SUBJECT: **RFQ- FOR DESIGN- BUILD SERVICES OF ACTIVE AND PASSIVE PARK PROJECTS**

BID # **CDB-0008-16** OPEN DATE: **10/21/2015**

COMPETITIVE SEALED PROPOSAL EVALUATION COMMITTEE

KIND AND BASIS OF CONTRACT:
CONSTRUCTION – DESIGN/BUILD

AGENCY: **DEPARTMENT OF PUBLIC WORKS**

BASIS OF AWARD: **EVALUATION CRITERIA**

NUMBER OF BIDS INVITED: 4 NUMBER RECEIVED: 9 OTHER: 1

SUMMARY OF BIDS AND RECOMMENDED ACTIONS:
Recommend approval to amend Contract 8150-15 with Acon Construction Co., Inc. to extend the expiration from March 27, 2021 thru September 26, 2021 and to increase the upset limit by $3,000,000.00 to a new limit of $33,000,000.00. This will allow continued Design Build services that are needed until the replacement contract is executed.

Attachments: Recommendation Memo, Previous Award

BUYER Nekole Hulitt
NEKOLE HULITT

RESPECTFULLY SUBMITTED
GREGORY PEASE, CHIEF
PROCUREMENT DIVISION

CONCURRENCE BY: **Robin G. Smith, P.E., Chief, Engineering and Construction Management**

(ALL AWARD ACTIONS SUBJECT TO LAWFULLY APPROPRIATED FUNDS)
ACTION OF CSPEC COMMITTEE ON RECOMMENDATIONS ABOVE

MEMBERS APPROVING_____ MEMBERS DISAPPROVING_____ DATE:_____

_____ _____ OTHER_____

_____ _____

_____ _____

_____ _____

_____ _____

ACTION OF AWARDING AUTHORITY DATE _____

APPROVED_____ DISAPPROVED: _____

OTHER: _____

SIGNATURE OF AUTHENTICATION _____

City of Jacksonville, Florida

Lenny Curry, Mayor

Department of Public Works
Engineering & Construction Management Division
214 N. Hogan Street, 10th Floor
Jacksonville, FL 32202
(904) 255-8762
www.coj.net

ONE CITY ONE JACKSONVILLE

February 2, 2021

TO: Gregory W. Pease
Chief of Procurement

THRU: John P. Pappas, P.E.
Director

FROM: Robin G. Smith, PE
Chief, Engineering and Construction Management

Daryl T. Joseph
Director, Parks, Recreation and Community Services

SUBJECT: CDB-0008-16 – Design-Build Services – Active and Passive Parks Projects

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The current expiration for Contract 8150-15, awarded under CDB-0008-16 is March 27, 2021. The RFP to replace this contract is under review so that it can be advertised. Once advertised, it will then need to be graded, negotiated, awarded and a contract processed. Continued Design Build services are needed until the replacement contract is executed. In addition, the maximum indebtedness established for Contract 8150-15 is at $30,000,000. Projects that have been assigned to date have almost reached the current limit and there are a number of additional projects and amendments to current projects that cannot be processed until the upper limit is raised. There is no rate increase associated with this amendment. Acon Construction Co., Inc. is committed to meeting the 10% JSEB participation goals established for this contract.

We therefore recommend that Contract 8150-15, originally executed March 28, 2016, be amended to extend the expiration from March 27, 2021 thru September 26, 2021 and to increase the upset limit by $3,000,000.00 to a new limit of $33,000,000.00.

RGS/lw

Robert Scott, P.E., Engineering and Construction Management
Lori West, Engineering and Construction Management

8150-15

DESIGN-BUILD SERVICES CONTRCT
BETWEEN
CITY OF JACKSONVILLE
AND
ACON CONSTRUCTION CO., INC.
FOR
DESIGN-BUILD SERVICES FOR ACTIVE AND PASSIVE PARK PROJECTS

THIS DESIGN-BUILD SERVICES CONTRACT (the "Contract") is made and entered into this 29 day of March, 2016 (the "Effective Date"), by and between the **CITY OF JACKSONVILLE**, a consolidated municipal corporation and political subdivision existing under the laws of the State of Florida (the "Owner"), and **ACON CONSTRUCTION CO., INC.**. a Florida profit corporation having a principal address at 3653 Regent Boulevard, Suite 400, Jacksonville, Florida 32224 (the "Design-Builder), for design-build services for active and passive projects of Owner's Department of Parks, Recreation and Community Services (the "Project").

