

9017-03

**AGREEMENT  
BETWEEN  
THE CITY OF JACKSONVILLE  
AND  
ENTACT, LLC  
FOR  
PARCEL REMEDIATION FOR FOREST STREET SITE – PART 4**

**PROJECT DESCRIPTION: REMEDIATION OF PARCELS WITH  
CONTAMINATION CAUSED BY INCINERATOR ASH  
WITHIN THE FORST STREET SITE – PART 4**

**CITY:** **CITY OF JACKSONVILLE**, a Florida municipal corporation  
Department of Neighborhoods  
Environmental and Compliance Division  
214 N. Hogan Street  
Jacksonville, FL 32202

**DB FIRM:** **ENTACT, LLC**, a Delaware limited liability company  
1010 Executive Court, Suite 280  
Westmont, IL 60559

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**AGREEMENT  
BETWEEN  
THE CITY OF JACKSONVILLE AND ENTACT, LLC  
FOR  
PARCEL REMEDIATION FOR FOREST STREET SITE - PART 4**

**THIS AGREEMENT** is made and entered into this 29 day of \_\_\_\_\_, 2013 (the "Effective Date") by and between the **CITY OF JACKSONVILLE**, a Florida municipal corporation (the "CITY"), and **ENTACT, LLC**, a Delaware limited liability company authorized to do business in Florida with offices located at 1010 Executive Court, Suite 280, Westmont, Illinois 60559, Federal I.D. No 770594061 ("DB Firm") for the remediation of parcels with contamination caused by incinerator ash within the Forest Street Site – Part 4 (the "Project").

**ARTICLE 1  
DB FIRM AND EXTENT OF AGREEMENT**

The DB Firm accepts the relationship of trust and confidence established between it and the City by this Agreement. It covenants with the City to demonstrate high performance in the industry to its best skill and judgment and to cooperate in furthering the interests of the City. It agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way and in the most expeditious and economical manner consistent with the best interests of the City.

**1.1 The DESIGN-BUILD TEAM**

The DB Firm, the Program Technical Director, and the City (together the "Design-Build Team") shall work jointly during design and through final construction and completion of parcel remediation on the Remediation Site (as defined herein) and shall be available thereafter should additional services be required. The specific representatives of the Design-Build Team are identified in **Exhibit A**, attached hereto and incorporated herein. The DB Firm will provide leadership during the design phase with direction from the City.

**1.2 EXTENT OF AGREEMENT**

This Agreement for Parcel Remediation for Forest Street Site – Part 4, City Contract No. \_\_\_\_\_, between the City and the DB Firm supersedes any prior negotiations, representations, or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both City and DB Firm.

**1.3 DEFINITIONS:**

- A.** Project – The Project is the total work to be performed under this Agreement. The Project consists of planning, design, permitting, parcel remediation, and inspection for the Forest Street Site (the "Remediation Site").
- B.** City – The City of Jacksonville, a Florida municipal corporation, acting through its Program Manager or those persons designated by the Program Manager to act on its behalf.
- C.** DB Firm – Entact, LLC, a Delaware limited liability company, the primary and authorized representative of the DB Firm, which includes consultants and subcontractors. See **Exhibit B**. The DB Firm's personnel to be assigned for Design and their duties and responsibilities to this Project and the duration of their assignments are shown on **Exhibit C**. The DB Firm's personnel to be assigned during the Construction and their duties and responsibilities to this Project and the duration of their assignments are shown on **Exhibits D and E**.
- D.** Parcel Remediation – The remediation performed by the DB Firm in Part 4.

- E. Part 4 – The design and construction/remediation of approximately 100 parcels located in the Forest Street Site.
- F. Program Technical Director – The City’s representative to review, approve, and assist in the development of a design criteria package and design guidelines. The representative will review and approve all design documents and review and assist with the remediation of the above Project.
- G. Program Manager – The person designated by the City to provide direct interface with the DB Firm with respect to the City’s responsibilities. See Exhibit A.
- H. Request for Proposal – Request for Proposal Bid No. CP-0040-12, on file with the City’s Procurement Division and incorporated herein by this reference.
- I. Substantial Completion – The term Substantial Completion shall mean that point at which the Project, or designated portion thereof, is at a level of completion in substantial compliance with this Agreement such that the CITY or its designee can enjoy, use or occupy it for its intended purpose. In the event the Project includes more than one phase, the CITY, at its discretion, may set Substantial Completion dates for each phase and may impose provisions for liquidated damages for each phase. The Substantial Completion date for Part 4 is 310 calendar days from the issuance of the written notice from CITY for DB Firm to begin work, as further defined in Paragraph F of Attachment B to the RFP.
- J. Work – Shall be comprised of all of DB Firm’s design, construction, and other services required by the Contract Documents, as defined in Section 17.22 herein, including procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents to complete the Project.

**ARTICLE 2  
DB FIRM'S SERVICES**

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

**2.1 PROJECT INFORMATION REPORTING**

**2.1.1 General**

- A. Commencing immediately after contract award, the DB Firm shall implement and shall utilize throughout the life of this Agreement all subsystems of Project Management Reporting as defined in Subsection 2.1.1.C below.
- B. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and shall provide a sound basis for identifying variances and problems and for making management decisions. They shall be prepared and furnished to the City monthly and shall accompany each pay request.
- C. The report shall be described in terms of the following major subsystems: Narrative Reporting, on a monthly basis; Schedule Control, on a monthly basis; and, Project Accounting.

### **2.1.2 Narrative Reporting Subsystem**

- A. The DB Firm shall prepare written reports as described hereunder. All reports shall be in 8 1/2" x 11" format.
  
- B. The Narrative Reporting Subsystem shall include the following reports:
  - 1. A Monthly Executive Summary providing an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by Permitting Authority.
  - 2. A Monthly Cost Narrative describing the current construction cost estimate status of the Project.
  - 3. A Monthly Scheduling Narrative summarizing the current status of the overall Project schedule. This report shall include an analysis of the various Project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
  - 4. A Monthly Accounting Narrative Report describing the current cost and payment status of the entire Project. This report shall relate current encumbrances and expenditures to the budget allocations.
  - 5. A Monthly Progress Report during the Parcel Remediation summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings, as applicable, such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations, and plans for the succeeding month.
  - 6. A Daily Diary Report during the Parcel Remediation describing events and conditions on the site provided to City on a monthly basis. A visitor's log for recording visits by the Program Technical Director, Consultants, City, Inspectors, and all visitors. This log shall include name and entity represented, phone number, date, and times of arrivals and departures. Daily Reports shall be provided weekly to City.
  - 7. A Monthly Minority Business Enterprise Report during the Parcel Remediation summarizing the participation of certified minority subcontractors/material suppliers for the current month and Project to date. The report shall include the name, address, and dollar amount of each certified MBE participant.
  
- C. The reports outlined in subsection B (1) through (5) above shall be bound with applicable computer reports and submitted monthly and shall be current through the end of the preceding month. Copies shall be transmitted to the CITY and others designated by the Program Manager with the monthly pay requisition. Additional copies of the report outlined in subsection B (1) shall be bound separately and distributed monthly as directed by the Program Technical Director.

- D. The report outlined in subsection B(6) above shall be maintained at the site available to the City. A bound copy of the complete diary shall be submitted to the City at the conclusion of the Project at the City's request and may be requested earlier by the City without waiving any right to obtain this data at Project conclusion.

### 2.1.3 Scheduled Control Subsystem

- A. Master Project Schedule – Upon award of this Agreement, the DB Firm shall submit a Master Project Schedule covering the planning and design approvals, construction, and completion of the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The Master Project Schedule shall be produced and updated monthly throughout the Project.
- B. Within thirty (30) calendar days after the date of the City's issuance of a Notice to Proceed, the DB Firm shall prepare and submit to the City a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the Project, showing the sequence in which the DB Firm proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The City shall determine whether the construction schedule developed and submitted by the DB Firm meets the requirements stated above and such determination shall be binding on the DB Firm. Failure of the DB Firm to develop and submit a construction schedule as aforesaid shall be sufficient grounds for the City to withhold any payment or to seek any other remedy that exists pursuant to the Agreement or Florida law. Following development and submittal of the construction schedule as aforesaid, the DB Firm shall at the end of each calendar month occurring thereafter during the period of time required to finally complete the Project, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the City in duplicate. Failure of the DB Firm to update, revise, and submit the construction schedule as aforesaid shall be sufficient grounds for the City to find the DB Firm in default and find that sufficient cause exists to withhold payment to the DB Firm until a schedule or schedule update acceptable to the City is submitted or to seek any other remedy that exists pursuant to the contract or Florida law.
- C. The DB Firm shall prepare and incorporate into the schedule database at the required intervals the following schedules:
  - 1. Pre-Bid Schedules (Subnetworks) – The DB Firm shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors and shall establish milestones keyed to

the overall master schedule.

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

#### 2.1.4 Project Accounting Subsystem

- A. The operation of this subsystem shall enable the DB Firm to plan effectively and to monitor and control the funds available for the Project, cash flow, costs, change orders, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. This subsystem will be produced and updated monthly and will include the reports described in subsections 2.1.4 B, C, and D which together will serve as a basic accounting tool and an audit trail. These reports will also provide for accounting by building and site element and shall be prepared and maintained pursuant to generally accepted accounting principles.
- B. Costs Status Report presenting the budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total cost to complete the work.
- C. A Payment Status Report showing the value in place (both current and cumulative), the amount invoiced (both current and cumulative), the retained, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request in the form of AIA Schedule of Values or other equivalent form.
- D. A Detailed Status Report showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate, and base commitment figures for each contract. It shall give the change order history, including change order number, description, proposed and approved dates, and proposed and approved dollar amounts. It shall also show all pending or rejected change orders.
- E. A Cash Flow diagram showing the projected accumulation of cash payments against the Project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- F. A Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The job ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.

## **2.2 DESIGN – BUILD SERVICES**

### **2.2.1 Overview of the Remediation Strategy for the Remediation Site**

Individual parcels will be remediated in accordance with the Preliminary Design Drawings (Preliminary Excavation Plans) developed for each parcel. Large tracts of undeveloped wooded areas, if needed, will be cleared of small trees and nuisance vegetation, excavated to the extent practical without damaging the remaining trees, and finished with a layer of soil and ground cover.

### **2.2.2 Description of Services**

This Agreement is for the remediation of parcels with contamination caused by incinerator ash within the Forest Street Site – Part 4.

### **2.2.3 Remedial Design Requirements**

The DB Firm will be required to complete the designs presented in the Preliminary Design Drawings. The extent of design services is described in more detail below.

#### **Parcel Remediation**

The DB Firm shall review the Preliminary Design Drawings for each parcel and submit in writing to the City any proposed modifications and/or concerns (Bid Item 1). The DB Firm will have six weeks to complete its review and issue the Pre-Construction Submittals described in the Specifications Project Management Plan (PMP), DB Firm's Quality Assurance Project Plan (QAPP), Health and Safety Plan (HASP), Dust Monitoring and Control Plan, Customer Satisfaction Plan, and Maintenance of Traffic Plan. Upon completion of the review and successful adjudication of proposed modifications and the approval of Pre-construction Submittals, the DB Firm will be issued a notice to proceed with the Project.

Before beginning work on each individual parcel, the DB Firm will be required to perform a Pre-construction Survey with each individual property City, the City, and the City's representative(s), and prepare the Site Property Plan (Bid Item 2). The Site Property Plan shall be signed by the property City of record, the DB Firm, and the City's representative before any work begins at the property. The Site Property Plan will be a refinement of the Preliminary Design Drawings and shall show the location of all pertinent features, including but not limited to trees, fences, shrubs, irrigation system, and utilities, located within the property, the remediation associated with each feature, and the costs of the same. The Site Property Plan shall also include the pre-construction elevation survey data.

Following the completion of each parcel remediation in accordance with the approved Site Property Plan, the DB Firm shall prepare a parcel completion package ("Final Construction Completion Report") for that parcel which includes the As-built Drawing. The Site Property Plans shall be converted to parcel As-built Drawings. (Bid Item 3). Payment for the remediation of each parcel will be made upon the DB Firm's submittal and approval by the City of each parcel remediation completion report.

### **2.2.4 Parcel Remediation Construction Requirements**

The DB Firm will be required to submit pricing for the parcel remediation for the Forest Street Site. The City will then assign initial remediation areas within the Forest Street Site for remedial construction, with the option of assigning additional remediation areas in the future. Part 4 of the Project will be assigned based on 1) risk to children, 2) residential zoning/use or public zoning/use, and 3) availability of access agreements, and shall represent 100 remediation parcels. The City will strive to assign Part 4 remediation areas with parcels in close proximity. Upon completion of remediation of the Part 4 remediation parcels, the City will evaluate the DB



Firm's performance. If the DB Firm's performance is Acceptable Performance as defined in Article 14.3, it may be assigned additional remediation areas within the Forest Street Site. If the DB Firm performs satisfactorily, at the City's option it may be assigned additional remediation areas within the Forest Street Site. These additional remediation areas are included in Part 2 of the Project. If the DB Firm's performance is Unacceptable Performance as defined in Article 14.3, it will not be assigned additional remediation and this Agreement will terminate.

The objective of the parcel remediation once construction begins at a parcel is to complete the parcel remediation (defined by placement of sod) as rapidly as possible to minimize disruption to the parcel areas located within the Remediation Site. This objective is of particular importance when a resident(s) is (are) temporarily relocated because there are additional cost impacts to the City. Failure to complete the physical remediation of a parcel so that temporary relocation exceeds seven calendar days will result in liquidated damages set at the cost of relocation expenses, which include but are not limited to lodging, meals, and transportation. The DB Firm must assume the seven days includes the day prior to the start of physical remediation of a parcel. The time may be extended beyond seven days on a case by case basis with prior City approval at City's sole discretion.

