

**CONTRACT
FOR
THE OPERATION AND MANAGEMENT OF HEMMING PLAZA**

THIS CONTRACT is made and entered as of September 1, 2014 (the "Effective Date"), by and between the **CITY OF JACKSONVILLE** ("CITY"), a municipal corporation existing under the laws of the State of Florida, and **I3-JAX, INC., d/b/a Friends of Hemming Park** ("FOHP"), a Florida not-for-profit corporation with its principal offices at 2821 Riverside Ave., Jacksonville, Florida 32205.

WHEREAS, on November 12, 2013, CITY issued a Request for Proposal No. 10-14 (the "RFP") for services relating to the operation and management of Hemming Plaza in downtown Jacksonville (the "Services"); and

WHEREAS, based on FOHP's response to the RFP, CITY has negotiated and awarded this Contract to FOHP;

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

1. **Performance of Services.** The Services will be performed by FOHP as described in Exhibit A ("**Scope of Services**") attached hereto, and in accordance with the terms set forth in Exhibit B ("**General Terms and Conditions**") attached hereto.

2. **Term.** The initial term of this Contract shall commence on the Effective Date and shall expire on September 30, 2017, unless sooner terminated by either party in accordance with the terms of this Contract. The FOHP will have the option to renew this Contract for up to two (2) additional one-year terms. This Contract may be terminated without cause by either party upon ninety (90) days prior written notice.

3. **Transition Period.** During the first 60 days of this Contract, the parties will work together to ensure a smooth and orderly transition of the Services. During this 60-day transition period, CITY will take the following actions:

- (a) Ensure that all light fixtures are working;
- (b) Ensure that all electrical outlets are working;
- (c) Ensure that the speaker system is working;
- (d) Repair all sections of broken concrete curbing around planting beds;
- (e) Clean and paint (epoxy paint) fountains to cover/remove mineral scale buildup;
- (f) Prune any dead tree limbs and remove any dead vegetation;
- (g) Remove any broken or damaged furniture, including waste receptacles;
- (h) Provide FOHP with office space for four (4) employees and storage space on the ground floor of the Main Library at no cost to FOHP. FOHP's license to use the space will have a minimum term of six months. After six months, the license may be terminated on sixty (60) days' notice from the CITY. If the license is terminated, CITY will work with FOHP to secure comparable office and storage space in another CITY controlled facility. The use of space in the Main Library

or other CITY facility will require agreement by FOHP to City's standard license agreement terms and conditions (substantially in the form attached as Exhibit D); and

- (i) Work with FOHP on any necessary permits and approvals (including temporary road closures) for upcoming events in Hemming Plaza.

At the end of the 60-day transition period, FOHP shall be fully responsible for performing the Services in accordance with this Contract.

4. **Projected FOHP Budget and Required Payments by CITY.** The parties anticipate an operating budget for the first eighteen (18) months of this Contract as set forth in Exhibit C attached hereto. In accordance with such budget, CITY will make the following payments to FOHP:

PAYMENT	AMOUNT
1 st Payment (due September 15, 2014)	\$300,000
2 nd Payment (due December 1, 2014)	\$150,000
3 rd Payment (due March 1, 2015)	\$150,000
4 th Payment (due June 1, 2015)	\$150,000
5 th Payment (due September 1, 2015)	\$150,000
6 th Payment (due January 1, 2016)	\$100,000
TOTAL	\$1,000,000

The foregoing payments, shall be used exclusively to perform the Services and for no other purpose. FOHP shall use reasonable and good faith efforts to perform the Services within the budget set forth on Exhibit C (and any subsequently agreed upon budgets). As provided in Exhibit A, FOHP must provide CITY with detailed quarterly reports showing any variances from any of the income or expense items set forth on the budget.

Each year during the term of this Contract, FOHP will prepare, update, and implement an annual business plan and budget for Hemming Plaza to increase utilization, promote efficiencies and achieve optimal results. The annual business plan and budget shall be based on a Fiscal Year ending September 30 and shall be presented to the City's Contract Manager and the CEO of City's Downtown Investment Authority ("DIA") by February 1 for each upcoming Fiscal Year. From February through July of each year, the parties will work together to reach a mutually agreeable business plan and budget. The annual business plans and budgets are subject to approval each year by DIA and the City Council. The agreed upon annual budget shall supersede the budget set forth as Exhibit C and will become part of this Contract without the need of a formal amendment. Each party shall continue to have its right to terminate this Contract without cause under Section 2 regardless of whether an agreement is reached on the annual business plans and budgets.

All payments to FOHP under this Contract are subject to appropriation by the City Council.

5. **Maximum Indebtedness.** CITY's maximum indebtedness, for all products and services under this Contract shall be a fixed monetary amount not-to-exceed ONE MILLION AND 00/100 DOLLARS (\$1,000,000). This maximum indebtedness may be increased by a contract amendment to the extent future appropriations are made by CITY.

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

As to CITY: Downtown Investment Authority
CEO
117 W. Duval Street, Suite 310 B
Jacksonville, FL 32202

With Copy to: City of Jacksonville
Director of Parks, Recreation and Community Services
214 N. Hogan Street, Suite 3102
Jacksonville, FL 32202

With Copy to: City of Jacksonville
Office of General Counsel
117 W. Duval Street, Suite 480
Jacksonville, Florida 32202

As to FOHP: Dr. Wayne Wood
Friends of Hemming Park
2821 Riverside Avenue
Jacksonville, Florida 32205

Each party may change its address for notices by notifying the other party of the change. Such changes shall not require a formal amendment to this Contract.

7. **Contract Managers.** Each party will designate a Contract Manager during the term of this Contract whose responsibility shall be to oversee the party's performance of its duties and obligations pursuant to the terms of this Contract.

8. **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by the FOHP. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party or any representative of either party, which is not expressed herein shall be binding. The RFP and FOHP's response are superseded by this Contract and are not incorporated herein. FOHP acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

9. **Amendments.** All changes or amendments to this Contract shall be binding only when in writing and signed by the authorized representative of each of the parties hereto.

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

[Signature Page Follows]

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

ATTEST:

CITY OF JACKSONVILLE

By James R. McCain
James R. McCain
Corporation Secretary



By Alvin Brown
Alvin Brown
Mayor

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

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 Agreement, and provision has been made for the payment of the monies provided therein to be paid from the following account:

By: C. Ronald Bulto
Director of Finance
10041
187

Form Approved:
Tim Hoyer
Office of General Counsel

ATTEST:

13-JAX, INC, d/b/a Friends of Hemming Park

By William R. Prescott
Signature
William R. Prescott
Type/Print Name
Treasurer
Title

By Wayne Wood
Signature
Wayne Wood
Type/Print Name
President
Title

EXHIBIT A
SCOPE OF SERVICES

This Exhibit is divided into three sections: Operational Requirements, Performance Standards, and Budgetary/Financial Requirements

OPERATIONAL REQUIREMENTS

In general, FOHP will be responsible for (i) keeping Hemming Plaza active during the day and early evening seven days a week throughout the year; (ii) creating an atmosphere that makes Hemming Plaza appealing to the entire community by making it cleaner, safer and more attractive; (iii) programming small-scale events throughout Hemming Plaza that will make it a vibrant focal point in the center of Jacksonville; and (iv) making it easy and desirable for third-party individuals and organizations to hold events in Hemming Plaza, thus leveraging the economic impact of a positive, active urban park space.

In particular, FOHP will be responsible for providing the following:

- **Maintenance Services.** FOHP will ensure that Hemming Plaza remains in good condition through regular preventative and routine maintenance activities. This includes: (i) keeping the grounds free of debris and litter; (ii) performing pest control services; (iii) ensuring landscaped areas are well maintained and neat in appearance at all times; (iv) cleaning and pressure washing of all hard surfaces, as needed; and (v) repairing any damage to Hemming Plaza to the extent the damage was caused by FOHP or occurred during an event managed by FOHP.

[The City will (i) provide and pay for all water, sewer and electricity services, (ii) provide Trash pickup service 7 days per week (once per day prior to 7am), (iii) continue responsibility for major maintenance and repair of all electrical, lighting, sound, water and mechanical systems, including any existing irrigation and fountain systems, (iv) provide tree pruning as reasonably requested; and (v) provide routine maintenance and repair all hardscape items (pavers, concrete edging, etc.) and other structural elements (tables, benches, etc.). Items (i) through (v) are subject to City Council appropriation and availability of funds. If FOHP needs any additional maintenance services from the City, including any additional assistance during special events, FOHP will need to pay the City in advance for any anticipated expenses (including labor and overtime.)]

- **Security Services.** FOHP will provide one dedicated Downtown Ambassador to identify any illegal or nuisance behaviors in Hemming Plaza from 7a.m. to 7p.m. and during any scheduled events. The Downtown Ambassador must have received extensive training on how to handle such behaviors and when to seek intervention from law enforcement. FOHP will cooperate with the Jacksonville Sheriff's Office to keep the premises safe at all times from theft, vandalism and other criminal activities. FOHP will provide increased security levels during events as reasonable for the safety of attendees and show participants.
- **Social Services Outreach.** FOHP will also provide one Social Services Outreach Specialist. This person will be trained to identify and assist those individuals who may be in need of social services.
- **Concession Services.** FOHP will arrange for the offering of food, beverage and other concession items for sale to the public from designated areas within Hemming Plaza during normal hours of operation and during all public events (as appropriate for the nature of the event). FOHP will have exclusive concession rights at Hemming Plaza and, subject to any existing rights of third parties, on the sidewalks along or adjacent to Hemming Plaza. FOHP will ensure that all concession services are

conducted in compliance with all applicable laws, but FOHP and its vendors shall be exempt from the requirements of Chapter 250, Part 5 (“Downtown Sidewalk Vendors And Open Air Markets”) and Chapter 667 (“Park Vending”), City Ordinance Code, and any future ordinances restricting the location of Food Trucks. Notwithstanding anything to the contrary in this Contract, any person holding a valid permit for vending in Hemming Plaza as of August 19, 2014 shall have the right to renew the permit and continue vending in Hemming Plaza in accordance with applicable City Ordinances.

