



November 12, 2013

Ref: P-10-14 Operation and Management of Hemming Plaza

Dear Consultant:

The Office of Economic Development (OED) 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) MANUALLY SIGNED ORIGINAL, TWO (2) HARD COPIES, AND SIX (6) EXACT COPIES on CD Rom (in pdf format excluding your financials) 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."

A Mandatory Pre-Proposal Conference is scheduled to be held on Thursday, November 21, 2013, @ 3:30 P.M., at the Ed Ball Building, 8<sup>th</sup> Floor Conference Room 825, 214 N. Hogan St., Jacksonville, FL 32202. In an effort to provide equal access to information to every Proposer, all answers to questions asked at this conference will be provided to all Proposers. The City's consultants should not be contacted individually by Proposers, as they are prohibited from having independent conversations related to this RFP. **FAILURE TO ATTEND THE MANDATORY PRE-PROPOSAL CONFERENCE, SHALL RESULT IN THE REJECTION OF THE PROPOSAL OF ANY SUCH NON-ATTENDING RESPONDENT.**

Any questions, requests for information or requests for amendments to this RFP must be submitted via email to Alex Baker at [abaker@coj.net](mailto:abaker@coj.net) no later than 11:00 a.m. Monday, December 2, 2013. The answers will be placed on the internet in the form of an addendum shortly thereafter

**Your proposal must clearly bear the RFP number (P-10-14) and must be received no later than 2:00 p.m. Wednesday, December 11, 2013, and directed to:**

City of Jacksonville  
Procurement Division  
Attn: Professional Services Specialist  
214 N. Hogan Street, Suite 105  
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.

Yours very truly,

*Gregory Pease*

Chief, Procurement Division  
Chairman, Professional Services  
Evaluation Committee

GP:

cc: Subcommittee Members  
Council Auditor

# Request for Proposals

For Operation and Management of Hemming Plaza

P-10-14

*November, 2013*



CITY OF JACKSONVILLE

Procurement Division

Ed Ball Building

214 North Hogan Street, Suite 800 (8th Floor)

Jacksonville, Florida 32202

Phone: (904) 255-8800

Fax: (904) 255-8837

**Alvin Brown**  
Mayor

**Gregory Pease, Chief**  
Procurement Division

# REQUEST FOR PROPOSALS

## Operation and Management of Hemming Plaza

RFP: P-10-14  
For  
City of Jacksonville, Florida

### SECTION 1 (General Information)

#### Contents

**Introduction**

**Background**

**Scope of Services**

**Term of Agreement**

**Lease Terms (if applicable)**

**Equal Business Opportunity Program**

**Pre-Response Meeting**

**Questions and Requests for Amendments**

**Response Due Date**

**Response Delivery Location**

**Response Opening**

**Contact Person**

**Approval of Contract**

**1.1 Introduction.** The City of Jacksonville (“City”) intends to hire an individual or firm (“Contractor”) to provide the services (“Services”) described in Section 1.3 of this Request for Proposal (“RFP”). Persons interested in submitting a response to this RFP (a “Response”) should carefully review this RFP for instructions on how to respond and for the applicable contractual terms. This RFP is divided into the following sections:

Section 1	General Information
Section 2	Instructions for Responding
Section 3	Terms and Conditions of Contract

Attachment A	Response Format
Attachment B	Evaluation Criteria
Attachment C	List of Events at Hemming Plaza that Must be Accommodated
Attachment D	Contract
Attachment E	EBO/JSEB Program

Form 1	SCHEDULE OF SUBCONTRACTOR PARTICIPATION
Form 2	CONFLICT OF INTEREST CERTIFICATE

In the event of conflicting provisions, the following sections of this RFP will have priority in the order listed: Any Addenda issued pursuant to section 2.2 herein, the Contract in Attachment D, Section 3, Section 2, Section 1, Attachment A, Attachment B, Attachment C and Attachment E.

**1.2 Background.** Hemming Plaza is located across from City Hall in the heart of downtown Jacksonville. First established as a public square by the City’s founder Isaiah D. Hart around 1857, it is Jacksonville’s oldest park. Known first as City Park and then St. James Park, it was renamed Hemming Park in 1899 to honor Civil War veteran Charles C. Hemming, who donated the park’s confederate monument (the City’s oldest and tallest) the previous year. At various times, the park

contained bandstands, fountains, comfort stations and Tourist and Convention Bureau buildings, along with many beautiful trees. In 1978, the City converted the park into a brick-paved plaza and completed additional work in 1986 that transformed the area into a single-level, pedestrian-oriented mall. Due to its centralized location, the plaza has long been a part of the downtown experiences for both tourists and local citizens.

A recent survey of surrounding businesses and users of Hemming Plaza found the following:

Twenty percent of the respondents visit Hemming Plaza once a week or more;

Thirty-five percent never visit Hemming Plaza;

When visiting Hemming Plaza, ~35% eat a meal, ~49% attend an event and ~34% relax;

Thirty-six percent of those surveyed like the location, convenience and proximity to other amenities;

Sixty-five percent stated enhanced security would make Hemming Plaza more inviting; and

Fifty-seven percent wanted to see a cleaner plaza.

The survey further indicated that providing enhanced security, improving the variety of food vendors and increasing programming in the Plaza would make people more likely to use the Plaza.

**1.3 Scope of Services.** The primary goal of this RFP is for the City to enter into an agreement with a qualified contractor to program, operate and manage events at Hemming Plaza. It is the City's desire to (i) keep Hemming Plaza active during the day and early evening seven days a week throughout the year; (ii) create an atmosphere that makes Hemming Plaza appealing to the entire community by making it cleaner, safer and more attractive; (iii) program small-scale events throughout Hemming Plaza that will make it a vibrant focal point in the center of our city; and (iv) make it easy and desirable for third-party individuals and organizations to hold events in Hemming Plaza, thus leveraging the economic impact of a positive, active urban park space.

Contractors are encouraged to be creative in submitting their proposed approach and work plans to the City. The City may accept a proposal in full or request modifications during the negotiations phase of this RFP. As further described in Section 1.5 below, the City may also be willing to allow a Contractor to lease the Hemming Plaza property for the purpose of providing the Services.

Unless otherwise stated in a Response, the Contractor will be solely responsible for providing the following Services:

**Maintenance Services.** The Contractor will ensure that Hemming Plaza remains in good condition through regular preventative and routine maintenance activities. This includes: (i) Keeping the grounds free of debris and litter; (ii) Performing pest control services; (iii) Ensuring landscaped areas are well maintained and neat in appearance at all times; (iv) Regularly cleaning restrooms (if any); and (v) repairing any damage to Hemming Plaza to the extent the damage was caused by Contractor or occurred during an event managed by Contractor.

[The City will (i) provide and pay for all water, sewer and electricity services, (ii) provide Trash pickup service 7 days per week (once per day prior to 8am), (iii) provide routine maintenance and repair of all electrical, lighting, sound, water and mechanical systems, including any existing irrigation and fountain systems, and (iv) provide routine maintenance and repair all hardscape items (pavers, concrete edging, etc.) and other structural elements (tables, benches, etc.)]

**Security Services.** The Contractor will be responsible for providing reasonable security in Hemming Plaza each day from 7a.m. to 7p.m. and during all events. The Contractor will cooperate with the Jacksonville Sheriff's Office to keep the premises safe at all times from theft, vandalism and other criminal activities. The Contractor will provide increased security levels during events as reasonable for the safety of attendees and show participants.

Concession Services. The Contractor will arrange for the offering of food, beverage and other concession items for sale to the public from designated areas within Hemming Plaza during normal hours of operation and during all public events (as appropriate for the nature of the event). The Contractor will have exclusive concession rights at Hemming Plaza and, subject to any existing rights of third parties, on the sidewalks along both sides of the streets adjacent to Hemming Plaza. The Contractor will ensure that all concession services are conducted in compliance with all applicable laws, including the requirements of Chapter 250, Part 5 (“Downtown Sidewalk Vendors And Open Air Markets”) and Chapter 667 (“Park Vending”), City Ordinance Code. Any future modifications or exemptions from these local ordinances shall be at the discretion of the City Council.

Event Management. The Contractor will actively and continuously (i) market and promote Hemming Plaza, (ii) seek events to advance the City’s goals for Hemming Plaza; and (iii) negotiate and administer all Use, License and/or Occupancy Agreements in accordance with any City Policies. City pledges to work cooperatively with the Contractor to ensure flexibility in programming and quick response times for proposed events. [Contractors will need to be cognizant of future events already planned for Hemming Plaza and be able to accommodate those events until the Contractor’s programming is the primary event planning mechanism for Hemming Plaza. It is envisioned the Contractor will operate as a clearinghouse for all future events taking place at Hemming Plaza once the City’s planned events are held and concluded. See **Attachment C** for the list of events scheduled that must be accommodated and addressed in each Response.]

Capital Improvements. The Contractor will recommend to the City any major or minor capital improvements to Hemming Plaza. All capital improvements must be approved by the City in advance; provided, however, that certain minor structural modifications (such as installations of public art or large plant containers) may be approved on an expedited basis by the joint concurrence of the CEO of the Downtown Investment Authority and the Director of the City’s Parks and Recreation Department.

Business Planning. The Contractor will prepare, update, and implement an annual business plan and budget for Hemming Plaza to increase utilization, promote efficiencies and achieve optimal results. The annual business plan and budget shall be based on a Fiscal Year ending September 30 and shall be presented to the Director of the City’s Parks and Recreation Department at least 90 days in advance of each Fiscal Year. The annual business plan and budget are subject to approval each year by the Parks and Recreation Department and the City Council.

The ownership of real estate, furniture, displays, fixtures and similar property which are owned by City shall be and remain the sole property of City. Unless otherwise agreed in writing, no property rights in and to Hemming Plaza will accrue to the Contractor. The Contractor will not dispose of any real and tangible property of the City without the City’s written consent.

To the extent any revenues are generated from the operation of Hemming Plaza (including but not limited to concessionaire fees, advertising fees, and event license fees), the revenues may be used to offset the reasonable expenses related to such activities, and the remaining net revenue shall be used for capital improvements to Hemming Plaza and adjoining areas All revenue activities and related expenses shall be reported to the City on a monthly basis.