BACKGROUND FACTS

WHEREAS, Owner issued CDB-0008-16 Request for Qualifications No. CDB-0008-16, including all addenda issued thereto (the "RFQ"), a copy of which is on file with the City of Jacksonville's Procurement Division, for certain design-build services consisting of design, permitting, and construction services as more particularly described in Section 4 (Description of Services) of the RFQ (the "Services" or the "Work"); and

WHEREAS, based on Design-Builder's Statement of Qualifications to the RFQ (the "SOQ"), a copy of which is on file with the City of Jacksonville's Procurement Division, Design-Builder was selected by Owner as the better qualified of two (2) design-builders to perform the Services, and Owner awarded this Contract to Design-Builder pursuant to Chapter 126, *Ordinance Code*; and

WHEREAS, Owner and Design-Builder have negotiated mutually satisfactory terms for execution of the Services; now therefore

IN CONSIDERATION of the premises and the mutual covenants contained below, the parties agree as follows:

1. **BACKGROUND FACTS AND CAPITALIZED TERMS.** The Background Facts set forth above are true and correct and incorporated herein by this reference. Unless otherwise defined herein, all capitalized terms shall have the meanings given to them in the RFQ, the Design Criteria Package (the "DCP"), and the Specific Conditions attached hereto as **Exhibit A**; provided, however, if the RFQ, the DCP, and the Specific Conditions define the same term differently or different terms are defined in the same way, then such terms will be construed in the context of the document in which the term is defined.

2. **INCORPORATION OF RFQ AND SOQ TERMS; ESTIMATED ANNUAL CONTRACT FUNDING.** The RFQ and SOQ are incorporated herein by this reference and the terms and conditions set forth therein shall be binding upon the Design-Builder in this Contract. Design-Builder acknowledges that funding for each Specific Project will be established in the

Capital Improvement Program (CIP) for Fiscal Years 2016-2020. The annual funding projected for this Contract will not exceed **SIX MILLION AND 00/100 DOLLARS ($6,000,000.00)** each fiscal year (October 1st through September 30th), and the Owner estimates from one (1) to thirty (30) Specific Projects during the Contract term; provided, however, that such projected funding and estimated projects are not a guarantee by Owner during the Contract term. To the extent that the estimated **SIX MILLION DOLLARS** or any lesser amount is available during any fiscal year for this Contract, the Owner, in its sole discretion, may rollover any unspent funding of the **SIX MILLION DOLLARS** into subsequent fiscal years.

3. **PERFORMANCE OF SERVICES.** Design-Builder shall perform the Services as specified in the RFQ and provide all material, equipment, tools, and labor necessary to complete the Work for Specific Projects as defined in the RFQ. The Services shall also include, but not be limited to, the start-up and proven commissioning of all systems to make a Specific Project a fully functioning facility, structure, or improvement. If any services, functions, or responsibilities not specifically described in Section 4 of the RFQ or this Contract are necessary for the proper performance and provision of the Work, they shall be deemed to be implied by and included within the Services to the same extent and in the same manner as if specifically described in this Contract. The Design-Builder shall be responsible for providing the equipment, supplies, personnel (including management, employees, and training), and other resources as necessary to provide the Work. The Design-Builder accepts the special relationship established between itself and Owner by this Contract. The Design-Builder covenants with Owner that it is an expert in the design, permitting, and construction of Specific Projects to be requested herein by Owner, and will cooperate with Owner, its representatives, program managers, and construction managers in fostering the interests of Owner with respect to Specific Projects. The Design-Builder shall employ sound business administration and superintendence to complete Specific Projects in a manner consistent with the best interests of Owner.

4. **TERM.** This Contract shall commence on the Effective Date and shall continue and remain in full force and effect for five (5) years thereafter until March 27, 2021, or until earlier expiration or termination as provided in this Contract or the RFQ.

