

San Jacinto River Authority
RFQ 18-0059



San Jacinto River Authority
Purchasing Department
1577 Dam Site Road
Conroe, Texas 77305

REQUEST FOR QUALIFICATIONS
RFQ 18-0059

Professional Services
for
Various Water, Wastewater, and Raw Water Services

NIGP CLASS and ITEM

918	42
925	00
925	96
925	97

Issue Date: Friday, May 4, 2018
Response Due Date and Time (Central Time)
Thursday, June 7, 2018 @ 2:00 p.m.
Location for Delivery: as stated above

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1. INTRODUCTION

In accordance with the provisions of Chapter 49 of the Texas Water Code, Texas Government Code 2254 (Professional Services Procurement Act), and the San Jacinto River Authority (SJRA) Purchasing Policy and Procedures Resolution dated 8-22-13, the SJRA is requesting qualifications based responses to contract with a Professional Consultant (“Consultant”), which must be a sole proprietorship, partnership, corporation, or other legal entity registered to do business in the State of Texas, with considerable experience in providing Water, Wastewater and Raw Water Engineering Consulting services to governmental entities.

This Request for Qualifications (RFQ) solicits information that will enable SJRA to determine the highest qualified Consultant that shall provide the professional services for various projects identified in previous proposed 10-year Project Plan.

The San Jacinto River Authority is exempt from Federal Excise and State Sales Tax.

2. OVERVIEW OF SAN JACINTO RIVER AUTHORITY

The SJRA was originally created by the Texas Legislature as the “San Jacinto River Conservation and Reclamation District” by House Bill No. 832, Chapter 426, of the General and Special Laws of the 45th Texas Legislature, Regular Session, 1937. In 1951, the Texas Legislature changed the name of the “San Jacinto Conservation and Reclamation District” to the “San Jacinto River Authority.” The SJRA is a government agency whose mission is to develop, conserve, and protect the water resources of the San Jacinto River basin. Covering all or part of seven counties, the organization’s jurisdiction includes the entire San Jacinto River watershed, excluding Harris County. This includes all of Montgomery County and parts of Walker, Waller, San Jacinto, Grimes, and Liberty Counties. The SJRA is one of ten (10) major river authorities in the State of Texas, and like other river authorities, its primary purpose is to implement long-term, regional projects related to water supply and wastewater treatment.

The SJRA’s general offices are located at 1577 Dam Site Road, Conroe, Texas 77305. SJRA has six (6) separate divisions, the General and Administrative Division, Lake Conroe Division, Woodlands Division, Highlands Division, Groundwater Reduction Plan (GRP) Division, and the Flood Management Division. More information can be accessed here: <http://www.sjra.net/about/>

3. PROJECT REQUIREMENTS AND PROJECT DESCRIPTION

The SJRA has identified the need for Consultants to provide professional engineering services for water, wastewater, and raw water rehabilitation, construction and asset management projects. The Consultant shall furnish all required labor, materials, supplies and travel required in connection with these projects. The SJRA expects that the project staff will include individuals with expertise in water, wastewater and raw water engineering services for a governmental entity.

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Background

The SJRA is soliciting Statements of Qualifications (SOQs) from Engineering Consultant(s) to provide necessary professional consulting services required to support the various water, wastewater, and raw water system improvement projects for all SJRA operating divisions.

Efforts are on-going in the Operating Divisions to construct and maintain future and existing facilities as well as other improvements. The SJRA anticipates multiple projects including, but not limited to, water well evaluation and rehabilitation, water well collection systems, potable water distribution and transmission systems, elevated and ground storage tank construction and rehabilitation, ground and surface water treatment plant improvements, sanitary sewer system evaluation survey assistance, wastewater collection system modeling assistance, wastewater collection and conveyance, lift station rehabilitation, wastewater facility improvements, raw water pump station improvements, canal improvements, reservoir improvements, control gate improvements, siphon construction/rehabilitation, asset management plan development and implementation assistance, and related activities.

