



April 29, 2009

Ref: P-43-09 Contaminated Assessment and Remediation Services for Various Projects
Throughout Duval County

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.
- 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 no later than 3:30 PM EST on Friday, May 8, 2009.

Your proposal must clearly bear the RFP number (P-43-09) and must be received no later than 4:00 p.m. Friday, May 22, 2009, and directed to:

City of Jacksonville
Procurement Division
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
Procurement Division
Chairman, Professional Services
Evaluation Committee

MC: ab
cc: Subcommittee Members
Council Auditor

DEPARTMENT OF CENTRAL OPERATIONS
117 W. Duval Street, Suite 335 | Jacksonville, FL 32202 | Phone: 904.630.1184 | Fax: 904.630.2151 | www.coj.net

REQUEST FOR PROPOSALS

RFP P-43-09

CONTAMINATION ASSESSMENT AND REMEDIATION SERVICES

VARIOUS PROJECTS THROUGHOUT DUVAL COUNTY

CITY OF JACKSONVILLE, FLORIDA

April 24, 2009

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REQUEST FOR PROPOSALS

RFP P-43-09

CONTAMINATION ASSESSMENT AND REMEDIATION SERVICES

VARIOUS PROJECTS THROUGHOUT DUVAL COUNTY

CITY OF JACKSONVILLE, FLORIDA

I. GENERAL INFORMATION:

Owner: City of Jacksonville

Operator: Engineering and Construction Management Division
Department of Public Works

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 MBES status with the City's Equal Business Opportunity Office.

This project has been designated to be under the Equal Business Opportunity Program and has been selected to utilize the following method for achieving JSEB/MBE utilization and goals under the Equal Business Opportunity Program: **The Encouragement Plan. (See Attachment "C")**

B. Ex-parte Communication Prohibited

The City believes that any ex-parte communication concerning the solicitation, evaluation, and selection process denies all Consultants 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 Consultant, 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 Consultant'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 285.011, Florida Statutes. This requirement shall not prohibit:

1. Meetings called or requested by the City and attended by Consultants 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 285.011, 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 Consultants. 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.

Notwithstanding the foregoing, communications with City staff are permissible by this Section when such communications with a prospective respondent are necessary for, and solely related to, the ordinary course of business concerning the vendor's providing services to the City under any existing contract(s) for the same materials or services addressed in this RFP. Such permitted communications with an existing vendor (who also intends to submit a proposal for this RFP) shall be: (1) limited solely to the subject matter of the existing contract(s), and (2) with only the City personnel assigned to administer said City contract(s). In no event shall any existing vendor intending to submit a response to this RFP initiate ex parte communications with any City personnel concerning this RFP except as otherwise expressly permitted in this RFP; it being understood such ex parte communication initiated by an existing vendor under these circumstances would not fit within the limited exception noted herein because it would not be in the ordinary course of business of the existing contract(s).

II. DESCRIPTION:

This is a Request for Proposals (RFP) from Consultants to provide hydrogeological, engineering, contamination assessment and remediation, and testing services which may be needed by the City from time to time as contaminated soils are encountered on various construction sites. These services may also be used on properties which the City is contemplating purchasing for various uses. A detailed scope of services and fee proposal therefore will be negotiated on each site and may include, but not be limited to, the following:

A. Site Screening for Contamination:

1. Visual inspection by qualified Professional Hydrogeologist (PG) or Professional Engineer to define potential sources of contamination.
2. Identification of buried storage tanks and sampling and analysis of tank contents or other potential hazardous materials to determine if contents are hazardous or toxic chemicals.
3. Installation of soil borings, piezometers and/or monitoring wells to determine the presence, limits and type of soil and groundwater contamination.
4. Conduct soil-gas surveys to define extent of contamination.

B. Compliance with Environmental Regulations:

1. Supervision of initial remediation action to remove and dispose of buried tanks and contaminated soil or groundwater according to State and Federal regulations.
2. Respond to notices of violation, consent orders, warning notices, initiation orders and other environmental orders issued by the FDEP, EPA or other environmental regulatory agencies.
3. Prepare Contamination Assessment Reports (CAR) and Remedial Action Plans (RAP) as required by State and Federal regulatory agencies.

C. Real Estate (Land Purchase) Environmental Audit:

1. Background review of public records including previous ownership

and historical land use, and regulatory files to determine if there may be potential contamination on site or on adjacent properties.

2. Provide detailed inspection of sites and adjacent properties by qualified Professional Hydrogeologist or Professional Engineer to locate potential sources of soil and groundwater contamination.
3. Perform field hydrogeologic surveys (possible test drilling) to define direction of groundwater flow and subsurface hydrogeologic conditions.
4. Install soil borings, piezometers, monitoring wells, or sampling probes to obtain and analyze soil and groundwater samples.
5. Prepare technical reports certified by qualified Professional Hydrogeologist or Professional Engineer defining site conditions.

D. Other Services:

Other services related to contaminated sites including, but not limited to, providing for the removal and disposal of contaminated soil, underground tanks, or other contaminants and replacing with approved backfill.

III. CONSULTANT SELECTION:

- A. The selection and contracting with a Consultant 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.

IV. MINIMUM REQUIREMENTS OF CONSULTANT:

- A. Authorized and licensed under Florida Statutes to perform the professional services sought by this RFP.
- B. Certification by the Florida Department of Transportation (FDOT) for providing the various testing and reporting procedures described in the description of services.
- C. A local office in which the work will be done.

(Note: Consultants are not required to have a local office in order to respond to this RFP, but one will be required prior to execution of a contract. - see Section X. Selection Criteria F. Proximity)

V. BUDGET:

No firm dollar amount for services to be performed under this proposal can be established in advance, as the extent of work required cannot be estimated at this time. The original contract(s) issued for these services may be in an amount up to \$500,000.00 for a one year period, but the City does not anticipate or guarantee this level of service and, in fact, may not need any service at all; or conversely, may need much more service during each one year period.

VI. TIMING:

It is required for the Consultant to begin work as soon after June 1, 2009, as possible. The original contract will be for a one (1) year period, and the City will have the option to extend such contract for two (2) additional one (1) year period upon satisfactory performance by the Consultant(s).

VII. CITY OF JACKSONVILLE PROJECT MANAGER:

The Project Manager for this project will be will be designated by William Joyce, P. E., Chief, Engineering and Construction Management Division, 10th Floor, Edward Ball Building, 214 North Hogan Street, Jacksonville, Florida 32202. The proposer's attention is directed to ATTACHMENT G - 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, no later than two weeks before the Proposals are due (See Section XXIV).

VIII. FURNISHED DOCUMENTS:

During preparation of a response to this RFP, the consultant may review documentation from the previous contract.

IX. FEE SUBMITTAL:

See requirements set forth in section X. Selection Criteria, paragraph 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 1 through the maximum points. Please note that 10 points is the maximum for all categories. 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 Consultant is a joint venture, it will be assumed the firm shown on the transmittal letterhead will be the prime Consultant with whom the City would contract and all other firms shown as team members would be subconsultants.

Joint Venture proposals (including those submitted in accordance with Section XXI) will be scored in categories C, E, F, G, and J 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 to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons and, where applicable, the relationship of construction cost estimates by the person to actual costs on previous projects. (10 Points maximum score)**

Provide written documentation which demonstrates that the Consultant meets all of the Minimum Requirements of Consultant 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 Consultant in accordance with Florida Statutes to perform the services required by this RFP.

Provide number and size of staff, and names and resumes of those individuals to be assigned to these services. Discuss overall experience of staff as it relates to the services being sought.