It is anticipated that the Contractor will have fund-raising capabilities to minimize if not totally eliminate any programming, maintenance or operational funding requirements on the City’s part. The Contractor’s Response should identify whether any initial or ongoing funding is requested from the City.

On an annual basis, the parties will arrange and participate in a public meeting to (i) review the successes and shortcomings of the preceding year, and (ii) discuss how the Contract could be amended to improve the value of Hemming Plaza to the citizens of Jacksonville.

All Services will be performed in accordance with Downtown Action Plan (Adopted 2007), OED Strategic Plan (Adopted 2006), Downtown Master Plan (Adopted 2000), Downtown DRI and Downtown Zoning Code Overlay (Adopted 2003). Proposals must be consistent with the objectives and priorities outlined in the JEDC Strategic Plan, the Downtown Master Plan, the Downtown Zoning Code, any applicable DRIs and the CRA plan.

A copy of these plans is available on-line at [www.jaxdevelopment.org](http://www.jaxdevelopment.org). Click on "Downtown Development" in the left hand navigation for copies of the Downtown Master Plan and Downtown Zoning Overlay. A copy of the JEDC Strategic Plan is available by going to [www.jaxdevelopment.org](http://www.jaxdevelopment.org) and clicking on "JEDC Information" and then on "Reports" in the left hand navigation. A copy of the Downtown Transportation Concurrency Exception Area Implementation Plan is available on-line at [www.coj.net](http://www.coj.net) Scroll to Planning and Development Department, Community Planning and then to Transportation Planning for a copy. Please use the Question and Amendment process in Section 2.2 of this RFP if you have questions about these documents. Once a Contract is signed, City staff will provide guidance as needed in the understanding and compliance with various regulations and plans.

The City's Downtown Investment Authority is in the process of creating a new Downtown Redevelopment Plan and a new Business Investment and Development Plan. These new plans may replace some of the plans mentioned in the preceding paragraphs. All Services will be expected to conform to the new plans as well.

**Term of Agreement.** The initial term of agreement will commence upon execution of the Contract and, following completion of an agreed-upon transition period, will continue for three (3) years. The parties will have the option to renew the Contract for up to two (2) additional one-year terms upon mutual agreement. The Contract may be terminated without cause by either party upon one-hundred eighty (180) days prior written notice.

The City anticipates having a 60-day transition period prior to the commencement of Services. During this period, the Contractor will be expected to work with the City to ensure a smooth and orderly transition of such Services.

**1.5 Potential Lease Terms.** If a Contractor proposes to take a leasehold interest in Hemming Plaza during the term of the Contract, it should describe the general terms of the lease in its Response. Generally, a lease agreement will allow the Contractor to have more responsibility and control over how the Services are performed and how any revenues are used. The City can make no assurances at this time as to whether a lease agreement will be a viable option. Accordingly, Contractors interested in a lease arrangement may submit a Response with two alternatives (one alternative with a lease, and one alternative without a lease). If two alternatives are submitted they will be evaluated as one. An advantage may be gained by submitting two alternatives. The City reserves the right to negotiate any and all terms of the lease and such negotiated terms shall be subject to approval by the City Council.

**1.6 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 (JSEBs) in its contract awards based upon availability. To participate as a JSEB on City projects, a company must be certified as a JSEB with the City's Equal Business Opportunity Office.

**This RFP and the resulting Contract are subject to requirements of the "Encouragement Plan" which is set forth on Attachment E. to this RFP.**

Contractors may contact City's Equal Business Opportunity Office at 904-255-8620 or find the JSEB directory on City's website ([www.jseb.coj.net](http://www.jseb.coj.net))

**1.7 Mandatory Pre-Response Meeting.** A MANDATORY PRE-PROPOSAL Conference is scheduled to be held on Thursday, November 21, 2013, at the Ed Ball Building, 8<sup>th</sup> Floor Conference

Room 825, 214 N. Hogan St, Jacksonville, FL. 32202, and beginning promptly at 3:30 p.m. The purpose is to allow interested parties to tour the property and make inquiries prior to their proposal submittal. **FAILURE TO ATTEND THE MANDATORY PRE-PROPOSAL CONFERENCE, SHALL RESULT IN THE REJECTION OF THE PROPOSAL OF ANY SUCH NON-ATTENDING RESPONDENT.** The City will not be bound by any statement or information provided at the Pre-Response meeting unless the statement or information is confirmed in a follow-up Question and Answer under Section 2.2 of this RFP.

**1.8 Questions and Requests for Amendments.** Any questions, requests for information or requests for amendments to this RFP must be submitted via email to Ms. Alex Baker at [abaker@coj.net](mailto:abaker@coj.net) no later than **11:00 a.m. Monday, December 2, 2013**. The answers will be placed on the internet in the form of an addendum shortly thereafter.

**1.9 Response Due Date.** The deadline for submitting Responses is **Wednesday, December 11, 2013, no later than 2:00 p.m.** Please see Sections 2.3 and 2.4 for more details.

**1.10 Response Delivery Location.** Responses must be delivered to the following location:

City of Jacksonville  
Procurement Division  
Attn: Professional Services Specialist  
214 N. Hogan Street, Room 105  
Jacksonville, Florida 32202

**1.11 Response Opening.** All Responses received shall be publicly announced and recorded at 2:00 PM on the Response Due Date at the Response Delivery Location (see Sections 1.9 and 1.10 above).

**1.12 Contact Person.** City's Contact Person for this RFP is:

Alex Baker  
Professional Services Specialist  
[abaker@coj.net](mailto:abaker@coj.net)

Please refer to Section 2.9 for further information on who may and may not be contacted regarding this RFP.

**1.13 Approval of Contract By City Council.** The Contract shall be subject to approval by the City Council. The City Council may accept, reject, or propose modifications to the Contract and may, subject to the approval of the Contractor, modify the terms thereof, including but not limited to the scope, financial, duration, renewal, and termination terms of the Contract.

---

*(Remainder of page intentionally left blank)*

**Section 2**  
**Instructions For Responding**  
**Operation and Management of Hemming Plaza**  
**P-10-14**

**Contents**

**Application of Chapter 126 and Other Laws**

- 2.2 Questions and Requests for Amendment to RFP**
- 2.3 Format/Content of Responses**
- 2.4. Submission of Responses**
- 2.5 Evaluation of Responses**
- 2.6 Negotiation and Award of Contract**
- 2.7 Terms of Agreement**
- 2.8 Public Meetings and Special Accommodations**
- 2.9 Ex-Parte Communication.**
- 2.10 Cost of Developing RFP Response**
- 2.11 Response Ownership.**
- 2.12 Public Records Law; Process For Protecting Trade Secrets and Other Information**
- 2.13 Multiple Responses from Same Contractor; No Collusion.**
- 2.14 Conflict of Interest.**
- 2.15 Convicted Vendor List**
- 2.16 Discriminatory Vendor List**
- 2.17 Contractor Representations**
- 2.18 Protests**

**Application of Chapter 126 and Other Laws.** The selection of and contracting with a Contractor under the RFP will be in accordance with Part 3 of Chapter 126, of the Jacksonville Ordinance Code. Other provisions of federal, state, county and local laws, and administrative procedures, policies or rules may apply to the RFP and any claims or disputes arising hereunder. Lack of knowledge of the law or administrative procedures, policies, or rules by any Contractor shall not constitute a cognizable defense against their effect.

**2.2 Questions and Requests for Amendment to RFP.** All requests for amendment must be submitted to the Contact Person in writing (via e-mail) and, unless otherwise specified in Section 1.7/1.8 of the RFP, be received by the Contact Person at least ten (10) calendar days before the Response Due Date. Questions and requests for amendments directed to the Contact Person or to any other City personnel shall not constitute a formal protest of the RFP. Failure to request an interpretation or change will be considered evidence that Contractor understands and agrees to the provisions of the RFP.

The posting of a written amendment is the only official method by which interpretations, clarifications, changes or additional information will be given by City prior to the opening of Responses. Any other interpretation, clarification, change or information will have no legal effect.

**City reserves the right to amend, cancel or reissue the RFP at its discretion. This includes the right to change the Response Due Date and the Contract award date. Notice of all amendments and cancellations will be posted on City's website (please contact the Contact Person if you are uncertain of the website address or if you experience problems accessing it). Contractor is responsible for monitoring this website for new or changing information.**

**2.3 Format/Content of Responses.**

- A. If a Response Format is specified in the RFP, Contractors should follow that format.
- B. Responses should be prepared simply and economically, providing a straightforward, concise description of Contractor's ability to provide services sought by the RFP. Unnecessary brochures, artwork, expensive paper, and presentation aids are discouraged. Bindings and covers will be at Contractor's discretion.
- C. When responding to specific questions, please reprint each question in its entirety before the response.
- D. Responses shall be in ink or typewritten. All corrections must be initialed.
- E. Response shall be limited to a page size of 8½" x 11". Font size less than 11-points is discouraged. The Response shall be indexed and all pages sequentially numbered.
- F. **Except as may be specifically requested in the Response Format, Contractor may not impose any additional terms or conditions to any aspect of the RFP.** City objects to and shall not be required to consider any additional terms or conditions submitted by Contractor, including any appearing in the Response. In submitting a Response, Contractor agrees that any additional terms or conditions shall have no force or effect. Any failure to comply with the terms and conditions of the RFP, including those specifying information that must be submitted with a Response, may result in rejection of the Response. **If Contractor desires a change or clarification to the terms or conditions of the RFP, Contractor must follow the process set forth in Section 2.2 ("Questions and Requests for Amendments").**
- G. Unless otherwise requested by City, Contractors should make only one proposal for each RFP item. Multiple offerings, alternates (unless any are specifically requested by City) and/or stipulations may be cause for rejection of a Response.
- H. Price offerings shall be **inclusive of ALL costs** (including but not limited to administrative cost for submission of all required paperwork on City's behalf and any other costs) and will be the only compensation given to Contractor for the required services herein.
- I. All prices submitted under the RFP shall be indelible. The use of correction fluid or erasures to correct line item bid prices and/or quantities are not acceptable. Corrections must be by lineout of the incorrect figures, writing in of correct figures, and initialing of the corrections by the originator. Correction fluid or erasure corrected bids will be considered non-responsive for the corrected item(s) only, and may render the entire Response as nonresponsive.
- J. Failure to sign any form requiring a signature may be grounds for rejecting a Response.