The SJRA will review and accept proposals from qualified consultants for each of the eighteen (18) areas of service(s) requested below. Qualified firms may submit qualification proposals for one (1) area of service, multiple areas of service, or all areas of service. SJRA requires that the firm submit a separate proposal for each of the service(s) that a firm desires to be considered. The SJRA will “shortlist” the consultants and maintain a list of Consultants for each area of eighteen (18) services identified below. Those firms that are not chosen for the “shortlist” will be notified via written communication.

A project is contemplated, where an identified need for the professional service(s) has been established over the identified term stated within the solicitation document, SJRA will conduct a *separate evaluation for each project*, conducting an evaluation and ranking from the “shortlisted” firms for the particular identified project solution.

The SJRA Board of Directors approves a five-year Capital Improvement Plan, which is updated yearly. The following link: www.sjra.net will direct you to the approved list of projects, from which this solicitation intends to award specific work.

Anticipated Consultant Scope of Work

It shall be each prospective firm’s responsibility to assemble a team of qualified professionals as needed to meet resource and discipline/area services requirements. The SJRA has no objection to firms who may wish to consider teaming with subconsultants so that the prospective firm’s team has the ability and the depth of resources to offer the required level of services within the SJRA’s required schedule and budget.

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The SJRA may consider requiring the Water/Wastewater/Raw Water Engineering Consultant(s) to provide the following engineering services that may generally include but may not be limited to the following:

1. ASSET MANAGEMENT PLAN DEVELOPMENT AND IMPLEMENTATION
2. PROJECT/PROGRAM PLANNING
3. PRELIMINARY DESIGN PHASE SERVICES
4. GEOTECHNICAL INVESTIGATIONS
5. ENVIRONMENTAL ASSESSMENTS AND STUDIES
6. SURVEYING
7. FINAL DESIGN PHASE SERVICES
8. PROCUREMENT PHASE SERVICES
9. CONSTRUCTION ADMINISTRATION/MANAGEMENT
10. CONSTRUCTION MANAGEMENT
11. CONSTRUCTION INSPECTION
12. PERMITTING
13. WATER DISTRIBUTION SYSTEM MODELING
14. WASTEWATER COLLECTION SYSTEM MODELING
15. RAW WATER (OPEN CHANNEL) MODELING
16. GRAPHIC INTERACE SYSTEM (GIS)
17. OTHER SERVICES AS REQUESTED
18. Engineering Disciplines: Civil, Concrete, Corrosion Control, Control Systems, Dam, Drainage, Electrical, Mechanical, Environmental, Facilities, Foundation, Flood Control, Geological, Geotechnical, Hazardous Waste, Industrial, Inspection, Instrumentation, Mechanical, Municipal, Sanitary, Sewage Collection, Structural, Water and Wastewater.

SJRA will provide 10-Year Capital Improvement Plan and Water Demand Projections, at the conclusion of the kick-off meeting.

Anticipated Schedule

The anticipated schedule for any identified project(s) is as follows:

- Contract Award by SJRA – TBD

All of the services shall be accomplished per Item #3 Project Requirements and Project Description, and as further clarified and negotiated once a Consultant has been selected. A detailed Scope of Work will be developed at that time.

4. MINIMUM QUALIFICATIONS

The following minimum requirements must be demonstrated in order for the submission to be **considered responsive** to the San Jacinto River Authority. Any submission received, which is determined to not meet these mandatory requirements *may be* disqualified and rejected as non-

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responsive. Refer to Item 15 for general provisions and SJRA reservations of rights, in regards to this solicitation.

- A demonstrated competence in providing Professional Services, related to performance of Professional Engineering services for Governmental Entities.
- SJRA prefers a minimum of three (3) references from customers for the services requested.
- The responding individual or business must be registered within the State of Texas to provide the products or services required in the solicitation, and the individual or business must have all licensure required by the State to provide any services required under this solicitation. To learn how to obtain information about filing with the State of Texas, or obtaining copies or certificates from the Secretary of State visit Webpage: <http://www.sos.state.tx.us/corp/copies.shtml>; Phone 512-463-5578; or email corpcert@sos.state.tx.us.
- Submittal documents including a coversheet, Solicitation Checklist, Attachments A - G and any additional requirements, per the method described in Item 10 – INSTRUCTIONS TO RESPONDENTS / STATEMENT OF QUALIFICATIONS AND Section 11 SUBMITTAL INSTRUCTIONS.