FOHP and its concessionaires shall be allowed to sell and serve alcohol on the premises during the following hours:

- Monday through Friday Noon to Midnight; provided that from Noon to 5pm alcohol may only be sold, served, consumed or possessed in a restricted area not to exceed 2,500 square feet where food and beverages are sold;
- Saturday Noon to Midnight;
- Sunday 1pm to Midnight.

Additional hours may be granted upon approval by the Director of Parks, Recreation and Community Services (“PRCS”).

No person (other than FOHP and its concessionaires) will be allowed to bring alcohol into or carry alcohol out of Hemming Plaza. No person will be allowed to consume alcohol in Hemming Plaza except during the hours when alcohol is being sold or served and within the areas designated by FOHP for the consumption of alcohol.

FOHP will ensure that all alcohol sales are conducted in compliance with all applicable laws, and Hemming Plaza (and adjoining streets and sidewalks when closure is authorized below) shall be considered an authorized location under Section 154.107(16) (“Sale and consumption of alcoholic beverages in municipal parks or on City-owned property”), City Ordinance Code.

To the extent this section conflicts with Chapter 656, Part 8 (“Zoning Code; Alcoholic Beverages”), City Ordinance Code, those ordinance provisions shall be waived. However, the City Council may legislatively revoke or change any of the authorizations in this section regarding the sale and consumption of alcohol at any time at its discretion.

- Event Management. FOHP will actively and continuously (i) market and promote Hemming Plaza, (ii) seek events to advance the beneficial use of Hemming Plaza; and (iii) negotiate and administer all Use, License and/or Occupancy Agreements in accordance with City Policies. All sponsors given naming rights of - the park space or existing structural elements in the park must be approved in advance by the Contract Manager; this excludes program naming rights (e.g., the XYZ Company Blues Fest).

FOHP shall not be subject to the permitting requirements of Sections 191.103 through 191.111 of Chapter 191, Part 1 (“Special Events”), City Ordinance Code, for events it conducts under this Contract. Other than events conducted by the City, FOHP will be responsible for all events conducted at Hemming Plaza.

FOHP agrees to accommodate and support all events the City currently conducts at Hemming Plaza. Those events consist of One Spark (annually), the Jacksonville Jazz Festival (annually), First Wednesday Art Walk (monthly), and Friday Market (weekly through the end of 2014). Additional

City events may be added upon mutual agreement. The parties agree that FOHP may work with the organizers of One Spark and First Wednesday Art Walk to make those events FOHP-sponsored events going forward.

- Occupancy of Adjoining Streets and Sidewalks. The City will allow the temporary closure of Laura, Duval and Monroe Streets for special events upon at least seven (7) days' notice to the Contract Manager and the CEO of DIA, subject to the approval of the Jacksonville Sheriff's Office. Notice to the Contract Manager and the CEO of DIA may be provided by email. The City may impose reasonable conditions on all road closures to protect the health, safety and welfare of its citizens.

During such road closures, FOHP may occupy the road and the sidewalks on the other side of the road for concession services and other purposes, subject to the rights of any users of the adjacent buildings. During such occupancy, the provisions of this Contract relating to the Services in Hemming Plaza shall apply to those occupied areas as well.

- Capital Improvements. FOHP will recommend to the City any major or minor capital improvements to Hemming Plaza. All capital improvements by FOHP must be approved by the City in advance; provided, however, that structural modifications costing under \$100,000 may be approved on an expedited basis by the joint concurrence of the CEO of the Downtown Investment Authority ("DIA") and the Director of the City's Parks, Recreation and Community Services Department ("PRCS"). The FOHP will submit its requests for capital improvements to the CEO of DIA who will in turn coordinate with PRCS and other entities for approval. FOHP will also comply with all generally applicable zoning, permitting, building and safety regulations pertaining to capital improvements at Hemming Plaza. The insurance and indemnity requirements for all capital improvements of more than ten thousand dollars (\$10,000) are attached as Exhibit E.
- Stakeholder Meetings. FOHP will organize and convene a quarterly meeting of Hemming Park stakeholders, including but not limited to a representative of the following entities: PRCS, DIA, the City's Office of Economic Development, the Jacksonville Public Library, the Jacksonville Sheriff's Office, Downtown Vision, Inc., MOCA Jacksonville, the Jacksonville Cultural Council, and Jax Pack Downtown Merchants. This purpose of the meeting will be to share information on issues affecting Hemming Plaza and assist FOHP in identifying opportunities to improve the maintenance and programming functions going forward. These meetings shall be open to the public.

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

- City Liaisons to FOHP Board. The FOHP Board of Directors shall extend the right to receive Board notices, attend Board meetings and participate in Board discussions to the following City representatives: (i) one member of the City Council appointed by the City Council President, and (ii) one member of the Board of Directors of the Downtown Investment Authority ("DIA") appointed by the Chair of the DIA Board. The City representatives shall not have voting rights on the FOHP Board.

All Services will be performed in accordance with the Downtown Action Plan (Adopted 2007), the OED Strategic Plan (Adopted 2006), the Downtown Master Plan (Adopted 2000), the Downtown DRI and the Downtown Zoning Code Overlay (Adopted 2003).

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

PERFORMANCE STANDARDS

FOHP shall use reasonable and good faith efforts to meet the Performance Standards set forth below. FOHP shall provide the City with a report for each Performance Standard by the end of each quarter and before requesting any quarterly payments due under this Contract. Each report shall (i) indicate whether or not FOHP met the Performance Standard; (ii) include all supporting data, and (iii) provide a detailed explanation of each case in which FOHP's performance did not meet the defined standard.

The Performance Standards are intended to address unsatisfactory performance in the context of ongoing operations without resort to the default provisions established in Exhibit B of this Contract. However, if FOHP fails to meet any part of a Performance Standard for any reason, CITY shall withhold any quarterly payments otherwise due to FOHP until such failure is satisfactorily cured.

Performance Standard #1. FOHP will raise private donations to help fund the Services in the following combined amounts during the following periods. Amounts raised in a previous period may be counted towards successive periods. In-kind donations will not count towards meeting this Performance Standard.

- 0 - 3 months after Effective Date \$25,000
- 0 - 6 months after Effective Date \$100,000
- 0 - 9 months after Effective Date \$200,000
- 0 - 12 months after Effective Date \$250,000

Performance Standard #2. Beginning November 1, 2014, FOHP will hold at least five (5) events per quarter that will have attendance in excess of 500 persons per event. If the event is spread out over multiple days, each day will be considered a separate event for purposes of this standard.

Performance Standard #3. Beginning 6 months after the Effective Date, FOHP will (i) be fully staffed; (ii) file all quarterly reports on a timely basis; and (iii) conduct on time all quarterly stakeholder meetings.

BUDGETARY AND FINANCIAL REQUIREMENTS

Annual Business Plans and Budgets. See Section 4 of this Contract.

Accounting of Revenues and Expenses.

(a) FOHP shall establish a separate bank account (the "Operating Account") for the deposit of all payments made by the City to FOHP under this Contract and for all revenues received by FOHP from the operation of Hemming Plaza (including but not limited to private donations, concessionaire fees, advertising fees, and event license fees). The funds from this account may be used only to offset the reasonable expenses related to performing the Services and for any approved capital improvements to Hemming Plaza and adjoining areas. All revenues and expenses shall be reported in detail to the City on a quarterly basis by the 15th day following the end of each quarter. The first quarterly report shall cover

the period from the Effective Date through September 30, 2014. All quarterly reports will be delivered to PRCS and DIA by the fifteenth (15th) day following the end of each quarter. A final closeout report shall be delivered to PRCS and DIA within thirty (30) days of the termination or expiration of this Contract.

(b) Upon the termination or expiration of this Contract for any reason, any balance in the Operating Account shall be immediately returned to the City, provided that FOHP may for thirty (30) days retain sufficient funds to pay any unpaid obligations relating to this Contract and incurred in the ordinary course of performing the Services.

(c) FOHP shall work with the City to establish sufficient internal controls to protect against the misuse of funds from the Operating Account. In no event may FOHP pledge or grant an interest in the funds in the Operating Account to any third party.

(d) All payments by the City under this Contract shall be conditioned on FOHP providing the quarterly accounting reports referenced above together with such other documentation reasonably required by the City. There shall be absolutely no release of funding pursuant to this Contract in the absence of such reports and other documentation.

Title to Fixed Assets. All real estate, benches, tables, statues, plaques, and similar fixed property at Hemming Plaza, whether existing on the Effective Date or added during the term of this Contract, shall be the sole property of the City. No property rights in and to Hemming Plaza will accrue to FOHP and FOHP will not dispose of any fixed property of the City without the City's written consent.

Title to Personal Property.

(a) The City may from time to time allow FOHP to use certain personal property of City to assist with the Services. The parties will document any transfer of custody of such property and FOHP shall accrue no ownership rights thereto. All such property shall be returned to the City upon reasonable notice in the same condition in which it was delivered, reasonable wear, tear and damage excepted (the City acknowledges that some property may be damaged in the normal course of conducting public events at the park).