**2.4 Submission of Responses.**

- A. The location and deadline for submitting Responses is set forth in Section 1 of the RFP. Contractors are fully responsible for meeting these requirements. Reliance upon mail or public carrier is at Contractor's risk. **Late bids will not be considered.**
- B. Contractor shall submit:
  - 1) One (1) original signed version of its Response clearly marked as "ORIGINAL." The Response must be manually signed by an officer or employee having authority to legally bind Contractor.
  - 2) Two (2) hard copies of the entire Response.

- 3) Six (6) scanned copies (in .pdf format) of entire Response, (excluding financials) each on a separate CD-ROM. Large files may be scanned as several separate PDF files.
- 4) Three (3) Copies of your company/firm's financial statement (if necessary) pursuant to Section 2.12) This copy should be marked "Confidential - Trade Secret" or something comparable to alert the reader of Contractor's claim of a public records exemption.

All copies are to be placed in a sealed package. The outside must be marked with (i) the RFP title and number, and (ii) Contractor's name, address, contact person, and telephone number.

It is the sole responsibility of each Contractor to assure all copies are EXACT duplicates of the original Response. Photocopies or CD copies will be used for the purpose of evaluating the Responses. Any information contained in the original Response which has not been transferred to the CDs or photocopies will NOT be considered. The original document will be used solely for official record keeping and auditing purposes.

## **2.5 Evaluation of Responses.**

City will determine the qualifications, interest and availability of Contractors by reviewing all Responses and, when deemed necessary in the sole discretion of City, by conducting formal interviews of selected Contractors that are determined to be the best qualified based upon evaluation of the Responses.

The determination of which Contractors are "best qualified" will be based upon the criteria set forth in the RFP.

C. Before making an award, City reserves the right to seek clarifications, revisions, and information it deems necessary for the proper evaluation of Responses. Failure to provide any requested clarifications, revisions or information may result in rejection of the Response.

D. City reserves the right to accept or reject any and all Responses, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if City determines that doing so will serve City's best interests. City may reject any Response not submitted in the manner specified by the RFP.

## **2.6 Negotiation and Award of Contract.**

A. The process for contract negotiation and award is set forth in Jacksonville Ordinance Code Sections 126.303 and 126.304. Generally, City will negotiate first with the highest ranked Contractor. If an agreement cannot be reached with the highest ranked Contractor, City reserves the right to negotiate and recommend award to the next highest ranked Contractor or subsequent Contractor(s) until an agreement is reached.

B. City may make an award within sixty (60) days after the date of the Responses are due, during which period the Responses shall remain firm and shall not be withdrawn. Any Response that expresses a shorter duration may, in City's sole discretion, be accepted or rejected. If award is not made within sixty (60) days, the Response shall remain firm until either the Contract is awarded or City receives from Contractor written notice that the Response is withdrawn. [Note: Withdrawal of a Response may be requested within 72 hours (excluding State holidays, Saturdays and Sundays) after the date and time Responses are due. City will not accept an amended Response after the date and time Responses are due.]

C. Except as may otherwise be expressly set forth in the RFP, City intends to award one contract, but reserves the right to enter into a contract with multiple Contractors or to reject all Responses.

D. Based on the evaluation and negotiation results, City shall electronically post a notice of intended award at City's website. Please contact the Contact Person if you are uncertain of City's website address or if you experience problems accessing it. Any person who is adversely affected by the decision shall file with City a notice of protest in accordance with the Protest provisions of the RFP. City does not intend to provide tabulations or notices of award by telephone.

**2.7 Terms of Agreement.** After award to the successful Contractor, and subject to any necessary approvals by the City Council, City and Contractor will promptly enter into a written agreement (the "Contract") incorporating the terms of the RFP, the successful Response, and other terms and conditions as may be agreed to between the parties. To the extent the Response contains exceptions to or modifications of the RFP, such exceptions or modifications are stricken unless City affirmatively accepts the exceptions or modifications in the Contract. The Contract will be substantially in the form set forth in an attachment to the RFP. City will not be obligated to pay Contractor for the Services until the Contract is signed by both parties. City retains the right to reject all bids and/or amend its notice of award at any time prior to the full execution of the Contract.

If the successful Contractor fails to perform the Services as agreed, City reserves the right to (i) issue a new solicitation for the Services; (ii) reopen the RFP for the purpose of negotiating and awarding a second contract to another Contractor in accordance with the criteria and processes set forth herein; and/or (iii) take such other actions permitted by law.

**2.8 Public Meetings and Special Accommodations.** Any meetings of the RFP evaluation committee (i.e., the Professional Services Evaluation Committee), shall be noticed on City's website and shall comply with Florida's Open Meetings Laws. Please contact the Contact Person if you are uncertain of City's website address or if you experience problems accessing it. Persons requiring a special accommodation because of a disability should contact the Contact Person identified in Section 1 at least forty-eight (48) hours prior to the meeting.

**2.9 Ex-Parte Communications.** Communications regarding the RFP by a potential vendor, service provider, bidder, lobbyist or consultant to city employees, staff, or hired consultants are prohibited. This prohibition includes communications with the City's Office of General Counsel unless the Contact Person has authorized those communications in advance. Violations may result in the rejection/disqualification of a Response.

These prohibitions on ex-parte communications do not apply to the following:

- communications regarding the RFP to the Chief of the Procurement Division or the Contact Person, provided the communication is limited strictly to matters of process or procedure already contained in the RFP.
- communications with the city employee responsible for administering the Jacksonville Small Emerging Business Program, provided the communication is limited strictly to matters of programmatic process or procedures.
- communications with City officials regarding any perceived inefficiency, misconduct or abuse by city employees.
- communications at any pre-bid conferences.
- presentations before publicly noticed committee meetings.
- contract negotiations during any duly noticed public meeting.
- any 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 that are necessary for, and solely related to, the ordinary course of business concerning City's existing contract(s) for the materials or services addressed in the RFP.

The period for these prohibitions commences upon the advertisement of the RFP and 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 prohibitions shall be reinstated until such time as the Chief issues a subsequent recommendation.

**2.10 Cost of Developing RFP Response.** All costs related to the preparation of Responses and any related activities are the sole responsibility of Contractor. City assumes no liability for any costs incurred by Contractors throughout the entire selection process.

**2.11 Response Ownership.** All Responses, including attachments, supplementary materials, addenda, etc., shall become property of City and shall not be returned to Contractor. City will have the right to use any and all ideas or adaptation of ideas presented in any Response. Acceptance or rejection of a Response shall not affect this right.

**2.12 Public Records Law; Process For Protecting Trade Secrets and Other Information.** Article 1, Section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public records. As such, all responses to the RFP are public records unless exempt by law. If Contractor considers any portion of its Response to be exempt from disclosure under Florida law, Contractor must provide City with a separate redacted copy of the Response and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation. Contractor shall be responsible for defending its determination that the redacted portions of its Response are confidential, trade secret or otherwise not subject to disclosure. Further, Contractor shall protect, defend, and indemnify City for any and all claims arising from or relating to Contractor's determination that the redacted portions of its Response are confidential, trade secret or otherwise not subject to disclosure. If Contractor fails to submit a Redacted Copy with its Response in accordance with Section 2.4 above, City is authorized to produce the entire Response in answer to a public records request.

**2.13 Multiple Responses from Same Contractor; No Collusion.** More than one Response from an individual, firm, partnership, corporation or association under the same or different names is not permitted. Reasonable grounds for believing that a Contractor is involved in more than one Response for the same work will be cause for rejection of all Responses in which such Contractor is believed to be involved. Any or all Responses will be rejected if there is reason to believe that collusion exists between Contractors. Responses in which the prices obviously are unbalanced will be grounds for rejection.

**2.14 Conflict of Interest.** Section 126.110 of the Jacksonville Ordinance 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 Contractor. The parties will follow the provisions of Section 126.110, Jacksonville *Ordinance Code*, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with City, to the extent the parties are aware of the same. All Contractors must submit the Conflict of Interest Certificate attached to the RFP.

**2.15 Convicted Vendor List.** A person or affiliate placed on the State of Florida convicted vendor list pursuant to Section 287.133, Florida Statutes, following a conviction for a public entity crime may not do any of the following for a period of 36 months from the date of being placed on the convicted vendor list:

submit a bid on a contract to provide any goods or services to a public entity;

submit a bid on a contract with a public entity for the construction or repair of a public building or public work;

submit bids on leases of real property to a public entity;

be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and

transact business with any public entity in excess of the Category Two threshold amount provided in Section 287.017, Florida Statutes.

**2.16 Discriminatory Vendor List.** An entity or affiliate placed on the State of Florida discriminatory vendor list pursuant to Section 287.134, Florida Statutes, may not:

submit a bid on a contract to provide any goods or services to a public entity;

submit a bid on a contract with a public entity for the construction or repair of a public building or public work;

submit bids on leases of real property to a public entity;

be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or

transact business with any public entity.

**2.17 Contractor Representations.** In submitting a Response, Contractor understands, represents, and acknowledges the following (if Contractor cannot so certify to any of following, Contractor shall submit with its Response a written explanation of why it cannot do so).

Contractor currently has no delinquent obligations to the City of Jacksonville or any of its independent agencies.

The Response is submitted in good faith and without any prior or future consultation or agreement with any other respondent or potential respondent;

To the best of the knowledge of the person signing the Response, neither the Contractor, its affiliates, subsidiaries, owners, partners, principals or officers:

is currently under investigation by any governmental authority for conspiracy or collusion with respect to bidding on any public contract;

is currently under suspension or debarment by any governmental authority in the United States;

has within the preceding three years been convicted of or had a civil judgment rendered against it, or is presently indicted for or otherwise criminally or civilly charged, in connection with (i) obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; (ii) violation of federal or state antitrust statutes; or (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

has within the preceding three-year period had one or more federal, state, or local government contracts terminated for cause or default.