5. SCHEDULE OF EVENTS

The San Jacinto River Authority reserves the right to change the dates indicated below:

Issue Solicitation:	05/04/2018
Pre-Submittal Meeting	05/16/2018, 9:00 AM CDT
Deadline for submission of questions:	05/23/2018 at 10:00 AM CDT
Deadline for submission of responses:	06/07/2018 at 11:00 AM CDT
Evaluate and rank initial results (shortlist):	week of 06/11/2018
Interview(s) with top ranked teams (if required):	week of TBD
Evaluate and rank shortlisted teams:	week of TBD
Negotiation with top ranked team:	week of TBD

The SJRA is using the solicitation ‘Issue Date’ as noted in the Schedule of Events above as the official 30 day notification requirement for an interview with a firm.

6. PRE-SUBMITTAL MEETING

A **non-mandatory** pre-submittal meeting will be held at **9:00 AM CDT on Wednesday May 16, 2018 at the SJRA General & Administration Building (G&A Main Conference Room) at 1577 Dam Site Road, Conroe, TX 773704.**

Internet link to meeting location (Google Maps):

www.google.com/maps/place/1577+Dam+Site+Rd,+Conroe,+TX+77304/@30.355386,-95.5700852,17z/data=!3m1!4b1!4m5!3m4!1s0x8647232ef12cf687:0x23c255278ca1edd6!8m2!3d30.3554502!4d-95.567799

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7. CONTRACT TERM

Award of Engineering Services

It is the intention of the SJRA to award a Professional Services Agreement (PSA) for projects identified and approved in the latest CIP to be constructed and or rehabilitated, from individual rankings of firms on the SJRA shortlist of services One or more Professional Services Firm may be selected to perform the negotiated services described herein and as detailed in Item #3 Project Requirements and Project Description. The projects identified shall include, without limitation, professional services in support of Water, Wastewater and Raw Water Engineering. The PSA shall commence upon the issuance of a Purchase Order by the SJRA and shall automatically expire upon acceptance by the SJRA following completion of the work.

SJRA may terminate the PSA contract, and Purchase Order, for any reason, with or without cause in accordance to the terms and conditions of Exhibit “A” – Professional Services Agreement.

8. PRICING

Do not submit pricing information with your initial proposal submission.

This solicitation is for professional services as defined in the Texas Government Code 2254 (TGC 2254) and price ***shall not*** be solicited. The San Jacinto River Authority will select a team on the basis of demonstrated competence and qualifications to perform the services described in this RFQ. Once the most qualified team has been selected, a fair and reasonable price will be negotiated. The professional fees under this contract may not exceed any maximum provided by law.

9. ADDENDA

Respondents are required to acknowledge addenda with their submission. Respondents will be responsible for monitoring the Brazos Valley Purchasing website at <http://brazosbid.cstx.gov/admin/login.asp> to ensure they have downloaded and signed all addenda required for submission with their submission.

10. INSTRUCTIONS TO RESPONDENTS / STATEMENT OF QUALIFICATIONS / AND SUBMITTAL REQUIREMENTS

The SJRA is requesting a Statement of Qualifications (SOQ) from qualified Consultants to provide the professional services. The Consultant shall include appropriately qualified, experienced professionals to provide these, as well as other services required within the proposed schedule.

SOQs shall not exceed **thirty-five (35) pages total**. ***Legibility, clarity and completeness are important and essential. It is important that Respondents follow the required format in preparing their responses. Each response shall be organized into sections, with each section being present in the order below.*** SOQs shall be printed on single side 8 ½” by 11” pages with not less than 1-inch margins, not less than 1.25 line spacing and not less than 12 point font.