Provide the name and office locations of any subconsultants proposed to be used on these services, and the estimated percentage of the work, which will be done by each such subconsultant. Evaluation of competency criterion will include a consideration of any proposed subconsultants.

Provide description of Consultant's equipment and facilities, which will be used to perform these services.

Discuss the extent of repeat business the Consultant has achieved.

Provide any other documentation, which the Consultant believes, documents its competency to perform the requested services.

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 prosecute multiple concurrent projects and contracts given its current workload.

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 Credit Report 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. Complete financial information is required for every joint venture partner.

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 Consultant and assigned personnel in observing and monitoring construction projects, ensuring that construction is proceeding in accordance with the plans and specifications, and other construction phase services. Evaluation of this criterion will also consider the Consultant's ability to interpret specifications as evidenced by the preparation of a response to this RFP.

E. Past and present record of professional accomplishments and past record of performance for using Agencies. (10 points maximum score)

Provide list of completed projects similar in scope to projects under consideration previously performed by Consultant, and references to include owner's contact person and telephone number. Describe any outstanding accomplishments of the Consultant that relates to the specific services being sought. Submit any letters of commendation or awards won which reflect on the professional accomplishments of the Consultant.

Provide description of all projects on which the Consultant has done work during the past 5 years for the City of Jacksonville and other

local Jacksonville governmental agencies such as the Duval County School Board, JTA, JPA, JAA, JEA, JEDC, and Jacksonville Housing Authority. List only those projects where the Consultant was the prime Consultant (not a subconsultant). Provide a self-assessment of the Consultant's performance on each project.

If the Consultant has performed no work for the City of Jacksonville or any Jacksonville governmental agencies in the past five (5) years, the response should so clearly state.

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

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

If Consultant's corporate headquarters are not located in Jacksonville, please indicate whether Consultant 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 branch office and have lived in the Jacksonville area for the previous twelve (12) months)

If the consultant's corporate headquarters are not located in Jacksonville and Consultant does not maintain a Jacksonville branch office, the response should so clearly state. Minimum points will be awarded in this criterion in this instance.

The selected Consultant will be required to verify its location by furnishing, prior to execution of an Agreement for professional services, 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.

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.

H. Ability to design an approach and work plan to meet the project requirements, where applicable. (10 Points maximum score)

Describe Consultant's understanding of the project(s) for which it is submitting a response, including proposed methodology in production of each. Discuss any problem areas the Consultant may have detected and proposed solutions, production schedule, and potential savings in either professional fees or construction costs by innovative and/or best

practices approaches. Response to this criterion should be project specific rather than generic.

Consultant shall also disclose its anticipated Minority Business Enterprise participation on each project it submits for as part of this Criterion.

I. An overall willingness to meet both time 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.

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 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 CPI since the date of response to the RFP. Unless specifically identified otherwise on the form, rates for subconsultants also shall not exceed those shown on the form.

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.

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 consultant 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

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.

3. 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. The 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.

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XII. INSURANCE REQUIREMENTS:

The Consultant 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 Employer's Liability (including Appropriate Federal Acts)	Florida Statutory Coverage \$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Each Employee/Disease
Commercial General Liability Premises-Operations Products-Completed Operation Blanket Contractual Liability Independent Contractors	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
(The City of Jacksonville shall be named as an additional insured under all of the above Commercial General Liability coverage.)	
Auto Liability All autos-owned, hired or non-owned	\$1,000,000 CSL
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.)

Contractors Pollution Liability \$1,000,000
with coverage for:

- a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- c. defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- d. Transportation coverage (if covered operations includes transportation of hazardous materials, waste, tank sludge, etc.)
- e. Non Owned Disposal Coverage (if covered operations includes removal and disposal of contaminated soil, tank sludge, etc.)

For losses caused by pollution conditions that arise from the operations of the Master Consultant described under the scope of services of this contract.

The Master Consultant agrees to name Owner as an additional insured and to furnish insurance certificates, showing the Master Consultant's compliance with this section and also agrees to notify Owner thirty days in advance of any cancellation or change to the insurance coverages shown on the certificate.

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 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 CONSULTANT shall relieve the CONSULTANT from responsibility to provide insurance as required by contract.

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.

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 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

XVI. CONFORMITY TO APPLICABLE LAWS

The Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant for these services:

"ETHICS PROVISION FOR PROFESSIONAL SERVICES

The Consultant, 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.

Consultants 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

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 Consultant 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, May 22, 2009. Late proposals will not be accepted.

In accordance with ATTACHMENT G - 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 no later than 3:30 PM EDT on Friday, May 8, 2009.

ATTACHMENT "A" (1 of 4)

NAME OF CONSULTANT _____

Proposal Number _____

SCHEDULE OF PROPOSED RATES

CONTAMINATION INVESTIGATION AND REMEDIATION

Average hourly direct labor rates (without Fringe Benefits)

Principal (Partner or Senior Officer)	_____	hr.
Registered Professional Engineer (PE) or		
Registered Professional Geologist (PG)	_____	hr.
Engineer (non-register)	_____	hr.
Geologist (non-registered)	_____	hr.
Senior Hydrogeologist	_____	hr.
Hydrogeologist	_____	hr.
Senior Chemist	_____	hr.
Chemist	_____	hr.
Senior Technician	_____	hr.
Technician	_____	hr.
Project Manager	_____	hr.
Environmental Scientist	_____	hr.
Draftsman/CADD Operator	_____	hr.
Clerical	_____	hr.
 Total Overhead Rate	_____	%
Profit Rate (to be applied to Direct Labor plus Overhead:)	_____	%
	_____	%

Test Drill and Well Installation

Soil Boring		Per foot
Test Drilling – Split Spoon		
Continuous	_____	Per foot
5 ft. Centers	_____	Per foot
Test Drilling – Auger	_____	Per foot
Piezometer Installation	_____	Per foot
Monitor Well Installation (2 inch)	_____	Per foot
Monitor Well Installation (4 inch)	_____	Per foot
Mobilization – Drill Rig	_____	Per site
Monitor Well Head Protection	_____	
Below Grade	_____	
(8-inch manhole locking cap)	_____	Per well
Above Grade	_____	
(4-inch x 4-inch steel riser)	_____	Per well
Abandon 2" monitor well	_____	Per well
Abandon 4" monitor well	_____	Per well

ATTACHMENT "A" (2 of 4)

Aquifer Testing

Slug Tests		
Falling Head		Per test
Slug Out		Per test
Double Ring Infiltrometer		Per test
Laboratory Permeability		Per test
Aquifer Pumping Test		Per hour (*)

Chemical Analyses

There are about 160 different types of chemical analyses listed in EPA manuals that are run for various reasons. The following list includes the analyses that are commonly required by FDER and are usually used to detect and assess contamination.