(b) Any personal property purchased by FOHP for use at Hemming Plaza during the term of this Contract will, upon termination or expiration of this Contract, be transferred to the City and the City shall take ownership thereof. Such personal property may include chairs, tables, signs, displays, pavers, and other items used at the park.

Private Fundraising. FOHP will have private fund-raising capabilities to enhance and pay for the Services under this Contract. Such private funding will not offset the City's obligation to make any payments as specified in this Contract.

Audit Rights. See Section 13 of Exhibit B. It is anticipated that DIA will, and the Council Auditor may, review FOHP's records of revenues, expenses and third party contracts prior to the City making any payments due under this Contract.

EXHIBIT B
GENERAL TERMS AND CONDITIONS

1. **Provision of Services.** FOHP shall provide City with all of the Services described in the Contract. If any services, functions or responsibilities are not specifically described in the Contract but are necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described herein.

2. **Relationship of the Parties; No Right to Contractually Bind the City.** In performance of the Services, FOHP shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture or associate of City. FOHP shall be solely responsible for the labor, supplies, materials, means, methods, techniques, sequences and procedures utilized to perform the Services in accordance with the Contract. The City shall not be bound to any contract entered by FOHP unless the City itself signs the contract.

3. **City's Right to Make Changes.** City may not alter, add to, or deduct from the Services without the express written consent of FOHP. Any substantive change shall require an amendment to the Contract.

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

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

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

6. **Use of Subcontractors; Flow-Down Provisions.** FOHP shall advise the Contract Manager of all subcontractors performing any of FOHP's obligations under the Contract. Pre-approval of subcontractors is not required. In all cases, FOHP will be responsible for the acts or omissions of its subcontractors. FOHP will ensure that all relevant contractual obligations will flow down to the subcontractors and will be incorporated into the subcontracts (including the obligations relating to insurance, indemnification, delays, intellectual property rights, public records, non-discrimination, audits, security, location of

services, termination, transition assistance, warranties, and the manner in which the Services are to be performed).

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

8. **Ownership of Works.**

(a) As used in Sections 8 and 9, the term "Work" shall mean each deliverable, drawing, design, specification, rendering, notebook, tracing, photograph, reference book, equipment, expendable equipment and material, negative, report, finding, recommendation, data and memorandum of every description, shared with or delivered to City pursuant to the Contract.

(b) With the exception of FOHP's pre-existing intellectual capital and third-party intellectual capital as described in Section 9 below, City shall own all right, title and interest, including ownership of copyright (limited to the extent permitted by the terms of any governing licenses), in and to each Work including, but not limited to, software, source code, reports, deliverable, or work product developed by FOHP specifically for City in connection with the Contract, and derivative works relating to the foregoing. The use of these Works in any manner by City shall not support any claim by FOHP for additional compensation.

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

9. **Intellectual Property.**

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

(b) If the Work contains, has embedded in, or requires for the use of, any third party intellectual property, or if the third party intellectual property is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the Work, FOHP shall

secure for City an irrevocable, perpetual, royalty free and fully paid-up right to use all third party intellectual property. FOHP shall secure such right at its expense and prior to incorporating any third party intellectual property (including, without limitation, all trade secrets, patents, copyright and know-how) into any Work, including, without limitation, all drawings or data provided under the Contract, and such right must include, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right and a right to sublicense all or any portion of the foregoing rights to an affiliate or a third party service provider. This subparagraph does not apply to standard office software (e.g., Microsoft Office).

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

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

11. **Invoicing and Payment.** Any invoice submitted to the City under this Contract shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. City may require any other information from FOHP that City deems necessary to verify its obligation to pay under the Contract.

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

13. **Retention of Records / Audits.**

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

(b) FOHP must retain all Records for a minimum period of five (5) years after the completion of the Contract. If an audit has been initiated and audit findings have not been resolved at the end of the five (5) year period, the Records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the Contract, at no additional cost to City. Records shall be retained for longer periods when the retention period exceeds the time frames required by law or ordinance.

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

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

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

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

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

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

(i) FOHP agrees to reimburse City for the reasonable costs of investigation incurred by City for audits, inspections and investigations that uncover a material violation of the Contract. Such costs shall include the salaries of investigators, including overtime, travel and lodging expenses, and expert witness and documentary fees. FOHP shall not be responsible for any costs of investigations that do not uncover a material violation of the Contract.

14. Indemnification. FOHP shall hold harmless, indemnify, and defend the City and its current and past officers, representatives, affiliates, agents, employees, successors and assigns (collectively the "Indemnified Parties") against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and cost and expense of whatsoever kind or nature (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney fees) which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties, arising directly or indirectly out of:

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

(b) any allegation that the Services, any product generated by the Services, or any part of the Services, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right, regardless of whether such injury or damage is caused by negligence, errors and omissions, recklessness, or intentionally wrongful conduct. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, FOHP shall, immediately, make every reasonable effort to secure for the City a license, authorizing the continued use of the Service or product. If FOHP fails to secure such a license for the City, then FOHP shall replace the Service or product with a non-infringing Service or product or modify such Service or

product in a way satisfactory to the City at no additional cost to the City, so that the Service or product is non-infringing.

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

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

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

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

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

<u>Schedule</u>	<u>Limits</u>
Worker's Compensation/Employers Liability	
Worker's Compensation	Florida Statutory Coverage
Employer's Liability	\$1,000,000 Each Accident
	\$1,000,000 Disease Policy Limit
	\$1,000,000 Each Employee/Disease

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

Commercial General Liability - (Form CG0001)

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

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

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

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

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

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

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

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

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

Umbrella Liability \$4,000,000 Per Occurrence and Aggregate

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

Employee Fidelity Bond \$ 300,000 Per Loss

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

- B. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and Automobile Liability CA2048; endorsements will be provided to, reviewed and approved by the City's Division of Insurance and Risk Management prior to commencement of work.
- C. It is FOHP's responsibility to provide all employee benefit coverages required by law for FOHP employees.
- D. FOHP's Insurance Primary. The insurance provided by the FOHP for shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City member, official, officer and employee.
- E. Deductible or Self-Insured Retention Provisions. Except as authorized in this Contract, the insurance maintained by the FOHP shall apply on a first dollar basis without application of a self-insurance, deductible or self-insured retention. Except as authorized specifically in this Contract, no self-insurance, deductible, or self-insured retention for any required insurance provided by FOHP pursuant to this Contract will be allowed. If there is any self-insurance, deductible or self-insured retention for any required insurance, the FOHP shall be responsible for paying on behalf of the City (and any other person or organization FOHP has, in this Contract, agreed to include as an insured for the required insurance) any self-insurance, deductible, or self-insured retention allowed under this paragraph. The City will not be responsible for any self-insurance, deductibles or self-insured retentions under this Contract.
- F. FOHP's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract shall not limit the liability of the FOHP or its Subcontractors or Sub-subcontractors, employees or agent to the City or others. Any remedy provided to City or City's members, officials or employees shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- G. No Waiver by City Approval/Disapproval. Neither approval by City nor failure to disapprove the insurance furnished by FOHP shall relieve FOHP of FOHP's full responsibility to provide insurance as required under this Contract.
- H. Each policy shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida Statutes. Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City. Such Insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better. Prior to commencing any Services, Certificates of Insurance approved by City's Division of Insurance & Risk Management demonstrating the maintenance of said insurance shall be furnished to City. The FOHP shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. In the event the FOHP is unable to obtain such endorsement, the FOHP agrees to provide the City the notice directly. Until such time as the insurance is no longer required to be maintained by FOHP, FOHP shall provide the City with renewal or replacement evidence of insurance with the above minimum requirements no less than 30 days before the expiration or termination of the insurance for which previous evidence of insurance has been provided.
- I. Notwithstanding the prior submission of a Certificate of Insurance, copies of endorsements, or other evidence initially acceptable to City's Division of Insurance and Risk Management, if requested to do so by the City, the FOHP shall, within thirty (30) days after receipt of a written request from the City,

provide the City with a certified, complete copy of the policies of insurance providing the coverage required herein.

- J. Anything to the contrary notwithstanding, the liabilities of the FOHP under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage. Neither approval of, nor failure to disapprove, insurance furnished by the FOHP shall relieve the FOHP or its sub-contractors or sub-subcontractors from responsibility to provide insurance as required by the Contract.
- K. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may, at its sole option require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the CITY also be named as an additional insured.
- L. When events or programs are held on the Property, FOHP shall assume all responsibility for obtaining insurance from event holders and subcontractors (such as caterers, vendors, production companies, entertainers, sponsors, etc.) in the types and amounts necessary to adequately protect itself and Jacksonville by having event holder include the City of Jacksonville and its official, officers, members. Employees and agents as an additional insured.
- M. It is FHOP's responsibility to insure its own personal property.

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

16. City's Right to Suspend Work. For activities such as construction and major repairs, the City may in its sole discretion suspend work by providing a written notice to FOHP at least five (5) days in advance that outlines the particulars of suspension. Within ninety (90) days of providing such notice, or within any longer period agreed to by FOHP, City shall either (1) authorize the resumption of work, at which time activity shall resume, or (2) terminate the Contract in accordance with the applicable termination provisions. Suspension of work shall not entitle FOHP to any additional compensation. FOHP shall not be entitled to receive compensation for any work it performs after being excused from providing it hereunder.