Contractor is not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. [This certification applies to contracts of \$1,000,000 or more. A list of the companies can be found as a link to "PFIA Quarterly Reports" at [www.sbafla.com/fsb/](http://www.sbafla.com/fsb/)]

Contractor has read and understands the RFP terms and conditions, and the Response is submitted in conformance with those terms and conditions.

All representations made by Contractor to City in connection with the RFP have been made after a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the Response.

Contractor shall indemnify, defend, and hold harmless City and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the Response.

All information provided by, and representations made by, Contractor are material and important and may be relied upon by City in awarding the Contract.

**2.18 Protests.** Any protest concerning the RFP shall be made in accordance with the Procurement Protest Procedures established pursuant to Section 126.106(e) of the Jacksonville Ordinance Code. A full copy of the procedures is available on City's website and can also be obtained by contacting City's Contact Person. Please contact the Contact Person if you are uncertain of City's website address or if you experience problems accessing it. Questions and requests made to the Contact Person shall not constitute formal Notice of Protest.

The Procurement Protest Procedures include the following provisions:

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 amendment, 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.

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 . . . 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.

A written Notice of Protest shall: (i) be addressed to the Chief [of Jacksonville's Procurement Division]; (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.

At the time of filing a timely Notice of Protest, 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 same.

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 214 North Hogan Street, Suite 899, Jacksonville, Florida 32202, or by electronic transfer via facsimile to (904) 255-8837. 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.

.....  
*(Remainder of page intentionally left blank)*

**Section 3**  
**General Terms and Conditions of Contract**

**Contents**

- 3.1 Provision of Services
- 3.2 Relationship of the Parties
- 3.3 City's Right to Make Changes
- 3.4 Service Warranties
- 3.5 City Will Assist Contractor
- 3.6 Location Requirements for Services
- 3.7 Use of Subcontractors; Flow-Down Provisions
- 3.8 Meetings and Reports
- 3.9 Ownership of Works
- 3.10 Intellectual Property
- 3.11 Software Development Processes and Standards
- 3.12 Limitation of Warranty for City-Furnished Software
- 3.13 Loss of Data
- 3.14 Purchase Orders
- 3.15 Best Pricing for Comparable Services to Other Government Entities
- 3.16 Invoicing and Payment
- 3.17 Taxes
- 3.18 Right of Setoff
- 3.19 Retention of Records / Audits
- 3.20 Indemnification
- 3.21 Insurance
- 3.22 City's Right to Suspend Work
- 3.23 City's Right to Terminate for Convenience
- 3.24 City's Remedies Upon Contractor Default.
- 3.25 Contractor Remedies Upon City Default.
- 3.26 Transition Services
- 3.27 Force Majeure, Notice of Delay, and No Damages for Delay
- 3.28 No Waiver
- 3.29 Qualification of Contractor Employees, Subcontractors, and Agents
- 3.30 Security Procedures
- 3.31 Restrictions on the Use or Disclosure of City's Information
- 3.32 Protection of Contractor's Trade Secrets and Other Confidential Information
- 3.33 Assignment
- 3.34 Notice and Approval of Changes in Ownership
- 3.35 Assignment of Antitrust Claims
- 3.36 Equal Employment Opportunity
- 3.37 Other Non-Discrimination Provisions
- 3.38 Prompt Payment to Subcontractors and Suppliers
- 3.39 Conflicts of Interest
- 3.40 Contingent Fees Prohibited
- 3.41 Truth in Negotiation Certificate
- 3.42 Compliance with Applicable Laws
- 3.43 Cooperative Purchasing
- 3.44 Warranty of Ability to Perform
- 3.45 Warranty of Authority to Sign Contract
- 3.46 Governing State Law/Severability/Venue/Waiver of Jury Trial
- 3.47 Construction

3.1. **Provision of Services.** Contractor shall provide City with all of the services and deliverables described in the RFP, the Response and the resulting Contract (collectively, the "Services"). If any services, functions or responsibilities are not specifically described in the RFP,

the Response or the resulting Contract but 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 the Services to the same extent and in the same manner as if specifically described herein.

**3.2. Relationship of the Parties.** In performance of the Services, Contractor shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture or associate of City. Contractor shall be solely responsible for the labor, supplies, materials, means, methods, techniques, sequences and procedures utilized to perform the Services in accordance with the Contract.

**3.3. City's Right to Make Changes.** City may unilaterally require, by written order, changes altering, adding to, or deducting from the Services ("Changes"), provided that such Changes are within the general scope of the Contract. City will make an equitable adjustment in the Contract price or delivery date if the Change materially affects the cost or time of performance. Such equitable adjustments require the written consent of Contractor, which shall not be unreasonably withheld. The Parties will cooperate with each other in good faith in discussing the scope and nature of the Change, the availability of Contractor personnel, the expertise and resources to provide such Change, and the time period in which such Change will be implemented.

**3.4. Service Warranties.** Contractor warrants that the Services shall be performed and delivered in a professional, first-class manner in accordance with the Contract and the standards prevailing in the industry. Contractor shall also undertake the following actions without additional consideration during the term of the Contract and for one year thereafter: (i) promptly making necessary revisions or corrections to resolve any errors and omissions on the part of Contractor; and (ii) conferring with City for the purpose of interpreting any of the Services or information furnished. Acceptance of the Services by City shall not relieve Contractor of these responsibilities. The warranties and covenants in this paragraph will extend to all subcontractors as well.

The foregoing warranties and covenants shall not apply (i) with respect to any portions of the Service that have been produced by anyone other than Contractor or its subcontractors; (ii) to any modifications made by anyone other than Contractor or its subcontractors or without Contractor's specific prior written consent; or (iii) to any use of the Service in a manner or for any purpose other than those contemplated in the Contract. **EXCEPT AS EXPRESSLY STATED IN THE CONTRACT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR'S WARRANTIES EXTEND SOLELY TO THE CITY.**

**3.5. City Will Assist Contractor.** At Contractor's request, City will provide reasonable assistance and cooperation to Contractor, including the supply of any data and information necessary for Contractor to provide the Services. City will also designate a Contract Manager who will, on behalf of City, work with Contractor and administer the Contract in accordance with its terms.

**3.6. Location Requirements for Services.** N/A

**3.7. Use of Subcontractors; Flow-Down Provisions.** Except to the extent the use of subcontractors is disclosed in the Response or consented to in writing by City, Contractor shall not be allowed to subcontract or assign any of its duties and obligations hereunder. In all cases, Contractor will be responsible for the acts or omissions of its subcontractors. Contractor will ensure that all relevant contractual obligations will flow down to the subcontractors and will be incorporated into the subcontracts (including the obligations relating to insurance, indemnification, delays, intellectual property rights, public records, non-discrimination, audits, security, location of services, termination, transition assistance, warranties, and the manner in which the Services are to be performed).

**3.8. Meetings and Reports.** Contractor must attend all meetings and public hearings relative to the Services where its presence is determined to be necessary and requested by City and Contractor can reasonably schedule its appearance. Unless otherwise agreed, Contractor shall provide a monthly report summarizing Contractor's performance. Contractor shall provide other periodic reports respecting the Services as City reasonably requests.

**3.9. Ownership of Works.**

(a) As used in Sections 3.9 and 3.10, the term "Work" shall mean each deliverable, drawing, design, specification, rendering, notebook, tracing, photograph, reference book, equipment, expendable equipment and material, negative, report, finding, recommendation, data and memorandum of every description, shared with or delivered to City pursuant to the Contract.

(b) With the exception of Contractor's pre-existing intellectual capital and third-party intellectual capital as described in Section 3.10 below, City shall own all right, title and interest, including ownership of copyright (limited to the extent permitted by the terms of any governing licenses), in and to each Work including, but not limited to, software, source code, reports, deliverable, or work product developed by Contractor specifically for City in connection with the Contract, and derivative works relating to the foregoing. The use of these Works in any manner by City shall not support any claim by Contractor for additional compensation.

(c) Each Work, and any portion thereof, shall be a "work made for hire" for City pursuant to federal copyright laws. Any software, report, deliverable, or work product as used in connection with the Work, but previously developed by Contractor specifically for other customers of Contractor or for the purpose of providing substantially similar services to other Contractor customers, generally shall not be considered "work made for hire", so long as the foregoing are not first conceived or reduced to practice as part of the Work. To the extent any of the Works are not deemed works made for hire by operation of law, Contractor hereby irrevocably assigns, transfers, and conveys to City, or its designee, without further consideration all of its right, title and interest in such Work, including all rights of patent, copyright, trade secret, trademark or other proprietary rights in such materials. Except as provided in the foregoing sentences, Contractor acknowledges that City shall have the right to obtain and hold in its own name any intellectual property right in and to the Work. Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as City may reasonably request, to perfect or evidence City's ownership of the Work.

**3.10. Intellectual Property.**

(a) Contractor grants to City an irrevocable, perpetual, royalty free and fully paid-up right to use (and such right includes, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant and the right to sublicense all, or any portion of, the foregoing rights to an affiliate or a third party who provides service to City) Contractor's intellectual property (including, without limitation, all trade secrets, patents, copyright and know-how) that is contained or embedded in, required for the use of, that was used in the production of or is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of any applicable unit of Work.

(b) If the Work contains, has embedded in, or requires for the use of, any third party intellectual property, or if the third party intellectual property is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the Work, Contractor shall secure for City an irrevocable, perpetual, royalty free and fully paid-up right to use all third party intellectual property. Contractor shall secure such right at its expense and prior to incorporating any third party intellectual property (including, without limitation, all trade secrets, patents, copyright and know-how) into any Work, including, without limitation, all drawings or data provided under the Contract, and such right must include, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right and a right to sublicense all or any portion of the foregoing rights to an affiliate or a third party service provider.

This subparagraph does not apply to standard office software (e.g., Microsoft Office).

(c) Should City, or any third party obtaining such Work through City, use the Work or any part thereof for any purpose other than that which is specified in the Contract, it shall be at City's and such third party's sole risk.