#### **2.2.5 Scoping Documents**

The following Scoping Documents, which were part of the Request for Proposal (RFP), are included by reference as part of this Agreement:

- A. Specifications for Parcel Remediation for Forest Street Site – Part 4 (Attachment L to the RFP)
- B. Preliminary Design Drawings for the Remediation Site (Attachment M to the RFP) (provided electronically).

#### **2.2.6 Bonds**

Within ten (10) days of receipt of the Contract Documents, the DB Firm shall provide to the City a Payment Bond and Performance Bond in an amount equal to **FOUR MILLION FIVE HUNDRED THIRTY-TWO THOUSAND TWO HUNDRED THIRTY-FOUR AND 00/100 DOLLARS (\$4,532,234.00)**, which represents the cost to complete the Parcel Remediation for Part 1, made out to the City in forms and formats approved and provided by the City as security for the faithful performance of the Work under the Agreement. The City will send the approved bond forms to the DB Firm for execution along with the Agreement; however, in no case shall the date on the bond forms be prior to the date on the executed Agreement. A fully executed Payment Bond and Performance Bond must be recorded with the Clerk of Duval County Court and delivered to the City before Work commences. The Payment Bond shall include without limitation all materials, machinery, equipment, and supplies purchased directly by City and/or Construction Manager and/or its subcontractors.

To be acceptable to the City as Surety for Performance Bonds and Payment Bonds, a Surety DB Firm shall comply with the following provisions:

- A. The Surety DB Firm shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Financial Services, authorizing it to write surety bonds in the State of Florida.
- B. The Surety DB Firm shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

- C. The Surety DB Firm shall be in full compliance with the provisions of the Florida Insurance Code.
- D. The Surety DB Firm shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this Agreement.
- E. If the Agreement Award Amount exceeds \$500,000, the Surety DB Firm shall also comply with the following provisions:
  - 1. The Surety DB Firm shall have at least the following minimum ratings in the latest issue of A.M. Best's Key Rating Guide.

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

- 2. The Surety DB Firm shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:
  - a. Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Financial Services to conduct business in this state have been met.
  - b. In the case of the Surety Insurance DB Firm, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety, and for the protection of the surety shall be deducted.

**2.2.7 Quality Control**

The DB Firm shall develop and maintain a program acceptable to the City to assure quality control of the construction. The DB Firm shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and it shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the DB Firm and City over acceptability of work and conformance with the requirements of the specifications and plans, the City shall be the final judge of performance and acceptability.

**2.2.8 Subcontractor Interfacing**

The DB Firm shall be the single point of interface with all subcontractors for the City and all of its agents and representatives. It shall negotiate all change orders, field orders, and requests for proposals with all affected subcontractors and shall review the costs of those proposals and advise the City of their validity and reasonableness,

acting in the City's best interest prior to requesting approval of each change order from the City. Before any work is begun on any change order, a written authorization and approval from the City must be issued. However, when health and safety are threatened, the DB Firm shall act immediately to remove the threat to health and safety. It shall also carefully review all shop drawings and then issue the shop drawings to the affected subcontractor for fabrication or revision. The DB Firm shall maintain a suspense control system to promote expeditious handling. It shall make interpretations of the drawings or specifications requested of it by the subcontractors and shall maintain a suspense control system to promote timely response. It shall advise the Program Manager when timely response is not occurring on any of the above.

#### **2.2.9 Permits**

The DB firm shall secure all necessary permits and all necessary utility connection permits, the cost of which will be considered a direct cost item.

#### **2.2.10 Job Site Requirements**

The DB Firm shall provide for each of the following activities as a part of its fee:

- A. Maintain a log of daily activities, including but not limited to manpower records, weather, delays, and major decisions.
- B. Maintain a roster of companies on the Project with names and telephone numbers of key personnel.
- C. Establish and enforce job rules governing parking, clean-up, use of facilities, and worker discipline.
- D. Provide labor relations management for a harmonious, productive Project.
- E. Provide a safety program for the Project to meet OSHA requirements and monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with the best acceptable practice.
- F. Provide a quality control program as developed under Article 2.2.8 above.
- G. Provide miscellaneous office supplies that support the construction efforts and which are consumed by its own forces.
- H. Travel to and from its home office to the Project site as the Project requires.

#### **2.2.11 Job Site Administration**

The DB Firm shall provide, as part of its job site fee, job site administrative functions during construction to assure proper documentation, including but not limited to such things as the following:

- A. Meetings – Hold weekly progress and coordination meetings to provide for an easy flowing Project. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing, labor allocation, etc. Review and coordinate each subcontractor's work. Monitor and implement revisions to the Master Project Schedule. Monitor and promote safety requirements. In addition, regular Project status meetings will be held

between the City and DB Firm either biweekly or monthly, as designated by the Program Manager.

Use the job site meeting as a tool to preplan work, enforce schedules, establish procedures and responsibilities, and identify authority for all to clearly understand.

Identify party or parties responsible for follow up on any problems, delay items, or questions and record course for solution. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying event known to those present for appropriate attention and resolution.

- B. Shop Drawing Submittals/Approvals – Provide staff to check shop drawings and closely monitor the submittal and approval process.
- C. Material and Equipment Expediting – Provide staff to closely monitor material and equipment deliveries, critically important checking, and follow-up procedures on supplier commitments of all subcontractors.
- D. Payments to Subcontractors – Develop and implement a procedure for review, processing, and payment of applications by subcontractors for progress and final payments. All financial documents and records shall be maintained pursuant to reasonable accounting practices designed to afford the City the ability to have the documents audited with the minimum of cost and disruption.
- E. Document Interpretation – Refer all questions for interpretation of the technical documents to the DB Firm and all others to the City.
- F. Reports and Project Site Documents – Record the progress of the Project. Submit written progress reports to the City, including information on the subcontractor’s work and the percentage of completion. Keep a daily log available to the City and the Permitting Authority inspectors for review and copying.
- G. Subcontractor’s Progress – Prepare periodic punch lists for subcontractor’s work, including unsatisfactory or incomplete items and schedules for their completion.

#### **2.2.12 Substantial Completion**

Substantial Completion shall be established by way of the following steps:

- A. DB Firm shall notify the City that the Project is ready for Substantial Completion inspections.
- B. The City shall conduct the Substantial Completion inspections.
- C. The City shall consolidate a punch list (City’s punch list)
- D. The City shall issue a Certificate of Substantial Completion with the City’s punch list attached.

### **2.2.13 Final Completion**

The DB Firm will monitor the Subcontractor's performance on the completion of the Project and provide notice to the City that the work is ready for final inspection. The DB Firm will secure and transmit to the City all required guarantees, affidavits, warranties, releases, bonds, waivers, manuals, record drawings, and maintenance books including the Final Completion form.

### **2.2.14 Record Drawings**

The DB Firm shall monitor the progress of its own forces or its Subcontractors on marked up field prints and at Project completion will prepare the final record drawings.

### **2.2.15 Administrative Records**

The DB Firm will maintain on a current basis at the job site electronically or at the Program Manager's Office unless agreed to otherwise by the Program Manager, all Project files and records. The Project records shall be available at all times to the City for reference, review, or copying.

### **2.2.16 Warranty**

Where any work is performed by the DB Firm's own forces or by subcontractors under contract with the DB Firm, the DB Firm shall warrant that all materials and equipment included in such work will be new except where indicated otherwise, and that such work will be of good quality, free from improper workmanship and defective materials and in conformance with the Preliminary Design Drawings and Technical Specifications and any successful adjudication of proposed modifications thereto. With respect to the same work, the DB Firm further agrees to correct all work found by the City to be defective in material and workmanship or not in conformance with the Drawings and Specifications for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The DB Firm shall collect and deliver to the City any specific written warranties given by others as required by this Agreement. Also, the DB Firm shall conduct, jointly with the City, a warranty inspection within a 12-month period after the date of Substantial Completion.

### **2.2.17 Multi-Year Funding**

If Multi-Year Funding is specified for this Project, the DB Firm shall not execute any work on the Project that exceeds the current year's appropriation and the City will not be responsible for any amounts that exceed this amount (being the lesser of the contract amount or annual appropriated budget) should additional funding not be approved.

## **2.3 MISCELLANEOUS**

### **2.3.1 RESPONSIBILITIES FOR ACTS AND OMISSIONS**

The DB Firm shall be responsible to the City for the acts and omissions of its employees and agents, its subcontractors and their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the DB Firm.

**2.3.2 SUBCONTRACTS**

Upon request, the DB Firm shall provide to City a copy of each signed subcontract, including the general supplementary conditions.

Each subcontract shall require that any claims by subcontractor for delay or additional costs must be submitted to the DB Firm within seven (7) calendar days in the format in which the DB Firm must submit such claims to the City, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims. Any such claim must include a time impact analysis as a justification for any equitable time or price adjustment and a subcontractor's refusal to provide such a timely analysis shall be considered a failure of a condition precedent to advance the claim in any future litigation.

**ARTICLE 3 CITY'S  
RESPONSIBILITIES**

**3.1 CITY'S Information**

The City shall provide information that it possesses regarding its requirements for the Project.

**3.2 CITY'S Representative**

The City shall designate a representative who shall be fully acquainted with the Project and shall define the lines of City authority to approve Project Budgets and changes in the Project. He shall render decisions promptly and furnish information expeditiously. This representative is referred to herein as the City's Program Manager.

**3.3 SITE SURVEY AND REPORTS**

The City shall provide all available surveys describing the physical characteristics, soil reports, and subsurface investigations relating to the Project. The City does not warrant the completeness or the current accuracy of any reports.

**3.4 APPROVALS AND EASEMENTS**

The City shall pay for necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

**3.5 LEGAL SERVICES**

The City shall furnish such legal services as may be necessary for obtaining any approvals or easements and such auditing services as City may require.

**3.6 DRAWINGS AND SPECIFICATIONS**

The City will review and act upon the DB Firm's Site Property Plan, which is a refinement of the Preliminary Design Drawing in thirty (30) days' time so as not to delay the progress of the Project.

**3.7 COST OF SURVEYS & REPORTS**

The services, information, surveys, and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the City's expense.

**3.8 PROJECT FAULT DEFECTS**

If the City becomes aware of any fault or defect in the Project or nonconformance with the Preliminary Design Drawings and Technical Specifications, it shall give prompt written notice thereof to the DB Firm.

**3.9 FUNDING**

The City shall furnish in accordance with the established schedule, reasonable evidence satisfactory to the DB Firm that sufficient funds will be available and committed for the cost of each part of the Project. The DB Firm shall not begin any work unless authorized in writing by the City.

**3.10 LINES OF COMMUNICATION**

The City shall communicate with the subcontractors or suppliers only through the DB Firm while such method of communication is effective in maintaining Project schedules and quality.

**3.11 LINES OF AUTHORITY**

The City shall establish and maintain lines of authority for its personnel and shall provide this definition to the DB Firm and all other affected parties.

**3.12 MULTI-YEAR FUNDING**

If Multi-Year Funding is specified for this project, the City shall advise the DB Firm of the proposed funding amounts per year and the amount currently appropriated. The City shall advise the DB Firm upon any changes in the funding appropriations changes in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses, or additional compensation.

**ARTICLES 4-7  
NOT USED**

**ARTICLE 8  
CONTRACT PRICE**

**8.1 MAXIMUM INDEBTEDNESS**

The Maximum Indebtedness of the City for all fees, reimbursable items or other costs for Services provided by the DB Firm pursuant to this Agreement shall not exceed the sum of **FOUR MILLION FIVE HUNDRED THIRTY-TWO THOUSAND TWO HUNDRED THIRTY-FOUR AND 00/100 DOLLARS (\$4,532,234.00)** (\$3,497,241.00 for the total base bid; \$69,944.00 for incentives bid items ## 31 and 32; \$928,049 for Add Alternate bid item #36; and, \$37,000.00 for Add Alternate bid item # 37) for the term of this Agreement.

Should the Maximum Indebtedness decrease as a result of the failure of DB Firm to qualify for incentive payments or should the Parties fail to utilize the add alternates, the Agreement and the Maximum Indebtedness will be amended in writing to reflect the same.

**8.2** In consideration of the performance of the Agreement, the City agrees to pay the DB Firm in accordance with the Pricing Proposal Schedule included in Exhibit F of this Agreement.

A. Costs and Expenses included in fee – The following are included in the Pricing Proposal for services performed during the Parcel Remediation:

1. Salaries or other compensation of the DB Firm's employees at its principal office and branch offices.
2. General operating expenses related to the Project of the DB Firm's principal and branch offices.
3. The costs of all data processing staff. Salaries or other compensation of the DB Firm's employees at the job site. The DB Firm's personnel to be assigned to the Remediation Site during the Construction under the job site management and supervision fee, their duties and responsibilities and the duration of their assignment are shown on **Exhibit D** and **Exhibit E**.
4. General operating expenses incurred in the management and supervision of the Project, except as expressly included in other articles.
5. Job office supplies, including but not limited to paper, pencils, paper clips, file folders, staples, and diskettes (photo copy paper not included), and janitorial supplies.
6. Relocation expenses for DB Firm's personnel.
7. Technical services.

**ARTICLE 9  
NOT USED**

**ARTICLE 10  
CHANGES IN THE PROJECT**

**10.1 CHANGE ORDERS**

The City, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions, or other revisions. All changes in the Project shall be authorized by Change Order signed by the City before the change is implemented.