Soil

EPA Method 5035		Per analysis
EPA Method 8021 (A+H)		Per analysis
EPA Method 8021 (A)		Per analysis
EPA Method 8021 (H)		Per analysis
EPA Method 8310 (PAHs)		Per analysis
TPH by FL-PRO Method		Per analysis
EPA Method 8240 Solvents GC/MS		Per analysis
EPA Method 8250 Priority Pollutants GC/MS		Per analysis
EAP Method 8260		Per analysis
EPA Method 8270		Per analysis
EPA Method 7060 As		Per analysis
EPA Method 7031 Cd		Per analysis
EPA Method 7190 Cr		Per analysis
EPA Method 3050 Pb		Per analysis
8 RCRA Metals		Per analysis
8 Priority Pollutant Metals		Per analysis
EPA Method 7470 Mg		Per analysis
EPA Method 7760 Ag		Per analysis
Soil Digestion (metals only)		Per sample

Water

EPA Method 601 Solvents		Per analysis
EPA Method 602 VOC		Per analysis
EPA Method 601/602 Combined		Per analysis
EPA Method 504 EDB		Per analysis
EPA Method 610 PAH		Per analysis
TRH by FL-PRO Method		Per analysis
EPA Method 624 Solvents GC/MS		Per analysis
EPA Method 625 Priority Pollutants GC/MS		Per analysis

ATTACHMENT "A" (3 of 4)

EPA Method 150.1 pH	_____	Per analysis
EPA Method 160.1 TDH	_____	Per analysis
EPA Method 180.1 Turbidity	_____	Per analysis
EPA Method 206.3 As	_____	Per analysis
EPA Method 213.2 Cd	_____	Per analysis
EPA Method 218.2 Cr	_____	Per analysis
EPA Method 239.2 Pg	_____	Per analysis
EPA Method 243.1 Mg	_____	Per analysis
EPA Method 245.1 Hg	_____	Per analysis
EPA Method 272.1 A	_____	Per analysis
EPA Method 415.1 TOC	_____	Per analysis
EPA Method 425.1 Surfactants	_____	Per analysis
8 RCRA Metals	_____	Per analysis
13 Priority Pollutant Metals	_____	Per analysis

Remedial Action

Soil Removal		
Petroleum Contaminated		
(loaded from stockpiled soils)	_____	Per cubic yard
Incineration (Petroleum)		
(Includes transportation to incinerator)	_____	Per cubic yard
Hazardous contaminated	_____	Per drum
Non-Hazardous contaminated	_____	Per drum
Free Petroleum Product Recovery		
Vacuum Truck	_____	Per day
Liquid Disposal	_____	Per gallon
Vapor Extraction System		
Install Vapor Extraction Wells	_____	Per well
Install Vacuum Monitor Wells	_____	Per well
Trenching and Piping	_____	Per foot
Groundwater Recovery and Treatment		
Install 4-inch Recovery Well	_____	Per well
Install 6-inch Recovery Well	_____	Per well
Install Recovery Pump and Piping	_____	Per hour (*)
Install Air Stripper	_____	Per hour (*)
Install Oil Water Separator	_____	Per hour (*)
Install Activated Carbon System	_____	Per hour (*)
Install Infiltration Gallery	_____	Per foot
Install Underground Piping	_____	Per foot
Install Concrete Pad for Treatment System	_____	Per foot
Install Security Fence	_____	Per foot
Install Panel and Electric Lines	_____	Per hour (*)

ATTACHMENT "A" (4 of 4)

Purchase of Recovery and Treatment Equipment

Recovery Pump		
0.5 h. p., 16 gpm submersible pump or equivalent		Per pump
Wilden M-1 or equivalent		Per pump
Oil Water Separator		Per each
Air Stripper and Blower		
(18"x 20' with blower or equivalent)		Per item
Activated Carbon Drum		
(200 lb. Carbon, 10 gpm or equivalent)		Per item
Transfer Pump		Per item
Air Compressor (1 h. p. 30 gal. Tank or equivalent)		Per item
Treatment System Control Panel		Per item
Electrical Panel and Wire		Per item
Power Distribution Pole (60 amp service)		Per item
Underground PVC Pipe (including fittings)		
1-inch pipe		Per foot
2-inch pipe		Per foot

(*) Hourly rates shall include all costs including labor, overhead and profit for these items.

Equipment

F.I.D. Organic Vapor Analyzer (OVA)		Per day
P.I.D. Organic Vapor Analyzer		Per day
Natural Gas Indicator		Per day
Surveying Equipment		Per day
Bailers		Per day
Conductivity Meter		Per day
pH Meter		Per day
Rolatape		Per day
Interface Probe		Per day
Water Level Indicator		Per day
2" Diam. PVC Screen (8 ft.)		Per screen
Centrifugal Pump		Per day
Pneumatic Pump and Compressor		Per day
Concrete Saw		Per day
Hand Auger		Per day
Data Logger		Per day
Pump Test Equipment (w/carbon drums)		Per day
Pump Test Equipment (w/o carbon drums)		Per day
Soil Vent Test Equipment		Per day
Portable GC		Per day
Free Product Recovery System		Per week
Portable Stripping Tower		Per day
Ponar Sampler		Per day

(Remainder of this page intentionally left blank)

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.

Name

Title or Position

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 7
EQUAL BUSINESS OPPORTUNITY PROGRAM
ENCOURAGEMENT PLAN

It is an official policy of the City of Jacksonville to encourage the maximum participation of **Jacksonville Small Emerging Businesses (JSEBs)** in contract awards. Based upon availability this project has been designated by the Equal Business Opportunity Program to utilize the **Encouragement Plan**.

Under the Encouragement Plan, vendors are required to make all efforts reasonably necessary to ensure that minority-owned and women-owned City certified JSEBs have a full and fair opportunity to compete for subcontract or sub-consultant participation on this project.

Bidders/Suppliers/Consultants or any entity doing business with the City shall not discriminate on the basis of race, ethnicity, national origin or gender in the award and performance of the work under this contract.

Please use the following ***Schedule of Subcontract/Sub-Consultant Participation*** to submit JSEB Participation on this Bid. You may contact the City's Equal Business Opportunity Office at 904-630-1165 or find the JSEB directory on-line through the Procurement Department website at www.coj.net.

(REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK)

FORM 1
SCHEDULE OF SUBCONTRACTOR/SUBCONSULTANT PARTICIPATION

Name of
Proposer: _____

Project Title: _____

Proposal Number: _____ Total Base Proposal
Amount (if applicable): _____

***Please list all MBEs first**

Full Company Name	MBE Classification (African-American, Women, Asian Native American or Hispanic)	Type of Work to be Performed	Total Contract Value or 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: _____

MBE 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

\$

Signature of JSEB

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 \$: _____		FORMULA FOR CURRENT MONTH %: CUMULATIVE \$ / CUMULATIVE \$ INVOICED			
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 ¹	TYPE OF WORK ²	\$ THIS PAYMENT
Use Sheet 2 if additional lines are needed.					TOTAL
NON-JSEB SUBCONTRACTORS TO BE PAID FROM THIS INVOICE					
COMPANY NAME	FEDERAL I.D. NO.	ZIP CODE	Type	TYPE OF WORK ²	\$ THIS PAYMENT
			N/A		
			N/A		
			N/A		
			N/A		
Use Sheet 3 if additional lines are needed.					TOTAL

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

²TYPE 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:

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

ATTACHMENT "D"

**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	Dec 2004 to Dec 2005	Dec 2005 to Dec 2006	Dec 2006 to Dec 2007	Dec 2007 to Dec 2008	Dec 2008 to Dec 2009
YEARLY TOTALS:					

ATTACHMENT E

**PROFESSIONAL SERVICES FOR DESIGN PROFESSIONAL
REVISED AS OF JULY 30, 2008**

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:
THE CITY OF JACKSONVILLE
AND**

FOR

THIS AGREEMENT, made and entered into in duplicate 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 “CONSULTANT”); for _____(hereinafter referred to as the “Project”).

WITNESSETH:

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

WHEREAS, the CONSULTANT 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 CONSULTANT 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 CONSULTANT 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 herein and made a part hereof.