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A. Outside Cover and/or First Page. Shall contain the Solicitation number, Respondent's name, address, contact name, phone, fax, website, and email address.

B. Table of Contents. The next page shall be the Table of Contents.

C. Section 1 (Letters)

- i. **Transmittal Letter.** The first page following the divider shall be a one-page letter transmitting the response to the SJRA. The transmittal letter shall state that the submittal is valid for 90 days, and that the signer of the document is authorized by the Respondent to sign the document. At least one copy of the transmittal letter shall contain the original signature of a partner, principal or officer of the Respondent.

D. Section 2 (Firm Qualifications and Experience)

- i. Complete **Attachment A – Business Overview Questionnaire and Form**
- ii. Also, provide a complete description of the Respondent and each member of the Respondent's team that is to be involved in providing these services. Describe the firm's qualifications to perform the requested services. Include the following:
- iii. References - List at least three engagements performed in the last five years that are similar to the engagements described in this Request for Qualifications, **by completion of Attachment C – References, Schedule and Budget Compliance Form.** Attachment C should also be inclusive of the Project Schedule and Budget Compliance history – providing specific details regarding the budget and schedules of three (3) references. Include the name of the client organization; the year(s) the work was performed; the name, title email address and telephone number of the principal client contact; the engagement partners; the scope of work; and the level of effort in terms of total hours.

E. Section 3 (Personnel)

- i. Team Organization Chart – Show all proposed team Members
- ii. List of Key Personnel and Resumes. List all the key personnel in the proposal response. Provide one-page resumes for key personnel including but not limited to Project Manager, Lead Technical Professional that are proposed to be assigned to this project. Clearly indicate in your proposal response the primary proposal contact that will be assigned to this project. Include the following:
 - Name
 - Position/title
 - Education
 - Applicable registration or certification
 - Other qualifications

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- Role/responsibility for this project, including availability and time commitment to the project
- Current location
- Experience directly relevant to the specific aspects and anticipated services for various projects including five (5) recent assignments of similar nature including the project name, location, client, project description, work/services performed under the direct supervision of the individual, completion of key deliverables, budget and schedule adherence and client name, title/position, current phone number and email address.

iii. Support Resources. The name, position/title, education, applicable registration or certification, other qualifications, role/responsibility for this project, current location and direct experience, and capabilities of support resources who will be directly assigned to the project. The personnel cited shall be designated as to whether they are an employee of the RFQ respondent or the employee of a subconsultant to the RFQ respondent.

F. Section 4 (Other Information) - Provide other information pertinent to the project regarding the team and its support resources.

i. The RFQ process allows for negotiation of the requirements of this solicitation, however, the terms and conditions of the PSA are ***not negotiable***. The respondent shall note any exceptions to the solicitation document, on **Attachment B – Submission Exceptions Form**. The exceptions will be reviewed to ensure they meet the minimum requirements and the proposal submission shall be ranked in accordance with the evaluation criteria. The SJRA reserves the right to accept, reject or negotiate the exceptions provided. ***Complete, sign and return Attachment B – Submission Exceptions Form*** with their proposal submission.

ii. Disclosures - The individual or business must disclose any business relationship that would have an effect of a conflict of interest. A conflict of interest statement must be signed as part of the contract negotiated with the awardee(s). ***Complete, sign, and return Attachment D – Conflict of Interest Questionnaire***.

iii. Company Does Not Boycott Israel - Pursuant to Section 2270.002 of the Texas Government Code, the Contractor shall be required to execute contemporaneous with its execution of the Agreement a verification that Contractor does not Boycott Israel and Contractor will not Boycott Israel during the term of this Agreement. “Boycott Israel” as used herein means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. ***Complete, sign, and return Attachment E – Company Does Not Boycott Israel***. List of Current Projects under Contract – Provide a list of all projects for which the prime Team is currently under contract to provide services.