17. City's Remedies Upon FOHP Default. Any one or more of the following events, if not cured within thirty (30) calendar days after FOHP's receipt of written notice thereof, shall constitute an "Event of Default" on the part of FOHP: (1) FOHP fails to perform the Services within the time specified in the Contract or any extension, (2) FOHP fails to maintain adequate progress, thus endangering performance of the Contract, (3) FOHP fails to honor any other material term of the Contract, or (4) FOHP fails to abide by any statutory, regulatory, or licensing requirement. City may extend the 30-day cure period in its discretion.

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

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

18. FOHP Remedies Upon City Default. City shall be in default if City fails to honor any material term of the Contract, and such failure is not cured within thirty (30) calendar days after receipt of written notice thereof from FOHP. In the event of City's default, FOHP will be entitled to terminate the Contract and pursue such other remedies available at law or equity as it deems appropriate, including up to \$100,000 in project closeout costs. **Except as expressly provided elsewhere in the Contract, FOHP will not be entitled to recover any lost profits or consequential damages.** The rights and remedies available to FOHP under the Contract are distinct, separate and cumulative remedies, and no one of them shall be deemed to be in exclusion of any other.

19. Transition At any time prior to the date the Contract expires or terminates for any reason (the "Termination Date"), City may request FOHP to provide reasonable transition assistance services ("Transition Assistance"). FOHP shall provide such Transition Assistance until such time as City notifies FOHP that City no longer requires such Transition Assistance, but in no event for more than 90 days following the Termination Date.

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

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

20. Force Majeure, No Damages for Delay. Neither party shall be responsible for delays in performance if the delay was beyond that party's control (or the control of its employees, subcontractors or agents). No claim, other than for an extension of time, shall be asserted against City for such delays. FOHP shall not be entitled to an increase in the Contract price or payment of any kind from City for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever.

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

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

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

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

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

24. **Restrictions on the Use or Disclosure of City's Information.** FOHP shall not use, copy or disclose to third parties, except in connection with performing the Services, any information obtained by FOHP or its agents, subcontractors or employees in the course of performing the Services, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of City. At City's request, all information furnished by City will be returned to City upon completion of the Services. FOHP shall not be required to keep confidential any information that has already been made publicly available through no fault of FOHP or that FOHP developed independently without relying on City's information. To ensure confidentiality, FOHP shall take appropriate steps as to its employees, agents, and subcontractors, including the insertion of these restrictions in any subcontract agreement. The warranties of this paragraph shall survive the Contract.

25. **Protection of FOHP's Trade Secrets and Other Confidential Information.** All documents received by City in connection with this Contract are subject to Chapter 119, Florida Statutes (the "Florida Public Records Law"). Any specific information that FOHP claims to be a trade secret or otherwise exempt from the Florida Public Records Law must be clearly identified as such by FOHP on all copies furnished to City. City agrees to notify FOHP of any third-party request to view such information, but it is FOHP's obligation to obtain a court order enjoining disclosure. If FOHP fails to obtain a court order enjoining disclosure within five (5) business days of FOHP's receiving notice of the request, City may release the requested information. Such release shall be deemed for purposes of the Contract to be

made with FOHP's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copy right or other intellectual property.

26. FOHP's Responsibilities Under Florida Public Records Law. In accordance with Section 119.0711, Florida Statutes, FOHP shall:

(a) keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services described herein;

(b) provide the public with access to public records related to this Contract on the same terms and conditions that the CITY would provide the records, and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by applicable law;

(c) ensure that public records related to this Contract that are exempt or confidential and exempt from public disclosure are not disclosed except as authorized by applicable law; and

(d) meet all requirements for retaining public records, and transfer at FOHP's sole cost and expense, all public records in the possession of FOHP upon termination of this Contract. FOHP shall destroy any duplicate records that are exempt or confidential and exempt from public disclosure requirements in accordance with applicable State and Federal provisions. Any public records stored electronically must be provided to the CITY in a format that is compatible with information technology systems maintained by the CITY.

In addition, FOHP shall promptly provide the CITY a copy of each public records request FOHP receives relating to the Services and FOHP's response to such request.

Upon request, City will provide FOHP with advice and reasonable support with respect to the FOHP's obligations under this Section.

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

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

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

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

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

The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between City and any subcontractor, supplier, or any third party or create any City liability for FOHP's failure to make timely payments hereunder. However, FOHP's failure to comply with the Prompt Payment requirements shall constitute a material breach of FOHP's contractual obligations to City. As a result of said breach, City, without waiving any other available remedy it may have against FOHP, may issue joint checks.

32. Conflicts of Interest. FOHP acknowledges that Section 126.112 of the Jacksonville Ordinance Code requires that a public official who has a financial interest in a bid or contract make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including but not limited to the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or contractor.

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

34. Truth in Negotiation Certificate. Pursuant to Section 126.305, Jacksonville Ordinance Code, the execution of the Contract by FOHP shall be deemed to be a simultaneous execution of a Truth-In-

Negotiation Certificate, whereby FOHP states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete and current at the time of contracting. Further FOHP agrees that the compensation hereunder shall be adjusted to exclude any significant sums where City determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of the Contract.

35. Compliance with Applicable Laws. Unless specifically waived in this Contract, the FOHP (and all subcontractors) must comply with all applicable federal, state and local laws, rules and regulations as the same exist and as may be amended from time to time, including, but not limited to:

- Chapter 119, Florida Statutes (the Florida Public Records Law);
- Section 286.011, Florida Statutes (the Florida Sunshine Law);
- All licensing and certification requirements applicable to performing the Services.

36. IRS Requirements. It is specifically understood that City intends to comply with Internal Revenue Service laws, regulations, rulings, notices or procedures ("IRS requirements"), issued prior or subsequent to the date of the Contract, governing the use and management of governmental facilities financed with the proceeds of tax exempt bonds. If any provision of the Contract presents an actual or potential conflict with any IRS requirements and City so informs FOHP, then the City may take such actions as necessary to resolve the conflict.

37. Warranty of Ability to Perform. FOHP warrants that (i) it is ready, willing and able to perform its obligations under the Contract, and (ii) to the best of FOHP's knowledge, there are no pending or threatened actions, proceedings, investigations or any other legal or financial conditions that would in any way prohibit, restrain, or diminish FOHP's ability to satisfy its Contract obligations. FOHP shall immediately notify City in writing if its ability to perform is compromised in any manner during the term of the Contract.

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

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

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**EXHIBIT C
18 MONTH FOHP BUDGET**

[2 pages follow]

Exhibit C -- 18 Month FOHP Budget

September 1, 2014 - March 31, 2016

	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	18 Month TOTAL
Administration/Management										
HP Director	7,083	7,083	7,083	7,296	7,296	7,296	7,296	7,296	7,296	125,233
Operations Person	5,000	5,000	5,000	5,150	5,150	5,150	5,150	5,150	5,150	80,900
Admin/HR support	4,583	4,583	4,583	4,721	4,721	4,721	4,721	4,721	4,721	74,156
Volunteer Coordinator/Marketing Support	4,583	4,583	4,583	4,721	4,721	4,721	4,721	4,721	4,721	67,282
Supplies/equipment/misc	1,667	1,667	1,667	1,667	1,667	1,667	1,667	1,667	1,667	30,000
Insurance	-	-	-	30,900	-	-	-	-	-	60,900
Subtotal Administration	22,916	22,916	22,916	64,455	23,555	23,555	23,555	23,555	23,555	438,471
Programming/Permitting										
Program Support	14,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000	263,000
Marketing Support	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	22,500
Subtotal Marketing/Leasing	15,250	15,250	15,250	15,250	15,250	15,250	15,250	15,250	15,250	285,500
Cleanliness/safety										
Cleaning/Beautification Ambassador (2.5 FTE)	8,333	8,333	8,333	8,583	8,583	8,583	8,583	8,583	8,583	151,494
Safety/Hospitality ambassador (2 FTE)	6,833	6,833	6,833	7,038	7,038	7,038	7,038	7,038	7,038	124,224
Social Service outreach person	5,000	5,000	5,000	5,250	5,250	5,250	5,250	5,250	5,250	81,500
Equipment /Misc	417	417	417	417	417	417	417	417	417	6,667
Pest Control	174	174	174	174	174	174	174	174	174	4,450
Subtotal Clean and safe	20,756	20,756	20,756	21,461	21,462	21,462	21,462	21,462	21,462	368,335
Beautification	-	-	-	1,250	1,250	1,250	1,250	1,250	1,250	7,500
Start-up Costs										
Administration										
Supplies/Equip/Misc										10,000
Build Out/Office Start Up										50,000
Cleanliness/Safety										
Equipment/Misc										10,000
Beautification										80,000
Subtotal Start-up										150,000
TOTAL Expenses	58,922	58,922	58,922	92,416	61,516	61,516	61,516	61,516	61,516	1,249,806
Friends of Hemming Fundraising	-	-	50,000	-	-	-	-	-	-	
Subtotal	-	-	50,000	-	-	-	-	-	-	250,000
City Funding Required	150,000			150,000				100,000		1,000,000