**3.11. Software Development Processes and Standards.** N/A

**3.12. Limitation of Warranty for City-Furnished Software.** In lieu of any other warranty expressed or implied herein, City warrants that any programming aids and software packages supplied for Contractor use as City-furnished property shall be suitable for their intended use on the system(s) for which designed. In the case of programming aids and software packages acquired by City from a commercial source, such warranty is limited to that set forth in the contractual document covering the product(s). Should City furnish Contractor with any programming aids or software packages that are found not to be suitable for their intended use on the system(s) for which designed, Contractor shall notify City and supply documentation regarding any defects and their effect on progress on the Contract. City will consider equitably adjusting the delivery performance dates or compensation, or both, and any other contractual provision affected by the City-furnished property in accordance with the procedures provided for in Section 3.3 above ("City's Right to Make Changes").

**3.13. Loss of Data.** If any City data or record is lost or corrupted due to the negligence of Contractor or any of its subcontractors or agents, Contractor shall be responsible for correcting and recreating all production, test, acceptance and training files or databases affected which are used in the provision of services, at no additional cost to the Customer in the manner and on the schedule set by City. This remedy shall be in addition to any other remedy City may be entitled to by law or the Contract.

**3.14. Purchase Orders.** If the Contract requires a Service to be ordered by City via purchase order, Contractor shall not deliver or furnish the Service until a City transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by City directly with Contractor, and shall be deemed to incorporate by reference the Contract. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to City.

**3.15. Best Pricing for Comparable Services to Other Government Entities.** N/A

**Invoicing and Payment.**

(a) Unless otherwise specified in the RFP, payment to Contractor for Services shall be made on a monthly basis for the Services provided by Contractor for the preceding month. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. City may require any other information from Contractor that City deems necessary to verify its obligation to pay under the Contract. Payments will be made to Contractor approximately forty-five (45) days after receipt and acceptance of a proper invoice. City does not pay service charges, interest or late fees unless required by law.

(b) To the extent Contractor's fees include reimbursement for travel or travel-related expenses, such travel and travel-related expenses shall be subject to and governed by the provisions and limitations of Chapter 106, Part 7, Jacksonville Ordinance Code.

(c) City's obligations to make payment are contingent upon availability of lawfully appropriated funds for the Services.

**3.17. Taxes.** City is generally exempt from any taxes imposed by the State of Florida or the Federal Government. Exemption certificates will be provided upon request. Contractor shall not include any state, local and federal taxes in any prices quoted to City.

**3.18. Right of Setoff.** City may, in addition to other remedies available at law or equity and upon notice to Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted in good faith by City (or any other local government entity or authority located in Duval County, Florida) against Contractor.

**3.19. Retention of Records / Audits.**

(a) Contractor must establish and maintain books, records, contracts, sub-contracts, papers, financial records, supporting documents, statistical records and all other documents pertaining to the Contract (collectively, the "Records"), in whatsoever form or format (including electronic storage media) is reasonable, safe and sufficient.

(b) Contractor must retain all Records for a minimum period of three (3) years after the final payment is made under the Contract. If an audit has been initiated and audit findings have not been resolved at the end of the three (3) year period, the Records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the Contract, at no additional cost to City. Records shall be retained for longer periods when the retention period exceeds the time frames required by law or ordinance.

(c) At all reasonable times for as long as the Records are maintained, Contractor must allow persons duly authorized by City (including City's auditor and inspector general offices), and to have full access to and the right to examine, copy or audit any of the Records, regardless of the form in which kept. Contractor will not charge City for any setup, supervision or space in connection with the examination and audit. Photocopying charges will not exceed the actual and reasonable cost of the copies to Contractor, and City shall be permitted to bring its photocopying equipment if City so desires.

(d) Contractor must comply with and cooperate in any audits or reports requested by City, and must ensure that all related party transactions are disclosed to the auditor.

(e) Contractor must permit City to interview any of Contractor's employees, subcontractors and subcontractor employees to assure City of the satisfactory performance of the terms and conditions of the Contract. Unless the parties agree otherwise or City is willing to pay for the employee's reasonable travel expenses, the interviews will be conducted at the employee's primary place of work. Contractor will not charge City for any employee time unless the interview time for that employee exceeds eight (8) hours in a calendar year.

(f) Following any audit or review, if performance of Contractor is, in the opinion of City, deficient, City will deliver to Contractor a written report of the deficiencies and request for development by Contractor of a corrective action plan. Contractor hereby agrees to prepare and submit, to City, said corrective plan within ten (10) days of receiving City's written report. Thereafter, Contractor must correct all deficiencies in the corrective action plan within a reasonable time after City's receipt of the corrective action plan.

(g) All reports and other information provided by Contractor pursuant to this Section shall be submitted under penalties of perjury, under Section 837.06, Florida Statutes.

(h) Contractor must include the aforementioned audit, inspection, investigation and record-keeping requirements in all subcontracts and Contract assignments.

(i) Contractor agrees to reimburse City for the reasonable costs of investigation incurred by City for audits, inspections and investigations that uncover a material violation of the Contract.

Such costs shall include the salaries of investigators, including overtime, travel and lodging expenses, and expert witness and documentary fees. Contractor shall not be responsible for any costs of investigations that do not uncover a material violation of the Contract.

**3.20. Indemnification.** Contractor shall hold harmless, indemnify, and defend the City and its current and past officers, representatives, affiliates, agents, employees, successors and assigns (collectively the "Indemnified Parties") against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and cost and expense of whatsoever kind or nature (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 Indemnified Parties, arising directly or indirectly out:

(i) any of Contractor's operations, work or services performed in connection with this Agreement including, but not limited to, any and all claims for damages as a result of the injury to or death of any person or persons, or damage to or destruction of any property which arises as a result of any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of Contractor, its employees, representatives, agents, affiliates or assigns, regardless of where the damage, injury or death occurred.

(ii) 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, regardless of whether such injury or damage is caused by negligence, errors and omissions, recklessness, or intentionally wrongful conduct. 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, Contractor shall, immediately, make every reasonable effort to secure for the City a license, authorizing the continued use of the Service or product. If Contractor fails to secure such a license for the City, then Contractor 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 at no additional cost to the City, so that the Service or product is non-infringing.

(iii) any violation of any federal, state, or municipal laws, statutes, resolutions, or regulations, by Contractor or those under its control; or.

(iv) any breach of any covenant, obligation, representation or warranty made by Contractor in this Agreement or in any certificate, document, writing or other instrument delivered by Contractor pursuant to this Agreement.

**.The indemnifications in this Section 3.20 are separate and apart from, and are in no way limited by, any insurance provided pursuant to the Contract or otherwise. This Section 3.20 shall survive the expiration or termination of the Contract.**

To the extent an Indemnified Party exercises its rights under this Section 3.20, the Indemnified Party will (1) provide reasonable notice to Contractor of the applicable claim or liability, and (2) allow Contractor to participate in the litigation of such claim or liability (at Contractor's expense) to protect its interests. Each Party will cooperate in the investigation, defense and settlement of claims and liabilities that are subject to indemnification hereunder, and each Party will obtain the prior written approval of the other Party before entering into any settlement of such claim or liability, which consent shall not be unreasonably withheld, delayed or conditioned.

**3.21. Insurance.** Without limiting its liability under this Contract, Contractor shall at all times during the term of this Contract procure prior to commencement of work and maintain at its sole expense during the life of this Contract (and Contractor shall require its contractors, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and in the minimum amounts stated below, and prior to work commencement provide a certificate with applicable endorsements on a form that is acceptable to the City's Division of Insurance and Risk Management evidencing the following required coverages to the City:

**Schedule**

**Limits**

**Worker’s Compensation/Employers Liability**

Worker’s Compensation  
Employer’s Liability

Florida Statutory Coverage  
\$1,000,000 Each Accident  
\$1,000,000 Disease Policy Limit  
\$1,000,000 Each Employee/Disease

This insurance shall cover the Contractor (and to the extent its subcontractors and sub-subcontractors are not otherwise insured, its subcontractors and sub-subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

**Commercial General Liability - (Form CG0001)**

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those approved by the Office of Insurance and Risk Management..

\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Ops Aggregate  
\$1,000,000 Personal/Advertising Injury  
\$1,000,000 Each Occurrence  
\$ 50,000 Fire Damage  
\$ 5,000 Medical Expenses

**Automobile Liability** \$1,000,000 Each Occurrence - Bodily Injury  
and  
Property Damage Combined

(Coverage for all automobiles, owned, hired or non-owned used in performance of the Services)

ISO Form CA0001 as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

**Professional Liability** \$1,000,000 Per Claim and Aggregate

(Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract. If provided on a Claim Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.)

**Liquor Liability** \$1,000,000 Per Claim and Aggregate

(Liquor Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract. If provided on a Claim Made Form, - the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.)

**Umbrella Liability**

\$4,000,000 Per Occurrence and Aggregate

(The Umbrella Liability policy shall be in excess of the Employer's Liability, Commercial General Liability, Automobile Liability and Liquor Liability limits without any gap. The Umbrella coverage will follow form the underlying coverages and provide on an Occurrence basis all coverages listed above.)

Waiver of Subrogation. All insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and the City's members, officials, officers and employees.

Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, and employees. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and Automobile Liability CA2048; endorsements will be provided to, reviewed and approved by the City's Division of Insurance and Risk Management prior to commencement of work.

It is the contractor's responsibility to provide all employee benefits coverages.

Contractor's Insurance Primary. The insurance provided by the Contractor for shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City member, official, officer and employee.

Deductible or Self-Insured Retention Provisions. Except as authorized in this Contract, the insurance maintained by the Contractor shall apply on a first dollar basis without application of a self-insurance, deductible or self-insured retention. Except as authorized specifically in this Contract, no self-insurance, deductible, or self-insured retention for any required insurance provided by Contractor pursuant to this Contract will be allowed. If there is any self-insurance, deductible or self-insured retention for any required insurance, the Contractor shall be responsible for paying on behalf of the City (and any other person or organization Contractor has, in this Contract, agreed to include as an insured for the required insurance) any self-insurance, deductible, or self-insured retention allowed under this paragraph. The City will not be responsible for any self-insurance, deductibles or self-insured retentions under this Contract.

Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract shall not limit the liability of the Contractor or its Subcontractors or Sub-subcontractors, employees or agent to the City or others. Any remedy provided to City or City's members, officials or employees shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.

No Waiver by City Approval/Disapproval. Neither approval by City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Contract.