**10.1.1 Change Order Definition**

A Change Order is a written order on an approved change order form under the authorization of the City of Jacksonville to the DB Firm signed by the City issued after the execution of this Agreement, authorizing a Change in the Project or the DB FIRM'S fee. Execution of a Change Order by the DB Firm serves as a waiver and an accord and satisfaction of all issues related to the work identified in the Change Order unless an exception is stated on the Change Order by the DB Firm and such exception is agreed to by the City.

**10.1.2 Acceptable Ways to Determine Increases or Decreases in the Price on Change Orders**

The increase or decrease in the Price resulting from a change in the Project shall be determined in one or more of the following ways

- A. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the City;



- B. by unit prices stated in the Agreement or subsequently agreed upon, if less;  
or
- C. by the method provided in Subparagraph 10.1.3.

#### **10.1.3 Itemized Accounting on Change Orders**

If none of the methods set forth in Clause 10.1.2 is agreed upon, the DB Firm, provided it receives a written order signed by the City, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. However, in the event a Change Order is issued under these conditions, the City will establish an estimated cost of the work and the DB Firm shall not perform any work whose cost exceeds that estimate without prior written approval by the City. In such case, and also under Article 10.1.2 above, the DB Firm shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data organized and maintained consistent with reasonable generally accepted accounting principles and practices. The amount of decrease in the price to be allowed by the DB Firm to the City for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

#### **10.1.4 Adjustments in Unit Prices Due to Inequitable Quantity Changes**

If unit prices are stated in the Agreement or subsequently agreed upon and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the City or the DB Firm, the applicable unit prices and price shall be equitably adjusted.

#### **10.1.5 Cost Escalation Clause**

For multi-year projects and at the discretion of the City, and at the written request of the DB Firm, the costs for transportation to the Trail Ridge Landfill and clean backfill may be adjusted on an annual basis. The effective date will be the date of notice to proceed. The base unit cost shall be adjusted in accordance with the percent changes of the special index described as follows. The basis shall be the Producer Price Index (PPI) for number 2 diesel fuel, commodity code 057303, not seasonally adjusted, as it appears in the periodical **PPI Detailed Report** as published by the U.S. Department of Labor, Bureau of Labor Statistics. This index shall be referred to as the fuels index. The escalation factor will be calculated as the fuels index for the subject year, divided by the base year fuels index. No change order will be necessary.

#### **10.1.6 Concealed Conditions**

Should concealed conditions encountered in the performance of the work below the surface of the ground or should concealed or unknown conditions at a parcel be at variance with the conditions indicated by the Preliminary Design Drawings and Technical Specifications or City furnished information or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered in work of the character provided for in this Agreement be encountered, the Total Price and the Substantial Completion Date shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.

**10.2 CLAIMS FOR ADDITIONAL COST OR TIME**

All claims for additional cost or time shall be made by request for a change order submitted as provided in Article 16. If there is any time delay or disruption during the Project, the Substantial Completion Date shall be extended by Change Order. The DB Firm must provide a time impact analysis justifying any request for equitable time extension.

Only delays or disruptions which are determined to extend the critical path for the schedule or constructing the Project will result in a time extension. Neither the City nor the DB Firm shall be considered to own the schedule float time.

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

**10.3 MINOR CHANGES IN THE PROJECT**

The Program Manager will have authority to order minor changes in the Project not involving an adjustment in the Price and not inconsistent with the intent of the Preliminary Design Drawings and Technical Specifications found in Article 2.2.5. Such changes shall be effected by written order. Documentation of changes shall be determined by the DESIGN-BUILD TEAM and included in the Final Completion Report. Changes shall be approved by the Program Manager prior to implementation.

**10.4 EMERGENCIES**

In any emergency affecting the safety of persons or property, the DB Firm shall act at its discretion to prevent threatened damage, injury, or loss. Any increase in the Price or extension of time claimed by the DB Firm on account of emergency work shall be determined as provided in Article 10.

**ARTICLE 11  
DISCOUNTS AND PENALTIES**

**11.1 DISCOUNTS AND PENALTIES**

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

**ARTICLE 12  
PAYMENTS TO THE DB FIRM**

**12.1 MONTHLY STATEMENTS**

The DB Firm shall submit to the City a sworn statement along with the cost reports required under Article 2.1.4 showing in detail all monies paid out, costs accumulated, or costs incurred on account of the Costs of the Project during the previous period. This data shall be attached to the Partial Pay Request form. Ten percent (10%) retainage shall be held on all payments until the Project is fifty percent (50%) complete, except when approved by the City certain suppliers and subcontractors may be paid the entire amount due when such payment is

generally the practice of the industry. At fifty percent (50%) completion of the Project, the retainage shall be reduced to five percent (5%). Retainage shall not be withheld on Design Services which are as defined as Item Nos. 1, 2, and 3 in the Pricing Proposal. Fifty percent completion means the point in the Project at which half of the parcels on the Remediation Site have been completely remediated or the point at which City has expended 50% of the total cost of remediation services purchased as identified in the Agreement, together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the construction, whichever occurs first. After fifty percent completion of the Project, the DB Firm may present a payment request to the City for up to half of the retainage held by the City.

## **12.2 FINAL PAYMENT**

Final payment constituting the unpaid balance of the Pricing Proposal shall be due and payable after the completion of the construction of all of the parcels in the Project, provided that the Project be then finally completed, that the DB Firm has verified by signature that it has completed all items specified and that this Agreement has been finally performed. However, if there should remain work to be completed, the DB Firm and the City shall list those items prior to receiving final payment and the City may retain a sum equal to one-hundred and fifty percent (150%) of the estimated cost of completing any unfinished work and portion of the DB Firm's retainage, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, City shall pay to DB Firm monthly the amount retained for each incomplete item after each of said items is completed.

## **12.3 PAYMENTS TO SUBCONTRACTORS**

The DB Firm shall promptly, within 10 days after receipt of payment from the City, pay all the amount due subcontractors less a retainage of ten percent (10%) until the Project is fifty percent (50%) complete, and based on DB Firm's evaluation of the subcontractor's acceptable performance, the City may approve a reduction in retainage from ten percent (10%) to five percent (5%) thereafter. If there should remain items to be completed, the DB Firm and City shall list those items required for completion and the DB Firm shall require the retainage of a sum equal to one-hundred and fifty percent (150%) of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, the DB Firm shall pay to the subcontractors, monthly, the amount retained for each incomplete item after each of said items is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills, and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted, and instruction for the City's operating and maintenance personnel is complete. Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the City.

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

## **13.1 INDEMNITY - DESIGN SERVICES**

**13.1.1** The DB Firm and without limitation its officers, directors, employees, members, and partners, (individually or collectively the "Indemnifying Parties") shall indemnify and hold harmless the City, including without limitation its officers, directors, members, employees, successors and assigns (the "Indemnified Parties") and will reimburse the Indemnified Parties from and against:

- A. General tort liability for any and all damages, liabilities, losses, and costs, including but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful misconduct of the Indemnifying Parties and other persons employed or utilized by the Indemnifying Parties in the performance of this Agreement or the work or services performed hereunder. This indemnification by the Indemnifying Parties shall extend for any claims arising in whole or in part from a breach of the Accuracy of Work provisions of this Agreement.
- B. Environmental liability for any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs of cleanup, containment, or other remediation, and all costs for investigation and defense thereof, including, but not limited to, court costs, reasonable expert witness fees, and attorney's fees) arising from or in connection with (1) the Indemnifying Parties' actions or activities that result in a violation of any environmental law, ordinance, rule, or regulation or that leads to an environmental claim or citation or to damages due to the Indemnifying Parties' activities, (2) any environmental, health, and safety liabilities arising out of or relating to the operation or other activities performed in connection with this Agreement by the Indemnifying Parties at any time on or subsequent to the Effective Date, or (3) any bodily injury (including illness, disability, and death, regardless of when any such bodily injury occurred, was incurred, or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction, and deprivation of the use of real property), or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Indemnifying Parties. The City will be entitled to control any remedial action or any proceeding relating to an environmental claim; and
- C. Intellectual property liability for any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees, and attorney's fees), arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services constitutes an infringement of any copyright, patent, trade secret, or any other intellectual property right, and will pay all costs (including, but not limited to, attorney's fees and court costs), damages, charges, and expenses charged to the Indemnified Parties by reason thereof. If in any suit or proceeding the Services or any product generated by the Services is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall immediately make every reasonable effort to secure for the City a license authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the City, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to the City so that the Service or product is non-infringing; and
- D. Liability for violation of laws, ordinances, etc. for any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and expenses (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees, and attorney fees) arising from, allegedly arising from, or based upon the violation of any federal, state, or municipal laws, statutes, ordinances, resolutions, rules, or regulations by the Indemnifying Parties or those under their control; and
- E. Breach of representations and warranties liabilities for any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities, and

expenses (including all costs for investigation and defense thereof, including but not limited to court costs, reasonable expert witness fees, and attorney's fees) which may be incurred by, charged to, or recovered from any of the foregoing arising directly or indirectly out of (1) any breach of any representation or warranty made by any of the Indemnifying Parties in connection with this Agreement or in any certificate, document, writing, or other instrument delivered by any of the Indemnifying Parties pursuant to this Agreement or (2) any breach of any covenant or obligation of any of the Indemnifying Parties set forth in this Agreement or any other certificate, document, writing, or other instrument delivered by any of the Indemnifying Parties pursuant to this Agreement.

- 13.1.2.** All indemnification provisions contained in this Section 13.1 of this Agreement are separate and apart from, and are in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This Section 13.1 of this Agreement relating to Indemnification shall survive the term of this Agreement and any holdover and/or Agreement extensions thereto, whether such term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

## **13.2 INDEMNITY - CONSTRUCTION SERVICES**

- 13.2.1.** The DB Firm, its employees, agents, and subcontractors shall indemnify and hold harmless the City and its employees against and from all liabilities, damages, losses, costs, and expenses of whatsoever kind or nature, including but not limited to reasonable attorney's fees, reasonable expert witness fees, and court costs, (all of which are collectively referred to as "Damages") to the extent such Damages are caused by the negligence, recklessness, or intentional wrongful conduct of the DB Firm and its subcontractors in the performance of this Agreement. Without limiting the foregoing, the above indemnification provision extends to Environmental Impact Claims.

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

- 13.2.2.** In any and all claims against the City and its employees or officers by any employee of the DB Firm, the indemnification obligation under Section 13.2.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the DB Firm under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- 13.2.3.** The obligation of the DB Firm under Section 13.2.1 will not extend to any claim, damage, loss, or expense arising out of a defect in maps, drawings, opinions, reports, surveys, change orders, designs, or specifications prepared or furnished by the City or its agents, or arising out of the giving by the City and its agents of erroneous directions or instructions required to be given to the DB Firm hereunder, or the failure of the City and its agents to give directions or instructions required to be given to the DB Firm hereunder, provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.
- 13.2.4.** For ten dollars (\$10.00) acknowledged to be included and paid for in the contract price and other good and valuable consideration, the DB Firm agrees to indemnify

and hold harmless the City or its agents and their employees in accordance with the provisions of this section.

**13.3 DB FIRM'S INSURANCE – DESIGN SERVICES**

13.3.1. Without limiting its liability under this Agreement, the DB Firm shall procure and maintain during the life of this Agreement insurance of the types and in the minimum amounts stated below:

SCHEDULE	LIMITS
<b><u>Workers' Compensation</u></b>	
Florida Statutory Coverage & Employer's Liability (including appropriate federal acts-USL&H and Jones Act)	\$100,000 Each Accident Policy Limit \$100,000 Employee/Disease \$500,000 Disease Each
<b><u>Commercial General Liability</u></b>	
Premises-Operations Blanket X, C, U Hazards Products/Completed Operations Contractual Liability Independent Contractors	\$1,000,000 Per Occurrence \$2,000,000 - General Aggregate Limit
The City of Jacksonville shall be named as an additional insured under all of the above Commercial General Liability coverage.	
<b><u>Professional Liability</u></b> \$1,000,000	
Professional Liability Coverage will be provided on an occurrence Form or a Claims Made Form with a retroactive date equal to at least the first date of this Agreement and with a three year reporting option beyond the annual expiration date of the policy	
<b><u>Auto Liability</u></b>	
All Autos-owned, non-owned, or hired	\$1,000,000 Combined Single Limit

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

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

13.3.4. To the extent any of the above coverages conflict with the RFP, the RFP insurance requirements shall control.

#### 13.4 DB FIRM'S INSURANCE – CONSTRUCTION SERVICES

- 13.4.1 **GENERAL:** The amounts and types of insurance required should be reasonably commensurate with the hazards and magnitude of the undertaking but in no event of lesser amount nor more restrictive than the limits of liability and schedule of hazards below described. Insurance requirements should be tailored to the type of construction or operations contemplated.
- 13.4.2 Without limiting its liability under the Agreement, the DB Firm shall procure and maintain at its expense during the life of this Contract insurance of the types and in the minimum amounts stated below
- 13.4.3 Without limiting its liability under the Agreement, the DB Firm shall procure and maintain at its expense during the life of this Agreement, and for three (3) years following Project completion, Project specific Contractors Pollution Liability in the amount of \$5,000,000 per occurrence and \$5,000,000 aggregate (project specific), which provides coverage for DB Firm, City, and subcontractors of any tier with coverage for:
- A. Bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death;
  - B. Property damage, including physical injury to or destruction of tangible property, including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
  - C. Defense, including costs, charges, and expenses incurred in the investigation, adjustment, or defense of claims for such compensatory damages;
  - D. Transportation coverage (if covered operations include transportation of materials)
  - E. Non Owned Disposal Coverage (if covered operations include removal and disposal of materials)
  - F. Products/Completed Operations for Pollution arising out of losses caused by pollution conditions that arise from the operations of the DB Firm described under the scope of services of this Agreement, including the transportation and disposal of related materials and waste.