Exhibit C – 18 Month FOHP Budget

September 1, 2014 - March 31, 2016

		Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15
Administration/Management										
HP Director	oversees all HP efforts; programming, addresses ongoing issues that arise/leads Board and Committees	3,542	7,083	7,083	7,083	7,083	7,083	7,083	7,083	7,083
Operations Person	Out in field /set up/volunteer support/vendor and program support, represents the organization	-	-	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Admin/HR support	assist with admin/marketing/social media support and calendar/website	-	-	4,583	4,583	4,583	4,583	4,583	4,583	4,583
Volunteer Coordinator/Marketing Support	To assist with marketing/volunteers	-	-	-	2,292	4,583	4,583	4,583	4,583	4,583
Supplies/equipment/misc	audit/furniture/equipment/supplies/phones/ internet	1,667	1,667	1,667	1,667	1,667	1,667	1,667	1,667	1,667
Insurance	Per contract requirements	30,000	-	-	-	-	-	-	-	-
Subtotal Administration		35,209	8,750	18,333	20,625	22,916	22,916	22,916	22,916	22,916
Programming Permitting										
Program Support	paying for bands, acts, magicians, games, 12 foot duck transport, extra JSO	25,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000
Marketing Support	HP monthly events calendar/website/posters/A frames	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250	1,250
Subtotal Marketing/Leasing		26,250	15,250	15,250	15,250	15,250	15,250	15,250	15,250	15,250
Cleanliness/safety										
Cleaning/Beautification Ambassador (2.5 FTE)		8,333	8,333	8,333	8,333	8,333	8,333	8,333	8,333	8,333
Safety/Hospitality ambassador (2 FTE)	7 - 7 7 days a week (84 hours a week)	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833
Social Service outreach person	1 FTE social service person	-	-	5,000	5,000	5,000	5,000	5,000	5,000	5,000
Equipment /Misc		208	208	208	208	417	417	417	417	417
Pest Control		1,500	174	174	174	174	174	174	174	174
Subtotal Clean and safe		16,874	15,548	20,548	20,548	20,757	20,756	20,756	20,756	20,756
Beautification	Banners, tables, chairs and umbrellas, shade, cooling mists, and other visual improvements	-	-	-	-	-	-	-	-	-
Start-up Costs										
<i>Administration</i>										
Supplies/Equip/Misc		10,000								
Build Out/Office Start Up		50,000								
<i>Cleanliness/Safety</i>										
Equipment/Misc	Pressure washer/electric utility vehicle	10,000								
Beautification	\$40K: Tables, chairs, umbrellas; \$25K: planters, décor; \$5K: banners; \$15K: heaters, misters, canopies, other	80,000								
Subtotal Start-up		150,000								
TOTAL Expenses		226,333	39,548	54,131	56,423	58,923	58,922	58,922	58,922	58,922
Friends of Hemming Fundraising	Presented as quarterly fundraising goals	-	-	25,000	-	-	75,000	-	-	100,000
Subtotal		-	-	25,000	-	-	75,000	-	-	100,000
City Funding Required		300,000			150,000			150,000		

Hemming Plaza Start-Up Costs

		Start-Up Costs	Notes
Administration/Management			
Supplies/equipment/misc	audit/furniture/equipment/supplies/phones/ internet	\$ 10,000.00	\$3k supplies, \$8k legal/accounting \$12k computers and phone, \$2k payroll exp, \$3k zerox machine misc \$2k
Build out /office start up	Build Out/Office Furniture	\$ 50,000.00	Build out of office space to support HP staff.
Cleanliness/safety			
Equipment /Misc		\$ 10,000.00	pressure washer/electric vehicle
Beautification	Banners, tables, chairs and umbrellas, shade, cooling mists, and other visual improvements	\$ 80,000.00	\$40k tables/chairs/umbrellas. \$25k planters/décor; \$5k banners, \$10k heaters/misters/canopies/other
TOTAL Start-up Expenses		\$ 150,000.00	

EXHIBIT D

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement"), made as of this 1st day of October, 2014 ("Effective Date"), between CITY OF JACKSONVILLE, whose address is 303 North Laura Street, Jacksonville, Florida 32202 (the "City"), and 13-JAX, INC., D/B/A FRIENDS OF HEMMING PARK ("FOHP"), a Florida non-profit corporation whose address is 2821 Riverside Avenue, Jacksonville, Florida 32205.

WITNESSETH:

WHEREAS, FOHP desires to use space at the Jacksonville Main Library (the "Main Library") located at 303 N. Laura Street, Jacksonville, Florida 32202, and described in Exhibit A attached hereto, consisting of certain space formerly used by the Main Library as café space (the "G5 Promenade") (as the "Premises"); and

WHEREAS, FOHP desires to utilize the Premises as FOHP's office space in connection with the management and programming of Hemming Plaza pursuant to its obligations in connection with its Contract for the Operation and Management of Hemming Plaza, issued in connection with RFP # 10-14 (the "Management Contract") and executed on even date herewith; and

WHEREAS, the City believes that the activities of FOHP in connection with the Management Contract are beneficial to the citizens of Jacksonville, Duval County, Florida and its surrounding areas; and

WHEREAS, the City desires to provide to FOHP use of the Premises to administer and manage Hemming Plaza under the conditions set forth herein;

NOW, THEREFORE, for and in the consideration of the premises and of the mutual covenants contained herein, other good/valuable considerations, the sufficiency and receipt of said good/valuable considerations being herewith acknowledged by the respective parties, the City and FOHP stipulate and agree as follows:

1. Grant of License; Term. G5 Promenade. The City hereby grants FOHP a limited non-exclusive license to use and access the G5 Promenade subject to the terms and conditions of this Agreement. The term of this Agreement for the G5 Promenade shall commence upon the Effective Date and after six months may be terminated by either party at any time for any reason by providing sixty days prior written notice thereof (the "Term").
2. License Fee. The License Fee for the Premises is \$1 for the Term and any Renewal Terms.
3. Coordination by the City. The City hereby designates the Library Director or his or her designee to be the project coordinator for this Agreement, who will, on behalf of the City,

coordinate with FOHP and administer this Agreement according to the terms and conditions contained herein.

4. Representations, Warranties, Validity and Binding Effect. FOHP represents, warrants and agrees as follows:

(a) FOHP is a Florida not-for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Florida with full legal right, power and authority to conduct its operations substantially as presently conducted, and to execute, deliver and perform its obligations under this Agreement.

(b) After a duly called meeting of its board of directors, at which a quorum was present and acting throughout, FOHP authorized the execution and delivery of this Agreement, and such corporate authorization remains in full force and effect and has not been revoked or modified in any respect whatsoever.

(c) This Agreement is a legal, valid and binding obligation of FOHP, enforceable against FOHP in accordance with its covenants, conditions and terms, except as enforceability may be limited by equitable principles, or bankruptcy, insolvency, reorganization, moratorium or other similar laws effecting the enforcement of creditors' rights generally.

(d) The execution and delivery of this Agreement and compliance with the covenants, conditions and terms hereof will not conflict with or constitute a breach of or a default under the provisions of any applicable federal, state or local law, court or administrative regulation, judgment, decree or order, or any agreement, indenture or other instrument to which FOHP is a party.

(e) FOHP is not in breach of or in default under any applicable federal, state or local law, ordinance, court or administrative regulation, decree or order or any agreement, indenture or other instrument of which FOHP is a party, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a breach or default, which breach or default would affect the validity or enforceability of this Agreement or would affect materially or adversely the financial condition, operation or properties of FOHP to perform its obligations hereunder.

(f) There is no action, suit, proceeding, inquiry or investigation, in equity or at law, before or by any court, governmental agency, public board or body to which FOHP is a party, pending or, to the best of its knowledge, threatened against or affecting it (i) contesting its corporate existence, tax exempt status or powers or the titles of its officers to their respective offices; or (ii) contesting the validity or the power of FOHP to execute and deliver, or affecting the enforceability of this Agreement, or contesting or affecting the power of FOHP to consummate the transactions contemplated by this Agreement, or (iii) wherein an unfavorable court decision, ruling or finding would materially affect the financial position of FOHP.

5. Use and Possession.

(a) Use. It is understood that the Premises are to be used by FOHP only in connection with the operation and management of Hemming Plaza. The Premises may not be

used for lectures, or other events of FOHP without the consent of the Library Director. FOHP and City agree that FOHP anticipates up to four (4) staff and volunteers will be working on the Premises. FOHP shall provide for the Premises, at its sole cost and expense, any furnishings and office equipment it may require, subject to the review and approval of the Library Director. FOHP shall preserve and protect any existing fixtures and City personal property on or within the Premises. FOHP may provide for its own secure wi-fi service for the Premises. No other use is permitted without the prior written consent of the Library Director, which consent may be withheld in the sole and absolute discretion of the Library Director. The parties shall coordinate such joint use and any conflicts regarding same shall be resolved by the City in its sole discretion. The City shall not be liable for theft, damage to or loss of any item or property of FOHP, its agents, employees, volunteers or other invitees in connection with FOHP's use of the Premises. FOHP may not serve, sell or otherwise distribute alcohol on the Premises without first obtaining all necessary licenses, permits and governmental approvals relating thereto.

The Library Director will designate a staff person to act as a liaison (the "Liaison") with FOHP. The Liaison will be a member of the Advisory Board of the FOHP. The Liaison will coordinate library activities with the FOHP to ensure that all events, programs and activities sponsored by the library, activities at the library Conference Center, the City and FOHP do not interfere with one another. Liaison and FOHP will keep the other fully apprised as to the schedule of events, programs and activities of each party. The Liaison will work closely with FOHP in ensuring that the FOHP Social Worker is meeting the needs of both the library and the FOHP. The Liaison will report to the Library Director on a monthly basis outlining all events, programs and activities of the FOHP and the FOHP Social Worker activities. Any disputes developed in this coordination activity will be brought to the attention of the Library Director for good faith resolution.

FOHP shall bear all cost of moving items related to its use of the Premises to and from the Library. FOHP may use furniture and equipment provided by the City provided, however, if FOHP requires additional furniture or equipment for storage or otherwise, such additional furniture or equipment shall be provided by FOHP upon approval by the Library Director.

