- (2) After the establishment of the Guaranteed Maximum Price or at the completion of the Preconstruction Phase, if the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the Owner, the Owner may terminate this Agreement and pay the CONSTRUCTION MANAGER his proportionate fee due in accordance with Article 8.1 plus any costs incurred pursuant to Articles 9 and 10.

**ARTICLE 15  
ASSIGNMENT AND GOVERNING LAW**

- 15.1 Neither the Owner nor the CONSTRUCTION MANAGER shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the laws of the State of Florida, venue for any action shall be in Duval County, Florida.

**ARTICLE 16  
NOTICE OF CLAIM: WAIVER OF REMEDIES; NO DAMAGES FOR DELAY**

- 16.1 The Owner's liability to CONSTRUCTION MANAGER for any claims arising out of or related to the subject matter of this contract, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
  - (a) All claims must be submitted as a Request for Change Order in the manner as provided herein;
  - (b) The CONSTRUCTION MANAGER must submit a Notice of Claim to Owner within 10 days of when the CONSTRUCTION MANAGER was or should have been aware of the occurrence of the event giving rise to the claim; and
  - (c) Within 21days of submitting its Notice of Claim, the CONSTRUCTION MANAGER shall submit to the Owner its Request for Change Order, which shall include a written statement in sufficient detail of the claim, including a description of the work affected.
  - (d) The CONSTRUCTION MANAGER agrees that the Owner shall not be liable for any claim that the CONSTRUCTION MANAGER fails to submit as a Request for Change Order as provided in this paragraph.
- 16.2 After receipt of a Request for Change Order, the Owner shall deliver to the CONSTRUCTION MANAGER its

written determination of the claim. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the Owner's written decision shall be final agency action.

- 16.3 For work the CONSTRUCTION MANAGER performs with its own forces, and in addition to the adjustments provided for in Article 8, the CONSTRUCTION MANAGER's exclusive remedy for delays or disruptions in performance of the construction caused by events beyond its control, and responsibility including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, except active interference including claims based on breach of contract or negligence, shall solely be a claim submitted in compliance with 16.1 above, for an extension of the scheduled construction time. In the event of a delay resulting from active interference, the CONSTRUCTION MANAGER's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes directly related to work on site including Reimbursables costs plus 10% for overhead and profit. Contractor agrees to insert this provision in its subcontractor's contracts.
- 16.4 Disputes shall be resolved in accordance with Executive Order 98-01.
- 16.5 The CONSTRUCTION MANAGER will cooperate with the Owner in resolving claims.

## **ARTICLE 17 MISCELLANEOUS**

- 17.1 Harmony- CONSTRUCTION MANAGER is advised and 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 on this project. CONSTRUCTION MANAGER further agrees that this provision will be included in all subcontracts of the Subcontractors as well as the 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.
- 17.2 Apprentices - If the CONSTRUCTION MANAGER employs apprentices on the project, the behavior of the CONSTRUCTION MANAGER and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The CONSTRUCTION MANAGER will include a provision similar to the foregoing sentence in each subcontract.
- 17.3 Invoices - Invoices shall be submitted in detail sufficient for a proper preaudit and postaudit thereof. Invoices for any travel expenses which are reimbursable pending negotiation of a lump sum construction management fee shall be submitted in accordance with procedures specified in the City of Jacksonville Ordinance Code.
- 17.4 CONSTRUCTION MANAGER's Project Records - The CONSTRUCTION MANAGER's Project Records shall be maintained as prescribed hereinabove in and shall be made available to the Owner or his authorized representative at mutually convenient times.
- 17.5 Severability - Should any provision of this agreement be deemed or determined to be unenforceable by a court of competent jurisdiction, the remaining contract provisions shall remain in full force and effect.
- 17.6 Sales Tax Exemption – The CONSTRUCTION MANAGER may serve as the owner's agent to obtain quotes for materials and otherwise assist in the procurement of materials that will be purchased directly by the owner in compliance section 212 Florida Statutes. As part of the CONSTRUCTION MANAGERS responsibility he shall administer this procurement process consistent with the following procedures and requirements;
  - 1. A Purchase Order Requisition Form in a form acceptable to the Owner and CONSTRUCTION MANAGER shall be prepared by subcontractors and submitted to the Owner prior to ordering Owner purchased materials. The requisition form will provide the name, address, telephone number and contact person for the materials supplier; a list of required items, the quantity needed the price and sales tax associated with the materials, and delivery dates established by the subcontractor.
  - 2. The Owner will prepare and issue standard Owner purchase order forms to the vendors. In conjunction with the execution of the Owner's Purchase Orders by the suppliers, the Subcontractor shall execute and deliver to the Owner, through the CONSTRUCTION MANAGER, deductive change orders reflecting the full value of all materials directly purchased by the Owner, plus all sales tax savings associated with the materials.