DB Firm agrees to name City as an Additional Named Insured and to furnish insurance certificates showing the DB Firm's compliance with this Article. DB Firm agrees to provide City with certified copy of Contractor's Pollution Policy within 60 days of effective date. DB Firm also agrees to notify City thirty days in advance of any cancellation or change to insurance coverages shown on the certificate.

SCHEDULE	LIMITS
<b><u>Commercial General Liability Occurrence Basis Only</u></b>	
Premises-Operations Blanket X, C, U Hazards Products/Completed Operations Contractual Liability Independent Contractors Watercraft, if applicable	\$2,000,000 Aggregate \$1,000,000 Per Occurrence
The City of Jacksonville shall be named as an additional insured under all of the above Commercial General Liability coverage.	
<b><u>Auto Liability</u></b>	
All Autos-owned, non-owned, or hired	\$1,000,000 Combined Single Limit
<b><u>Workers' Compensation</u></b>	
Florida Statutory Coverage & Employer's Liability (Including appropriate Federal Acts- USL&H and Jones Act)	\$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Each Employee/Disease

The DB Firm and its subcontractors shall procure and maintain during the life of the subcontract, the insurance of the types and minimum amounts stated above. If subcontractor is not required to carry Workers' Compensation coverage as defined under Chapter 440, Florida Statutes, the above requirement may be waived. DB Firm is responsible for determining applicability of Chapter 440, Florida Statutes. DB Firm is responsible for worker's compensation benefits payable to an injured employee as defined by Chapter 440, Florida Statutes. Written confirmation verifying exemption will be provided on DB Firm's letterhead signed by an officer or authorized representative.

- 13.4.4 Said insurance described in 13.4.2 and 13.4.3 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 work on the Project, Certificates of Insurance approved by the City's Division of Risk Management evidencing the maintenance of said insurance shall be furnished to the City.
- 13.4.5 Said insurance shall be written by a company or companies approved to do business in the State of Florida and acceptable to the City's Division of Risk Management. Before commencing any work hereunder, certificates evidencing the maintenance of said insurance shall be furnished to the City and its agents.
- 13.4.6 The insurance shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until 30 days after receipt of written notice to the City. Cancellation or non-renewal of any insurance policy shall in no way limit the DB Firm's liabilities hereunder.
- 13.4.7 The DB Firm shall present a letter (or other written statement) from its Insurance Agent affirming:
- (A) that the Agent has personally reviewed the insurance requirements of the Contract Documents, and
  - (B) that the Agent is able (having proper market) to provide the coverages and limits of liability required on behalf of the DB Firm.
- 13.4.8 In the event that any part of the work to be performed hereunder shall require the DB Firm or its subcontractors to enter, cross, or work upon or beneath the property,



tracks, or right-of-way of a railroad or railroads, the DB Firm shall, before commencing any such work and at its expense, procure and carry liability or protective insurance coverage in such form and amounts as each railroad shall require. City shall identify the railroads and rights of way affected.

- 13.4.9** The original of such policy shall be delivered to the railroad involved, with copies to the City and its agents. The DB Firm shall not be permitted to enter upon or perform any work on the railroad's property until such insurance has been furnished to the satisfaction of the railroad. The insurance herein specified is in addition to any other insurance which may be required by the City and shall be kept in effect at all times while work is being performed on or about the property, tracks, or right-of-way of the railroad.
- 13.4.10** Depending upon the nature of any aspect of this Project and its accompanying exposures and liabilities, the City may, at its sole option, require additional insurance coverages in amounts responsive to those liabilities which may or may not require that the City and other authorized representatives also be named as an additional insured.
- 13.4.11** Neither approval of nor failure to disapprove insurance furnished by the DB Firm shall relieve the DB Firm from the responsibility to provide insurance as required by this Agreement. Anything to the contrary notwithstanding, the liabilities of the DB Firm under this Agreement shall survive and not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverage.
- 13.4.12** To the extent any of the above coverages conflict with the RFP, the RFP insurance requirements shall control.

## **13.5 WAIVER OF SUBROGATION**

### **13.5.1 Damages Caused by Perils Covered by Insurance**

The City and the DB Firm waive all rights against each other for damages caused by perils covered by insurance provided under Sections 13.3 and 13.4 to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the City and DB Firm as trustees. The DB Firm shall require similar waivers from all subcontractors and their sub subcontractors.

### **13.5.2 Loss of or Damage to Equipment Covered by Insurance**

The City and DB Firm waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The DB Firm shall require similar waivers from all subcontractors and their sub subcontractors.

### **13.5.3 Property and Consequential Loss Policies**

The City waives subrogation against the DB Firm on all property and consequential loss policies carried by the City on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

### **13.5.4 Endorsement of Policies**

If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage where there is a waiver of subrogation, the City of such policies will cause them to be so endorsed, failure to obtain proper endorsement nullifies the waiver of subrogation.

### **13.5.5 The City**

The City shall be an additional insured on all policies of insurance, without waiving any indemnity or limitation under the law.

## **ARTICLE 14 TERM OF AGREEMENT, TERMINATION OF THE AGREEMENT AND CITY'S RIGHT TO PERFORM DB FIRM'S OBLIGATION**

### **14.1 TERM OF AGREEMENT**

The Agreement shall be in force from the Effective Date until Completion of remediation work on all of the parcels in the Remediation Site that City determines, in its sole discretion, are required to be remediated, acceptance by City of the work performed, and final payment, including resolution of all disputes, claims, or suits, if any. Certain provisions of this Agreement shall extend past termination, including without limitation warranty provisions and insurance and indemnification obligations of DB Firm.

### **14.2 TERMINATION BY THE DB FIRM**

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the DB Firm, or if the Project should be stopped for a period of thirty (30) days by the DB Firm for the City's failure to make payments thereon, then the DB Firm may, upon seven (7) days' written notice to the City, request payment for all work executed, the DB Firm's fees earned to date, and payment for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit on work performed and terminal expenses incurred by the DB Firm, excluding legal fees.

### **14.3 TERMINATION DUE TO LACK OF FUNDING**

If Multi-Year Funding is specified for this Project and should additional funding NOT be appropriated, the City shall pay the DB Firm for all work performed up to the approved appropriation for the work completed. The DB Firm is not entitled and shall not be paid additional compensation for termination due to additional funding's not being approved.

### **14.4 TERMINATION BASED ON UNACCEPTABLE PERFORMANCE EVALUATION**

#### **14.4.1 USE OF DB FIRM PERFORMANCE EVALUATION SCORECARDS**

The City may evaluate the DB Firm's performance using the evaluation criteria shown on the vendor scorecard included in this Agreement as **Exhibit H**. Scores for all metrics shown on the evaluation range from a low of 1, meaning significantly deficient performance, to a high of 5, meaning exceptionally good performance. The DB Firm's performance shall be classified as Top Performance, Acceptable Performance, or Unacceptable Performance, as defined herein. The evaluator will be a designated City employee or City contractor familiar with the performance of the DB Firm. The evaluator and the Program Manager may review deficient performance letters and Unacceptable Performance scorecards, as described below, prior to issuance. The City may also designate other personnel to review or provide input on the scorecard in addition to the evaluator and the Program Manager. When evaluating the DB Firm's performance, the City will consider the performance of the DB Firm's subcontractors and DB Firm as part of the DB Firm's performance.

#### **14.4.2 FREQUENCY OF EVALUATIONS**

The City shall conduct a performance evaluation after the completion of the remediation of the Project. The City may also conduct performance evaluations and prepare scorecards in accordance with the procedures described herein at any time during performance of the Project or soon after the completion of the Project. The City may conduct one or more evaluations determined solely at the discretion of the City.

#### **14.4.3 NOTICE AND RESPONSE TIMEFRAMES**

The number of days specified in the policy and procedures below, including DB Firm and contractor response times, cure periods, and the like, are for example only. The City reserves the right in all cases to modify these notice and response times, at its sole discretion, to account for such items as remaining term of contract and risk of continued Unacceptable Performance.

#### **14.4.4 UNACCEPTABLE PERFORMANCE**

**14.4.4.1** If at anytime the City determines, using the criteria described on the scorecard, that the performance of the DB Firm is Unacceptable, the Program Manager or its designated alternate will notify the DB Firm of such in a letter. The Program Manager will schedule a meeting at City offices within 10 days. An officer of the DB Firm shall attend such meeting and present a corrective action plan to bring performance to at least Acceptable Performance.

**14.4.4.2** Within 30 days from date of the first Unacceptable Performance letter, the Program Manager or its designated alternate will notify the DB Firm by letter as to whether its performance, as determined solely by the City, is meeting expectations or is continuing to be Unacceptable. If the DB Firm's performance as described in the letter is meeting expectations, no further remedial action is required by the DB Firm as long as DB Firm's performance continues to be Acceptable.

**14.4.4.3** If the DB Firm's performance as described in the letter continues to be Unacceptable or is inconsistently Acceptable, then the DB Firm shall have 15 days from date of second letter to demonstrate solely through its performance of the Project that it has achieved Acceptable Performance. At the end of the 15-day period, the City will prepare a scorecard documenting the DB Firm's performance from the start of the Project or date of most recent scorecard, whichever is latest, and giving due consideration to improvements in its performance the DB Firm has made or has failed to make. If the scorecard shows DB Firm's performance is Acceptable, then no further remedial action is required by DB Firm as long as DB Firm's performance remains Acceptable. If the scorecard shows the DB Firm's performance is Unacceptable, the City will take such actions as it deems appropriate, including but not limited to terminating the Agreement for breach, suspending the DB Firm from bidding on any City related solicitations, and other remedies available in the City Procurement Code and in law. Such action does not relieve the DB Firm of its obligations under the Agreement, nor does it preclude an earlier termination.

**14.4.4.4** If the DB Firm has already received three Deficient Performance Letters in the most recent 12-month period and is going to be issued a fourth, then the City will prepare a scorecard describing the deficiencies and the DB Firm's performance will be scored as Unacceptable.

#### **14.4.5 ACCEPTABLE PERFORMANCE**

The City expects the DB Firm's performance to be, at a minimum, Acceptable. Where the DB Firm's performance is determined to be Acceptable, no response to the scorecard on the part of the City or the DB Firm is required.

#### **14.4.6 FINANCIAL INCENTIVES**

The DB Firm may be eligible for financial incentives for customer satisfaction and commitment to local community as described in Exhibit H of this Agreement and as contained in DB Firm's Pricing Proposal Schedule attached hereto as Exhibit F.

#### **14.4.7 DISPUTES**

**14.4.7.1** In the event that the DB Firm wants to dispute the results of its scorecard performance evaluation, the DB Firm must submit a letter to the Program Manager supplying supplemental information that it believes the City failed to take into account when preparing the scorecard. Such letter, along with supplemental information, must be submitted no later than 10 days following the DB Firm's receipt of the scorecard. If the Program Manager decides to change the scorecard, the DB Firm will be notified and a revised scorecard will be prepared, with a copy issued to the DB Firm. If the Program Manager decides that no change is warranted, the decision of the Program Manager is final.

**14.4.7.2** There can be no expectation of confidentiality of performance-related data in that all performance-related data is subject to disclosure pursuant to Florida Public Records Laws. All scorecards are the property of the City.

#### **14.5 TERMINATION BY CITY WITHOUT CAUSE**

**14.5.1** If the City terminates this Agreement other than pursuant to Section 14.3, 14.4 and/or 14.6 and without cause after 15 days written notice, the City shall reimburse the DB Firm for any unpaid Project costs due the DB Firm at the time of termination, including any costs of lower tier subcontractors or vendor terminations upon review and approval by the City.

- A. The City shall also pay to the DB Firm fair compensation, either by purchase or rental at the election of the City, for any equipment retained.
- B. In case of such termination of Agreement, the City shall further assume and become liable for obligations, commitments, and unsettled contractual claims that the DB Firm has previously undertaken or incurred in good faith in connection with said Project before notice of intent to terminate.
- C. The DB Firm shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights as the City may require for the purpose of fully vesting in it the rights and benefits of the DB Firm under such obligations or commitments.
- D. The City does not assume any responsibility for liabilities of the DB Firm relating to issues that were in dispute between the DB Firm or any subcontractor or supplier existing prior to termination.

**14.5.2** If the final cost estimates or lack of legislative funding make the Project no longer feasible from the standpoint of the City, the City may terminate this Agreement and pay the DB Firm any outstanding invoices for work performed up to receipt of the notice of termination.

#### **14.6 TERMINATION FOR DEFAULT-BOND**

**14.6.1** City may give the DB Firm written notice to discontinue all or part of the work on the Project under the Agreement or a Notice to Cure a material breach in the event that:

- A. The DB Firm assigns or subcontracts the Project without prior written permission;
- B. Any petition is filed or any proceeding is commenced by or against the DB Firm (or any company holding a more than a 50% interest in DB Firm) for relief under any bankruptcy or insolvency laws;
- C. A receiver is appointed for the DB Firm's properties or the DB Firm commits any act of insolvency (however evidenced);
- D. The DB Firm makes an assignment for the benefit of creditors;
- E. The DB Firm suspends the operation of a substantial portion of its business;
- F. The DB Firm suspends the whole or any part of the Project to the extent that it impacts the DB Firm's ability to meet the Project schedule, or the DB Firm abandons the whole or any part of the Project;
- G. The DB Firm, at any time, violates any of the conditions or provisions of the Contract Documents, or the DB Firm fails to perform as specified in the Contract Documents, or the DB Firm is not complying with the Contract Documents.
- H. The DB Firm attempts to willfully impose upon City items or workmanship that are, in City's sole opinion, defective or of unacceptable quality.
- I. The DB Firm breaches any of the representations or warranties
- J. The DB Firm is determined, in City's sole opinion, to have misrepresented the utilization of funds or misappropriate property belonging to City.
- L. There is an adverse material change in the financial or business condition of the DB Firm.