(b) Non-Interference. FOHP's use of the Premises shall not interfere with the City's use of the Library. In the event of any such interference, FOHP, upon receipt of written notice from the City, shall cause any such interference to cease and make such modifications in its use of the Premises as may be required to prevent such interference.

(c) Damage to Premises or Library. FOHP shall, at its sole cost and expense, repair to the complete satisfaction of the City, any and all damage to the Premises or the Library and any improvements or personal property located thereon that is caused by or arising from FOHP's exercise of the rights granted herein.

(d) Non-Discrimination. FOHP shall not discriminate against any person on the basis of race, creed, color, sex, religion, national origin, age, marital status or disability in its use of the Premises.

(e) Expiration of Term. At the expiration of the term hereof, FOHP shall remove all of its belongings at no cost to the City and restore the Premises to its original condition, ordinary wear and tear excepted.

6. Acceptance of Premises. Upon FOHP relocating to the Premises, FOHP shall be deemed to have accepted the Premises in its then "as is" condition.

7. Taxes. FOHP shall bear, pay and discharge, on or before the last day on which payment may be made without penalty or interest, all federal, state and local taxes, of whatever kind or nature, which shall or may, during the term of this Agreement, be lawfully charged, levied, assessed, imposed, become due and payable, or become liens upon, or arise in connection with the use, occupancy or possession of the Premises.

8. Laws, Ordinances and Regulations. FOHP, at its sole expense, hereby covenants and agrees to comply with all applicable federal, state and local laws, rules, ordinances, and regulations. FOHP shall not make or permit any unlawful, improper or offensive use of the Premises or any use or occupancy thereof contrary to federal, state or local laws now or hereafter made. FOHP acknowledges that the City, its agents, representatives, and governmental authorities, including, without limitation, Fire Marshals or Health Inspectors, may inspect the Premises at any reasonable time and, in the event that FOHP is deemed to be in non-compliance with this Paragraph 8 or any governmental laws, rules, regulations or ordinances, then FOHP shall promptly remedy such non-compliance, paying all costs, expenses, fees or fines associated therewith.

9. Utilities, Maintenance.

(a) Utilities. The City will pay all water, power and electrical service utilities, gas, sewer, and garbage collection rates or charges which may become payable during the term of this Agreement for the utilities and services used by FOHP on the Premises. FOHP hereby agrees not to place hazardous or toxic substances or materials in any trash collection facilities, wastewater or sewage systems. In no event shall the City be liable for the unavailability of any utilities or services or any interruption or failure in the supply of any such utilities to the Premises.

(b) FOHP's Obligations of Maintenance and Repair. FOHP shall, at its sole cost and expense, repair and maintain its property on the Premises in a good, safe and attractive condition that is in at least as good condition as the rest of the Library.

10. Notices. Any and all notices which are permitted or required in this Agreement shall be in writing and shall be duly delivered and given when personally served or 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. Notice shall be deemed given on the date of personal delivery or mailing and receipt shall be deemed to have occurred on the date of receipt; in the case of receipt of certified or registered mail, the date of receipt shall be evidenced by return receipt documentation. 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.

If to City: City of Jacksonville
c/o Duval County Public Library
303 N. Laura Street
Jacksonville, Florida 32202
Attn: Richard Mott

With Copy to: Office of General Counsel
City of Jacksonville
Attn: Government Operations
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

If to FOHP: 13-Jax, Inc. d/b/a Friends of Hemming Park

Attn: _____

or such other address either party from time to time specify in writing to the other.

11. Security. The City reserves the right to inspect bags, purses, briefcases, or other similar containers that are brought into the Premises. The City shall provide FOHP with ___ () contractor badges for Premises and building access. The badges will be active during the Term of the Agreement and renewable upon request of the City. FOHP shall have twenty-four (24) hour access only to the G5 Promenade via the Monroe Street entrance and shall not have after hour access to the main library.

12. Alterations. FOHP shall not make additions, alterations, changes or improvements in or to the Premises or any part thereof without the prior written consent of the Library Director, which consent may be withheld in the sole discretion of the Library Director. In the event that the Library Director consents to such additions, alterations, changes or improvements, then all additions, alterations, changes or improvements shall be constructed at FOHP's sole expense and shall, upon completion thereof, become the property of the City; provided, however, the City may, at its option, require FOHP, at FOHP's sole cost and expense, to remove any such additions, alterations, changes or improvements at the expiration or sooner termination of this Agreement, and to repair any damage to the Premises or Library caused by such removal. Any of FOHP's alterations, additions, changes, or improvements shall be made at such times and in such manner as not to unreasonably interfere with the occupation, use and enjoyment of the remainder of the Library by the City.

13. Mechanics' Liens. FOHP shall have no power to do any act or make any contract that may create or be the foundation for any mechanics', materialmen's or other lien or encumbrance upon the Library or Premises.

14. The City's Right to Inspect and Enter. The City shall have the right, at all times during the term of this Agreement, to enter the Premises for any purpose deemed necessary or desirable by the City.

15. Force Majeure. If City or FOHP shall be delayed in, hindered in or prevented from the performance of any act required hereunder (other than performance requiring the payment of a sum of money) by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations or actions, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond such party's reasonable control (excluding the unavailability of funds or financing), then the performance of such act shall be excused for the period of the delay and the period for the performance of any such act as required herein shall be extended for a period equivalent to the period of such delay.

16. Fire or Casualty. If the Library or Premises is damaged by fire or other casualty, either party may terminate this Agreement by providing thirty (30) days written notice to the other party within twenty (20) days of the casualty. If neither party terminates this Agreement, then the City may, at its discretion, repair the damage and restore the Premises (excluding FOHP's alterations, improvements and personalty) and Library to their condition existing immediately prior to the occurrence of the casualty. The City shall not be liable, regardless of cause, for any inconvenience or interruption of the business of FOHP occasioned by fire or other casualty.

17. Condemnation. If any part of the Premises or Library is taken by eminent domain or condemnation or voluntarily transferred to such authority under the threat thereof, the City may terminate the Agreement by giving thirty (30) days written notice to FOHP within forty-five (45) days after the taking, or if by reason of such taking, FOHP's operation on or access to the Premises is substantially and materially impaired, FOHP shall have the option to terminate this Agreement by giving thirty (30) days written notice to the City within forty-five (45) days after the taking. FOHP hereby waives any and all rights it may have in all condemnation awards (other than for property of FOHP) and hereby assigns said claims to the City.

18. Assignment and Sublease. FOHP shall not transfer, hypothecate, mortgage, pledge, assign or convey its interest in the Agreement or sublet the Premises or any part thereof.

19. Indemnity and Release.

(a) FOHP's Indemnity. FOHP will indemnify, defend and save the City, its officers, employees, agents, successors and assigns, harmless from and against any and all actions, damages, liability and expenses in connection with the loss of life, loss of property, personal injury, property damage, or loss or damage of whatever nature, to anyone including but not limited to third parties, caused by or resulting from, or claimed to have been caused by or to have resulted from, wholly or in part, any act, omission or negligence of FOHP or anyone claiming under FOHP (including, but without limitation, FOHP's concessionaires, agents, officers, employees, servants, volunteers, guests and contractors, but excluding Library patrons and other members of the public who are not part of one of the other groups named in this parenthetical). This indemnity, defense and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in connection with any such injury, loss or damage or any such claim, or any proceedings brought thereon or the defense thereof including, without limitation, court costs and reasonable attorneys' fees. If FOHP or anyone claiming under FOHP or the whole or any part of the property of FOHP shall be injured, lost or damaged by theft, fire, water or steam or in any other way or manner whether similar or dissimilar to the foregoing, no part of said injury, loss or damage is to be borne by the City or its agents. The City

agrees to give FOHP timely notice of any claims for which indemnity will be sought and the opportunity to defend such claims. The obligations set forth in this paragraph shall survive the expiration or sooner termination of the Agreement.

(b) Release. FOHP does hereby release and forever discharge the City from any and all liability to FOHP and/or to any third parties for any and all losses or damages, of whatsoever kind or nature, and any and all claims for losses and damages, of whatsoever kind or nature, resulting therefrom, which arise or may arise out of or are incidental to the City's operation of the Library.

20. Insurance.

Before entering the Premises, and without limiting its liability under this Agreement, FOHP and its subcontractors of any tier shall procure and maintain, at its sole cost and expense, during the term of this Agreement, insurance of the types and in the minimum amounts stated below:

SCHEDULE	LIMITS
<u>Workers' Compensation</u>	Florida Statutory Coverage
<u>Employer's Liability</u> (including appropriate Federal Acts)	\$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 500,000 Each Employee/Disease

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

If FOHP is not required to carry Worker's Compensation coverage as defined under Chapter 440, Florida Statutes, the above requirement may be waived. FOHP is responsible for determining applicability of Chapter 440, Florida Statutes. FOHP is responsible for worker's compensation benefits payable to an injured employee as defined by Chapter 440, Florida Statutes. If applicable, written confirmation verifying exemption will be provided on FOHP's letterhead, signed by an officer or authorized representative.

Commercial General Liability

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

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

Automobile Liability \$1,000,000 Combined Single Limit
(In the event the use of motor vehicles is an integral part of the operations) (Coverage for all automobiles-owned, hired or non-owned)

Property Insurance Special Form (All Risk)

Personal Property and Improvement and Betterments (if applicable)
Materials)
Limit: Replacement Cost

City and its members, officials, officers and employees shall be endorsed as an additional insured under all of the above Commercial General Liability on a form no more restrictive than ISO CG2011 Insurance coverage a form no more restrictive than CA2048 (only if vehicles are integral part of the operations).