3. Subcontractors will be responsible for all matters relating to the receipt of materials purchased by the Owner including verifying correct quantities, inspection and acceptance of the goods at the time of delivery. The Subcontractor will forward the invoice to the Owner through the CONSTRUCTION MANAGER for payment.
4. Title to the Owner purchased materials will vest in the Owner at the time the materials are delivered to the Owner owned construction site (F.O.B. job site).
5. Owner is billed directly by the selling vendor for purchases of building materials.
6. Payment for the building materials is made directly to the selling vendor by the Owner.
7. The Owner will bear the costs of all Payment and Performance Bonds and Owner's Insurance including Builder's Risk Insurance as a reimbursable expense to the CONSTRUCTION MANAGER, noting however the Builder's Risk Insurance will be provided by the Owner.

The Owner and CONSTRUCTION MANAGER are additionally named insured Owner's Builder's Risk insurance and, in the event of damage or destruction to Owner or CONSTRUCTION MANAGER purchased materials, the Owner or CONSTRUCTION MANAGER, as applicable, will receive all proceeds derived from all claims against insurers or others to pay for repair or reconstruction as a result of damage or destruction.

CONSTRUCTION MANAGER shall be responsible for coordinating the delivery, storage and incorporation of material purchases made by the Owner pursuant to this section. Once the materials are incorporated in the project they become the responsibility of the CONSTRUCTION MANAGER. Failure by the CONSTRUCTION MANAGER to comply with the tax exemption procedures which results in taxes, fines or damages to the Owner shall be the sole responsibility and liability of the CONSTRUCTION MANAGER.

- 17.7 Public Entity Crime Information Statement - "A person or affiliate who has been placed on the 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 CONSTRUCTION MANAGER, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
- 17.8 Unauthorized Aliens - The Department shall consider the employment by any CONSTRUCTION MANAGER 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.
- 17.9 Electronic Mail Capabilities - The CONSTRUCTION MANAGER must have electronic mail capabilities through the World Wide Web. It is the intention of the Owner to use electronic communication for all projects whenever possible. The CONSTRUCTION MANAGER shall provide their electronic mail address and the name of a contact person responsible for their electronic communications.
- 17.10 Electronic Submittals - All electronic submittals must be in a form acceptable to the Owner.
- 17.11 **MINORITY BUSINESS ENTERPRISE (MBE) PARTICIPATION**

A. POLICY

It is an official policy of the City of Jacksonville to encourage the maximum participation of Minority Business Enterprises (MBE's) in its contract awards based upon availability. It is the City of Jacksonville's intent in adopting this program to reflect the philosophy with regard to enhancing participation of Minority Business Enterprise in all areas of procurement. The goal for this contract is twenty-five percent.

B. CONSTRUCTION MANAGER OBLIGATION

CONSTRUCTION MANAGERS are required to make all efforts reasonably necessary to ensure that Minority-Owned Business Enterprises have a full and fair opportunity to compete for performance on this project. The CONSTRUCTION MANAGERS shall pursue such Minority Owned Business Enterprise participation in accordance with Exhibit "I", attached

hereto and, by this reference, made a part hereof. CONSTRUCTION MANAGERS shall not discriminate on the basis of race, ethnicity, national origin or gender in the award and performance of the work under this contract.

C.        SUBMITTAL REQUIREMENTS.

The CONSTRUCTION MANAGER’s will include the MBE Participation Plan in the GMP Proposal in accordance with the RFP requirements.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment the day and year first above written.

**ATTEST:**

**CITY OF JACKSONVILLE**

By \_\_\_\_\_  
                Neill W. McArthur, Jr.  
                Corporation Secretary

By \_\_\_\_\_  
                John Peyton, Mayor

**ATTEST:**

**(COMPANY NAME)**

By \_\_\_\_\_  
                Signature  
\_\_\_\_\_  
                Type/Print Name  
\_\_\_\_\_  
                Title

By \_\_\_\_\_  
                Signature  
\_\_\_\_\_  
                Type/Print Name  
\_\_\_\_\_  
                Title

In compliance with the Ordinance Code of the City of Jacksonville, I do certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement and that provision has been made for the payment of the monies provided therein to be paid.

\_\_\_\_\_  
Director of Administration and Finance

Form approved:  
  
\_\_\_\_\_  
Office of General Counsel

**Exhibit B – Quotation of Rates**

NAME OF CONSULTANT\_\_\_\_\_

Proposal Number\_\_\_\_\_

**SCHEDULE OF PROPOSED RATES**

1. Average hourly direct labor rates (without Fringe Benefits)

|                                                               |            |
|---------------------------------------------------------------|------------|
| Principal (Partner or Senior Officer)                         | \$_____hr. |
| Project Executive (Responsible Professional)                  | \$_____hr. |
| Project Manager                                               | \$_____hr. |
| Assistant Project Manager                                     | \$_____hr. |
| Superintendents                                               | \$_____hr. |
| Schedulers                                                    | \$_____hr. |
| Cost Estimators                                               | \$_____hr. |
| Clerical (Typist, Word Processor,<br>Document Assembly, etc.) | \$_____hr. |