**14.6.2** If within 30 days after service of such notice to discontinue or notice to cure upon the DB Firm an arrangement satisfactory to City has not been made by the DB Firm for continuance of the Project or the material breach has not been remedied, City may declare the DB Firm to be in default and terminate the Agreement.

**14.6.3** Once DB Firm is declared in default and the Agreement has been terminated, City will notify the Surety in writing of the termination. The Surety shall, at City's sole option, take one of the following actions:

- A. Within a reasonable time, but in no event later than thirty (30) days from City's written notice of termination for default, arrange for DB Firm with

City's consent, which shall not be unreasonably withheld, to complete the Agreement and pay City all losses, delay, and disruption damages and all other damages, expenses, costs, and statutory attorney's fees, including appellate proceedings, that City sustains because of a default by DB Firm under the Agreement;

- B. Within a reasonable time, but in no event later than sixty (60) days after City's written notice of termination for default, award a contract to a completion contractor and issue notice to proceed or, alternatively, City may elect to have Surety determine jointly with City the lowest responsible qualified bidder, to have Surety arrange for a contract between such bidder and the City, and for Surety to make available as work progresses sufficient funds to pay the cost of completion less the balance of the contract price (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph). The term "balance of the contract price," as used in this bond, shall mean the total amount payable by the City to DB Firm or under the Agreement and any approved change orders thereto, less the amount paid by the City to DB Firm.

Either way, Surety shall pay the City all remaining losses, delay and disruption damages and all other damages, expenses, costs, and statutory attorneys' fees, including appellate proceedings, that the City sustains because of a default by DB Firm under the Agreement; or

- C. Within a reasonable time, but in no event later than thirty (30) days from City's notice of termination for default, City may waive its right to complete or arrange for completion of the Agreement and, within twenty-one (21) days thereafter, determine the amount for which the Surety may be liable to City and tender payment to City of any amount necessary in order for City to complete performance of the Agreement in accordance with its terms and conditions less the balance of the Agreement price, and shall also indemnify and save harmless on account of all claims and damages arising from DB Firm's default under the Agreement, and pay City for all losses, delay and disruption damages and all other damages, expenses, costs, and statutory attorneys' fees, including appellate proceedings, that the City sustains because of a default by DB Firm under the Agreement.

**14.6.4** City shall have the right to take possession of and use any of the materials, tools, equipment, supplies, and property of any kind provided by the DB Firm for the purpose of this Project.

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

**14.6.6** The Agreement documents shall in no way limit City's right to all remedies for nonperformance provided under law or in equity except as specifically set forth herein. In the event of termination for nonperformance, the DB Firm shall immediately surrender all Project records to City. In such a case, City may set off any money owed to the DB Firm against any liabilities resulting from the DB Firm's nonperformance.

- 14.6.7 City has no responsibility whatsoever to issue notices of any kind, including but not limited to deficient performance letters and scorecards, to the DB Firm regarding its performance prior to default by DB Firm for performance related issues after it has complied with the procedures found in Section 14.3.
- 14.6.8 City shall have no liability to the DB Firm for termination costs arising out of the Agreement or any of the DB Firm's subcontracts as a result of termination for default.
- 14.6.9 Immediately upon termination or expiration of this Agreement, DB Firm must return to City all materials, documents, and things used by DB Firm and belonging to City, including proposals, computer files, borrower files, building keys, and any other property or information regarding continued business compliance or goodwill, whether in electronic or hard-copy form. Furthermore, upon City's request, DB Firm shall certify in writing that all of the foregoing documents or materials, including archival or backup copies, whether in electronic or hard-copy form, have been returned to City, deleted from any computer system, or otherwise destroyed.
- 14.6.10 Any other provision in this Agreement to the contrary notwithstanding, the duration of this Agreement after the initial year shall be contingent upon the existence of lawfully appropriated funds for each subsequent year of the term.

## **ARTICLE 15 ASSIGNMENT AND GOVERNING LAW**

### **15.1 ASSIGNMENT CONSENT**

Neither the City nor the DB Firm shall assign its interest in this Agreement without the written consent of the other.

### **15.2 GOVERNING LAWS**

This Agreement shall be governed exclusively by the laws of the State of Florida, and venue for any action shall be in a court of appropriate jurisdiction located exclusively in Duval County, Florida.

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

### **16.1 GOVERNING PROVISIONS**

The City's liability to DB Firm for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including but not limited to claims for extension of construction time, for payment by the City of the costs, damages, or losses because of changed conditions under which the work is to be performed, or for additional work shall be governed by the following provisions:

- 16.1.1 The DB Firm must submit a Notice of Claim to City within seven (7) days of the time at which the DB Firm was or reasonably should have been aware of the occurrence of the event giving rise to the claim; and
- 16.1.2 Within fourteen (14) days of submitting its Notice of Claim, the DB Firm shall submit to the City its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected.

**16.1.3** The DB Firm agrees that the City shall not be liable for any claim for which the DB Firm fails to submit as timely notice a Request for Change Order as provided herein.

**16.2 WRITTEN DETERMINATION OF CLAIM**

After receipt of a Request for Change Order, the City shall deliver to the DB Firm its written determination of the claim. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the City's written decision shall be final agency action unless the DB Firm requests an administrative proceeding pursuant to City of Jacksonville policies.

**16.3 EXCLUSIVE REMEDY OF CLAIM**

The DB Firm agrees that its sole remedy for any claims, damages, or losses related to any delay, disruption, or hindrance alleged to be caused by City or any of the City's agents or other contractors shall be an extension of the Agreement completion date.

Any demand for equitable adjustment must be served in writing to the City within five days from the event giving rise to any delay, disruption, or hindrance. Any request for an equitable adjustment shall be accompanied by a logical time impact analysis demonstrating the nature and magnitude of the event to the critical path.

Failure to strictly comply with these requirements shall be deemed a waiver of any right to seek equitable adjustment.

In the event the "no damage for delay" clause is inapplicable, there shall be no recovery for office overhead and any damages claimed shall be proven by discreet accounting of direct Project costs and no theoretical formula or industry estimating reference manuals shall be permissible.

**ARTICLE 17  
MISCELLANEOUS**

**17.1 HARMONY**

DB Firm is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by DB Firm and its subcontractors for work on the Project shall work in harmony with and be compatible with all other labor now or hereafter on the Remediation Site.

DB Firm further agrees that this provision will be included in all subcontracts of the subcontractors as well as the DB Firm's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

**17.2 APPRENTICES**

If the DB Firm employs apprentices on the Project, the behavior of the DB Firm and the City shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice programs and agreements established by the Division of Labor of the State of Florida Department of Labor and Employment Security. The DB Firm will include a provision similar to the foregoing sentence in each subcontract.



**17.3 INVOICES SUBMITTED UNDER ARTICLE 12**

Invoices submitted under Article 12 shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices for any travel expenses shall be submitted in accordance with procedures specified in Chapter 106, Part 7, *Ordinance Code*, governing payments by the City for travel expenses.

**17.4 DB FIRM'S PROJECT RECORDS**

The DB Firm's Project Records shall be maintained as prescribed hereinabove for the minimum period required by federal law, by Chapter 126, *Ordinance Code*, and by Chapter 119, Florida Statutes, and shall be made available to the City or its authorized representative at mutually convenient times. Any records relating to claims, directly or indirectly, shall be provided within 15 days of written request to City or its agent.

**17.5 PUBLIC ENTITY CRIME INFORMATION STATEMENT**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not: submit a bid on a contract to provide any goods or services to a public entity; 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; or, transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**17.8 SEVERABILITY**

Should any provision of this Agreement be deemed or determined to be unenforceable by a court of competent jurisdiction, the remaining contract provisions shall remain in full force and effect.

**17.9 UNAUTHORIZED ALIENS**

The City shall consider the employment by the DB Firm of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationalization Act. Such violation shall be cause for unilateral cancellation of this Agreement.

**17.10 SALES TAX EXEMPTION**

If City determines it to be in its best interests, the DB Firm may serve as the City's agent for the limited purpose of obtaining quotes for materials and to otherwise assist in the procurement of materials that will be purchased directly by the City in compliance with Section 212, Florida Statutes, and Chapter 126, *Ordinance Code*. As part of the DB Firm's responsibility, it shall administer this procurement process consistent with the following procedures and requirements:

**17.10.1** A Purchase Order Requisition Form (in a form acceptable to the City and DB Firm) shall be prepared by the DB Firm and submitted to the City before ordering City-purchased materials. The requisition form will provide the name, address, telephone number, and contact person for the materials supplier, a list of required items, the quantity needed, the price and sales tax associated with the materials, and delivery dates established by the DB Firm.

**17.10.2** The City will prepare and issue standard City Purchase Order Forms to the vendors. In conjunction with the execution of the City's Purchase Orders, the DB Firm shall execute and deliver to the City deductive change orders reflecting the full value of all

materials directly purchased by the City, plus all sales tax savings associated with the materials.

**17.10.3** The DB Firm will be responsible for all matters relating to the receipt of materials purchased by the City, including verifying correct quantities and inspection and acceptance of the goods at the time of delivery. Vendors will forward the invoice directly to the City for payment.

**17.10.4** Title to the City-purchased materials will vest in the City at the time the materials are delivered to the City-owned construction site (F.O.B. job site).

**17.10.5** City is billed directly by the selling vendor for purchases of building materials. All discounts are for the account of the City.

**17.10.6** The City makes payment for the building materials directly to the selling vendor.

The reasonable costs of all Payment and Performance Bonds and City's Insurance including Builder's Risk Insurance shall be a reimbursable expense to the DB Firm by the City.

The City is an Additional Named Insured on the DB Firm's Builder's Risk Insurance and, in the event of damage or destruction to City-purchased materials, the City will receive all proceeds derived from all claims against insurers or others to pay for repair or reconstruction as a result of damage or destruction, or as is in the best interests of the City.

**17.10.7** DB Firm shall be responsible for coordinating the delivery, storage, and incorporation of material purchases made by the City pursuant to this Article. Once the materials are incorporated into the Project they become the responsibility of the DB Firm. City shall include a consent to assignment to DB Firm in each of its purchase orders submitted hereunder and shall assign the purchase orders to DB Firm once the materials have been incorporated into the Project so that DB Firm has the right to enforce all warranty obligations on the vendor supplying the materials. Failure by the DB Firm to comply with the tax exemption procedures which results in taxes, fines, or damages to the City shall be the sole responsibility and liability of the DB Firm.

**17.11** The DB Firm and City waive any right to seek attorney's fees and claim preparation costs.

**17.12** The DB Firm shall neither present nor recover on any claim from the City based on any formulas or hypothetical or statistical methodologies used in damage computation. The DB Firm may only recover for damages which are documented using discreet accounting records, and with pay records that specifically indicate any alleged damage, loss, or cost.

**17.13 JACKSONVILLE SMALL & EMERGING BUSINESS (JSEB) PROGRAM**

As official policy, the City encourages the maximum participation of Jacksonville Small and Emerging Business Enterprise (JSEB) in its contract awards based upon availability. The City intends to adopt this program to reflect the philosophy with regard to enhancing participation of JSEBs in all areas of procurement.

A JSEB participating on City projects must be certified as a JSEB with Minority Business Enterprise (MBE) status with the City's Equal Business Opportunity Division of the Department of Procurement.

This Project has been designated an Equal Business Opportunity Program with an established 25% participation goal with any combination of JSEB certified businesses. City shall adhere to the requirements for the Equal Business Opportunity Program as provided in Attachment I to the RFP – Equal Business Opportunity Program Participation Percentage Plan for

Jacksonville Small and Emerging Business. Prospective DB Firms shall refer for more information on the subject to the following:

<http://www.coj.net/Departments/Central+Operations/Equal+Business+Opportunity+Contract+Compliance/default.htm>.

**17.14 FULL AND FAIR CONSIDERATION OF EX-OFFENDERS FOR AWARDED CONTRACTOR DIRECT HIRING**

It is the policy of the City of Jacksonville that the rehabilitation of ex-offenders is an essential component in a community fight against criminal activity. Qualified ex-offenders must receive full and fair consideration for hire by the City of Jacksonville and by those contractors doing business with the City of Jacksonville. The hiring of ex-offenders into fair-paying jobs helps restore the economic stability of ex-offenders, perpetuates their rehabilitation, reduces recidivism, and contributes to a community crime-free environment. This policy is intended to encourage companies doing business with the City of Jacksonville to provide consideration and opportunities to ex-offenders without compromising security to such companies or to the City and its citizens and without unnecessarily depriving others of opportunities. While nothing in the policy establishes a fixed quota or specific number of individuals to be hired or for a contract to be awarded, it is the policy of the City of Jacksonville to take a leading role in the rehabilitation of ex-offenders and reduce recidivism by providing meaningful employment opportunities.

Requirements for the Full and Fair Consideration of Ex-Offenders for Awarded Contractor Direct Hiring Program are provided in Attachment J to the RFP.

**17.15** The DB Firm shall comply, and be responsible for all costs associated, with all federal, state, and local laws.

**17.16 Notification of Surety**

The DB Firm shall notify its surety of any change affecting the general scope of the work or altering the contract price. The amount of the applicable bonds shall be adjusted accordingly and the DB Firm shall furnish proof of such adjustment to the City within 10 days of the change order or purchase order.