Such insurance shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City, except for Worker's Compensation.

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

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

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

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

Said insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A-VII or better or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Prior to commencing any work on the project, Certificates of Insurance approved by City's Risk Management Division of insurance & Risk Management demonstration the maintenance of said insurance shall be furnished to the City. The FOHP shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal.

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

Any indemnification provisions in this Agreement are separate and apart from and in no way limited by the insurance amounts stated above.

FOHP shall provide such other insurance of the types, amounts and coverages required by City's Risk Manager in his or her sole reasonable discretion.

City is subject to Section 768.28, Florida Statutes. With respect to City's self-insurance program, liabilities caused by the negligent acts or omissions of City's employees, or authorized agents shall be subject to the limits of Section 768.28, Florida Statutes. City is self-insured, and its obligations with respect thereto are controlled by the provisions and limitations of § 768.28, Florida Statutes, which provisions are not altered, expanded or waived.

Neither approval of, nor failure to disapprove, the insurance furnished by the FOHP shall relieve the FOHP or its agents from the responsibility to provide the insurance as required by this Agreement.

Failure to maintain proper insurance as required by this Paragraph 20 after having received written notice from City may result in immediate termination of this Agreement.

21. Access and Operation. FOHP shall have use of the Premises during normal business hours (10:00 a.m. – 6:00 p.m., except for Tuesday and Wednesday hours of 11:00 a.m. - 7:00 p.m., and Sundays 1:00 – 5:00 p.m.) of the Main Library. Access to the Premises during other than normal business hours shall be through the Monroe street door only; the main entrance adjacent to Laura Street will be closed and locked after hours. For security purposes it is the policy of the City that FOHP will only be permitted to use the Premises outside of Main Library normal operating hours if an FOHP employee, FOHP subcontractor or City/Library employee is present.

22. Signage. FOHP shall not be permitted to display any signage on the interior or exterior of the Premises without the prior written consent of the Library Director, which may be withheld in his or her sole discretion for any or no reason.

23. Supplies. FOHP will provide, at its own expense, any supplies needed to perform its operations.

24. Right to Terminate. Notwithstanding any contrary provision contained in this Agreement, the City hereby retains an absolute right to terminate this Agreement with or without cause upon giving sixty (60) days written notice to FOHP after four (4) months from the Effective Date. FOHP shall have the right to terminate this Agreement at any time during the term of the Agreement upon giving the City sixty (60) days written notice.

25. Hazardous Substances.

(a) FOHP covenants and agrees that it shall not cause or permit any Hazardous Substances (the "Hazardous Substances" as hereinafter defined) to be installed, placed, stored, held, located, released or disposed of in, on, at, or under the Premises or Library, without the City's prior written consent, which consent may be unreasonably, and in the City's sole discretion, withheld. FOHP further covenants and agrees to indemnify the City for any loss, cost, damage, liability or expense (including without limitation, attorneys' fees and other costs of legal representation) that the City might ever incur because of FOHP's failure to comply with the provisions of the immediately preceding sentence. This indemnification is to survive the expiration or other termination of this Agreement.

(b) For the purposes of this Paragraph 25, Hazardous Substances shall mean and include all those substances, elements, materials or compounds that are included in any list of hazardous or restricted substances adopted by the United States Environmental Protection Agency (the "EPA") or any other substance, element, material or compound defined or restricted as a hazardous, toxic, radioactive or dangerous substance, material or waste by the EPA or by any other ordinance, statute, law, code, or regulation of any federal, state or local governmental entity or any agency, department or other subdivision thereof, whether now or later enacted, issued, or promulgated.

26. Default Termination by the City.

FOHP shall be in default should FOHP fail to keep, perform and observe each and every covenant and condition set forth in this Agreement on its part to be kept, performed or observed.

(a) In the event the City has declared FOHP to be in default of this Agreement pursuant to the provisions herein described, the City shall provide FOHP with a written notice describing the default or event of default and the City's intention to terminate this Agreement within twenty (20) days of receipt by FOHP of said notice if the default is not cured as hereinafter described.

(b) FOHP shall have the right to cure or cause the cure of such default within ten (10) days after it receives notice; provided, however, that if the default is such that it cannot be

cured within a ten (10) days period, but FOHP commences and diligently pursues curative action with respect thereto, the period of time during which FOHP may cure such default shall be the amount of time which is reasonably necessary to cure such default. As used herein, "reasonably capable of being cured", or other phrases substantially similar thereto, shall mean an objective standard whereby the default or event of default in question is capable of cure by any reasonable person. In no event will FOHP be entitled to more than ten (10) days to cure any default resulting from the non-payment of rental, fees, or charges.

(c) The City may enforce the performance of this Agreement in any method provided at law or in equity, and this Agreement may be terminated at the City's discretion if such default has not been cured as herein above described; thereupon, this Agreement shall cease and come to an end. The City, its agents and attorneys, shall have the right, without further notice or demand, to re-enter and remove all persons and property therefrom without being deemed guilty of any manner of trespass, and without prejudice to any remedies for collection of arrears of rent or breach of covenant.

(d) No waiver by the City of any default by FOHP of any of the terms, covenants, or conditions hereof to be performed, kept and preserved by FOHP shall be construed to be a waiver of any subsequent default. The acceptance of fees or the performance of any of the conditions or any part of this Agreement by the City for or during any period or periods after default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by FOHP, shall not be deemed a waiver of any right on the part of the City to declare a default or cancel this Agreement for a subsequent breach thereof.

27. Waiver of Defaults. The waiver by either party of any breach of this Agreement by the other party shall not be construed as a waiver of any subsequent breach of any duty or covenant imposed by this Agreement.

28. No Personal Liability. No representation, statement, covenant, warranty, stipulation, obligation or agreement contained herein shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of City or FOHP in his or her individual capacity and none of the foregoing persons shall be liable personally or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

29. Third Party Beneficiaries. Nothing herein express or implied is intended or shall be construed to confer upon any entity other than City and FOHP any right, remedy or claim, equitable or legal, under and by reason of this Agreement or any provision hereof, all provisions, conditions and terms hereof being intended to be and being for the exclusive and sole benefit of City and FOHP.

30. Entire Agreement. It is agreed between the parties that neither the City nor FOHP nor any of their agents have made any statements, promises or agreements, verbally or in writing, in conflict with the terms of this Agreement. Any and all representations by either of the parties or their agents made during negotiations prior to the execution of this Agreement and which representations are not contained in the provisions hereof shall not be binding upon either of the parties hereto. It is further agreed that this Agreement contains the entire agreement between the

parties, and no rights are to be conferred upon either party until FOHP and the City have both executed this Agreement.

31. Construction of Language. Words of any gender used in this Agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural when the sense requires. The paragraph headings and titles are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

32. Modification. No modification, alteration or amendment to this Agreement shall be binding unless in writing and executed by the parties hereto.

33. Provisions Severable. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

34. Time. Time is of the essence of this Agreement. When any time period specified herein falls upon a Saturday, Sunday or legal holiday, the time period shall be extended to 5:00 P.M. on the next ensuing business day.

35. No Recording. This Agreement shall not be recorded in the public records by either party hereto.

36. Law and Venue. This Agreement shall be enforced in accordance with the laws of the State of Florida. The agreed upon venue is Jacksonville, Duval County, Florida.

37. Execution; Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and any of which shall be deemed to be complete in itself and may be introduced into evidence or used for any purpose without the production of the other counterparts.

38. State Required Disclosure. The following disclosure is required to be made by the laws of the State of Florida:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

39. Rules and Regulations. All reasonable rules and regulations that the City may hereafter from time to time adopt for the management of the Premises or Library are hereby made a part of the Agreement and shall during the term of this Agreement be in all respects observed and performed by FOHP's and FOHP's employees, servants, agents, volunteers, invitees and guests.

40. Mayor and Corporation Secretary. The Mayor and Corporation Secretary shall have the authority to terminate this Agreement under any circumstances wherein the City has a legal right to terminate this Agreement in accordance with the provisions hereof.

41. City Council Approval. This Agreement is expressly conditioned upon the approval of the City Council of Jacksonville, Florida.

IN WITNESS WHEREOF, FOHP and the City have caused this Agreement to be duly executed as of the date first above written.

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain Jr.
Corporation Secretary

Alvin Brown, Mayor

Witness:

**13-JAX, INC., D/B/A FRIENDS OF
HEMMING PARK**, a Florida non-profit
corporation

By: _____
Name: _____

By: _____
Its: _____

By: _____
Name: _____

Name: _____

FORM APPROVED:

By:  _____
Assistant General Counsel

EXHIBIT A TO LICENSE AGREEMENT
The Premises

Premises

Located on the ground floor to the right of the Laura Street entrance, consisting of approximately 2,428 square feet.

EXHIBIT E

INSURANCE AND INDEMNIFICATION REQUIREMENTS

The insurance and indemnity requirements below shall only be applicable to any Capital Improvement work with an estimated cost in excess of \$10,000.