SECTION 1 BASIC SERVICES OF THE CONSULTANT

1.01 STATEMENT OF CONSULTANT SERVICES

The CONSULTANT shall furnish all services, documents, drawings and other matters called for in this Agreement, as well as those contained in the “Scope of Services” attached hereto as Exhibit “A” and, by this reference, made a part hereof. If any services, functions or responsibilities not specifically described in this Agreement and/or the Scope of Services are necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the Scope of Services to the same extent and in the same manner as if specifically described in this Agreement. The Contractor shall be responsible for providing the equipment, supplies, personnel (including management, employees, and training), and other resources as necessary to provide the Services. The CONSULTANT accepts the special relationship established between itself and the CITY, by this Agreement. The CONSULTANT covenants with the CITY that it is an expert in the design of the Project, and will cooperate with Program Managers, Construction Managers, CITY representatives and others, in fostering the interests of the CITY. The CONSULTANT shall employ sound business administration and superintendence to complete the Project in a manner consistent with the best interests of the CITY.

1.02 PERIOD OF SERVICE

This Agreement shall commence on the day and year first above written and shall continue and remain in full force and effect thereafter until _____, or earlier termination as provided in Section 5.1 hereof.

1.03 COMMENCEMENT OF WORK

1.03.01 The CONSULTANT shall not commence work on the Project without a prior written Notice to Proceed issued by the CITY.

1.03.02 The giving of a written Notice to Proceed shall be a condition precedent to any liability attaching to the CITY, whether under the terms of this Agreement or otherwise. As part of the consideration for the execution of this Agreement, the CONSULTANT hereby releases the CITY from any claim for damages, whether in contract, tort or otherwise, in the event that no Notice to Proceed is ever issued pursuant to this Agreement.

1.04 GENERAL REQUIREMENTS

The CONSULTANT shall serve as the CITY's professional representative on the Project and shall consult with the CITY during the performance of its services. The CONSULTANT warrants that it now has or will secure at its own expense all personnel and facilities required to perform all services under this Agreement. The CONSULTANT shall not have any direct or indirect contractual relationship with any officer or employee of the CITY, which will conflict with its ability to perform hereunder. All personnel assigned to the work shall be fully qualified and all facilities employed shall be adequate for the work required. The CONSULTANT shall prosecute the work under the full-time direction of one or more of its senior officers or a responsible representative, who shall be acceptable to the CITY. The CONSULTANT shall designate in

writing to the CITY such representative who shall be authorized to act on behalf of the CONSULTANT on any matter covered by this Agreement.

1.04.01 All services performed by the CONSULTANT shall be executed in cooperation and coordination with the CITY through its Project Manager, and in the performance of such services the CONSULTANT shall:

1.04.01.01. Maintain close liaison and cooperation with the CITY during performance of the work hereunder to obtain agreement and coordination of the various phases of work contained herein.

1.04.01.02. Attend all meetings and conferences as arranged and required by the CITY during the progress of the work hereunder to establish project criteria, to review CITY and State standards, to secure agreement upon the comprehensive and detailed basis of the CONSULTANT's services, and to discuss any other matters relating to the work.

1.04.01.03. Provide the CITY with written memoranda to confirm and record the understandings and agreements resulting from meetings and conferences related to the Project.

1.04.01.04. Provide the CITY with schedules, including starting dates and contemplated completion dates, for the work hereunder and periodic progress reports. Such schedules and progress reports shall be in such format and detail as the CITY may require. Provide progress updates as required by the Project Manager.

1.04.02. In addition to Project delivery requirements otherwise specified, the CONSULTANT shall deliver all final drawings to the CITY in electronic form using either a standard .dxf or .dwg format and in layers as prescribed by the CITY's Project Manager. Further, all survey data and other horizontal control and location shall be referenced to State Plane

Coordinates, NAD 83, and all vertical control and elevations shall be referenced to National Geodetic Vertical Datum (NGVD).

1.05 STUDY (CONCEPTUAL DESIGN) PHASE

If the Study (Conceptual Design) Phase is included under Section 3 hereof, the CONSULTANT shall:

1.05.01. Consult with the CITY to determine the CITY's requirements for the Project and to establish general design criteria and standards for use on the Project.

1.05.02. Review and study any reports, documents or studies previously prepared by and/or for the CITY.

1.05.03. Coordinate services performed by sub-consultants and act as the CITY's technical representative in connection therewith.

1.05.04. Interpret and evaluate information obtained from such data and other investigations.

1.05.05. Evaluate information on conditions to be encountered at the site, essential for design and construction purposes, and investigate all reasonably available information necessary to accurately indicate existing and proposed locations of underground utilities and facilities.

1.05.06. Review the provisions of part 12, Zoning Code (Landscape and Tree Protection Regulations), and determine possible impacts on the Project. A tree survey is not required during this phase.

1.05.07. Prepare a study/conceptual design and a preliminary cost estimate and submit copies thereof to the CITY, as may be required by the Scope of Services, attached hereto as Exhibit "A".

1.05.08. Assist the CITY by preparing for and conducting a Town Meeting at the end of the Study Phase.

1.06 FINAL DESIGN (CONSTRUCTION DOCUMENTS AND BIDDING) PHASE

If the Final Design (Construction Documents and Bidding) Phase is included under Section 3 hereof, the consultant shall:

1.06.01. Prepare surveys, including location of trees and other investigations as needed for the design of the Project and verify as to accuracy, reliability, and margin of error before any design work commences.

1.06.02. Submit maps or site plans of real property which identify all parcels of land or easements to be acquired along with legal descriptions of each such parcel not later than 60% submittal stage.

1.06.03. Prepare engineering data and required engineering documents, in order to make application for all regulatory permits including tree removal and replacement, and actively pursue permits and approvals of such authorities as have jurisdiction over the Project.

1.06.04. Prepare and furnish design and construction documents as required by the Scope of Services attached as Exhibits hereto to the City for review and approval. Any changes, refinements, or modifications which the CITY may require after each review shall be completed prior to proceeding further with design and construction documents.

1.06.05. Each submittal shall contain a statement signed by the Engineer, that the Engineer has reviewed and agrees with the information submitted from the Engineer's subconsultants.

1.06.06. Advise the CITY of any adjustment of the cost estimate for the Project caused by changes in scope, design requirements, construction costs or other matters, and furnish a revised cost estimate for the Project based on such.

1.06.07. Upon approval, by the CITY, of 90% construction documents, prepare for incorporation, in the Contract Documents, final construction drawings and plans (hereinafter called the “Drawings”) to show work to be performed by contractors on the Project, and technical provisions (hereinafter called the “Specifications”). Final drawings, as required by the Scope of Services, with budget cost estimates and supporting documents, shall be prepared by the CONSULTANT and submitted to the CITY for its approval. A proposed complete draft of Specifications, as required by the Scope of Services, shall be prepared by the CONSULTANT and submitted to the CITY for its approval. All unit priced bid quantities submitted shall be signed and sealed for accuracy.

1.06.08. After approval of all Drawings and Specifications, by the CITY, the CONSULTANT shall produce, assemble and deliver, to the CITY, Drawings and Specifications as required by the Scope of Services, together with three (3) copies of the CONSULTANT’s cost estimate and the original documents, if contract administration is not to be performed by the CONSULTANT.

1.06.09. Assist the CITY concerning interpretation of the intent of the Contract Documents during the bidding/negotiation period.

1.06.10. Evaluate all bids submitted, including, without limitation, compliance with Specifications, cost, and ability of the bidder to perform the work, and other factors.