5. **CONTRACT DOCUMENTS.** In the event of any inconsistency, conflict, or ambiguity between or among the following specified contract documents (collectively the "Contract Documents"), the Contract Documents shall take precedence in the following order:

a. All written modifications, amendments, including Project Specific Contract Amendments, and change orders to this Contract;
b. This Contract, including all exhibits attached hereto and incorporated herein;
c. SOQ;
d. Specific Conditions;
e. Design and construction documents prepared and approved in accordance with the DCP;
f. DCP; and
g. RFQ.

The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the GMP specified in each Project Specific Contract Amendment for each Specific Project. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict,

with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in this Section 5 hereof.

6. OWNERSHIP OF WORK PRODUCT.

a. Design-Builder shall deliver to Owner for approval and acceptance, and before being eligible for final payment of any amounts due: all drawings, maps, and plats; the originals of specifications; the approved as-built drawings if Design-Builder has performed contract administration; true copies of all computations, survey notes, and diaries; and, copies of memoranda and pertinent correspondence pertaining to the work (including a copy of all computer disks containing any of the aforementioned data). Design-Builder shall provide a copy of all CADD work on computer disks in the Autocad drawing format or the transfer DFX format. CADD work shall conform with the current CADD standards of the Engineering Division of Owner. All such documents described in this Section 6.a (collectively referred to as "Work Products") shall become the property of Owner. Design-Builder shall not be liable for any re-use of such Work Products for other than the specific purpose intended without Design-Builder's written verification or adaptation thereof. Design-Builder and Owner agree that said Work Products shall be considered as works made for hire under the United States copyright laws. Owner shall have the absolute and exclusive right to own and use all the Work Products together with any and all copyrights, patents, trademarks, and service marks associated with the Work Products. The use of the Work Products in any manner by Owner shall not support any claim by Design-Builder for additional compensation.

b. Upon termination of the Contract for any reason prior to Specific Project completion, all Work Products completed up through the date of termination and paid for by Owner under the terms of this Contract shall become the property of Owner as set forth in Section 6.a above.

c. In addition to any other indemnifications from the Design-Builder to Owner in the Contract Documents, Design-Builder will, at its expense, defend all claims, actions, or proceedings against Owner based on any allegation that the Work Products or any part of the Work Products constitutes an infringement of any copyright, patent, or any other intellectual property right, and will pay to Owner all costs, damages, charges, and expenses occasioned to Owner by reason thereof. Owner will give Design-Builder written notice of any such claim, action, or proceeding and, at the request and expense of Design-Builder, Owner will provide Design-Builder with available information, assistance, and authority for the defense. If in any action or proceeding the Work Products or any parts thereof are held to constitute an infringement, Design-Builder will forthwith either secure for Owner the right to continue using the Work Products or will, at Design-Builder's expense, replace the infringing items with non-infringing Work Products or make modifications as necessary so that the Work Products no longer infringe. Design-Builder will obtain and pay for all patent, copyright, and other intellectual property royalties and license fees required in respect of the Work Products.

7. CONTRACT TIME.

a. **Date of Commencement.** The Work on any Specific Project shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed (the "Date of Commencement") unless the parties mutually agree otherwise in writing. No Notice to Proceed shall be issued by Owner prior to the parties' execution of a Project Specific Contract Amendment for a Specific Project in accordance with Section 8 herein, and Owner shall assume no liability or obligation to Design-Builder prior to the issuance of a Notice to Proceed. For purposes of this Agreement, a "Notice to Proceed" shall mean the written notification by Owner to Design-Builder to proceed with the construction of a Specific Project.

b. **Substantial Completion and Final Completion.** For purposes of this Agreement, "Substantial Completion" shall be defined as in the Specific Conditions. Substantial Completion of each Specific Project shall be achieved by the date set forth in the Notice to Proceed for a Specific Project (the "Scheduled Substantial Completion Date"). Guaranteed Completion of each Specific Project shall be achieved by the date as set forth in the Project Specific Contract Amendment for each Project (the "Guaranteed Completion Date"). Design-Builder shall resolve all items on the Substantial Completion punch to Owner's satisfaction and acceptance by the Guaranteed Completion Date (the "GCD"). All of the dates set forth in this Section 7 (the "Contract Times") shall be subject to adjustment in accordance with the Specific Conditions.