Each policy 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-VII or better. Prior to commencing any Services, Certificates of Insurance approved by City's Division of Insurance & Risk Management demonstrating the maintenance of said insurance shall be furnished to City. The Contractor shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. In the event the Contractor is unable to obtain such endorsement, the Contractor agrees to provide the City the notice directly. Until such time as the insurance is no longer required to be maintained by Contractor, Contractor shall provide the City with renewal or replacement evidence of insurance with the above minimum requirements no less than 30 days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.

Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to City's Division of Insurance and Risk Management, if requested to do so by the City, the Contractor shall, within thirty (30) days after receipt of a written request from the City, provide the City with a certified, complete copy of the policies of insurance providing the coverage required herein.

Anything to the contrary notwithstanding, the liabilities of the Contractor under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage. Neither approval of, nor failure to disapprove, insurance furnished by the Contractor shall relieve the Contractor or its sub-contractors or sub-subcontractors from responsibility to provide insurance as required by the Contract.

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.

Notwithstanding anything to the contrary herein, if the Contractor permits the use of Hemming Plaza in an extra hazardous manner (e.g., an event with pyrotechnics, for example), then the Contractor shall receive concurrence from the City's Risk Contractor as to any endorsements or coverages required by the City's Risk Contractor for such use, and such insurance shall be provided to the City as a condition precedent to such use of the facility.

These insurance requirements may be modified by the City to the extent the Contractor takes a leasehold interest in Hemming Plaza.

**3.22. City's Right to Suspend Work.** City may in its sole discretion suspend any or all activities under the Contract by providing a written notice to Contractor at least five (5) days in advance that outlines the particulars of suspension. Within ninety (90) days of providing such notice, or within any longer period agreed to by Contractor, City shall either (1) authorize the resumption of work, at which time activity shall resume, or (2) terminate the Contract in accordance with the applicable termination provisions. Suspension of work shall not entitle Contractor to any additional compensation. The parties will reasonably amend any schedules relating to performance of the Services to reflect the suspension of work hereunder. Contractor shall not be entitled to receive compensation for any work it performs after being excused from providing it hereunder.

**3.23. City's Right to Terminate for Convenience.** Either party may terminate the Contract at any time and for any reason by giving written notice in accordance with Section 1.4 of the RFP. If the Contract is terminated for convenience as provided herein, the parties will be relieved of all further obligations other than those that expressly or customarily survive termination. Access to any and all work papers will be provided to the City after the termination of the Contract. In the event of City's termination of the Contract, City (in its sole discretion) may also require Contractor to provide the Transition Assistance as set forth in Section 3.26 below.

**3.24. City's Remedies Upon Contractor Default.** Any one or more of the following events, if not cured within ten (10) calendar days after Contractor's receipt of written notice thereof, shall constitute an "Event of Default" on the part of Contractor: (1) Contractor fails to perform the Services within the time specified in the Contract or any extension, (2) Contractor fails to maintain adequate progress, thus endangering performance of the Contract, (3) Contractor fails to honor any other material term of the Contract, or (4) Contractor fails to abide by any statutory, regulatory, or licensing requirement. City may extend the 10-day cure period in its discretion.

In addition, the following shall constitute an immediate Event of Default with no right cure: (i) Contractor is found to have made a false representation or certification in its Response, or (ii) Contractor has been placed on the list maintained under Section 287.135, Florida Statutes, of companies with activities in Sudan or in Iran Petroleum Energy Sector.

Upon an "Event of Default" on the part of Contractor, City will be entitled to terminate the Contract and pursue such other remedies available at law or equity, including the recovery of any reprocurement costs and delay damages. The rights and remedies available to City under the Contract are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a party, shall be deemed to be in exclusion of any other.

If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience.

**3.25. Contractor Remedies Upon City Default.** City shall be in default if City fails to honor any material term of the Contract, and such failure is not cured within forty-five (45) calendar days after receipt of written notice thereof from Contractor. In the event of City's default, Contractor will be entitled to terminate the Contract and pursue such other remedies available at law or equity as it deems appropriate. **Except as expressly provided elsewhere in the Contract, Contractor will not be entitled to recover any lost profits or consequential damages.** The rights and remedies available to Contractor under the Contract are distinct, separate and cumulative remedies, and no one of them shall be deemed to be in exclusion of any other.

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

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

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

**3.27. Force Majeure, Notice of Delay, and No Damages for Delay.** Neither party shall be responsible for delays in performance if the delay was beyond that party's control (or the control of its employees, subcontractors or agents). Contractor shall notify City in writing of any such delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date Contractor first had reason to believe that a delay could result. Based upon such notice, City will give Contractor a reasonable extension of time to perform; provided, however, that City may elect to terminate the Contract in whole or in part if City determines, in its sole judgment, that such a delay will significantly impair the value of the Contract to City. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. **THE FOREGOING SHALL CONSTITUTE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** No claim for damages, other than for an extension of time, shall be asserted against City. Contractor shall not be entitled to an increase in the Contract price or payment of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever.

**3.28. No Waiver.** The delay or failure by a party to exercise or enforce any of its rights under the Contract shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. Unless otherwise agreed in writing, City's payment for the Services shall not release Contractor of its obligations under the Contract and shall not be deemed a waiver of City's right to insist upon strict performance hereof.

**3.29. Qualification of Contractor Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors and agents performing work under the Contract shall be properly trained and qualified. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors and agents performing work under the Contract must comply with all reasonable administrative requirements of City and with all controlling laws and regulations relevant to the services they are providing under the Contract. City may conduct, and Contractor shall cooperate in, a security background check or other assessment of any employee, subcontractor or agent furnished by Contractor. City may refuse access to, or require replacement of, any personnel for reasonable cause.

Contractor shall take all actions necessary to ensure that Contractor's employees, subcontractors and agents are not considered employees of City. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors and agents receive payment and any legally mandated insurance (e.g., workers' compensation and unemployment compensation) from an employer other than City.

As a condition to providing services to City, Contractor (and any subcontractor) will enroll and participate in the federal E-Verify Program within thirty days of the effective date of the Contract. Proof of enrollment and participation will be made available to City upon request.

**3.30. Security Procedures.** Contractor and its employees, subcontractors and agents shall comply fully with all generally applicable security procedures of the United States, the State of Florida and City in performance of the Contract. City agrees that any security procedures imposed by City specifically for the Contract will be reasonable and will not impose any unreasonable costs or hardships.

**3.31. Restrictions on the Use or Disclosure of City's Information.** Contractor shall not use, copy or disclose to third parties, except in connection with performing the Services, any information obtained by Contractor or its agents, subcontractors or employees in the course of performing the Services, including, but not limited to, security procedures, business operations information, or

commercial proprietary information in the possession of City. At City's request, all information furnished by City will be returned to City upon completion of the Services. Contractor shall not be required to keep confidential any information that has already been made publicly available through no fault of Contractor or that Contractor developed independently without relying on City's information. To ensure confidentiality, Contractor shall take appropriate steps as to its employees, agents, and subcontractors, including the insertion of these restrictions in any subcontract agreement. The warranties of this paragraph shall survive the Contract.

**3.32. Protection of Contractor's Trade Secrets and Other Confidential Information.** All documents received by City in connection with this Agreement are subject to Chapter 119, Florida Statutes (the "Florida Public Records Law"). Any specific information that Contractor claims to be a trade secret or otherwise exempt from the Florida Public Records Law must be clearly identified as such by Contractor on all copies furnished to City. City agrees to notify Contractor of any third-party request to view such information, but it is Contractor's obligation to obtain a court order enjoining disclosure. If Contractor fails to obtain a court order enjoining disclosure within five (5) business days of Contractor's receiving notice of the request, City may release the requested information. Such release shall be deemed for purposes of the Contract to be made with Contractor's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copy right or other intellectual property.

**3.33. Assignment.** Each party binds itself and its respective successors and assigns in all respects to all of the terms, conditions, covenants and provisions of the Contract. Contractor shall not sell, assign or transfer any of its rights (including rights to payment), duties or obligations under the Contract without the prior written consent of City. In the event of any assignment, Contractor shall remain liable for performance of the Contract unless City expressly waives such liability. City may assign the Contract with prior written notice to Contractor of its intent to do so. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee or agent of City.

**3.34. Notice and Approval of Changes in Ownership.** Because the award of the Contract may have been predicated upon Contractor's ownership structure, Contractor agrees that any transfer of a substantial interest in Contractor by any of its owners shall require City's prior written approval, which approval shall not be unreasonably withheld or unreasonably delayed. By execution of the Contract, Contractor represents that it has no knowledge of any intent to transfer a substantial interest in Contractor. A substantial interest shall mean at least 25% of the voting shares in Contractor. This section shall not apply to (i) transfers occurring upon the incapacitation or death of an owner; (ii) transfers associated with an initial public offering on the NYSE or NASDAQ markets; or (iii) transfers to a company whose stock is publicly traded on the NYSE or NASDAQ markets.

**3.35. Assignment of Antitrust Claims.** Contractor and City recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by City. Therefore, Contractor hereby assigns to City any and all claims under the antitrust laws of Florida or the United States for overcharges of goods, materials or services purchased in connection with the Contract.

**3.36. Equal Employment Opportunity.** The Equal Opportunity clause in Title 41, Part 60-1.4 of the Code of Federal Regulations (Paragraphs 1 through 7 of President's Executive Order 11246), the provisions of the Equal Opportunity for Individuals with Disabilities Act in 42 U.S.C. Section 12112, the Listing of Employment Openings for Veterans Clause in Title 41, Part 50-260.2 of the Code of Federal Regulations and the Disabled Veterans and Veterans of the Vietnam era Clause in Title 41, Part 60-250.5 of the Code of Federal Regulations, are incorporated herein by reference if and to the extent applicable. If Contractor is exempt from any of the above cited terms, written evidence of such exempt status must be provided to City.