1.06.11. Recommend to the CITY the lowest responsible bidder.

1.06.12. At the CITY’s option and, at no additional cost to the CITY, modify the Drawings and Specifications so as to reduce the cost of the Project to not more than an amount approved by

the CITY if the lowest responsible bid for the project exceeds the CONSULTANT’s latest cost

estimate as approved by the CITY. All such modifications shall be subject to the approval of the CITY. Following such approval, the CONSULTANT shall assist the CITY in rebidding the Project at no additional cost to the CITY.

1.07 CONTRACT ADMINISTRATION PHASE

If the Contract Administration Phase is included under Section 3 hereof, the CONSULTANT shall:

1.07.01. Represent the CITY as its Contract Administrator including, without limitation, interpretation of Drawings and Specifications, and issuing instructions to the contractor performing construction work.

1.07.02. Make periodic visits to the Project site (not less than four hours every week unless specified otherwise) while actual construction is in progress at intervals appropriate to the various stages of construction as the CONSULTANT, as an experienced and qualified design professional, deems necessary in order to observe and determine if the work is proceeding in substantial accordance with the Contract Documents. On the basis of such on site visits, the CONSULTANT shall endeavor to protect the CITY against defects and deficiencies in the work and shall, within one week following each visit, submit a written report to the CITY detailing the CONSULTANT's observations and advising of any work observed that fails to conform to the Contract Documents, or which appears to be deficient, defective, or otherwise not in accordance with good engineering or construction practices. The CONSULTANT shall take reasonable steps necessary to require that the contractor corrects such work at the contractor's expense.

1.07.03. Check all shop drawing, diagrams, illustrations, brochures, catalog data, schedules

and samples, the results of tests and inspections, and other data which the contractor is required

to submit for the purpose of verifying acceptability in accordance with the requirements and information given in the Contract Documents, and assemble maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection as required in construction contracts related to the Project.

1.07.04. Based on CONSULTANT's on site observations as an experienced and qualified professional, and on its review of the contractor's applications for payment and supporting data, recommend to the CITY approval or disapproval of the contractors' applications for payment.

1.07.05. Make an inspection to determine if the Project is substantially complete, and a final inspection to determine if the Project has been fully completed in substantial accordance with the Contract Documents and whether the CONTRACTOR has fulfilled all of its obligations thereunder so that the CONSULTANT may recommend approval, in writing, of final payment to the contractor.

1.07.06. Receive, review and approve Record drawings prepared by the contractor for compliance with the requirements of the Contract Documents.

1.07.07. Take all steps necessary for the finalization of Record drawings within the one-month period following the date of final acceptance of the Project by the CITY. Such period includes the time required by the contractor to prepare, check and submit its Record construction data and deliver same to the CONSULTANT to review, approve and forward Record as-built drawings to the CITY. Should said as-built drawings not be approved by the CITY, the CONSULTANT shall take whatever steps are necessary to correct the as-built drawings and resubmit them to the CITY until such are approved.

1.07.08. Participate in and conduct a warranty inspection eleven (11) months after the

Project has been completed.

1.08 RESIDENT PROJECT REPRESENTATION

If Resident Project Representation is included under Section 3, hereof, the CONSULTANT shall:

1.08.01. Furnish not less than one Resident Project Representative on the Project site at all times that construction work is in progress to observe and inspect the work in order to further protect the CITY from defects and deficiencies in such work, and to better determine that the work is proceeding in accordance with the Contract Documents.

1.09. TECHNICAL SUPPORT SERVICES DURING CONSTRUCTION

If Technical Support Services During Construction is included under Section 3, hereof, the CONSULTANT shall:

1.09.01. Review shop drawings, diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections, and other data which the contractor is required to submit for the purpose of verifying acceptability in accordance with the requirements given in the Contract Documents.

1.09.02. Make periodic visits to the Project site during construction, as requested by the Project Manager. Provide written reports when requested. Participate in Substantial Completion, Final Completion, and Eleven (11) Month Warranty Inspections when requested.

1.09.03. Provide technical assistance to the CITY when requested.

SECTION 2 THE CITY'S RESPONSIBILITIES

The CITY shall:

- 2.01 Advise as to its requirements for the work.
- 2.02 Assist the CONSULTANT by placing at its disposal all available information pertinent to the site of the work which the CITY may have.
- 2.03 Make reasonable efforts to obtain access, on both public and private land, as necessary for the CONSULTANT, to perform its work under this agreement.
- 2.04 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and render written decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT. The CITY's review of any documents, prepared by the CONSULTANT, shall be solely for the purpose of determining whether such documents are generally consistent with the CITY's construction program and intent. No review of such documents shall relieve the CONSULTANT of its ultimate responsibility for the accuracy, adequacy, fitness, suitability and coordination of its work product.
- 2.05 Advertise for proposals from bidders, open the proposals at the appointed time and place and pay for all costs incident thereto.
- 2.06 Provide such legal, accounting and insurance counseling services as may be required for the work, and such auditing services as the CITY may require, for its own benefit.
- 2.07 Designate in writing a person to act as the CITY's Project Manager with respect to the work to be performed under this Agreement, who shall have complete authority to transmit instructions, receive information, and interpret and define the CITY's policies and decisions with respect to the work covered by this Agreement.
- 2.08 Assist the CONSULTANT in securing approval of all governmental authorities having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the work.

2.09 Furnish or direct the CONSULTANT to provide at the CITY's expense any necessary additional services in connection with the work that may be required by the CITY, provided that any such direction shall be given by the CITY to the CONSULTANT in writing, and shall provide a maximum indebtedness for such services.

SECTION 3 PAYMENT FOR SERVICES OF THE CONSULTANT

3.01. The City shall pay to the CONSULTANT, in increments proportional to satisfactory completion, for all services actually, timely and faithfully rendered:

3.01.01. For _____ Services, as specified in Section _____, of this Agreement and as described in Exhibit "A", a lump sum amount of _____, as detailed in Exhibit "B", attached hereto and, by this reference, made a part hereof. Payment of the entire lump sum amount is contingent upon CONSULTANT's final completion of the entire Project as specified in this Agreement and in the Exhibits attached hereto which constitute the Scope of Services. Such final completion of the Project must be acceptable to and accepted by the CITY. Such acceptability and acceptance to the CITY may not be unreasonably denied. In the event the CONSULTANT does not complete the entire Project, then the lump sum amount will be pro rated using the ratio that the amount actually completed and which is acceptable to and accepted by the CITY bears to the entire Project.

3.02 The City shall pay to the CONSULTANT the actual costs of the following up to the maximum amount indicated:

3.02.01. For _____, an amount not-to-exceed _____ as detailed in Exhibits "A" and "B".

3.02.02. For _____, an amount not-to-exceed _____, as detailed in Exhibits “A” and “B”.

3.02.03. For _____, an amount not-to-exceed _____, as detailed in Exhibits “A” and “B”.

3.03. The CONSULTANT shall submit invoices for payment or reimbursement under this subsection on an “as incurred” basis. Such invoices shall be combined with the CONSULTANT’s regular invoices as set forth the in Subsection 3.04 hereof. The cost of services provided by the CONSULTANT shall be paid at the rates (including direct labor, indirect costs and profit) shown in the “Contract Fee Summary Format” attached hereto as Exhibit “B”. The cost of services provided to the CONSULTANT by others shall be reimbursed at the invoiced amount without markup by CONSULTANT. Travel expenses, if provided for as a reimbursable expense in Exhibit “B”, shall be reimbursed only to the extent provided by Chapter 106, Part 7 of the Ordinance Code of the CITY. Travel expenses not specifically covered by said chapter shall be reimbursed only to the extent provided by the uniform policies and practices of the CITY.