c. **Time of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Project Specific Contract Amendment for each Specific Project.

d. **Liquidated Damages.** Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date contained in the Notice to Proceed and Project Specific Contract Amendment for a Specific Project, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by one (1) day after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner the amount specified in the Project Specific Contract Amendment as liquidated damages for each day that the Substantial Completion extends beyond the LD Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion by the Scheduled Substantial Completion Date and shall be Owner's sole remedy for the delay. Design-Builder understands and agrees that liquidated damages are to be paid not as a penalty, but as compensation to Owner as fixed and reasonable liquidated damages for losses that Owner will suffer because of such default, whether through increased administrative and engineering costs, interference with Owner's normal operations, other tangible and intangible costs, or otherwise, which costs will be impossible or impractical to measure or ascertain with any reasonable specificity. Liquidated damages may, at Owner's sole discretion, be deducted from any monies held by Owner that are otherwise payable to Design-Builder.

8. **PROJECT SPECIFIC CONTRACT AMENDMENTS.** Owner may enlist Services from the Design-Builder for a Specific Project or multiple Specific Projects together during the term of this Contract. Prior to Owner's issuing a Notice to Proceed for a Specific Project, Owner and Design-Builder will execute a Project Specific Contract Amendment in the form attached hereto as **Exhibit B**. Owner shall have no liability or obligations to Design-Builder prior to Owner's issuance of a Notice to Proceed for a Specific Project. All Project Specific Contract Amendments will be subject to approval by the City of Jacksonville's Competitive Sealed Proposal Evaluation Committee (CSPEC) and the Mayor or his designee. Each Project Specific Contract Amendment shall contain: (1) a specific description of the Project; (2) Guaranteed Maximum Price (GMP) in accordance with Section 10 herein which is equal to Design-Builder's Fee (as defined in Section 9.b.4 hereof) plus the negotiated lump sum Cost of the Work (as defined in Section 9.d hereof), subject to any adjustments made in accordance with the Specific Conditions; (3) a Scheduled Substantial Completion Date; (4) Guaranteed Completion Date; (5) the amount of liquidated damages in accordance with Section 7.d; and, (6) an updated Maximum Indebtedness amount under this Contract.

9. **MAXIMUM INDEBTEDNESS; PAYMENTS TO DESIGN-BUILDER.**

a. **Maximum Indebtedness.** Owner's maximum indebtedness under this Contract is an amount not to exceed **ZERO AND 00/100 DOLLARS ($0.00)** ("Maximum Indebtedness). The Maximum Indebtedness amount shall be increased via a Project Specific Contract Amendment.

b. **Payments.**

1. Owner will pay Design-Builder for each Specific Project using either a two-phased approach where Owner will first pay Design-Builder an amount to perform a portion of the design elements based upon a DCP for a Specific Project as described in Section 4 of the RFQ to enable the Owner and Design-Builder to negotiate a GMP and GCD for the Specific Project, or a one-phased approach where Owner will negotiate a GMP and GCD, which shall include design services. Any such amount paid by Owner under either approach will be pursuant to a Project Specific Contract Amendment.

2. Upon Owner's acceptance of the GMP Proposal in accordance with Section 10 herein, Owner and Design-Builder will execute a Project Specific Contract Amendment and pay Design-Builder in accordance with the payment terms set forth in the Specific Conditions.

3. Notwithstanding the foregoing, Design-Builder acknowledges and agrees that Owner may not solicit Design-Builder to perform any Work pursuant to the terms hereof during the term of this Contract, and Owner makes no guarantee or representation as to the quantity of Specific Projects, if any, that Owner may solicit, or issue to, Design-Builder to perform Work during the term of this Contract.

Design-Builder further acknowledges and agrees that Design-Builder shall have no recourse, legal or otherwise, against Owner if Owner does not solicit Design-Builder to perform any Work or Specific Projects pursuant to this Contract.