**3.37. Other Non-Discrimination Provisions.** As required by Section 126.404, Jacksonville Ordinance Code, Contractor represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of the Contract. Contractor agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Community Relations Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the non-discrimination provisions of the Contract; *provided however*, that Contractor shall not be required to produce, for inspection, records covering periods of time more than one (1) year prior to the effective date of the Contract. Contractor agrees that, if any of the products or Services to be provided pursuant to the Contract are to be provided by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

**3.38. Prompt Payment to Subcontractors and Suppliers.** The following is required by Chapter 126, Part 6, Jacksonville Ordinance Code; provided however, if Contractor does not use JSEB or MBE subcontractors, as identified below, this Section 3.38 shall not apply:

(a) *Generally.* When Contractor receives payment from City for labor, services or materials furnished by subcontractors and suppliers hired by Contractor, Contractor shall remit payment due (less proper retainage) to those subcontractors and suppliers within fifteen (15) calendar days after Contractor's receipt of payment from City. Nothing herein shall prohibit Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subcontractors and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after Contractor has provided notice to the City and to the subcontractor or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to City and said subcontractor or supplier within ten (10) 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.

(b) *Jacksonville Small and Emerging Business Enterprise and Minority Business Enterprise Participation.* Notwithstanding Chapter 126, Part 6 of the Jacksonville Ordinance Code, Contractor shall pay all contracts awarded with certified Jacksonville Small and Emerging Business Enterprises ("JSEB") and Minority Business Enterprises ("MBE"), as defined therein, their pro rata share of their earned portion of the progress payments made by City under the 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 or MBE at the time of payment. As a condition precedent to progress and final payments to Contractor, Contractor shall provide to City, with its requisition for payment, documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's or MBE's from all prior payments Contractor has received from City. Contractor shall not unreasonably withhold payments to certified JSEB's and MBE's if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEB's or MBE'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's or MBE's 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 JSEB's or MBE's 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 in this Section. The failure to pay undisputed amounts to the JSEB's or MBE's within seven (7) business days shall be a breach of the Contract, compensable by one per-cent (1%) of the outstanding invoice being withheld by City, not as a penalty, but as liquidated damages to compensate for the additional contract administration by City.

(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 MBE 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 Contractor's contractual obligations to City. As a result of said breach, 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 late payment charge or the charges specified in said Chapter 126 of the Jacksonville Ordinance Code for JSEB's or MBE's and in Chapter 218, Florida Statutes, for non-JSEB's or MBE's, whichever is greater.

**3.39. Conflicts of Interest.** Contractor acknowledges that Section 126.112 of the Jacksonville Ordinance 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 contractor.

**3.40. Contingent Fees Prohibited.** In conformity with Section 126.306, Jacksonville Ordinance Code: Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure the Contract 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 Contractor, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of the Contract. For the breach or violation of these provisions, City shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**3.41. Truth in Negotiation Certificate.** Pursuant to Section 126.305, Jacksonville Ordinance Code, the execution of the Contract by Contractor shall be deemed to be a simultaneous execution of a Truth-In-Negotiation Certificate, whereby Contractor 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 Contractor agrees that the compensation hereunder shall be adjusted to exclude any significant sums where City determines the contract price was increased due to inaccurate, incomplete or non-current 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 the Contract.

**3.42. Compliance with Applicable Laws.** Contractor (and any subcontractors) 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:

Chapter 119, Florida Statutes (the Florida Public Records Law);  
Section 286.011, Florida Statutes (the Florida Sunshine Law);  
Chapter 602, Jacksonville Ordinance Code (the Jacksonville Ethics Code);  
Chapter 126, Jacksonville Ordinance Code (the Jacksonville Purchasing Code);  
Chapter 191, Jacksonville Ordinance Code (Special Events);  
All City ordinances and policies pertaining to park vendors, road closures, and the sale/consumption of alcoholic beverages; and  
All licensing and certification requirements applicable to performing the Services.

**3.43. Cooperative Purchasing.** N/A

**3.44. Warranty of Ability to Perform.** Contractor warrants that (i) it is ready, willing and able to perform its obligations under the Contract, and (ii) to the best of Contractor's knowledge, there are no pending or threatened actions, proceedings, investigations or any other legal or financial conditions that would in any way prohibit, restrain, or diminish Contractor's ability to satisfy its

Contract obligations. Contractor shall immediately notify City in writing if its ability to perform is compromised in any manner during the term of the Contract.

**3.45. Warranty of Authority to Sign Contract.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**3.46. Governing State Law/Severability/Venue/Waiver of Jury Trial.** The rights, obligations and remedies of the parties as specified under the Contract shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of the Contract be determined by the courts to be illegal, unenforceable or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. Venue for litigation of the Contract shall be exclusively in courts of competent jurisdiction located in Jacksonville, Duval County, Florida. The parties waive any and all rights to a jury trial with respect to disputes arising under the Contract.

**3.47. Construction.** Both parties acknowledge that they have had the opportunity to provide meaningful input into the terms and conditions contained in the Contract. Therefore any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared the Contract. Article headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

---

(Remainder of page intentionally left blank)

## Attachment A – Response Format

To maintain comparability and facilitate the evaluation process, Responses shall be organized in the manner set forth below. Tab delineations for each of the five sections would be helpful.

**1) Title Page:** Include RFP Title, RFP Number, Contractor’s full name, address, phone number.

**2) Cover Letter:** Include the following:

Date of Letter.

RFP Title and Number

Contractor’s full name, address and phone number.

Names of the persons who will be authorized to make representations for the Contractor, their titles, addresses (including email address) and telephone numbers.

Contractor’s Federal Employer ID Number.

Acknowledgement that (i) the Response is based on the terms set forth in the RFP and all amendments thereto posted on City’s website as of the date of the Response, and (ii) the Contractor will be responsible for monitoring City’s website for subsequent amendments and for either maintaining, amending or withdrawing the Response prior to the Response Due Date based on those subsequent amendments.

Signature of Authorized Representative.

**3) Required Forms.** Attach all forms identified in Section 1 of the RFP, each signed by an authorized representative. Examples of the forms that may be required include:

Conflict of Interest Certificate.

Equal Business Opportunity Program Forms (see Attachment E).

**4) Statement of Qualifications.** This portion of the Response will be used to provide the information City needs to evaluate how well the Contractor meets the criteria listed in Attachment B – Evaluation Criteria. Failure to provide adequate information on any criterion will result in lower scores and could result in rejection of the Response as non-responsive. Please divide this portion of the Response into ten subsections (one subsection for each of the listed criteria).

## Attachment B- Evaluation Criteria

The evaluations will be based upon the following criteria, and Contractors 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 criterion will be evaluated relative to the other responses received. **Contractors are encouraged to arrange their responses in a format that will offer ready review and evaluation of each criterion.** If oral presentations are conducted as part of the evaluation process, the presentations will be scored as part of Criteria 1 and 8 only, and the presentation will be allotted no more than five (5) points out of the maximum score for each of those items.

1. **COMPETENCE.** Including professional and/or technical education and training; experience in the kind of projects to be undertaken; availability of adequate personnel, equipment and facilities and the extent of repeat business of the persons. Provide names and resumes of all individuals to be assigned to this project. List previous projects similar to the one in the RFP, which have been satisfactorily completed. Provide resumes of principal staff/project manager showing years of experience in the field to which they are assigned for this project. **(15 points maximum score)**

2. **CURRENT WORKLOAD.** Provide the number and size of the projects currently being performed. Discuss past ability to deliver projects on a timely basis under similar current workload conditions. **(5 points maximum score)**

3. **FINANCIAL RESPONSIBILITY.** Describe form of business, i.e., proprietorship, partnership, corporation; years in business; changes in ownership; bank reference(s); past, present, pending and/or threatened legal proceedings within any forum; and any other information the Contractor may wish to supply to demonstrate financial responsibility. Failure to provide all listed information and documentation will result in score less than maximum for this criterion. **(5 points maximum score)**

4. **ABILITY TO OBSERVE AND ADVISE WHETHER PLANS AND SPECIFICATIONS ARE BEING COMPLIED WITH, WHERE APPLICABLE.** Describe experience, ability, and understanding of Contractor and assigned personnel in observing and monitoring instruction or direction to similarly related tasks. **(5 points maximum score)**

5. **PAST AND PRESENT RECORD OF PROFESSIONAL ACCOMPLISHMENTS WITH CITY AGENCIES AND OTHERS.** Provide a list of completed projects that are similar in nature and scope to the project under consideration with references to include owner's contact person and telephone number. Describe any outstanding accomplishments that relate to specific services being sought. Responding to this evaluation criterion necessitates that Contractors include statements of their past and present record of professional accomplishments or performance with the City of Jacksonville and its various "using agencies," which is defined in the Jacksonville Ordinance Code as "a department, division, office, board, agency, commission or other unit of the City and an independent agency required by law or voluntarily requesting to utilize for services of the [Procurement] Department"; and with any of the City's "Independent Agencies"; and on projects undertaken with others that are similar in nature to the size and scope of professional services and/or work required herein. **(5 points maximum score)**

6. **PROXIMITY TO THE PROJECT.** Document the location of Contractor's corporate headquarters, which, if located in Jacksonville, Florida, no further information is required under this criterion and maximum points will be awarded. If Contractor's corporate headquarters are not located in Jacksonville, Florida, please document the location and the nature of business of Contractor's branch office(s), if any, that are located in and/or that are closest to Jacksonville, Florida, the number of employee assigned thereto and the period of continuous existence thereof. Additionally, Contractors are requested to demonstrate, define and provide examples of their ability to provide the services contemplated herein from a local office or to show that a local office is

not necessary to satisfactorily perform the services required for this project, in which event maximum points may be awarded. The definition of a local office will be one that is located within Duval County or the abutting counties of Nassau, Baker, Clay and St. Johns. However, no travel costs (time or mileage) will be allowed in the negotiated service rates and/or paid for travel to and from the Contractor's office to Duval County. **(5 points maximum score)**

**7. PAST AND PRESENT DEMONSTRATED COMMITMENT TO SMALL AND MINORITY BUSINESSES AND CONTRIBUTIONS TOWARD A DIVERSE MARKET PLACE.**

Responding to this evaluation criterion necessitates that Contractors 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 Contractor's: (i) commitment to diversity among the directors, officers, members and/or employees that make up its firm; (ii) commitment to diversity within its community and beyond; (iii) commitment to and/or utilization of minority, women-owned, small and emerging businesses on past projects; and (iv) commitment to and/or utilization of minority, women-owned, small and emerging businesses, certified JSEBs in particular, for the project solicitation in question. **(10 points maximum score)**

**8. ABILITY TO DESIGN AN APPROACH AND WORK PLAN TO MEET THE PROJECT REQUIREMENTS.**

Describe the Contractor's understanding of the requirements of this solicitation, and its ability, approach and/or plan to satisfy the same in complete compliance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations. Responses should address, at a minimum, the following:

detailed plans for the proposed area outlining proposed programming, operation and maintenance activities;

ability to obtain financing or funding to carry out the programming, operations and maintenance plan;

information on jobs to be created and wage levels;

programming and security plans that will keep Hemming Plaza active and secure every day from 7am-7pm and during any managed events.;

required maintenance and facility improvements,

operation permits and licenses necessary for successful programming and management of Hemming Plaza; (vii) interface plan with existing downtown groups such as the Cultural Council, Museum of Contemporary Art, Jacksonville Library, non-profit organizations and private interests in collaborating and building consensus on the type of programming needed;

description of promotions, event fundraisers and sponsorships to support the programming and operation needs of Hemming Plaza;

a development timetable to complete the proposed project;

a commitment to compliance and consistency with downtown plans and codes and

a complete proposal budget of items 1-9 referenced above; and

if a lease arrangement is proposed, a general description of the proposed lease terms.