I. Insurance. Without limiting its liability under this Operator's Agreement, FOHP shall at all times during the term of this License require its contractors to procure prior to commencement of work, and maintain at its sole expense during the life of this Agreement (and Contractor shall require its contractors, subcontractors, or sub-subcontractors of any tier to maintain) insurance coverage in the not less than amounts stated below, and prior to entering the Park to provide a certificate (with applicable endorsements) on a form that is acceptable to the Jacksonville's Division of Risk Management evidencing the following required coverages to Jacksonville:

SCHEDULE

LIMITS

Worker's Compensation
Employer's Liability (including
Appropriate Federal Acts)

Florida Statutory Coverage
\$100,000 Each Accident
\$500,000 Disease/Policy Limit
\$100,000 Disease/Each Employee

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

Commercial General Liability

Facility-Operations
Products-Completed Operation
Contractual Liability
Independent Contractors
Personal/Advertising Injury

\$1,000,000 each occurrence
\$2,000,000 aggregate
\$2,000,000 Products/Comp Ops
\$1,000,000

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those approved by Jacksonville's Office of Risk Management. Jacksonville and its members, officials, officers, employees, and agents shall be named in the Commercial General Liability policy as "an additional insured" on forms no more restrictive than the most recent versions of both ISO Form CG 2010 and ISO Form CG 2037. Contractors shall continue to maintain products/completed operations coverage in the amounts stated below for a

period of three (3) years after the final completion of the Project.

Automobile Liability

All automobiles (owned, hired or non-owned) \$1,000,000 CSL

Such insurance shall cover all automobiles owned, hired, or non-owned used in the performance of the Project and be provided on a form no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those approved by Jacksonville's Office of Risk Management.

Builder's Risk or Installation Floater Insurance

\$ equal to the amount of the
construction contract

In addition to the above coverages, to the extent design work is provided, the FOHP's design professional or the Engineering Firm shall purchase and maintain, or cause its subcontractors to purchase and maintain, design professional liability insurance with not less than limits of \$1,000,000 per occurrence and aggregate, and which shall, at a minimum, cover the FOHP's design professional and subcontractor for claims arising out of design professionals work.

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

Pollution Liability and Pollution Legal Liability (when transportation of pollutants is included in any of the Project phases): The Contractor (where applicable) will provide or cause its contractors, subcontractors, and sub-subcontractors of any tier to provide Pollution Liability coverage with limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Such coverage will name Jacksonville and its members, officials, officers, employees, and agents as additional insureds and include a waiver of subrogation in favor of Jacksonville and its members, officials, officers, employees, and agents.

- (i) All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and its members, officials, officers, employees and agents. Jacksonville shall be named as a loss payee under Builder's Risk or Installation Floater Insurance. The above-required insurance shall be written by an insurer holding a current certificate of authority issued by the Department of Financial Services of the State of Florida pursuant to Chapter 624, Florida Statutes, or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best rating of A- VII or better. Before starting construction, FOHP shall furnish to Jacksonville Certificates of Insurance evidencing the maintenance of said insurance. 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 Jacksonville. Any indemnification provisions in this License are separate and apart from and in no way limited by the insurance amounts stated above. Contractor shall provide a Waiver of Subrogation in favor of Jacksonville and its members, officials, officers, employees and agents.

- (ii) FOHP shall require any contractor or contractors performing work as part of the project to furnish a Construction 100% Performance and Payment Bond in an amount not less than the full amount of the contract price for completing the build-out of any improvements, as surety for the faithful performance of the contract by the contractor, and for the payment of all persons performing labor and furnishing materials in connection with the work. FOHP shall, before the commencement of any construction, furnish Jacksonville with evidence of the Construction Bond as outlined herein. If at any time during the continuance of the contract a surety on the contractor's bond or bonds becomes irresponsible, Jacksonville shall have the right to request additional and sufficient sureties, which FOHP shall require the contractor to furnish within ten (10) days after receipt of written notice from Jacksonville to do so.
- (iii) Deductible or Self-Insured Retention Provisions. The insurance maintained by the CONTRACTOR shall apply on a first dollar basis or with application of a deductible or except as authorized by the City application of any self-insurance or self-insured retention. Except as authorized specifically in this Contract, no self-insurance or self-insured retention for any required insurance provided by CONTRACTOR pursuant to this Contract will be allowed. If there is any self-insurance, deductible or self-insured retention for any required insurance, the CONTRACTOR shall be responsible for paying on behalf of the CITY, its members, officials, employees and agents, ENGINEER, PROGRAM MANAGEMENT FIRM(S)(when program management services are provided), its members, officials, officers, employees and agents any self-insurance, deductible, or self-insured retention allowed under this paragraph. The CITY, ENGINEER, and PROGRAM MANAGEMENT FIRM(S) (when program management services are provided) and their respective members, officials, officers, employees and agents will not be responsible for any self-insurance, deductibles or self-insured retentions under this Contract.
- (iv) Depending upon the nature of any aspect of this project and its accompanying exposures and liabilities, the CITY may, at its sole option, require an additional insurance coverage 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.
- (v) Neither approval of, nor failure to disapprove, the insurance furnished by Contractor and Engineering Firm shall relieve Contractor or Engineering Firm or their contractors, subcontractors, suppliers, or agents from the responsibility to provide the insurance required by this License.
- (vi) FOHP and Contractor shall be responsible for damage to any other area of the Park caused by construction of the Project.
- (vii) The insurance provided by the CONTRACTOR for shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the CITY, ENGINEER, and PROGRAM MANAGEMENT FIRM(S) (when program management services) and for all respective members, officials, officers, employees and agents.

2. INDEMNIFICATION. FOHP shall require its CONTRACTOR and its subcontractors (individually or collectively referred to as the "Indemnifying Parties"), to hold harmless, indemnify, and defend CITY and its members, officials, officers, employees, and agents and the ENGINEER, and PROGRAM MANAGEMENT FIRM(S) (when program management services are provided) (including

their directors, officers, employees, representatives, and agents) (individually or collectively referred to as the "Indemnified Parties") from and against:

(a) General Tort Liability, including without limitation any and all claims, actions, losses, damages, injuries, liabilities, costs and expenses of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury (whether mental or corporeal) to persons (including death) or damage to property, arising out of or incidental to the Indemnifying Parties' performance of the Contract or work performed hereunder; and

(b) Environmental Liability, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs of cleanup, containment or other remediation, and all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney's fees), arising from or in connection with (a) the Indemnifying Parties' actions or activities under the Contract 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, (b) any environmental, health and safety liabilities arising out of or relating to the operation or other activities performed in connection with the Contract by the Indemnifying Parties at any time on or prior to the effective date of the Contract, or (c) any bodily injury (including illness, disability and death, regardless of when any such bodily injury occurred, was incurred or manifested itself), personal injury, property damage (including trespass, nuisance, wrongful eviction and deprivation of the use of real property) or other damage of or to any person in any way arising from or allegedly arising from any hazardous activity conducted by the Indemnifying Parties. CITY will be entitled to control any remedial action and any legal proceeding relating to an environmental claim; and

(c) Intellectual Property Liability, including without limitation any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney'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 Indemnified Parties a license, authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to CITY, so that the Service or product is non-infringing; and

(d) Violation of Laws Liability, CONTRACTOR shall hold harmless, indemnify, and defend the Indemnified Parties against 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) charged to, recovered from or incurred by, any of the Indemnified Parties arising from or based upon the violation of any federal, state, or municipal laws, statutes, resolutions, or regulations, by CONTRACTOR or those under their control. This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to Indemnification shall survive the Term, and any holdover and/or contract extensions thereto, whether

such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement; and

(e) Liability from Breach of Representations, Warranties and Obligations, including without limitation, any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including all costs for investigation and defense thereof including, but not limited to, court costs, reasonable expert witness fees and attorney's fees) which may be incurred by, charged to or recovered from any of the foregoing, arising directly or indirectly out of (a) any breach of any representation or warranty made by the Indemnifying Parties in connection with the Contract or in any certificate, document, writing or other instrument delivered by the Indemnifying Party, or (b) any breach of any covenant or obligation of the Indemnifying Parties set forth in the Contract or any other certificate, document, writing or other instrument delivered by the Indemnifying Parties pursuant to the Contract; and

(f) Accuracy of Work, In providing the Services under this Agreement, the CONTRACTOR, including its officers, employees, agents and subcontractors, shall exercise that degree of skill and care required by customarily accepted good practices and procedures for the performance of the same or similar Services. The CONTRACTOR shall be responsible for the accuracy of its work, including work by any subcontractors, and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of the CONTRACTOR or subcontractors, at no additional compensation. Acceptance of the work by the CITY shall not relieve the CONTRACTOR of the responsibility for subsequent corrections of any such errors and the clarification of any ambiguities; and

(g) At any time during the provision of Services under this Agreement, or during any phase of work performed by others based on data furnished by the Prime CONTRACTOR under this Agreement, the CONTRACTOR shall confer with the CITY for the purpose of interpreting the information furnished and/or correct any errors and/or omissions made by the CONTRACTOR. The CONTRACTOR shall prepare all drawings or data to correct its errors and/or omissions without added compensation even though final payment may have been received therefor; and

(h) The CONTRACTOR shall be and remain liable, in accordance with applicable law, and shall indemnify, hold harmless and defend the City for all damages to the City caused by the CONTRACTOR's breach of contract or its negligent performance of any Services under this Agreement. The CONTRACTOR shall not be responsible, however, for any time delays, in the Project, caused by circumstances beyond the CONTRACTOR's control.

This section relating to Indemnification shall survive the Term, and any holdover and/or contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

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

This indemnification agreement is separate and apart from, and is in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This section relating to Indemnification shall survive

the Term and any holdover and/or contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

In the event that any provision in this Section shall be deemed to be in violation of Section 725.06, Florida Statutes, such provision shall be modified to be in compliance with Section 725.06 and 725.08, Florida Statutes.

This section relating to Indemnification shall survive the Term, and any holdover and/or contract extensions thereto, whether such Term expires naturally by the passage of time or is terminated earlier pursuant to the provisions of this Agreement.

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

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