4. **Design-Builder's Fee.** Design-Builder's Fee for each Specific Project shall be limited as follows:

A. For Projects with a GMP less than $100,000, Design Builder's Fee shall not exceed fifteen percent (15%) of the negotiated lump sum Cost of the Work for that Project, subject to negotiations between both parties.

B. For Projects with a GMP between $100,000 and $500,000, Design-Builder's Fee shall not exceed ten percent (10%) of the negotiated lump sum Cost of the Work for that Project, subject to negotiations between both parties.

C. For Projects with a GMP in excess of $500,000, Design-Builder's Fee shall not exceed seven and a half percent (7.5%) of the negotiated lump sum Cost of the Work for that Project, subject to negotiations between both parties.

5. **Cost of the Work.** The term "Cost of the Work" shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work required for each Specific Project. The Cost of the Work shall include only the following:

A. Wages of direct employees of Design-Builder performing the Work at the Sites or, with Owner's agreement, at locations off the Sites.

B. Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and located at the Sites or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

C. Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices who are performing functions required to complete the Work. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

D. Costs incurred by Design-Builder for employee benefits, prêmiums, taxes, insurance, contributions, and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent

such costs are based on wages and salaries paid to employees of Design-Builder covered under Section 9.b.5.C hereof.

6. The reasonable and documented portion of the cost of travel, accommodations, and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

7. Payments properly made by Design-Builder to subcontractors and design consultants for performance of portions of the Work, including any required insurance and bond premiums incurred by subcontractors and design consultants.

8. Costs, including transportation, inspection, testing, storage, and handling of materials, equipment, and supplies incorporated or reasonably used in completing the Work.

9. Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

10. Costs of removal of debris and waste from the Sites.

11. The reasonable costs and expenses incurred in establishing, operating, and demobilizing the Site(s) office(s), including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and DSL internet services.

12. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment, and hand tools not customarily owned by the workers which are provided by Design-Builder at the Sites, whether rented from Design-Builder or others, and incurred in the performance of the Work.

13. Premiums for insurance and bonds required by this Agreement or the performance of the Work, including but not limited to errors and omissions insurance, including any subcontractors bonds as Design-Builder deems appropriate.

14. All fuel and utility costs incurred in the performance of the Work.

15. Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.

16. Costs for permits, royalties, licenses, tests, and inspections incurred by Design-Builder as a requirement of the Contract Documents.

17. Deposits which are lost, except to the extent caused by Design-Builder's negligence.

18. Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property to the extent not covered by Design-Builder's insurance.

19. Other documented costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

20. Design-Builder Firm, when qualified, may self-perform all or a portion of the Work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit for the direct cost of the Work.

21. Costs of all reproductions used for bidding or information purposes required by the Specific Projects to directly benefit the Specific Projects.

22. Costs for watchmen and security services for the Specific Projects.

23. Costs for such temporary facilities during construction, as approved by Owner, including temporary water, heat, power, sanitary facilities, telephones, radios, and computers with software.

24. Costs for efficient logistical control of the Sites, including horizontal and vertical transportation and materials and personnel. Also, costs for adequate storage.

c. **Non-Reimbursable Costs.** The following shall be excluded from the Cost of the Work:

1. Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 9.b.5.C hereof.

2. Overhead and general expenses, except as provided for in Section 9.b hereof, or which may be recoverable for changes to the Work.

3. The cost of Design-Builder's capital used in the performance of the Work.

4. Once the parties have agreed on a GMP, costs that would cause the GMP, as may be adjusted in accordance with the Contract Documents, to be exceeded.

5. Any costs incurred by Design-Builder arising out of Design-Builder's, or its employees', agents', contractors' and subcontractors' errors, negligent or wrongful acts, or omissions in performing the Work.