3.04 The CONSULTANT shall submit written invoices not more often than monthly in such form and containing such documentation as reasonably required by the CITY's Project Manager in order to establish charges and to enable compensation therefor by the CITY as soon as practicable upon receipt, review and approval of each such invoice. Each such invoice shall include the amount of payment requested, the amount previously paid, the total contract value, the percent completed since the last invoice, the total percent completed to date, and any other such information as may be reasonable and necessary to secure the written approval of the

invoice by the CITY's Project Manager. Each invoice shall contain a statement that it is made subject to the provisions and penalty of Section 837.06, Florida Statutes.

3.05. Each and every payment by the CITY to the CONSULTANT shall be expressly subject to the submittal of written invoices as provided in Section 3.03.

3.06. The maximum indebtedness of the CITY for all Services to be performed pursuant to this Agreement shall not exceed the sum of _____.

SECTION 4

ADDITIONAL SERVICES OF THE CONSULTANT

4.01 AUTHORIZED ADDITIONAL SERVICES

If authorized in writing by the CITY, the CONSULTANT shall furnish or obtain from others additional services of the following types, which shall be paid for by the CITY, provided that such services are clearly consistent with the original Request for Proposals and that such services are provided for by written amendment to this Agreement.

4.01.01 Prepare documents for alternate bids requested by the CITY.

4.01.02 Provide additional or extended services during construction made necessary by (1) work damaged during construction; (2) defective or neglected work of the construction contractor; and (3) acceleration of the work schedule involving services beyond normal working hours.

4.01.03 Prepare to serve and serve as an expert witness for the CITY in any trial, hearing or other judicial or quasi-judicial or administrative proceeding at customary, reasonable and usual rates to be established prior to serving as an expert witness.

4.01.04 Subsequent to completion of final design, revise previously approved Drawings and/or Specifications, or any portions thereof, that the CITY desires changed to accommodate changed conditions.

4.01.05 Provide additional services in connection with the Project, including services normally furnished by the CITY and services not otherwise provided for in this Agreement.

SECTION 5 GENERAL CONDITIONS

5.01 TERMINATION AND SUSPENSION

5.01.01 This Agreement shall continue and remain in full force and effect, as to all of its terms, conditions, and provisions as set forth herein, until and unless the CITY shall give written notice to the CONSULTANT of its desire to terminate this Agreement, with or without cause, on a specified time and date thereafter. Such written notice to terminate this Agreement shall be given no less than thirty (30) days prior to the date this Agreement shall be so terminated, with twenty-four hour notice in the event that funds become unavailable to the CITY for any reason whatsoever. In the event of any such termination, the CONSULTANT shall be paid by the CITY for all services actually, timely and faithfully rendered up to receipt of the notice of termination, and thereafter until the date of termination, the CONSULTANT shall be paid only for such services as are specifically authorized in writing by the CITY.

5.01.02 This Agreement, or any portion hereof, may be suspended from time to time for various periods of time in the event that any Project proposed hereunder is delayed, postponed or otherwise adversely affected, permanently or temporarily, by action of the City of Jacksonville. In the event of any such suspension, the CONSULTANT shall be paid for all services actually,

timely and faithfully rendered up to the date of suspension, and for all services so rendered after cessation of the suspension and resumption of the services.

5.01.03 If the CITY fails to issue a written Notice to Proceed, in the form of a Purchase Order, to the CONSULTANT within six (6) calendar months from the date first above written, or if the CITY suspends work under this Agreement for a period of at least six (6) calendar months once work has commenced, the CONSULTANT shall have the right, at its option, to terminate this Agreement by giving written notice thereof to the CITY. The giving of such written notice to terminate by the CONSULTANT shall eliminate all further rights and obligations of the parties hereunder other than the CONSULTANT's obligations under Sub-Sections 5.4, 5.5, 5.7, 5.8, 5.9 and 5.12.

5.02 OWNERSHIP OF DOCUMENTS

The CONSULTANT shall deliver to the CITY for approval and acceptance, and before being eligible for final payment of any amounts due all drawings, maps and plats, printed on 20 lb. vellum or mylar; the originals of specifications; the approved as-built drawings if the CONSULTANT has performed contract administration; true copies of all computations, survey notes and diaries; and copies of memoranda and pertinent correspondence pertaining to the work (including a copy of all computer disks containing any of the aforementioned data). The CONSULTANT shall provide a copy of all CADD work on computer disks in the Autocad drawing format or the transfer DFX format. CADD work shall conform with the current CADD standards of the Engineering Division. All such documents shall become the property of the CITY. The CONSULTANT shall not be liable for any re-use of such documents for other than the specific purpose intended without the CONSULTANT's written verification or adaptation thereof.

5.03 ESTIMATES

Since the CONSULTANT has no control over the cost of labor, materials or equipment, or over contractor's methods of determining prices, or over competitive bidding or market conditions, the estimates of construction costs provided for herein are to be made on the basis of the CONSULTANT's experience and represent its best judgment as a design professional familiar with the construction industry. The CONSULTANT does not guarantee that bids will not vary from its cost estimates and has no liability other than as set forth in Section 1.6.12, of this Agreement, in the event that bids do so vary.

5.04 INDEMNIFICATION INDEMNITY REQUIREMENTS IN THE RFP GOVERN

5.04.01. The CONSULTANT and without limitation, its officers, directors, employees, members, partners, agents, affiliates, sub-consultants, contractors, subcontractors and representatives, (individually or collectively, the AIndemnifying Parties@) shall indemnify, hold harmless, and defend the CITY including without limitation, its officers, directors, members, representatives, affiliates, agents and employees, successors and assigns (the AIndemnified Parties@) and will reimburse the Indemnified Parties from and against:

5.04.01.01 any and all damages, liabilities, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct 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; this indemnification, by the Indemnifying Parties, shall extend for any claims arising in whole or in part from a breach of Section 5.12, of this Agreement.

5.04.01.02. 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 the negligence, recklessness, or intentionally wrongful misconduct of the Indemnifying Parties that result in: (a) 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) that result in any environmental, health and safety liabilities at any time on or after the Effective Date, 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. The City will be entitled to control any remedial action, any proceeding relating to an environmental claim; and

5.04.01.03. 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 the negligence, recklessness, or intentionally wrongful misconduct of the Indemnifying Parties 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

CONSULTANT shall, immediately, make every reasonable effort to secure for the CITY a license, authorizing the continued use of the Service or product. If the CONSULTANT fails to secure such a license for the CITY, then the CONSULTANT 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

5.04.01.04. 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, the negligence, recklessness, or intentionally wrongful misconduct of the Indemnifying Parties resulting in the violation of any federal, state, or municipal laws, statutes, ordinances, resolutions, rules or regulations, by the Indemnifying Parties or those under their control; and

5.04.01.05. 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 the negligence, recklessness, or intentionally wrongful misconduct of the Indemnifying Parties resulting in: (a) any breach of any representation or warranty made by any of the Indemnifying Parties in connection with this Agreement or in any certificate, document, writing or other instrument delivered by any of the Indemnifying Parties pursuant to this Agreement or (b) any breach of any covenant or obligation of any of the Indemnifying Parties set forth in this Agreement or any other any certificate, document, writing or other instrument delivered by any of the Indemnifying Parties pursuant to this Agreement.

5.04.2. All indemnification provisions contained in this Section 5.04, of this Agreement are separate and apart from, and are in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section 5.04, of this Agreement, relating to Indemnification shall survive the term of this Agreement, and any holdover and/or Agreement extensions thereto, whether such term expires naturally by the passage of time or is earlier terminated earlier pursuant to the provisions of this Agreement.