2. Total Overhead Rate (to be applied to Direct Labor: 150% maximum) \_\_\_\_\_%

3. Profit Rate (to be applied to Direct Labor plus Overhead: 10% maximum) \_\_\_\_\_%

4. Anticipated Construction Management Fee Expressed as a Percentage of Total Construction Cost of \_\_\_\_\_%

5. Anticipated Insurance Costs for coverages listed at Section XVII of this document. \$\_\_\_\_\_

6. Other Direct Project Costs per Unit (please specify) :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Estimated percentage of total fee to be performed by subconsultants \_\_\_\_\_%

8. Please provide any other relevant rates that may apply to this project including average direct hourly labor rates for other categories of personnel.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Exhibit C- Equal Business Opportunity Program**

It is an official policy of the City of Jacksonville to encourage the maximum participation of Minority Business Enterprises (MBEs) in its contract awards based upon availability. It is the CITY's intent in adopting this program to reflect the

philosophy with regard to enhancing participation of Minority Business Enterprises in all areas of procurement. **The City of Jacksonville will accept certified vendors with the State of Florida Office of Supplier Diversity.**

This project has been designated to be under the Equal Business Opportunity Program and has been selected to utilize the following method for achieving minority utilization and goals under the Equal Business Opportunity Program: **The Participation Percentage Plan.**

A. **PARTICIPATION GOALS**

The following goals and conditions apply to this contract and submissions of a request for proposal (RFP) by the prospective **Consultant** shall constitute full acceptance of all conditions outlined in the bid documents or proposals.

The attainment of MBE participation goals established for this contract will be measured as a percentage of the total dollar value of the contract or in the case of alternates the percentage is calculated on the base bid for the purpose of the award, we however, expect the contractor to meet or exceed the stated goals when the alternates are awarded. The goals established for this contract are:

13% PERCENT TO BE PERFORMED BY A CITY CERTIFIED AFRICAN AMERICAN BUSINESS ENTERPRISES

5% PERCENT TO BE PERFORMED BY CITY CERTIFIED ASIAN, HISPANIC, OR NATIVE AMERICAN OR NORTH AMERICAN BUSINESS ENTERPRISES.

7% PERCENT TO BE PERFORMED BY CITY CERTIFIED WBE FIRMS.

N/A PERCENT TO BE PERFORMED BY ANY COMBINATION OF CITY CERTIFIED W/MBE FIRMS

B. **MBE OBLIGATION**

Consultants are required to make all efforts reasonably possible to ensure that Minority-Owned Business Enterprises have a full and fair opportunity to compete for performance on this project. The consultant shall not discriminate on the basis of race, ethnicity, national origin or gender in the award and performance of the work under this contract.

C. **CALCULATION OF MBE PARTICIPATION**

1. The EBO office will require that no more than 60% of the purchase price for materials from MBE suppliers will go towards meeting MBE percentage goals.

D. **ELIGIBILITY**

1. To be considered eligible for contract award, the Consultant shall include with the bid/proposal an original of MBE Form 1(Schedule of MBE Participation), showing:
  - a. Total percentage of MBE work or procurement that the Prime Consultant intends to award,
  - b. The identification of the MBE as being a subcontractor, service organization, manufacturer, or supplier,
  - c. The awarded amount to each MBE.

**Please note the MBEs participating on City projects must be certified as an MBE with the City's Equal Business Opportunity Office or the State of Florida Office of Supplier Diversity.** You may contact the City's Equal Business Opportunity Office for a copy of the minority directory or visit our web site at [www.coj.net/pub/ebo](http://www.coj.net/pub/ebo).

2. In the event the highest ranking firm is unable to obtain bids from MBE sub-consultants that equal or exceed the

percentages established in the participation goals, he/she shall include documentation with the bid that indicates good faith efforts they have made as stated in Good Faith Efforts, Section H.

3. The MBE must be providing a service or commodity in the area that the MBE is certified in by the CITY or the State of Florida Office of Supplier Diversity.

E. **COMPLIANCE**

**All consultants or sub-consultants participating in this project are hereby notified that failure to fully comply with the CITY's MBE policy as set forth herein shall constitute a breach of contract which may result in termination of the contract or such other remedy as deemed appropriate by the Owner. Such penalties as outlined in Section 126.614 of Ordinance 93-722-342 will apply.**

F. **POST AWARD REQUIREMENTS**

1. After the award of the contract, failure on the part of the highest ranking firm to sub-consult with MBEs at a percentage level equal to or higher than stated on Form 1, will put the consultant in violation and is subject to penalties outlined in Section 126.614 of Ordinance 93-722-342.

G. **GOOD FAITH EFFORTS**

Consultants who fail to meet the stated minority participation goals set forth in Section "A" above are required to submit with their bid all efforts that would demonstrate a "Good Faith Effort" in the solicitation of sub-consultants/sub-suppliers or subcontractors to meet the MBE participation goals on this project.