10. GUARANTEED MAXIMUM PRICE.

a. GMP Established after Execution of this Agreement

1. **GMP Proposal.** Design-Builder shall submit a GMP Proposal to Owner for each Specific Project which shall include the following unless the parties mutually agree otherwise:

A. A proposed GMP, which shall be the sum of:

1) Design-Builder's Fee as defined in Section 9.b.4 hereof;

2) the negotiated lump sum Cost of the Work as defined in Section 9.b.5 hereof, inclusive of any Design-Builder's Contingency, if applicable, as defined in this Section 10; and

3) For purposes of this Agreement, "Contingency" means the amount set forth in the GMP, which amount shall not constitute more than fifteen percent (15%) of the GMP, and which amount is available for Design-Builder's exclusive use for costs that are incurred in performing the Work that are not included in a specific line item or which would be the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, and acceleration. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. In no event shall the Contingency be used by Design-Builder to pay for Non-Reimbursable Costs, as defined in Section 9.c. Design-Builder shall provide Owner with notice of all anticipated charges against the Contingency, and any Contingency amount remaining unused upon Final Payment shall be returned to Owner.

B. A list of the drawings and specifications, including all addenda, used as the basis for the GMP Proposal;

C. A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;

D. The allowable construction time upon which the proposed GMP is based, and a schedule upon which the Scheduled Substantial Completion Date is based;

E. A list of allowances and a statement of their basis;

F. A schedule of alternate prices;

G. A schedule of unit prices;

H. A statement of Additional Services; and

I. The time limit for acceptance of the GMP Proposal.

2. **Review and Adjustment to GMP Proposal.** After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

3. **Acceptance of GMP Proposal.** If Owner accepts the GMP Proposal, as may be amended by Design-Builder and Owner, Owner shall submit the GMP Proposal to the City of Jacksonville's Competitive Sealed Proposal Evaluation Committee (CSPEC) for approval. Upon obtaining approval from CSPEC, Owner and Design-Builder will execute a Project Specific Contract Amendment in the amount of the GMP.

4. **Failure to Accept the GMP Proposal.** If Owner rejects the GMP Proposal or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

A. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 10.a.3 above;

B. Owner may abandon pursuit of a Specific Project with this Design-Builder and terminate this Contract in accordance with the terms herein.

11. PROCEDURE FOR PAYMENT.

a. **Progress Payments.**

1. Design-Builder shall submit to Owner on the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the Specific Conditions.

2. Owner shall make payment within twenty-one (21) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the Specific Conditions, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the Specific Conditions.

3. Progress payments under this Section only will be made upon Owner's receipt from Design-Builder of updated schedules and reports submitted with each invoice, as set forth in Section 2.1.2 of the Specific Conditions.

b. **Retainage on Progress Payments.**

1. Owner will retain ten percent (10%) of each Application for Payment; provided, however, that when fifty percent (50%) of the Work has been completed by Design-Builder, Owner will consider, in its sole discretion, whether to retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for subcontractors completing their work early in the Specific Project. Retainage shall not be withheld on services or fees set forth in Section 9.c herein and for materials purchased by Design-Builder.

2. Upon Final Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the Specific Conditions, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to one and one-half (1 ½) times the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Final Completion.

3. **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the Specific Conditions. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within twenty-one (21) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the Specific Conditions.

4. Record Keeping and Finance Controls. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance

with generally accepted accounting principles and as provided in the Contract Documents and, specifically, Section 12.31 of the Specific Conditions. During the performance of the Work and for a period of three (3) years after receipt of final payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after receipt of final payment.

12. TERMINATION.

a. Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Contract or any Specific Project. In such event, Design-Builder shall cease performing Work on the Specific Project and Owner shall pay Design-Builder for the following:

1. Up to receipt of notice of termination: (i) all Work actually, timely, and faithfully rendered on all Specific Projects, including that portion of Design-Builder's fees equal to the percentage of Work completed and (ii) for proven and documented costs or expenses in connection with the Work required for each Specific Project. Thereafter, until the date of termination, only for such services as are specifically authorized in writing by Owner, and

2. Fair compensation either by purchase or rental, at the election of Owner, for any equipment obtained by Design-Builder and used for the Specific Projects.

b. If Owner terminates this Contract pursuant to Section 12.a above and proceeds to design and construct the Specific Project through its employees, agents, or third parties, Owner's rights to use the Work Products shall be as set forth in Section 6 hereof.