**17.17 Payment of Overtime**

Any overtime required for the DB Firm to complete the Project within the contract time shall be at the sole cost and expense of the DB Firm. If City requires the DB Firm to perform overtime work in order to complete the Project prior to the Substantial Completion date, the DB Firm shall bill City only for the actual costs incurred by the DB Firm relating to the payment of overtime premiums, in accordance with its labor policies and applicable laws. Such actual costs include overtime wage premium and additional taxes and insurance directly associated with the overtime wage premium. The DB Firm agrees that it will not charge for personnel paid a salary or other form of compensation such that the DB Firm incurs no direct costs as a result of the overtime.

The DB Firm shall total the direct overtime charges and add the agreed upon overhead rate, but in no case shall such overhead rate exceed 10 percent of the total overtime costs.

Overtime may only be charged to City if the DB Firm was directed in writing by the Program Manager to incur the overtime. Such authorization for overtime shall be accompanied by a Change Order.

**17.18 Scheduling of Overtime**

Whenever the DB Firm schedules work beyond eight hours per day for a five day week, beyond 10 hours per day for a four day week, beyond 40 hours per week, or on Saturdays, Sundays, or holidays, the DB Firm shall arrange in advance for the City or the City's representative to inspect the work performed during overtime. The DB Firm shall not perform overtime work or after-hours work without the City or the City's representative at the Remediation Site or available to perform the inspections as directed by the Program Manager. Except where City has requested the DB Firm schedule overtime to perform additional work, the DB Firm shall reimburse City for any additional costs associated with the City's or the City's Representatives' overtime pay.

**17.19 Show-Up Pay**

In the event that inclement weather prevents the DB Firm from performing work, the DB Firm may be obligated to pay its crew show-up pay. The DB Firm shall be solely responsible for providing this pay.

**17.20 Proprietary Information**

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

**17.21 Confidentiality and Public Record Laws**

Any information disclosed by one party ("Disclosing Party") to the other party ("Recipient") in connection with this Agreement that is marked confidential or that due to its character and nature, a reasonable person under like circumstances would treat as confidential (the "Confidential Information") will be protected and held in confidence by the Recipient. Confidential Information will be used only for the purposes of this Agreement and related internal administrative purposes. Disclosure of the Confidential Information will be restricted to the Recipient's employees, contractors, or alliance companies on a "need to know" basis in connection with the Project who are bound by confidentiality obligations no less stringent than these prior to any disclosure. Each party may disclose Confidential Information relating to the Project to providers of goods and services for the engagement to the extent such disclosure is necessary and reasonably anticipated. Confidential Information does not include information which: (i) is already known to Recipient at the time of disclosure; (ii) is or becomes publicly known through no wrongful act or failure of the Recipient; (iii) is independently developed by Recipient without benefit of Disclosing Party's Confidential Information; or, (iv) is received from a third party which is not under and does not thereby breach an obligation of confidentiality. Each party agrees to protect the other's Confidential Information at all times and in the same manner as each protects the confidentiality of its own proprietary and confidential materials, but in no event with less than a reasonable standard of care. A Recipient may disclose Confidential Information to the extent required by law, but that disclosure does not relieve Recipient of its confidentiality obligations with respect to any other party. Except as to the confidentiality of trade secrets, these confidentiality restrictions and obligations will terminate five (5) years after the expiration or termination of the Agreement under which the Confidential Information was disclosed unless the law requires a longer period.

The parties acknowledge that City is a municipal corporation that is subject to Chapter 119, Florida Statutes, and related statutes known as the "Public Records Laws." If a request is made to view such Confidential Information, City will notify DB Firm of such request and the date that such records will be released to the requester unless DB Firm obtains a court order

enjoining such disclosure. If the DB Firm fails to obtain a court order enjoining disclosure, City will release the requested information on the date specified. Such release shall be deemed to be made with the DB Firm's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copyright, or other intellectual property. In the event the DB Firm breaches this Agreement, then the DB Firm hereby grants City a limited license to use the Confidential Information in any reasonable way in order to mitigate City's damages.

## **17.22 Conflict and Order of Precedence**

**17.22.1** The Agreement shall consist of City's Agreement or Purchase Order together with these specifications and conditions, including but not limited to the executed Bid Document, which shall be collectively referred to as the Contract Documents. This Agreement is the complete agreement between the parties. Parol or extrinsic evidence will not be used to vary or contradict the express terms of this Agreement. The Contract Documents are complementary; what is called for by one is binding as if called for by all. The DB Firm shall, upon discovery, inform City in writing of any conflict, error, or discrepancy in the Contract Documents. Should the DB Firm proceed with the Project prior to written resolution of the error or conflict by City, all work done is at the sole risk of the DB Firm. City will generally consider this precedence of the Contract Documents in resolving any conflict, error, or discrepancy:

- Executed Change Orders and Amendments
- Agreement and Exhibit(s) thereto, including Pricing Proposal Form
- Addenda Issued Prior to Receipt of Bids
- Performance Specifications
- Special Conditions of the Specifications
- Remedial Work Plan
- Technical Provisions of the Specifications
- Drawings
- Request for Proposal
- Instructions for RFP Respondents
- General Conditions

**17.22.2** Any specific item stated in the General Conditions, Special Conditions or Technical Specifications, takes precedence over an item which is made part of the documents by being added by reference.

## **17.23 Force Majeure**

No party shall be liable for any default or delay in the performance of its obligations under this Agreement due to an act of God or other event to the extent that: (i) the non-performing party is without fault in causing such default or delay; ii) such default or delay could not have been prevented by reasonable precautions; and, (iii) such default or delay could not have been reasonably circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means. Such causes include but are not limited to: act of civil or military authority (including but not limited to courts or administrative agencies); acts of God; war; terrorist attacks; riot; insurrection; inability of City to secure approval, validation or sale of bonds; blockades; embargoes; sabotage; epidemics; fires; hurricanes, tornados, and floods; or, strikes.

In the event of any delay resulting from such causes, the time for performance of each of the parties hereunder (including the payment of monies if such event actually prevents payment) shall be extended for a period of time reasonably necessary to overcome the effect of such delay, except as provided for elsewhere in the Contract Documents.

In the event of any delay or nonperformance resulting from such causes, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement, and anticipated impact of such delay or nonperformance. Such written notice, including change orders, shall indicate the extent, if any, to which it is anticipated that any delivery or completion dates will be thereby affected.

**17.24 Nonwaiver**

Failure by either party to insist upon strict performance of any of the provisions of the Agreement will not release either party from any of its obligations under the Agreement.

**17.25 Waiver of Claims**

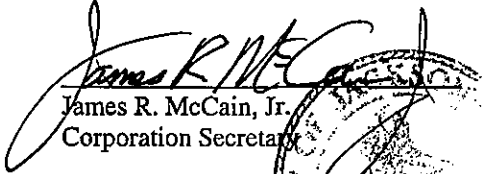
A delay or omission by City to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by City under this Agreement shall not be effective unless it is in writing and signed by the party granting the waiver. A waiver by a party of a right under, or breach of, this Agreement shall not be construed to operate as a waiver of any other or successive rights under, or breaches of, this Agreement.


The DB Firm's obligations to perform and complete the Work in accordance with the Agreement shall be absolute. None of the following will constitute a waiver of any of City's rights under the Agreement: approval or payment of any progress payments or any other payments, including final payment; issuance of the Certificate of Substantial Completion or Certificate of Contract Completion; any use or occupancy of the Work by City; or any correction of faulty or defective work by City.

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

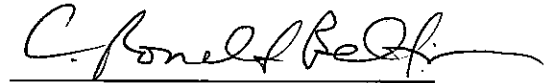
ATTEST:

CITY OF JACKSONVILLE

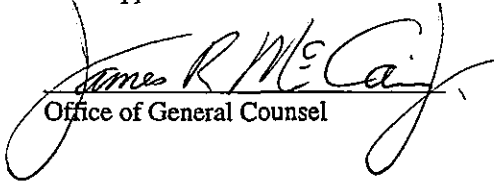
  
James R. McCain, Jr.  
Corporation Secretary

  
Alvin Brown  
Mayor

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

  
Director of Finance  
City Contract # 9017-03  
*BT*

Form approved:

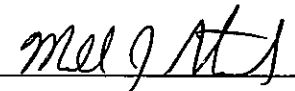
  
Office of General Counsel

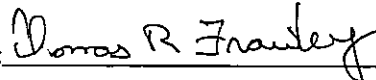
**Karen Bowling**  
Chief Administrative Officer  
For: Mayor Alvin Brown  
Under Authority of:  
Executive Order No. 2013-04

AS WITNESSED

ENTACT, LLC, a Delaware limited liability company

By: Entact Environmental Services, Inc., a Delaware corporation

By:   
Name: Michael J. Staub

By:   
Name: THOMAS R. FRAWLEY  
Title: Vice President

**EXHIBIT A**

**DESIGN-BUILD TEAM ASSIGNED REPRESENTATIVES**

<b>CITY</b> <b>(names)</b>	<b>TITLE</b>
Jeff Foster	Program Manager/Engineer
England, Thims & Miller, Inc.	Program Director/Project Engineer

<b>DB FIRM</b> <b>(names)</b>	<b>TITLE</b>
Thomas Frawley	Vice-President
Michael Stoub	Project Manager



**EXHIBIT B**

**DB FIRM'S PERSONNEL**

**OFF-SITE SUPPORT STAFF**

<b>DB FIRM (names)</b>	<b>TITLE</b>
Scott Chafin	Project Coordinator
Thomas Frawley	Vice President

**ON-SITE SUPPORT STAFF**

<b>DB FIRM (names)</b>	<b>TITLE</b>
Maynard Randall	Project Superintendent
Michael Stoub	Project Manager

**EXHIBIT C**

**DB FIRM'S PERSONNEL  
TO BE ASSIGNED DURING DESIGN PHASE**

<b>DB FIRM (names)</b>	<b>TITLE</b>	<b>Duration in Months (numbers)</b>	<b>Percentage of Time Available (%)</b>
Michael Stoub	Project Manager	9	50%
Chris Nelson	Project Superintendent	9	50%

**Duty Descriptions:**

1. Michael Stoub, Project Manager, serves as the primary on site representative for ENTACT, LLC and will have the daily responsibility with regard to this contract and ENTACT's performance on this contract. The Project Manager is responsible for daily performance, quality, safety, and will be responsible for ensuring the Design-Build Team meets its obligations under this contract. All disputes between the City and ENTACT that cannot be resolved by the ENTACT Project Manager will be elevated to the Vice-President.
2. Maynard Randal, Project Superintendent, will be responsible for coordinating all activities on behalf of ENTACT that will need to be accomplished on site in support of this project. These may include, but not be limited by, subcontractor coordination, scheduling of the work, performance of work crews, interface with residents, City Staff and Regulatory Staff, and safety.

**EXHIBIT D**

**DB FIRM'S PERSONNEL  
TO BE ASSIGNED DURING PARCEL REMEDIATION**

OFF-SITE

<b>DB FIRM (names)</b>	<b>TITLE</b>	<b>Duration in Months (numbers)</b>	<b>Percentage of Time Available (%)</b>
Thomas Frawley	Vice President	9	10%
Scott Chafin	Project Coordinator	9	10%

**Duty Descriptions:**

1. Tom Frawley, Vice President, serves as the Principal in Charge for ENTACT, LLC and will be the final contractual point of contact for ENTACT, LLC with regard to this contract and ENTACT's performance on this contract. The Vice President is responsible for performance, quality, and will be responsible for ensuring the Design-Build Team meets its obligations under this contract. All disputes between the City and ENTACT that cannot be resolved by the ENTACT Project Manager will be elevated to the Vice President.
2. Scott Chafin, Project Coordinator, will be responsible for coordinating all activities on behalf of ENTACT that will need to be accomplished off site in support of this project. These may include, but not be limited by, subcontractor coordination, materials coordination, insurance and bonding, scheduling, and financial matters.

**EXHIBIT E**

**DB FIRM'S PERSONNEL  
TO BE ASSIGNED DURING PARCEL REMEDIATION**

ON-SITE

<b>DB FIRM (names)</b>	<b>TITLE</b>	<b>Duration in Months (numbers)</b>	<b>Percentage of Time Available (%)</b>
Michael Stoub	Project Manager	9	50%
Maynard Randall	Project Superintendent	9	100%

**Duty Descriptions:**

1. Michael Stoub, Project Manager, serves as the primary on site representative for ENTACT, LLC and will have the daily responsibility with regard to this contract and ENTACT's performance on this contract. The Project Manager is responsible for daily performance, quality, safety, and will be responsible for ensuring the Design-Build Team meets its obligations under this contract. All disputes between the City and ENTACT that cannot be resolved by the ENTACT Project Manager will be elevated to the Vice President.
2. Maynard Randall, Project Superintendent, will be responsible for coordinating all activities on behalf of ENTACT that will need to be accomplished on site in support of this project. These may include, but not be limited by, subcontractor coordination, scheduling of the work, performance of work crews, interface with residents, City Staff and Regulatory Staff, and safety.