The documentation will be judged on a matrix system with 100 points maximum. Consultants must receive a minimum of 80 points to qualify as a Good Faith Effort. Each item is evaluated on a pass/fail basis either full or zero points received for compliance with each item.

1. **ADVERTISEMENTS – 15 points**

**Effort:** The consultant shall advertise in the general circulation media, trade association publications and minority focused media. The advertisement shall appear at least 10 days prior to the bid date. If the CITY's solicitation period is shortened and does not allow a 10-day notice then a shorter publication time may be acceptable.

**Evidence:** Include a list of publications where the advertisement was placed, include a copy of the advertisement and a rate sheet. Advertisement shall include, at a minimum, project location; indication of City of Jacksonville as owner; location where plans and specifications may be obtained or viewed; sub-bid due date; trade or scopes of work for which subcontracts are being solicited; statement that bidder intends to conduct itself in good faith with MBE firms for participation on the project. The list should also include the names of minority publications and trade associations whose focus is minority businesses. If the publication is a certified minority then those expenditures may count toward minority participation, in meeting project goals.

2. **ATTENDANCE AT PRE-BID CONFERENCE – 5 points**

**Effort:** Attendance at any pre-bid conference scheduled by the CITY. Although attendance may be optional, this will remain one of the criteria for meeting good faith efforts.

**Evidence:** Attendance will be verified by conference sign-in sheet.

3. **WRITTEN NOTIFICATION 10 points**

**Effort:** Written notification sent by the consultant to CITY certified minority sub-consultants/sub-suppliers or sub-contractors.

**Evidence:** Name, address, contact person and date of written notice, the letters should outline the type of work, material, equipment, or services sought to be subcontracted. Copies of these letters to each sub-consultant/sub-supplier or subcontractor should be well documented. Notification must be dated at least ten (10) working days before the bid date. Firms must be certified by City of Jacksonville and adequate number of MBEs contacted in each working category (5 or less – contact all; 6 to 10 – contact at least 5; 11 to 50 – contact 50%, 51 or more – contact at least 25).

4. **FOLLOW UP – 15 points**

**Effort:** Contractor followed up initial sub-consultant/sub-supplier or subcontractor bid solicitation.

**Evidence:** Include a list of sub-suppliers/sub-consultants or subcontractors who were followed up by phone call or revisited after negotiations, and results of that contact, list contact names of MBEs, dates and letters.

5. **FEASIBLE PORTIONS OF WORK – 15 points**

**Effort:** To break the project up into economically feasible portions of work. Identified and selected specific work categories that may be subcontracted to MBEs.

**Evidence:** Include steps taken to segment elements of the work into economically feasible units to meet MBE availability. Identify sub-consultants/sub-suppliers subcontractors and scope of work involved in segmenting; show dates negotiations took place.

6. **EFFORTS MADE TO NEGOTIATE – 30 points**

**Effort:** Written statements of the consultant’s effort made to negotiate with CITY certified minority firms.

**Evidence:** Names, addresses and telephone numbers of CITY certified sub-consultants/sub-suppliers subcontractors contacted by the bidder offering to negotiate prices or services, outline steps taken. Give dates negotiations took place with each subcontractor, explain the offers made to MBEs. Document quotes/proposals received for work category solicited to minority sub-consultant/sub-supplier subcontractors. Barring lack of qualifications, only significant price differences (15% or more) will be considered cause for rejecting MBE proposals, and evidence of this price differential must be made available.

7. **EFFORTS MADE TO ASSIST IN THE AREA OF FINANCE, BONDING OR INSURANCE – 5 points**

**Effort:** Written statements of the bidder’s effort made to assist CITY certified minority businesses in the area of finance, bonding or insurance.

**Evidence:** Describe the type of assistance provided or offered to CITY certified minority sub-consultants/sub-suppliers subcontractors. Give names and the contact person of bonding companies or financial institutions offering assistance to the certified minority sub-consultants/sub-suppliers subcontractors.

8. **OUTREACH EFFORTS – 5 points**

**Effort:** Document outreach efforts to locate CITY certified minority businesses by utilizing local, state and federal business assistance offices.

**Evidence:** Provide copies of letters, faxes, telephone logs, etc. used to contact organizations. Include the names of organizations/groups, dates persons contacted, and telephone numbers. Provide copies of correspondence received from any of the organizations/groups acknowledging contact by the bidder. Must notify at least three minority/women organizations.