13. REPRESENTATIVES OF THE PARTIES.

a. **Owner's Representatives.** Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes relating to this Contract:

Thomas Fallin, P.E.
Engineer and Construction Management Division
Public Works Department, City of Jacksonville
214 N. Hogan Street, 10th Floor
Jacksonville, FL 32202
(904) 255-8710
Email:ThomasF@coj.net

Owner shall designate various individuals as its Owner's Representative for each Specific Project performed under this Contract, which individual has the authority and responsibility set forth in Section 3.4 of the Specific Conditions. The Owner's Representative for each Specific Project shall be designated in the Project Specific Contract Amendment for each Project.

b. **Design-Builder's Representatives.**

Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes relating to this Contract:

Marianne Sypniewski, VP/Treasurer
ACON Construction Co., Inc.
3653 Regent Boulevard, Suite 401
Jacksonville, Florida 32224
904.565.9060 (Phone); 904.565.9080

Design-Builder shall designate various individuals as its Design-Builder's Representative for each Project performed under this Contract, which individual has the authority and responsibility set forth in Section 2.1.1 of the Specific Conditions. The Design-Builder's Representative for each Specific Project shall be designated in the Project Specific Contract Amendment for said Project.

14. NOTICES. Unless otherwise provided herein, any and all notices which are permitted or required in this Contract shall be in writing and shall be duly delivered and given when personally served or the next business day after such notice is sent by overnight delivery service by a nationally recognized courier such as Federal Express or UPS with delivery charges paid by the sender, or three (3) business days after such notice is mailed to the person at the address designated below. If notice is mailed, the same shall be mailed, postage prepaid, in the United States mail by certified or registered mail – return receipt requested. Failure to accept certified or registered mail shall be deemed a receipt thereof within ten (10) days after the first notice of delivery of the certified or registered mail. Any entity may change its address as designated herein by giving notice thereof as provided herein or such other address either party from time to time specifies in writing to the other.

If to the Owner:	Engineering and Construction Management Division Department of Public Works 214 N. Hogan Street Jacksonville, Florida 32202 Attn: Director
With a copy to:	Office of General Counsel Government Operations 117 West Duval Street, Suite 480 Jacksonville, Florida 32202

Attn: Corporation Secretary

If to Design-Builder: David Sypniewski, President/Secretary
ACON Construction Co., Inc.
3653 Regent Boulevard, Suite 401
Jacksonville, Florida 32224

With a copy to: _____
_____
_____
_____

15. MISCELLANEOUS PROVISIONS.

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

b. **Headings.** The paragraph headings used in this Contract are for convenience purposes only and shall not be used in the interpretation of this Contract.

c. **Exhibits.** All exhibits attached hereto are incorporated herein by this reference and made a part of this Contract.

d. **Counterparts.** This Contract may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one (1) agreement, but in making proof of the Contract, it shall not be necessary to produce or account for each counterpart

e. **Severability.** The provisions of this Contract are severable, and if any provision of any part hereof or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Contract and the application of such provision or part hereof to other persons or circumstances shall not be affected thereby.

f. **Dates and Time Periods.** Should the date for the giving of any notice, the performance of any act, or the beginning or end of any period provided for herein fall on a Saturday, Sunday, or other legal holiday, such date shall be extended to the next succeeding business day which is not a Saturday, Sunday, or legal holiday.

g. **Governing Law.** This Contract shall be governed and interpreted under the laws of the State of Florida. The venue shall be Duval County, Florida.

h. **Approvals.** Design-Builder represents and warrants to Owner that Design-Builder has full right and authority to execute and perform its obligations under this Contract, and Design-Builder and the person(s) signing this Contract on Design-Builder's behalf represent and warrant to Owner that such person(s) are duly authorized to execute this Contract on Design-Builder's behalf without further consent or approval by anyone. Design-Builder shall deliver to Owner promptly upon request all documents reasonably

requested by Owner to evidence such authority.