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- iv. Felony Conviction Notification Form – The individual or business must disclose any felony convictions for any team members that will be assigned to the SJRA project; ***complete, sign, and return Attachment F – Felony Conviction Notification.***
- v. Acknowledgement Form - Submit a signed acknowledgement by authorized agent of the responding team; ***complete sign, and return Attachment G – Acknowledgement.***

11. SUBMITTAL INSTRUCTIONS

The SJRA will accept submissions until the date and time on the cover sheet of this solicitation. Any submission received after the date and/or hour set for solicitation opening will be returned unopened, and rejected.

The Qualifications Statement Response should be in a sealed envelope which are clearly labeled and addressed, and delivered (by Postal Service, team or express courier) to the address listed below:

CONFIDENTIAL: STATEMENT OF QUALIFICATIONS

San Jacinto River Authority
Purchasing Department
RFQ# 18-0059 Water/Wastewater/Raw Water Engineering Consultant
1577 Dam Site Road
Conroe, TX 77305

The SJRA reserves the right to accept or reject in part or in whole any submission, and to waive technicalities of the submission, in the best interest of obtaining best value.

Any submission received after the date and/or hour set for solicitation opening will be returned unopened, and rejected. The SJRA reserves the right to reject any or all Statement of Qualifications, in part or in whole any submission, and to waive technicalities of the submission, informalities and irregularities, in the interest of obtaining best value. Each respondent is responsible for taking the necessary steps to ensure their submission is received by the date and time noted herein. The SJRA is not responsible for missing, lost or late mail or any mail or email delays, internal or external, that may result in the submission arriving after the set time.

12. SUBMISSION FORMAT

Respondents shall provide detailed information to allow the SJRA to properly evaluate the submission, as detailed within the solicitation. The San Jacinto River Authority requests the following format be utilized:

1. Submit response before the published due date. Submittals must be in a sealed envelope with the solicitation number and name.

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2. Provide one (1) bound hard copy submission, with original signature by an officer authorized to bind the team, and **one (1) electronic PDF copy via USB flash drive (memory data stick) format.**
3. Submission shall be no more than thirty-five (35) pages in length. ***Provide no more than 15 pages for the requirements in Item 10, sub-items D through F; provide no more than 20 pages for the remainder of the RFQ including coversheet, Section 1 attachments, completed forms, and plain section dividers.***
4. Utilize tabs to identify exhibits and attachments.
5. The submission shall be in the following order, utilizing plain section dividers:
 - a. Coversheet – including Solicitation number and name, company name, address, contact name, phone, fax, website and email address.
 - b. Table of Contents
 - c. Section 1
 - d. Sub-items D through F as identified in Item 10 – Instructions to Respondents / Statement of Qualifications (***maximum 15 pages***)
 - e. Completed Solicitation Checklist
 - f. Attachment A – Business Overview Questionnaire Form
 - g. Attachment B – Submission Exception Form
 - h. Attachment C – References, Schedule and Budget Compliance Forms
 - i. Attachment D – Conflict of Interest
 - j. Attachment E – Verification Company does not Boycott Israel
 - k. Attachment F – Felony Conviction Notification Form
 - l. Attachment G - Acknowledgement

13. CONFIDENTIALITY OF STATEMENT OF QUALIFICATIONS INFORMATION

All materials submitted to the SJRA in response to a competitive solicitation, upon receipt by the SJRA become public property, and are subject to the Texas Government Code Chapter 552 (Texas Public Information Act). There will be no disclosure of contents to competing teams and all responses will be kept confidential during the selection process to the degree permitted by law. The SJRA is subject to the Texas Public Information Act (Texas Government Code 552). In accordance with the provisions of Texas Government Code 552.110, trade secrets, commercial or financial information that may be privileged or confidential by statute or judicial decision, are exempt from required public disclosure. All submissions shall be opened in a manner that avoids disclosure of the contents to competing respondents and keeps the responses secret during negotiations, in accordance to the statutory provisions of Texas Government Code 552.104. A public opening **will not** be conducted with this procurement process.

If a Respondent does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked “proprietary” at the time of submittal. SJRA will, to the extent provided by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request. Respondents shall not be permitted to mark entire Proposal as

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proprietary. All information, documentation, and other materials not marked “confidential” shall be subject to public disclosure, after award of the contract.