**NOTE:** The CITY will investigate and verify information submitted in making decisions awarding

**Good Faith Effort points.**

H. **EXCLUSIONARY AGREEMENTS**

**Agreements between any consultant and an MBE in which the MBE promises not to provide subcontracting quotations to other consultants are prohibited.**

**SCHEDULE OF MBE PARTICIPATION**

NAME OF FIRM \_\_\_\_\_  
PROJECT TITLE \_\_\_\_\_  
BID NUMBER \_\_\_\_\_

*TOTAL BID AMOUNT* \_\_\_\_\_

| NAME OF<br>MBE | TYPE OF WORK TO<br>BE PERFORMED | TYPE OF<br>MBE | CONSULTANT<br>SUPPLIER | TOTAL<br>CONTRACT<br>VALUE |
|----------------|---------------------------------|----------------|------------------------|----------------------------|
| _____          | _____                           | _____          | _____                  | _____                      |
| _____          | _____                           | _____          | _____                  | _____                      |
| _____          | _____                           | _____          | _____                  | _____                      |
| _____          | _____                           | _____          | _____                  | _____                      |
| _____          | _____                           | _____          | _____                  | _____                      |

|                                                     |          |
|-----------------------------------------------------|----------|
| <b><i>Sub-consultant Total Values</i></b>           |          |
| Hispanic, Asian-American Participation Total Value: | \$ _____ |
| African-American Participation Total Value:         | \$ _____ |
| Native-American Participation Total Value:          | \$ _____ |
| Woman Participation Total Value:                    | \$ _____ |

|                                                     |       |   |     |          |
|-----------------------------------------------------|-------|---|-----|----------|
| <b><i>Supplier Total Values</i></b>                 |       |   |     |          |
| Hispanic, Asian-American Participation Total Value: | _____ | X | 60% | \$ _____ |
| African-American Participation Total Value:         | _____ | X | 60% | \$ _____ |
| Native-American Participation Total Value:          | _____ | X | 60% | \$ _____ |
| Woman Participation Total Value:                    | _____ | X | 60% | \$ _____ |

The undersigned will enter into a formal Agreement with the MBE Suppliers or Consultants identified herein for work listed in this schedule conditioned upon execution of a contract with the City of Jacksonville. Under penalty of perjury, I declare that I have read the foregoing conditions and instructions and the facts are true to the best of my knowledge and beliefs.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**FORM 1**

**MBE MONTHLY REPORT**

NAME OF BIDDER: \_\_\_\_\_ BID NO. \_\_\_\_\_

PROJECT TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

CONTRACT AMOUNT: \$ \_\_\_\_\_

| NAME OF MBE | ADDRESS | TYPE OF WORK | TOTAL PAID<br>PREVIOUS<br>MONTH |
|-------------|---------|--------------|---------------------------------|
|             |         |              |                                 |
|             |         |              |                                 |
|             |         |              |                                 |
|             |         |              |                                 |
|             |         |              |                                 |

CUMULATIVE MBE AMOUNT PAID FOR PREVIOUS MONTHS \$ \_\_\_\_\_

PERCENTAGE OF TOTAL CONTRACT: % \_\_\_\_\_

PERCENTAGE OF OVERALL CONTRACT COMPLETED % \_\_\_\_\_

The undersigned hereby affirms and declares that the above listed firms were actually employed in the performance of work services under this contract, and further that each such firm earned and has been paid the stated amounts for their respective efforts.

Under penalties of perjury I declare that I have read the foregoing conditions and instructions and the facts are true to the best of my knowledge and beliefs.

\_\_\_\_\_  
Signature Title Date

NOTES: Contractor shall attach to this form a typewritten explanation of any differences in MBE participation between this form and MBE Schedule of Participation, including an accounting for any changes in MBE firms employed.

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH BIDDER'S REQUEST FOR MONTHLY AND FINAL PAYMENTS. IN ADDITION, A COPY OF THIS FORM MUST BE SUBMITTED DIRECTLY TO THE EQUAL BUSINESS OFFICE OF THE CITY OF JACKSONVILLE AT 117 WEST DUVAL STREET, JACKSONVILLE FLORIDA 32202.

**FORM 3**

# CITY OF JACKSONVILLE



## PROCUREMENT DIVISION

117 West Duval Street – Suite 335, Jacksonville, Florida 32202  
(904) 630-3682-Ph; (904) 630-3442-Fax; [www.coj.net](http://www.coj.net)

## PROCUREMENT PROTEST PROCEDURES

### 126.106(e) PROTEST PROCEDURES

- 126.106(e)(1) Purpose and Scope
- 126.106(e)(2) Definitions
- 126.106(e)(3) Timely Notice of Protest
- 126.106(e)(4) Extension Request / Supplemental Protest Documentation
- 126.106(e)(5) Delivery
- 126.106(e)(6) Process
- 126.106(e)(7) Protest Hearing Rules and Procedures
- 126.106(e)(8) Independent Agency, Board or Delegated Authority

#### 126.106(e)(1) Purpose and Scope

(a) These protest procedures are promulgated pursuant to § 126.106(e) of the Jacksonville Ordinance Code (the “Code”), which authorizes the Chief of the Procurement Division to “prepare and publish rules and regulations governing bid protests.” In the event a court of competent jurisdiction declares any provision of these Procurement Protest Procedures to be unconstitutional, invalid, or otherwise unenforceable, then all remaining provisions shall be severable, valid and enforceable regardless of the invalidity of any other provision.