5.05 **INSURANCE INSURANCE REQUIREMENTS IN THE RFP GOVERN**

5.05.01 Without limiting its liability under this Agreement, the CONSULTANT shall procure and maintain during the life of this Agreement 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 Per Occurrence
Premises-Operations	\$2,000,000 Aggregate
Products-Completed Operation	
Contractual Liability	
Independent Contractors	

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

Professional Liability	\$1,000,000
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(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.)

Auto Liability	\$1,000,000 Combined Single Limit
All autos-owned, hired or used	

Valuable Papers	\$100,000
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(The City of Jacksonville shall be named as an additional insured under Valuable Papers coverage.)

5.05.02. Depending upon the nature of any aspect of these projects 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.

5.05.03. 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(s), 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 or failure to disapprove insurance furnished by the CONSULTANT shall relieve the CONSULTANT or its subconsultants from responsibility to provide insurance as required under this Agreement.

5.06 SUCCESSORS AND ASSIGNS

The CITY and the CONSULTANT each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants and provisions of this Agreement; and any assignment or transfer by the CONSULTANT of its interests in this Agreement without the written consent of the CITY shall be void. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY, nor shall it be construed as giving any right or benefit hereunder to anyone other than the CITY or CONSULTANT.

5.07 NON-DISCRIMINATION PROVISIONS

5.07.01. The CONSULTANT warrants that it has adopted and shall maintain a policy of non-discrimination against an employee or applicant for employment on account of race, religion, sex, color, national origin, age or handicap, which policy applies to all areas of employee relations throughout the term of this Agreement.

5.07.02. On written request, the CONSULTANT shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission of the CITY for the purpose of investigation to ascertain compliance with the non-discrimination provisions of this Agreement. The CONSULTANT shall not be required to produce for inspection any records covering periods of time more than one (1) year prior to the date of this Agreement.

5.07.03. The CONSULTANT agrees that if any of the obligations of this Agreement are to be performed by a subcontractor, then the provisions of the above two paragraphs shall be incorporated into and become a part of the subcontract.

5.08. PROMPT PAYMENT TO SUBCONSULTANTS, ETC.

5.08.01 Generally, when the CONSULTANT receives payment from the CITY for labor, services, or materials furnished by subconsultants, subcontractors and suppliers, hired by the CONSULTANT, the CONSULTANT shall remit payment due (less proper retainage) to those subconsultants, subcontractors and suppliers within fifteen (15) calendar days after the CONSULTANT's receipt of payment from the CITY. Nothing herein shall prohibit the CONSULTANT from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subconsultants, subcontractors and suppliers. In the event of such a dispute, the CONSULTANT may withhold the disputed portion of any such payment only after the CONSULTANT has provided notice to the CITY and to the subconsultant, subcontractor or supplier whose payment is in dispute, which notice shall: (i)

be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to the CITY, the subconsultant, subcontractor or supplier within ten (10) calendar days after the CONSULTANT's receipt of payment from the CITY. The CONSULTANT shall pay all undisputed amounts due within the time limits imposed by this section.

5.08.02. Jacksonville Small Emerging Business ("JSEB") and Minority Business Enterprise ("MBE") Participation. Notwithstanding Chapter 126, Part 6, of the Jacksonville Ordinance Code (the "Code"), the CONSULTANT shall pay all contracts awarded with certified JSEB's and certified MBE's, as defined therein, their pro-rata share of their earned portion of any progress payments made by the CITY under this Agreement, within seven (7) business days after the CONSULTANT's receipt of payment from the 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 or certified MBE at the time of payment. As a condition precedent to progress and final payments to the CONSULTANT, the CONSULTANT shall provide to the CITY, with its requisition for payment, documentation that sufficiently demonstrates that the CONSULTANT has made proper payments to its certified JSEB's or certified MBE's from all prior payments that CONSULTANT has received from the CITY. The CONSULTANT shall not unreasonably withhold payments to certified JSEB's or certified MBE's if such payments have been made to the CONSULTANT. If the CONSULTANT withholds payment to its certified JSEB's or certified MBE's, which payment has been made by the CITY to the CONSULTANT, the CONSULTANT shall return said payment to the CITY. The CONSULTANT shall provide notice to the CITY and to the certified JSEB or certified MBE 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 the CITY and to the certified JSEB or certified MBE within five (5) calendar days after CONSULTANT's receipt of payment from the CITY. The CONSULTANT shall pay all undisputed amounts due within the time

limits imposed by this section. The failure to pay undisputed amounts to the certified JSEB or certified MBE within seven (7) business days, after the CONSULTANT receives payment from the CITY, shall be a breach of contract, compensable by 1% of the outstanding invoice, being withheld by the CITY, not as a penalty, but as liquidated damages for additional and extra contract administration by the CITY. Continued failure to adhere to this section may be cause for termination of the Agreement.

5.08.03. The Prompt Payment requirements hereunder shall, in no way, create any contractual relationship or obligation between the CITY, on the one hand and any subconsultant, subcontractor, JSEB, MBE or any third-party or create any CITY liability for the CONSULTANT's failure to make timely payments hereunder. However, CONSULTANT's failure to comply with these Prompt Payment requirements shall constitute a material breach of the CONSULTANT's contractual obligations to the CITY. As a result of said breach, the CITY, without waiving any other available remedy it may have against the CONSULTANT, may: (i) issue joint checks; and (ii) charge the CONSULTANT a 0.2% daily late payment interest charge or other charges specified in Chapter 126, of the Code, for JSEB's and MBE's and Chapter 218, Florida Statutes, for non-JSEB's or MBE's, whichever is greater.

5.09 RETENTION OF RECORDS/AUDIT RIGHTS

5.09.01. The CONSULTANT must establish and maintain books, records, contracts, subcontracts, papers, financial records, supporting documents, statistical records, goods, services and all other documents, in whatsoever form or format including, but not limited to electronic storage media, (for purposes of this Section 5.09, hereinafter referred to as the "Records") sufficient to reflect all receipt and expenditures of funds provided by the CITY under this Agreement.

5.09.02. The CONSULTANT must retain all Project Records pertinent to this Agreement for a period of six (6) years after completion of the Project. If an audit has been initiated and audit findings have not been resolved at the end of six years, the Records shall be retained until resolution of the

audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the CITY. Records shall be retained for longer periods when the retention period exceeds the time frames required by law or ordinance.

5.09.03. Upon demand, at no additional cost to the CITY, the CONSULTANT must facilitate the duplication and transfer of any Records during the required retention period in Section 5.09.02 hereof.

5.09.04. The CONSULTANT must provide these Records at all reasonable times for inspection, review, copying or audit by the CITY.

5.09.05. At all reasonable times for as long as the Records are maintained, The CONSULTANT must allow persons duly authorized by the CITY to have full access to and the right to examine any of the provider's Records, relative to the Project, regardless of the form in which kept.

5.09.06. The CONSULTANT, at its sole and exclusive cost and expense, must provide audits or reports as requested by the CITY, and must insure that all related party transactions are disclosed to the auditor.

5.09.07. To comply and cooperate immediately with any inspections, reviews, investigations, deemed necessary by the CITY.

5.09.08. The CONSULTANT must permit the CITY to interview any employees subcontractors and subcontractor employees of the CONSULTANT to assure the CITY of the satisfactory performance of the terms and conditions of this Agreement. Following such review, if performance of the CONSULTANT is, in the opinion of the CITY, deficient, the CITY will deliver to the CONSULTANT a written report of the deficiencies and request for development by the CONSULTANT of a corrective action plan. The CONSULTANT hereby agrees to prepare and submit, to the CITY, said corrective plan within ten (10) days of receiving the CITY's written report. Thereafter, the CONSULTANT must correct all deficiencies in the corrective action plan, within (10) days from the CITY's receipt of the corrective action plan.