## EXHIBIT F PRICING PROPOSAL SCHEDULE

### FOREST STREET SITE • PART 4 PRICING PROPOSAL

revised 2-15-13

BASE BID					
ITEM No.	DESCRIPTION	UNT	UNIT COST	ESTIMATED QUANTITY	TOTAL COST
<b>Design Services for Parcel Remediation</b>					
1	Design Review of Parcel Preliminary Design Drawings and Preparation of Pre-Construction Submittals	LS	\$ 323,517.00	1	\$323,517.00
2	Pre-Construction Survey and Site Property Plan <sup>1,4</sup> (to be paid upon City approval of Parcel Remediation Completion Report)	EA	\$ 4,103.00	100	\$410,300.00
3	As-Built Drawings and Parcel Remediation Completion Report (to be paid upon City approval of Parcel Remediation Completion Report)	EA	\$ 2,714.00	100	\$271,400.00
<b>Construction Services for Parcel Remediation</b>					
4	Mobilization	LS	\$ 18,788.00	1	\$18,788.00
5	Project Signs	EA	\$ 139.00	6	\$834.00
6	Staging Area Site Preparation	LS	\$ 174,370.00	1	\$174,370.00
7	Staging Area Operation (Including Sediment and Erosion Control and Maintenance of traffic)	LS	\$ 489,560.00	1	\$489,560.00
8	Temporary Fencing	LF	\$ 140	1,500	\$210,000.00
9	Fence Relocation and Reinstallation	LF	\$ 6.60	5,000	\$33,000.00
10	New Fencing	LF	\$ 6.60	8,000	\$52,800.00
11	Depth Boundary Marker	SY	\$ 0.41	3,000	\$12,300.00
12	Parcel Site Preparation <sup>4</sup> (to be paid upon City approval of Parcel Remediation Completion Report)	EA	\$ 3,255.00	100	\$325,500.00
13	Tree Removal for Wooded Parcels and Areas <sup>4</sup>	AC	\$ 5,945.00	5	\$29,725.00
14	Demolition <sup>11</sup> <span style="float: right;">REVISED ADDENDUM 1</span>	TON	\$ 29.50	1,250	\$36,875.00
15	Excavation <sup>11</sup>	TON	\$ 5.35	60,000	\$321,000.00
16	Backfill <sup>11</sup>	TON	\$ 3.78	60,000	\$226,800.00
17	Sod	SY	\$ 3.06	112,000	\$342,720.00
18	Ground Surface Preparation for Sod (not including sod)	SY	\$ 1.30	15,000	\$19,500.00
19	Hydroseed <span style="float: right;">(Contingency)</span>	SY	\$ 0.36	120,000	\$6,720.00
20	Re-Excavate/Backfill <span style="float: right;">(Contingency)</span>	TON	\$ -	4,000	\$0.00
21	Hazardous Material Stabilization <span style="float: right;">(Contingency)</span>	TON	\$ 21.30	2,000	\$42,600.00
22	Crawl Space Barrier	EA	\$ 2,555.60	20	\$51,112.00
23	Landscape Mulch	CY	\$ 43.00	500	\$21,500.00
<b>Landscape Materials (Trees and shrubs)</b>					
24.1	Liriodendron 7- to 11-in. shrub	EA	\$ 8.00	200	\$1,600.00
24.2	Pinus strobus 7-gallon shrub	EA	\$ 8.00	200	\$1,600.00
24.3	Live Oak 3-inch caliper tree	EA	\$ 93.00	100	\$9,300.00
24.4	River Birch 3-inch caliper tree	EA	\$ 49.00	100	\$4,900.00
25	Payment and Performance Bonds	LS	\$ 75,000.00	1	\$75,000.00
26	Concrete Repair <sup>11</sup>	CY	\$ 234.00	30	\$7,020.00
27	Tree Removal (12" to 24" <sup>11</sup> )	EA	\$ 192.00	250	\$48,000.00
28	Tree Removal (> 24" DBH) <sup>11</sup>	EA	\$ 387.00	80	\$30,960.00
29	Utility Repair <sup>11</sup>	EA	\$ 417.00	20	\$8,340.00
30	Misc. Gravel <sup>4</sup>	CY	\$ 30.00	100	\$3,000.00

SUBTOTAL BASE BID \$1,497,341.00

## **EXHIBIT G FINANCIAL INCENTIVES**

Financial incentives are included to promote quality work, a high degree of property City satisfaction, and use of local labor. These incentives must be earned, they are NOT GUARANTEED. The available funding for these incentives is reflected on the Pricing Proposal. The City will evaluate the DB Firm performance on the two areas described below and may elect to award the incentive at the conclusion of each part (Parts 1 and 2).

**Incentive No. 1 - Customer Satisfaction** - Payment methodology will be based on the average rating from completed Property City Satisfaction Surveys and assessment of performance by the City including timeliness of punch list resolution, business relations, complaint resolution, and overall quality of work.

Property City Survey ratings:

- 9-10 = Excellent
- 7-8 = Very Good
- 5-6 = Acceptable
- 3-4 = Poor
- 1-2 = Very Poor

If the average rating is 8 or greater, the DB Firm is eligible for up to 100% of the incentive. If the average rating is between 6 and 8, the DB Firm is eligible for up to 50% of the incentive. If the average rating is below 6, the DB Firm is not eligible for the incentive.

**Incentive No. 2 - Commitment to Local Community** - Only local labor expenditures will be considered "allowable expenditures" for the purpose of this incentive. The expressed intent of the City is to offer jobs to local citizens especially those in the affected areas.

The DB Firm shall provide supporting documentation to the City on a monthly basis detailing in two reports, their local labor expenditures for workers who reside within the affected areas, and their local labor expenditures for other Duval County residents who do not reside in the affected areas. Each report will include a listing of the DB Firm's work force who qualifies for the two separate categories.

In accordance with the evaluation criteria, the DB Firm who can document that more than 50% of their labor force is comprised of local residents will qualify for up to 50% of the incentive in this category. The DB Firm who can document that more than 50% of their labor force is comprised of local residents who live within any of the four affected areas may qualify for up to 100% of the available incentive.

## EXHIBIT H VENDOR SCORECARD

### SUPPLIER/CONTRACTOR PERFORMANCE EVALUATION PROGRAM

Contract Number:	Evaluator:
PO Number:	Supervisor:
Bid Number:	Contract Administrator:
Evaluation Number:	Type of Work:
Contract Name:	Evaluation Date:
Vendor Name:	Evaluation Start Date:
Vendor Contact:	Evaluation End Date:

**Instructions:** Select the box that best describes the performance of the supplier for each performance measure. Not all items in a box must exactly describe the supplier's performance. Rather, select the box that contains the combination of attributes most reflective of the supplier's performance. A score of 3 indicates the supplier met expectations for that metric.

Select Not Applicable if the measure does not apply. Select Insufficient Information if you cannot adequately support a score for that metric. Use the comment sections to clarify and provide examples.

### Operation, Maintenance, and Repair Scorecard

	1 0	2 0	3 0	4 0	5 0
<b>Timeliness:</b>  Measure of how well the supplier adheres to schedule, and meets due dates.  <input type="checkbox"/> Not Applicable <input type="checkbox"/> Insufficient Information	<b>Rarely on schedule:</b>  Few or no due dates met. Little or no sense of urgency. Little or no use of scheduling process. More than 20% behind schedule and delay is attributable to supplier's performance.	<b>Inconsistently on schedule:</b>  10%-20% behind schedule and delay is attributed to supplier's performance. Some sense of urgency, but little effective action. Some use of schedule, or some semblance of a scheduling process.	<b>Usually on schedule:</b>  Demonstrated sense of urgency and commitment to a schedule, less than 10% over or under schedule adjusting for change orders. No portion of delay is attributable to supplier's performance. Regularly uses schedules to plan work and communicate progress and communicate progress.	<b>Consistently on schedule:</b>  Proactive in identifying schedule related issues. Scheduling and planning processes formalized. Where being ahead of schedule is beneficial to COJ, work was more than 10% but less than 20% ahead of schedule adjusting for change orders.	<b>Always on schedule:</b>  Met all due dates, including interim steps. Proactive in identifying and resolving schedule related issues. Scheduling and planning processes formalized and integrated into all aspects of the work. Where being ahead of schedule is beneficial to COJ, work was more than 20% ahead of schedule adjusting for change orders.
Comments:					

## Operation, Maintenance, and Repair Scorecard

	1	2	3	4	5
<p><b>Responsiveness :</b></p> <p>Measure of how well the supplier responds to on-call maintenance requests as specified in the contract.</p> <p><input type="radio"/> Not Applicable <input type="radio"/> Insufficient Information</p>	<p><input type="radio"/> <b>Poor responsiveness</b></p> <p>Did not respond according to specifications. Little or no use of a call tracking system. No sense of urgency.</p>	<p><input type="radio"/> <b>Fair responsiveness</b></p> <p>Only sometimes responded according to specifications. Some semblance of a call tracking system with some follow-up. Some sense of urgency, but little effective action.</p>	<p><input type="radio"/> <b>Good responsiveness</b></p> <p>Demonstrated sense of urgency and commitment to providing good service. Regularly used call tracking system to monitor service. Usually responded according to specifications.</p>	<p><input type="radio"/> <b>Very good responsiveness</b></p> <p>Consistently responded according to specifications. Proactively identified response related issues.</p>	<p><input type="radio"/> <b>Excellent responsiveness</b></p> <p>Always responded according to specifications. Call tracking and work management processes documented and used to manage all parts of work. Proactively identified and resolved response related issues.</p>
<p>Comments:</p>					



## Operation, Maintenance, and Repair Scorecard

	1 0	2 0	3 0	4 0	5 0
<p><b>Customer Service:</b></p> <p>Measure of customer service orientation of contractor to COJ and other agencies involved in the work as demonstrated through courtesy and cooperation, credibility and adequacy of communications, reliability of stated actions, and flexibility.</p> <p><input type="checkbox"/> Not Applicable <input type="checkbox"/> Insufficient Information</p>	<p><b>Poor customer service:</b></p> <p>Demonstrated little or no courtesy or cooperation with others. Inflexible to changing conditions. Little or no regard for serving COJ. Little or no useful communication. Unreliable in meeting commitments.</p>	<p><b>Customer service needs improvement:</b></p> <p>Some effective communication, but could be improved. Some issues relating to cooperation with others. Some issues that could have been resolved easier had contractor been more flexible. Sometimes did not follow through to ensure commitments made were met.</p>	<p><b>Good customer service:</b></p> <p>Cooperative and courteous. Demonstrated intent to be flexible to COJ needs. Met commitments made. Timely and useful communications.</p>	<p><b>Very good customer service:</b></p> <p>Consistently cooperative and courteous. Met all commitments made to COJ and other agencies. Very flexible in handling day-to-day issues. Very good communication and coordination.</p>	<p><b>Exceptional customer service:</b></p> <p>Always a can-do approach to business and extremely flexible to COJ needs. Always courteous and cooperative. Formal processes for providing updates and other useful communications; excellent verbal and written communications. Proactively seeks ways to better serve COJ.</p>
<p>Comments:</p>					

## Operation, Maintenance, and Repair Scorecard

	1	2	3	4	5
<p><b>Care of COJ Customers:</b></p> <p>Measure of how well contractor prevents customer complaints and responds to complaints in the event they occur.</p> <p>O Not Applicable O Insufficient Information</p>	<p style="text-align: center;">0</p> <p><b>Poor customer care:</b></p> <p>Customer experienced significant distress. Ineffective or untimely response to customer issues. Little or no actions taken to prevent customer related issues. Little or no communication with customer and Project Outreach. Many customer complaints, or one or more significant customer related issues. Required upper management to get involved in resolution. Where survey was used, score of 10 or less on Project Outreach Questionnaire.</p>	<p style="text-align: center;">0</p> <p><b>Customer care needs improvement:</b></p> <p>Communication with customer and Project Outreach could be improved. Customer did not experience significant distress. Response to customer issues including timeliness and resolution actions could use improvement. Some actions taken to prevent customer related issues. Some customer complaints received, none of them of major significance. Where survey was used, score of 11 to 14 on Project Outreach Questionnaire.</p>	<p style="text-align: center;">0</p> <p><b>Good customer care:</b></p> <p>Customer experienced no distress. Effective and timely actions taken to prevent customer related issues. Effective and timely communication with customer and Project Outreach. Effective and timely resolution of customer issues. Only a few minor customer complaints received. Where survey was used, score of 15 or 16 on Project Outreach Questionnaire.</p>	<p style="text-align: center;">0</p> <p><b>Very good customer care:</b></p> <p>No customer related complaints generated that could be considered the contractor's fault. Proactive and very effective actions taken to prevent customer related issues. Very effective communications. Issues resolved quickly, professionally, and customer and Project Outreach pleased with contractor interaction. Where survey was used, score of 17 or 18 on Project Outreach Questionnaire.</p>	<p style="text-align: center;">0</p> <p><b>Excellent customer care:</b></p> <p>Customer gives COJ high marks for handling of the project. Formalized processes for providing exceptional care of COJ's customers. No customer complaints received. Several customer compliments received. Where survey was used, score of 19 or 20 on Project Outreach Questionnaire.</p>
<p>Comments:</p>					

## Operation, Maintenance, and Repair Scorecard

	1 0	2 0	3 0	4 0	5 0
<p><b>Financial Performance (Fixed and unit price work)::</b></p> <p>Measure of the commitment of the contractor to delivering maximum value to COJ.</p> <p><input type="checkbox"/> Not Applicable <input type="checkbox"/> Insufficient Information</p>	<p style="text-align: center;"><b>Poor value for the money:</b></p> <p>Contractor not forthright or timely with information relative to change orders. Cost overruns of more than 20% attributable to contractor's performance. Supplier missed major opportunities to minimize costs to COJ.</p>	<p style="text-align: center;"><b>Questionable value for the money:</b></p> <p>After work began, contractor actively sought out opportunities to submit change orders. Contractor not consistently forthright or timely with information relative to change orders. Cost overruns of more than 10% but less than 20% attributable to contractor's performance. Supplier missed some opportunities to minimize costs to COJ.</p>	<p style="text-align: center;"><b>Good value for the money:</b></p> <p>Contractor requested change orders only when scope or circumstances clearly changed. Contractor was forthright and timely with information relative to change orders. Cost overruns of not more than 10%, adjusting for change orders. No portion of overrun attributable to contractor's performance. Supplier did not miss significant opportunities to minimize costs to COJ.</p>	<p style="text-align: center;"><b>Very good value for the money:</b></p> <p>Contractor actively sought ways to minimize number and dollar amount of change orders. Contractor found savings of up to 10% by identifying ways COJ could avoid costs that otherwise would have been incurred. Contractor was forthright and timely with information relative to change orders. Supplier found savings of up to 10% of original contract price through value engineering and shared savings with COJ per value engineering clause.</p>	<p style="text-align: center;"><b>Excellent value for the money:</b></p> <p>Contractor actively sought ways to minimize number and dollar amount of change orders. Contractor found savings of more than 10% by identifying ways COJ could avoid costs that otherwise would have been incurred. Contractor was forthright and timely with information relative to change orders. Supplier found savings of more than 10% of original contract price through value engineering and shared savings with COJ per value engineering clause.</p>
<p>Comments:</p>					