(b) In accordance with the procedures contained herein, any person or entity that is adversely affected by a decision or an intended decision concerning a solicitation, solicitation documents, award, or any other process or procedure prescribed in the Code and who has standing to protest said decision or intended decision under Florida law (the “Protestant”), must timely file a written Notice of Protest seeking to challenge the decision or intended decision. The issue(s) raised and the information contained in the Notice of Protest and any supplemental documentation filed in accordance with § 126.106(e)(4), hereof, must clearly identify and explain the factual and legal basis for any relief sought, and shall be the only

issue(s) and information the Protestant may present for consideration before the applicable committee.

#### 126.106(e)(2) Definitions

For the purpose of these Bid Protest Procedures, the following definitions are provided:

(a) “Competitive solicitation” or “solicitation” shall include without limitation an invitation to bid, competitive sealed bid, multi-step competitive sealed bid, competitive sealed proposal, or a request for proposals and/or qualifications.

(b) “Posting” means the notification of solicitations, decisions or intended decision, or other matters relating to procurement on a centralized Internet website, by placing the same on the bulletin board(s) designated by the Procurement Division for this purpose, or as may be consistent with § 126.102(m) of the Code.

(c) “Exceptional purchase” means any purchase excepted by law or rule from the requirements for competitive solicitation, including without limitation purchases pursuant to §§ 126.107, 126.206, 126.207, 126.211, 126.307, 126.309, 126.311, 126.312, or 126.313 of the Code.

(d) "Electronic transfer" is limited solely to facsimile transmissions that appear legibly on paper at the place of filing.

(e) "Final Agency Action" means a final decision that results from a proceeding hereunder, and includes actions which are affirmative, negative, injunctive, or declaratory in form.

(f) "Procurement process" has the same meaning as "contract solicitation or award process."

### **126.106(e)(3) Timely Notice of Protest**

(a) **Recommendations of Award and/or Bid Rejection.** A Protestant shall have 48 hours after either the posting or written notification of a decision or intended decision, whichever is earlier, in which to file a written Notice of Protest in order to timely challenge or seek relief from a Procurement Division recommended award of an exceptional purchase or an award or recommended conclusion to any bid or proposal solicitation process, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short-listing of bidders or proposers.

(b) **Bid/Proposal Specifications and/or Requirements.** A Protestant shall have 10 business days after the posting of a solicitation or 48 hours after the posted date and time of a pre-bid or pre-proposal conference, whichever is earlier, or 48 hours after the posting of an addendum, in which to file a written Notice of Protest in order to timely challenge the requirements, terms and/or conditions contained in bid or proposal documents, including without limitation any provisions governing or establishing: (i) the basis for making the award in question; (ii) evaluation criteria; (iii) equipment, product, or material specifications; (iv) proposed project schedules; (v) statements regarding participation goals or other equal opportunity measures; or (vi) other general solicitation or project requirements.

(c) **Computation of Time** - The computation of the time limitations or periods contained herein shall be governed by and shall be pursuant to Florida Rule of Civil Procedure 1.090(a). Failure to file a written Notice of Protest within the applicable time limitation or period shall constitute a waiver of any right, remedy, or relief available hereunder.

(d) **Form and Content of the Notice of Protest** - A written Notice of Protest shall: (i) be addressed to the Chief; (ii) identify the solicitation, decision, or recommended award in question by number and title or any other language sufficient to enable the Chief to

identify the same; (iii) state the timeliness of the protest; (iv) state Protestant's legal standing to protest; and (v) clearly state with particularity the issue(s), material fact(s) and legal authority upon which the protest is based.

### **126.106(e)(4) Request for Extension to File Supplemental Protest Documentation**

At the time of filing a timely Notice of Protest hereunder, a Protestant may request an extension of three (3) business days after the date its Notice of Protest is timely received, in which to provide supplemental protest documentation. Failure to do so or to timely submit the supplemental protest documentation shall constitute a waiver of any right to the same.

### **126.106(e)(5) Delivery**

The timely filing of a Notice of Protest shall be accomplished when said notice is actually received by the Procurement Division within the applicable time limitation or period contained herein. Filing a notice may be accomplished by manual transfer via hand-delivery or mail to the Chief of Procurement Division at 117 West Duval Street, Suite 335, Jacksonville, Florida 32202, or by electronic transfer via facsimile to (904) 630-2151. The responsibility and burden of proof that its Notice of Protest has been timely and properly received shall rest with the Protestant, regardless as to the method of delivery employed.