5.09.09. All reports, audits, and other information provided by the CONSULTANT pursuant to this Section shall contain the following statement: “The information provided to the City of Jacksonville in this submittal is submitted under penalties of perjury, under Section 837.06, Florida Statutes.”.

5.09.10. To the extent that the CONSULTANT uses subcontractors in the performance of the Services under this Agreement, or assigns this Agreement with prior CITY consent, the CONSULTANT must include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments.

5.10 COMPLIANCE WITH STATE AND OTHER LAWS

In the provision of the Services, the CONSULTANT must comply with any and all applicable Federal, State and local laws, rules, regulations and ordinances, as the same exist and may be amended from time to time. Such laws, rules, regulations and ordinances shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). Such laws, rules, regulations and ordinances must also include, but are not limited to, obtaining and maintaining all licenses and certifications that are required to perform the Services contemplated in this Agreement, in the City of Jacksonville, State of Florida. 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.

5.11 SETTLEMENT OF CLAIMS

In any case where the CONSULTANT deems that extra compensation is due it for services or materials not clearly covered in this Agreement, or not ordered in writing by the CITY as an additional service, the CONSULTANT shall notify the CITY in writing before it begins the work on which it bases the claim. The CONSULTANT shall not commence such work without prior written authorization from the CITY. If such authorization is not previously given, or the claim is not

separately and strictly accounted for, the CONSULTANT hereby agrees to waive the claim for such extra compensation. However, such notice or accounting shall not in any way be construed as proving the validity of the claim. Any dispute not otherwise settled shall be resolved by Executive Order 98-01.

5.12 ACCURACY OF WORK

5.12.01. The CONSULTANT 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 CONSULTANT or subcontractors without additional compensation. Acceptance of the work by the CITY shall not relieve the CONSULTANT of the responsibility for subsequent corrections of any such errors and the clarification of any ambiguities.

5.12.02. 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 CONSULTANT under this Agreement, the CONSULTANT 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 CONSULTANT. The CONSULTANT shall prepare all drawings or data to correct its errors and/or omissions without added compensation, even though final payment may have already been received therefor.

5.12.03. The CONSULTANT shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the CONSULTANT's breach of contract or its negligent performance of any of the services furnished under this Agreement. The CONSULTANT shall not be responsible for any time delays in the Project caused by circumstances beyond the CONSULTANT's control.

5.13 PUBLIC UTILITIES AND PERMITTING AUTHORITIES

Where privately, publicly or cooperatively owned utility companies will require re-arrangements in connection with the proposed construction, and when certain permits will be required for

construction, the CONSULTANT shall make the necessary contacts and confer with the owners of such utilities regarding the requisite revisions in their facilities, apprising the CITY of the results of all such contacts. The CONSULTANT shall make no commitments with utilities or permitting authorities which are binding upon the CITY. The CITY shall conduct all negotiations with public utilities and authorities. However, the CONSULTANT shall participate in such negotiations at the request of the CITY.

5.14 PROHIBITION AGAINST CONTINGENT FEES

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

5.15 TRUTH IN NEGOTIATION CERTIFICATE

The CONSULTANT understands and agrees that execution of this Agreement by the CONSULTANT shall be deemed to be simultaneous execution of a truth-in-negotiation certificate under this provision to the same extent as if such certificate had been executed apart from this Agreement, such certificate being required by Section 287.055, Florida Statutes. Pursuant to such certificate, the CONSULTANT 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 CONSULTANT 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.

5.16 INDEPENDENT CONTRACTOR

In the performance of this Agreement, the CONSULTANT shall be acting in the capacity of an independent contractor, and not as an agent, employee, partner, joint venturer or associate of the CITY. The CONSULTANT shall be solely responsible for the means, methods, techniques, sequences and procedures utilized in the full performance of this Agreement.

5.17 CONSULTANT DEFINED

As used herein, the term "CONSULTANT" shall include, but not be limited to **NAME OF CONSULTANT.**, its officers, employees, agents, subcontractors, and other persons, firms, partnerships, corporations or other entities working for or on behalf of the CONSULTANT, and shall include the words "Engineer", "Architect", "Planner", "Landscape Architect", or other term as appropriate.

5.18 CONSTRUCTION

Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement. The rule sometimes referred to as "*Fortius Contra Proferentum*" shall not be applied to the interpretation of this Agreement.

5.19 ORDER OF PRECEDENCE

In the event of any conflict between the provisions of this Agreement and those of the Exhibits attached hereto or amendments, the priority shall be fully executed amendments, exhibits and lastly the provisions of this Agreement in decreasing order of precedence.

5.20 AMENDMENTS

This Agreement may be amended only by written instrument specifically referring to this Agreement and executed with the same formalities as this Agreement.

5.21. ETHICS PROVISION FOR PROFESSIONAL SERVICES

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

5.22 COOPERATION WITH COUNSEL FOR THE CITY

The CONSULTANT acknowledges that the CITY is represented by the Office of General Counsel. During the term of this Agreement, it may be necessary to attend meetings or participate in telephone calls or discussions with counsel for the CITY for issues related to the Project. The CONSULTANT may also have its counsel at such meetings, and it is agreed by the parties that neither side will claim that a conflict exists or that counsel may not represent its client on the basis of any such meeting, duty or conference.

5.23 SEVERABILITY

Should any provision(s) of this Agreement be deemed to be unenforceable or not legal, by a court of competent jurisdiction, the remaining provisions of the Agreement shall remain in full force and effect.

5.24 ENTIRE AGREEMENT

This Agreement represents the entire agreement by and between the parties with respect to the Project. No representation, understanding, statement, agreement, course of conduct or course of action, by the parties, or by their representatives, that is not in this Agreement shall be binding. This Agreement may be amended only by written instrument, signed by the authorized representatives of the parties.

5.25 COUNTERPARTS

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

5.26 GOVERNING LAW AND VENUE

This Agreement shall be governed and interpreted exclusively under the laws of the State of Florida. Venue for litigation under this Agreement shall be in courts of competent jurisdiction located in Jacksonville, Duval County, Florida.

5.27 NON WAIVER

Failure by either party to insist upon strict performance of any of the provisions hereof, either party's failure or delay in exercising any rights or remedies provided herein, the CITY's payment for the services or any part or combination thereof, or any purported oral modification or rescission of this Agreement by an employee or agent of either party, shall not release either party of its obligations under this Agreement, shall not be deemed a waiver of any rights of either party to insist upon strict performance hereof, or of either party's rights or remedies under this Agreement or by law, and shall not operate as a waiver of any of the provisions hereof.

[Remainder of this page is intentionally left blank. Signature page follows immediately.]

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

ATTEST:

By _____
Neill McArthur
Corporation Secretary

CITY OF JACKSONVILLE

By _____
John Peyton, Mayor

ATTEST:

By _____
Signature

Type/Print Name

Title

NAME OF THE CONSULTANT

By _____
Signature

Type / Print Name

Title

In compliance with the Charter 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 Finance

Form Approved:

Assistant General Counsel

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ATTACHMENT F
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

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 2nd 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.

Procurement Division



Michael Clapsaddle Chief
Procurement Division
117 West Duval Street, Suite 335
Jacksonville, Florida 32202
(904) 630-3682 – Phone
(904) 630-3442 – Facsimile
mclap@coj.net

ATTACHMENT G

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.