Responses should also provide documentation detailing availability of adequate personnel and equipment required to provide required Services. **(30 points maximum score)**

**9. QUOTATION OF RATES, FEES OR CHARGES AND OTHER DETAILED COST PROPOSAL OR COST BREAKDOWN INFORMATION.**

Provide the amount of compensation, expressed as a flat monthly fee, required in exchange for the Services provided. Contractor must also detail what costs and expenses it intends to cover what its capabilities are with respect to minimizing to the greatest degree any costs on the part of the City. It is anticipated that Contractor will have fund-raising capabilities to minimize if not totally eliminate any funding requirements on the City's part. **(25 points maximum score)**

**10. THE VOLUME OF CURRENT AND PRIOR WORK PERFORMED FOR USING AGENCIES SHALL BE CONSIDERED A MINUS FACTOR.** Provide a list of all local government projects on which Contractor has been awarded fees during the past five (5) years. Include only those projects on which Contractor was the Prime Contractor (do not delete fees paid to subcontractors or others). Such list shall include all work for the City of Jacksonville and its various “using agencies,” which is defined in the Jacksonville Ordinance Code as “a department, division, office, board, agency, commission or other unit of City and independent agency required by law or voluntarily requesting to utilize the services of the [Procurement] Department”; and with any of City’s Independent Authorities”; and on projects undertaken with others that are similar in nature to the size and scope of professional services and/or work required for the project solicitation herein. If the Contractor has not performed work for any of these agencies during the past five (5) years, the response should so clearly state. **(10 points maximum score)**

**ATTACHMENT C**

**List of Events at Hemming Plaza That Must Be Accommodated**

ATTACHMENT D

SERVICES CONTRACT  
BETWEEN  
[THE CITY OF JACKSONVILLE]  
AND  
INSERT CORPORATE NAME OF CONTRACTOR  
FOR  
INSERT SUMMARY OF SERVICES TO BE PERFORMED

THIS CONTRACT, made and entered into this \_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Effective Date"), by and between the CITY OF JACKSONVILLE (the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and \_\_\_\_\_(the "CONTRACTOR"), a \_\_\_\_\_corporation authorized to transact business in Florida and with its principal offices at \_\_\_\_\_.

WHEREAS, the CITY (as the "City") issued a Request for Proposal No. \_\_\_\_\_ (the "RFP") for certain services described in the RFP (the "Services"); and

WHEREAS, based on CONTRACTOR'S response to the RFP dated \_\_\_\_\_, consisting of \_\_\_ pages (the "Response"), the CITY has negotiated and awarded this Contract to CONTRACTOR;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained below, the parties agree as follows:

1. **Performance of Services.** The Services will be performed by CONTRACTOR as specified in the RFP and the Response.

2. **Compensation.** CONTRACTOR will be paid by the CITY for the Services [as follows: \_\_\_\_\_] or [as specified on the Price Sheets attached as Exhibit \_\_\_\_].

3. **Maximum Indebtedness.** As required by Section 106.431, *Ordinance Code*, the CITY's maximum indebtedness, for all products and services under this Contract shall be a fixed monetary amount not-to-exceed \_\_\_\_\_(\$\_\_\_\_\_).

4. **Term.** The initial term of this Contract shall commence on the Effective Date and shall expire on \_\_\_\_\_, unless sooner terminated by either party in accordance with the terms of the RFP. This Contract may be renewed for up to \_\_\_\_\_additional one (1) year periods by (i) the CITY, it its sole discretion, upon written notice to CONTRACTOR at least sixty (60) days prior to end of the then-current term, or (ii) upon the mutual agreement of the parties.

5. **Contract Documents.** This Contract consists of the following documents which are hereby incorporated as if fully set forth herein and which, in case of conflict, shall have priority in the order listed:

This document, as modified by any subsequent signed amendments

Any amendments to the RFP

General Information (Section 1 of the RFP)

General Instructions (Section 2 of the RFP)

General Contract Conditions (Section 3 of the RFP)

Any Purchase Order under the Contract

The Response, provided that any terms in the Response that are prohibited under the RFP shall not be included in this Contract.

6. **Notices.** All notices under this Agreement shall be in writing and shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

As to the CITY:

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

As to the CONTRACTOR:

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

7. **Contract Managers.** Each Party will designate a Contract Manager during the term of this Contract whose responsibility shall be to oversee the Party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, CITY'S Contract Manager is     [Insert Name and Address]    , and the CONTRACTOR'S Contract Manager is     [Insert Name and Address]    . Each Party shall provide prompt written notice to the other Party of any changes to the Party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.

8. **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by the CONTRACTOR. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party or any representative of either party, which is not expressed herein shall be binding. CONTRACTOR may not unilaterally modify the terms of this Contract by affixing additional terms to materials delivered to the CITY (e.g., "shrink wrap" terms accompanying or affixed to a deliverable) or by including such terms on a purchase order or payment document. CONTRACTOR acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

9. **Amendments.** All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

10. **Counterparts.** This Contract, and all amendments thereto, may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

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

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE

By \_\_\_\_\_  
James R. McCain  
Corporation Secretary

By \_\_\_\_\_  
Alvin Brown  
Mayor

Form Approved:

\_\_\_\_\_  
Office of General Counsel

ATTEST:

INSERT NAME OF CONTRACTOR.

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Type/Print Name

\_\_\_\_\_  
Type/Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**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 **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 Sub-Consultant Participation** to submit JSEB Participation on this Bid. You may contact the City's Equal Business Opportunity Office at 904-255-8840 or find the JSEB directory on-line through the Procurement Division website at [www.jseb.coj.net](http://www.jseb.coj.net).

**SCHEDULE OF SUBCONSULTANT PARTICIPATION**

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

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

Bid Number: \_\_\_\_\_

**\*Please list all MBEs/JSEBs first**

Full Company Name	JSEB Classification (African-American, Women, Asian or Hispanic) if applicable	Type of Work to be Performed
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Attach additional list of sub-consultants as needed

The undersigned will enter into a formal Agreement with the JSEB/MBE sub-Consultants 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  
Prime  
Consultant \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

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

**LETTER OF INTENT**  
**TO PERFORM AS A SUB-CONSULTANT**

\_\_\_\_\_  
(Name of JSEB/MBE Sub-consultant)

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

**SUB-CONSULTANT STATUS:**

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

I, the undersigned, understand that the below is representative of my intent to perform the scope of work stated below. I further understand that the amount of work performed 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

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

\_\_\_\_\_  
Signature of JSEB/MBE

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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

# CITY OF JACKSONVILLE



## PROCUREMENT DIVISION

214 N. Hogan Street – 8<sup>th</sup> floor, Jacksonville, Florida 32202  
(904) 255-8800-Ph; (904) 255-8837-Fax; [www.coj.net](http://www.coj.net)

## PROCUREMENT PROTEST PROCEDURES

### 126.106(e) PROTEST PROCEDURES

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

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

(a) These protest procedures are promulgated pursuant to § 126.106(e) of the Jacksonville Ordinance Code (the “Code”), which authorizes the Chief of the Procurement Division (the “Chief”) 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 at 214 N. Hogan Street, 8<sup>th</sup> floor, Jacksonville, Florida 32202 or by electronic transfer via facsimile to (904) 255-8837. 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 Protester, 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 Protester, 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 Protester 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 Protester. 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 1<sup>st</sup> day of October, 2011, 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**



Gregory Pease, Chief  
City of Jacksonville  
214 N. Hogan Street, 8<sup>th</sup> floor  
Jacksonville, Florida 32202  
(904) 255-8800 – Phone  
(904) 255-8837 – Facsimile  
[gpcase@coj.net](mailto:gpcase@coj.net)

# CITY OF JACKSONVILLE



## PROCUREMENT DIVISION

214 N. Hogan Street – 8<sup>th</sup> floor, Jacksonville, Florida 32202  
(904) 255-8800-Ph; (904) 255-8837-Fax; [www.coj.net](http://www.coj.net)

## PROCUREMENT PROTEST PROCEDURES

### 126.106(e) PROTEST PROCEDURES

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

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

(a) These protest procedures are promulgated pursuant to § 126.106(e) of the Jacksonville Ordinance Code (the “Code”), which authorizes the Chief of the Procurement Division (the “Chief”) 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 at 214 N. Hogan Street, 8<sup>th</sup> floor, Jacksonville, Florida 32202 or by electronic transfer via facsimile to (904) 255-8837. 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 Protester, 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 Protester, 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 Protester 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 Protester. 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 1<sup>st</sup> day of October, 2011, 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**



Gregory Pease, Chief  
City of Jacksonville  
214 N. Hogan Street, 8<sup>th</sup> floor  
Jacksonville, Florida 32202  
(904) 255-8800 – Phone  
(904) 255-8837 – Facsimile  
[gpcase@coj.net](mailto:gpcase@coj.net)