### **126.106(e)(6) Process**

(a) Upon receipt of a timely filed written Notice of Protest, the Chief or his/her designee shall schedule and provide notice of the time, date and place that the protest will be heard. The protest will be heard before the General Governmental Awards Committee ("GGAC"), the Professional Services Evaluation Committee ("PSEC"), or the Competitive Sealed Proposal Evaluation Committee ("CSPEC"), whichever is applicable. The Chief or his/her designee shall have the discretion to proceed with the solicitation or contract award process in question or to suspend the same pending the resolution of the protest. To the extent the Chief or his/her designee decides to exercise his/her discretion not to suspend the solicitation or contract award process pending the resolution of the protest, the Chief or his/her designee shall set forth in writing the particular facts and/or circumstances upon which his/her decision is based.

(b) Those persons or entities, other than the Protestant, who will be directly affected by the resolution of the protest shall be given notice of the protest hearing, and the Notice of Protest and any supplemental protest

documentation shall be made available to them upon a written request for the same.

(c) When a Notice of Protest is filed pursuant to § 126.106(e)(3)(b), hereof, the Chief or applicable awards committee chairperson shall have the discretion to direct that the solicitation in question not be opened pending the resolution of the protest.

#### **126.106(e)(7) Protest Hearing Rules and Procedures**

(a) Hearings hereunder shall be heard before the applicable committee, and shall begin with a general statement of the rules and procedures prescribed herein by a representative of the committee, followed by a general statement of the facts by a representative of the Procurement Division. Representatives of the Protestant, limited solely to its owners, officers, employees and/or legal counsel, will then be required to present its case based solely upon the issue(s) and information contained in the Notice of Protest and any timely submitted supplemental protest documentation. Those persons or entities, other than the Protestant, who have legal standing and will be directly affected by the resolution of the protest will be given an opportunity to be heard and to present information before the committee, which will be followed by a statement and the presentation of information from the Procurement Division and other governmental representatives. The Protestant must establish by the preponderance of the evidence that the protest should be granted based upon the law, facts and information presented. The committee is entitled to ask questions of any party at any time during the hearing.

(b) For hearings hereunder, the formal rules of evidence pursuant to the Florida Evidence Code may be

relaxed at the sole discretion of the presiding chairperson of the applicable committee. Hearsay evidence may be admissible and used to supplement or explain other evidence.

(c) Unless otherwise provided by the Code, the burden of proof shall rest with the Protestant. The standard of proof for proceedings hereunder shall be whether a Procurement Division recommendation or the decision or intended decision in question was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without any basis in fact or law. In any protest proceeding challenging a decision or intended decision to reject all bids, proposals, or replies, the standard of review shall be whether the decision or intended decision is illegal, arbitrary, dishonest, or fraudulent.

(d) A majority vote of the members of the applicable committee shall be required to grant a protest, hereunder; otherwise, the protest shall be denied, and, upon execution by the Mayor or his designee, said vote and/or decision of the applicable awards committee shall be posted and shall represent final agency action.

#### **126.106(e)(8) Independent Agency, Board or Delegated Authority**

If a protest is filed and the solicitation is for the benefit of an independent agency, board, or delegated authority that has its own established procurement procedure and does not use the City's procurement process and/or protest procedures, then the person or entity protesting must follow the protest procedures of that independent agency, board, or delegated authority.

### **CERTIFICATE OF ADOPTION AND IMPLEMENTATION**

The preceding Procurement Protest Procedures are hereby adopted this 2<sup>nd</sup> day of September, 2008, by the undersigned Chief of Procurement for immediate implementation, and will remain in full force and effect until such time as they may be formally revised, amended, supplemented, superseded, or abolished.