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

Attest:

By: _____
James R. McCain, Jr.
Corporation Secretary

CITY OF JACKSONVILLE

By: _____
Lenny Curry
Mayor

Sam E. Mousa
Chief Administrative Officer
For: Mayor Lenny Curry
Under Authority of
Executive Order No. 2015-05

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

See Next Page
Director of Finance
CITY Contract Number: _____

Form Approval:

By: _____
Office of General Counsel

Witness:

By: _____
Name: Catherine Watson

ACON CONSTRUCTION CO., INC.

_____
Name: David Sypniewski
Its: President

G:\Gov't Operations\JMCain\PW\Contracts\Design-Build\ACON.DesignBuild.ActPassParks P.O 022916 doc

Encumbrance and funding information for internal City use:

***Account*..... _____**

***Amount*.....$_____**

This above stated amount is the maximum fixed monetary amount of the foregoing contract. It shall not be encumbered by the foregoing contract. It shall be encumbered by one (1) or more subsequently issued purchase(s) that must reference the foregoing Contract. All financial examinations and funds control checking will be made at the time such check request(s) are issued.

In accordance with Section 24.103(e), of the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; provided however, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent purchase order[s], as specified in said Contract.

_____

Director of Finance
City Contract # 8150-15

Contract Encumbrance Data Sheet follows immediately.

Exhibit "A"

Special Conditions to immediately follow this page.

Specific Conditions
(Design-Build Contract)

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1.Article 1

General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Contract* or *Agreement* refers to the executed agreement between Owner and Design-Builder pursuant to a contract award issued by the City of Jacksonville's Procurement Division in accordance with the RFQ to perform design-build services for Specific Project(s).

1.2.2 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.3 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

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

1.2.5 *Specific Conditions of Contract* refer to this *Specific Conditions of Contract*, which shall be incorporated into the Contract by reference and made a part thereof.

1.2.6 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Projects or Sites, the practices involved in the Projects or Sites, or any Work.

1.2.7 *Design Criteria Package or DCP* is defined in Section 2 of the RFQ and will be developed by Owner for each Specific Project is developed by or for Owner to describe Owner's requirements and objectives for the Specific Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. The DCP may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.8 *Specific Project* or *Project* is an individual assignment to be performed under the Contract. Each project shall be authorized by a Notice to Proceed after a Project Specific Contract Amendment has been executed by Owner and Design-Builder. Each Specific Project shall be performed under a Guaranteed Maximum Price (GMP) and Guaranteed Completion Date as specified in the Contract amendment. Owner shall have no liability or obligations to Design-Builder prior to Owner's issuance of a Notice to Proceed for a Specific Project.

1.2.9 *Site* is the land or premises on which the Project(s) is/are located.

1.2.10 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work required for the Projects and shall include materialmen and suppliers.

1.2.11 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work required for the Projects and shall include materialmen and suppliers.

1.2.12 *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.13 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents to complete the Specific Projects. A Specific Project may be performed individually or multiple Specific Projects may be performed aggregately by Design-Builder

1.2.14 *RFQ* shall mean the CDB-_____ Request For Qualifications No.____ issued by Owner for the Work.

Unless otherwise defined in these Specific Conditions, all capitalized terms contained herein shall have the same meaning as given to them in the RFQ.

2. Article 2

Design-Builder's Services and Responsibilities

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner's Representative and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work for each Specific Project, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (v) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the GMP and within the Contract Time(s). In addition, Design-Builder shall provide Owner with a log of submittals, RFI's, Change Orders, and shop drawings.

2.1.3 Design-Builder shall prepare and submit a schedule for the execution of the Work for each Specific Project for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work for the Projects consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Specific Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in a Project Specific Contract Amendment entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim

design submissions may include design criteria, drawings, diagrams and specifications setting forth the Specific Project requirements. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner "Construction Documents" setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth Section 2.4.1 above. After Owner's issuance of a Notice to Proceed, Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work; provided, however, nothing in this 2.4.4 authorizes work not expressly and in writing agreed to by Owner pursuant to an amendment to the Contract.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) for any Specific Projects may be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of Notice to Proceed affecting the performance of the Work. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits

2.6.1 Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Specific Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

2.7.1 Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Specific Projects consistent with the Contract Documents. Owner may provide additional inspection and testing services, but Owner shall not be obligated to provide such services.