## Operation, Maintenance, and Repair Scorecard

	1	2	3	4	5
<p><b>Financial Performance (Time &amp; Material):</b></p> <p>Measure of the value COJ received for the money paid. Use this section for time &amp; material contracts.</p> <p><input type="checkbox"/> Not Applicable <input type="checkbox"/> Insufficient Information</p>	<p style="text-align: center;"><b>⊖</b></p> <p><b>Poor value for the money:</b></p> <p>Proceeded with significant out of scope work without COJ prior approval producing a significant claim. Where an estimate was provided, costs were more than 30% over estimate considering any mitigating factors. Work was managed poorly with little or no thought given to minimizing costs to COJ.</p>	<p style="text-align: center;"><b>0</b></p> <p><b>Questionable value for the money:</b></p> <p>Contractor did not take reasonable actions to minimize costs to COJ. Where an estimate was provided, costs were more than 15%, but less than 30% over estimate considering mitigating factors. Work was not managed to deliver good value to COJ.</p>	<p style="text-align: center;"><b>⊕</b></p> <p><b>Good value for the money:</b></p> <p>Contractor took reasonable actions to minimize costs to COJ. Where an estimate was provided, Contractor completed the work at the estimated costs or not more than 15% over estimate considering any mitigating factors. Work was managed adequately.</p>	<p style="text-align: center;"><b>0</b></p> <p><b>Very good value for the money:</b></p> <p>Contractor found savings of up to 10% by identifying ways COJ could avoid costs that otherwise would have been incurred. Where an estimate was provided, project completed under estimate by not more than 10% considering any mitigating factors. Work was well managed with contractor consistently managing project costs.</p>	<p style="text-align: center;"><b>⊕</b></p> <p><b>Excellent value for the money:</b></p> <p>Contractor found savings of more than 10% by identifying ways COJ could avoid costs that otherwise would have been incurred. Where an estimate was provided, project completed more than 10% under original estimate considering any mitigating factors. Work was managed exceptionally well with contractor always managing project costs.</p>
<p>Comments:</p>					

## Operation, Maintenance, and Repair Scorecard

	1 ⊖	2 0	3 ⊕	4 0	5 ⊕
<b>Quality -- Workmanship:</b>  Measure of the craft skills, knowledge, and dedication to quality work.  ○ Not Applicable ○ Insufficient Information	<b>Poor workmanship:</b>  Extensive rework required. Workers do not understand the work, nor take any sense of pride in work output. Workers bored for every opportunity to just get the job done.	<b>Workmanship needs improvement:</b>  Some care regarding delivering a quality project. Some demonstrated knowledge of the work. Some significant rework required.	<b>Good workmanship:</b>  Demonstrated experience in the craft and regard for delivering a quality project. Little rework required -- none of it significant.	<b>Very good workmanship:</b>  Contractor's inspection program identified and remedied all defects without notice from COJ. Demonstrated above average knowledge of the craft and a high regard for delivering a quality project. Little or no rework required.	<b>Exceptional workmanship:</b>  Demonstrated a relentless drive to deliver a quality project. Demonstrated an unusually high level of understanding and skill in executing the work. No rework required by COJ.
Comments:					

## Operation, Maintenance, and Repair Scorecard

	1	2	3	4	5
<p><b>Quality -- Equipment Used:</b></p> <p>Measure of the fitness of equipment used in providing the service.</p> <p><input type="checkbox"/> Not Applicable <input type="checkbox"/> Insufficient Information</p>	<p><input type="checkbox"/> <b>Poor equipment usage:</b></p> <p>Equipment failures caused significant problems. Regularly tried to use poor quality or the incorrect equipment to do the work.</p>	<p><input type="checkbox"/> <b>Equipment usage needs improvement:</b></p> <p>Equipment used caused service quality issues. Periodically used unfit equipment.</p>	<p><input type="checkbox"/> <b>Good equipment usage:</b></p> <p>No significant issues were created as a result of equipment failures. Used good quality, appropriate equipment to do the work.</p>	<p><input type="checkbox"/> <b>Very good equipment usage:</b></p> <p>Equipment used contributed to above average quality or otherwise significantly improved service delivery. Used innovative, well-maintained equipment.</p>	<p><input type="checkbox"/> <b>Exceptional equipment usage:</b></p> <p>Incorporated numerous equipment innovations in delivery of the service. Innovative equipment use produced exceptional results.</p>
<p>Comments:</p>					

## Operation, Maintenance, and Repair Scorecard

	1 0	2 0	3 0	4 0	5 0
<p><b>Quality -- Materials &amp; Equipment:</b></p> <p>Measure of the technical understanding of materials and equipment installed and dedication to proper selection and handling of materials and equipment.</p> <p>O Not Applicable O Insufficient Information</p>	<p style="text-align: center;"><b>Poor usage:</b></p> <p>Little or no care demonstrated in the selection, transport, or storage of materials or equipment. Materials or equipment did not meet specifications and was unacceptable. Regularly tried to incorporate poor quality or wrong material or equipment into the work. Created significant project issues.</p>	<p style="text-align: center;"><b>Usage needs improvement:</b></p> <p>Little care was demonstrated in the selection, transport, or storage of materials or equipment. Materials or equipment did not meet some specifications and significant rework was required to fix. Occasionally tried installing sub-spec material or equipment creating material or equipment related issues</p>	<p style="text-align: center;"><b>Good usage:</b></p> <p>Good care was demonstrated in the selection, transport, and storage of material and equipment. Installed material and equipment to specification. No material or equipment quality issues.</p>	<p style="text-align: center;"><b>Very good usage:</b></p> <p>Supplier demonstrated a strong technical knowledge of material and equipment that produced an overall better quality project than originally specified. Very good care was demonstrated in the transport and storage of material and equipment.</p>	<p style="text-align: center;"><b>Exceptional usage:</b></p> <p>Created significant benefit for COJ and produced a significantly better quality project than originally specified. Exceptional care was demonstrated in the transport and storage of materials and equipment. Supplier demonstrated exceptional technical knowledge of material and equipment installed.</p>
<p>Comments:</p>					

## Operation, Maintenance, and Repair Scorecard

	1 0	2 0	3 0	4 0	5 0
<p><b>Safety:</b></p> <p>Measure of how safe a work environment is maintained by the contractor.</p> <p><input type="radio"/> Not Applicable <input type="radio"/> Insufficient Information</p>	<p style="text-align: center;"><b>Potentially dangerous:</b></p> <p>Blatant disregard for worker safety. Created one or more significantly dangerous situations. Deliberately hindered inspections. Did not demonstrate safe working practices. Failure to comply with one or more of the four elements of the CSMP. Safety Assessment scores will be considered. Received one or more OSHA violations or a stop-work order.</p>	<p style="text-align: center;"><b>Safety performance needs improvement:</b></p> <p>Failure to comply with one or more of the four elements of the CSMP. Safety Assessment scores will be considered. Improvement needed. Inconsistent use of safe working practices. Received one or more OSHA violations or recordables or stop-work order(s).</p>	<p style="text-align: center;"><b>Good safety performance:</b></p> <p>Compliance with the four elements of the CSMP. Safety Assessment scores will be considered. Demonstrated safe working practices. Followed documented safety program. No OSHA violations or recordables; no stop-work orders. No potentially dangerous situations observed.</p>	<p style="text-align: center;"><b>Very good safety performance:</b></p> <p>Compliance with the four elements of the CSMP. Safety Assessment scores will be considered. Consistently demonstrated safe working practices. Demonstrated strict adherence to its documented safety program. No OSHA violations or recordables; no stop-work orders.</p>	<p style="text-align: center;"><b>Model safety performance:</b></p> <p>Compliance with the four elements of the CSMP. Safety Assessment scores will be considered. Formalized safety program is integrated into every part of the company's work practices and culture. No OSHA violations or recordables; no stop-work orders. Supplier always demonstrated the highest sensitivity to worker safety. Very open to inspections and to being held out as having a model safety program.</p>
<p>Comments:</p>					



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	1	2	3	4	5
<p><b>Environmental Stewardship:</b></p> <p>Measure of how sensitive contractor is to the environment and job-site related environmental issues.</p> <p>○ Not Applicable ○ Insufficient Information</p>	<p style="text-align: center;">○ <b>Poor environmental stewardship:</b></p> <p>Deliberately hindered inspections. Job-site was not cleaned, solid waste was not disposed of properly, chemicals were not handled appropriately, and sediment run-off or erosion control not managed properly. One or more significant deficiencies found during internal or regulatory inspection. Regulatory intervention occurred. Repeated attempts to correct deficiencies went unheeded.</p>	<p style="text-align: center;">○ <b>Environmental stewardship needs improvement:</b></p> <p>Chemicals were sometimes mis-handled. Job-site was sometimes messy. Chemicals were sometimes mis-handled. Contractor needed internal notifications to properly contain sediment run-off and erosion control. Supplier needed internal notifications to properly contain sediment run-off and erosion control.</p>	<p style="text-align: center;">○ <b>Good environmental stewardship:</b></p> <p>Demonstrated sensitivity to environmental issues including job-site cleanliness, noise pollution, use of chemicals, and sediment and erosion control. Followed all (O&amp;M) mandates and complied with all permits as outlined in the contract. Supplier's operating procedures address environmental stewardship.</p>	<p style="text-align: center;">○ <b>Very good environmental stewardship:</b></p> <p>Job-site was clean and orderly, noise pollution was actively managed, chemicals were handled with care, and sediment run-off and erosion control was properly managed. No noted deficiencies through internal or regulatory inspections. Supplier's operating procedures fully address management of environmental issues.</p>	<p style="text-align: center;">○ <b>Model environmental stewardship:</b></p> <p>Job-site was always clean and orderly, noise pollution was always mitigated, chemicals were always handled with care, and sediment run-off and erosion control always managed properly. Supplier's practices demonstrated exceptional knowledge of environmental issues and effectiveness in incorporating that knowledge into every aspect of their business. Very open to inspections and to being held out as having a model environmental program.</p>
<p>Comments:</p>					

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	1	2	3	4	5
<b>EBO Compliance:</b>  Measure of contractor's compliance with EBO program, its intent, and achievement of targets.  O Not Applicable O Insufficient Information	O <b>Poor compliance:</b>  Did not comply or demonstrate an intent to comply resulting in less than 50% of target EBO utilization.	O <b>Compliance needs improvement:</b>  Reluctant compliance with program resulting in less than 100% of target utilization. Utilization could have been 100% of target had contractor complied with program.	O <b>Good compliance:</b>  Achieved 100% of program target utilization, where market conditions allowed. Full-compliance with program.	O <b>Very good compliance:</b>  Full-compliance with program and achieved 100% of EBO targets. Performed EBO mentoring.	O <b>Model EBO Program:</b>  Achieved or exceeded EBO targets. Active EBO mentoring and development program. Full compliance with program. Achieved or exceeded EBO targets.
Comments:					

## Operation, Maintenance, and Repair Scorecard

	1	2	3	4	5
<p><b>Contract Administration:</b></p> <p>Measure of how well supplier managed the administrative processes associated with providing the service.</p> <p><input type="radio"/> Not Applicable <input type="radio"/> Insufficient Information</p>	<p style="text-align: center;"><input type="radio"/></p> <p style="text-align: center;"><b>Poor administration:</b></p> <p>Incomplete permitting or certifications. Invoice accuracy is poor. Rarely produced required paperwork. Reports not delivered, or completely inaccurate. Schedules not updated or provided.</p>	<p style="text-align: center;"><input type="radio"/></p> <p style="text-align: center;"><b>Administration needs improvement:</b></p> <p>Certifications provided late. Inconsistently produces required paperwork on time. Invoice accuracy needs improvement. Little or no documented status reporting. Schedules not updated adequately. Some reports delivered with errors.</p>	<p style="text-align: center;"><input type="radio"/></p> <p style="text-align: center;"><b>Good administration:</b></p> <p>Good use of schedules. Usually produces required paperwork including accurate invoices and status reports in a timely manner.</p>	<p style="text-align: center;"><input type="radio"/></p> <p style="text-align: center;"><b>Very good administration:</b></p> <p>Consistently produces required paperwork including accurate invoices and reports in a timely manner. Rarely are invoice inaccuracies found. Regularly seeks ways of improving scheduling and status reporting. Service management process is documented in supplier's operating procedures.</p>	<p style="text-align: center;"><input type="radio"/></p> <p style="text-align: center;"><b>Excellent administration:</b></p> <p>Aggressively finds and implements process improvements designed to improve contract and process administration. Always produces required paperwork in a timely manner. Invoices and reports always accurate, timely and useful. Service management documentation integrated into every part of the company's operations.</p>
<p>Comments:</p>					



**EXHIBIT I**  
**MAP OF FOREST STREET SITE – PART 4**