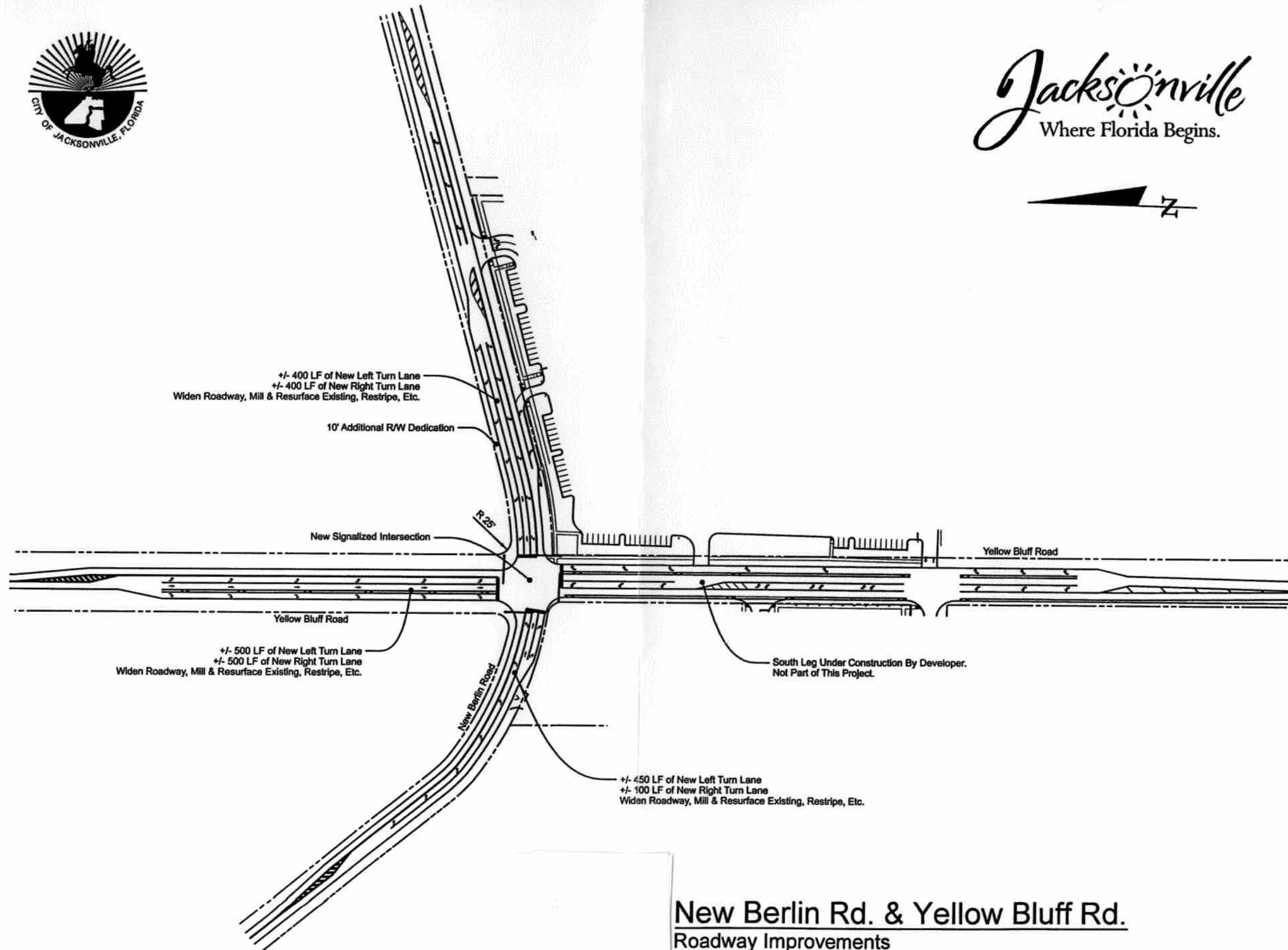
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## New Berlin Rd. & Yellow Bluff Rd. Roadway Improvements

## **ATTACHMENT H**

### **Solicitation Silence Policy**

The City of Jacksonville's Procurement Division has implemented a Solicitation Silence Policy that prohibits certain oral communication regarding a solicitation during the period the policy is in effect. Written communications to the Chief of the Procurement Division or his/her staff are allowed at all times.

### **Prohibitions**

Any oral communication regarding a particular solicitation is prohibited between a potential vendor, service provider, bidder, lobbyist or consultant and city employees, staff, or hired consultant.

### **Exceptions to the Solicitation Silence Policy**

Unless specifically provided in the applicable solicitation document the Solicitation Silence Policy does not apply to the following:

- communications regarding a particular solicitation between the Chief of the Procurement Division or his/her staff responsible for administering the procurement process for such solicitation, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document
- communications between a potential vendor, service provider, bidder, consultant or lobbyist and city employees responsible for administering the Jacksonville Small Emerging Business Program, provided the communication is limited strictly to matters of programmatic process or procedures
- communications with the Office of General Counsel and his/her staff
- communications with the Office of Inspector General and his/her staff
- emergency procurements of goods and services pursuant to Purchasing Code, Chapter 126.207
- oral communications at pre-bid conferences
- oral presentations before publicly noticed committee meetings
- contract negotiations during any duly noticed public meeting
- duly noticed site visits to determine competency of bidders during the period between bid opening and issuance of the Chief of Procurement Division's written recommendation
- communications in writing at any time to the Chief of Procurement Division or his/her staff unless specifically prohibited by the applicable solicitations document

### **Commencement and Termination of the Solicitation Silence Period**

The period of Solicitation Silence commences after the advertisement of the solicitation document. The period of Solicitation Silence terminates after the Chief of the Procurement Division issues a written recommendation to the corresponding awarding committee. If the awarding committee refers the Chief's recommendation back for further review, the Solicitation Silence period shall be reinstated until such time as the Chief issues a subsequent recommendation.

### **Written Communication During the Solicitation Silence Period**

When the Solicitation Silence period is in effect, any communication shall be in writing, unless one of the exceptions applies. Written communication may be in the form of letter, email or facsimile.

### **If Not an Exception**

If an oral inquiry call is for an answer or response that is not within the scope of the exception, kindly request that the question be presented in writing to the Chief of the Procurement Division or his/her staff and that a response will, in turn, be given in writing.

Any information that changes adds to or clarifies the terms, provisions or requirements of the solicitation document shall be conveyed equally to all competitors in a solicitation addendum.