After the contract has been awarded all submissions will be open for public inspection, and the unsuccessful Respondent(s) may request a debriefing regarding their submittal. Contact the SJRA Purchasing staff to document the request for a debriefing. A meeting with the SJRA Purchasing Staff and the SJRA Division will be scheduled within a reasonable time.

14. EVALUATION PROCEDURES

Selection of a team to provide the aforementioned services shall be in accordance with the SJRA Purchasing Policies and Procedures, the State of Texas Government Code 2254, Chapter 49 of Texas Water Code, and. The SJRA shall open all submissions and evaluate each respondent in accordance to the below criteria:

Step 1: Initial Evaluation

The SJRA shall conduct an **initial evaluation** of the submission(s) in accordance with the selection criteria and will provide an initial shortlist of the teams on the basis of the submittals. The SJRA reserves the right to consider information obtained in addition to the data submitted in the response. SJRA may conduct such investigations as SJRA deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of Respondents, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to SJRA's satisfaction within the prescribed time. The selection criteria is listed below:

- a. Relevant experience, expertise, and qualifications of the Prime Consultant Firm and Proposed Subconsultant Firms, if any **(25 points)**;
- b. Relevant experience, expertise, and qualifications of the Proposed Individual Project Manager **(25 points)**;
- c. Relevant experience, expertise, and qualifications of the Proposed Lead Technical Professional **(25 points)**;
- d. Relevant experience, expertise, and qualifications of the proposed management, administrative, and technical team depth/support services **(25 points)**;

TOTAL POSSIBLE POINTS: 100 POINTS

The submissions shall be scored as indicated above, Step 1 items a-d. Based on the outcome of the computations performed, each submission will be assigned a score for completion of the scoring process.

Step 2: Interviews (optional – to be determined by SJRA)

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Following Step 1: Initial Evaluation, the SJRA *may* conduct interviews with the top ranked teams (shortlist). The interview format shall be determined by the SJRA, but may consist of presentations by the teams and opportunity for questions and answers (Q&A).

Step 3: Final Evaluation (optional – to be determined by SJRA)

Following Step 2: Interviews, the SJRA shall conduct a final evaluation (*if necessary*) of the top ranked teams (shortlist), considering all selection criteria from Step 1 and as further defined in the shortlisted team's interview.

Step 4: Negotiation

Following Step 1, if Interviews are not conducted, or Step 3, if Interview are conducted: the SJRA shall proceed to negotiate a contract with the *highest ranked team*. Provided the SJRA cannot successfully contract with the highest ranked team, the SJRA shall formally, and in writing, end all negotiations with that team and the SJRA may elect to proceed to negotiate with the next team in the order of the selection ranking until a contract is reached or negotiations with all ranked teams end, in accordance with Texas Government Code 2254.

Step 5: Written Recommendation for Award

Following Step 4: Negotiation, a written recommendation for approval of a final negotiated professional services agreement will be presented to the SJRA Board of Directors requesting authorization to proceed with contract execution for the proposed services.

The successful respondent will be required to enter into a Professional Services Agreement, similar to Exhibit "A" of this solicitation. This RFQ and the successful respondents' response, or any part thereof, may be incorporated into and made a part of the final contract. The SJRA reserves the right to negotiate final terms and conditions of the contract. The SJRA also retains the right to revise the PSA based on review of laws passed by the Texas Legislature, results of recent case law or other considerations. The SJRA reserves the right to *reject any or all Statement of Qualifications*, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced, or conditional SOQs and to reject the SOQ of any Respondent, if the SJRA believes that it would not be in the best interest of the Project to make an award to that Respondent, whether because the SOQ is not responsive or the Respondent is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the SJRA.

15. CONTACT BETWEEN RESPONDENT(S) AND SAN JACINTO RIVER AUTHORITY

Respondents shall direct all inquiries and communications concerning this solicitation to the Point of Contact (POC) only, as listed below:

Gilbert C. Garza, CPSM, CPPO
Senior Buyer
1577 Dam Site Road
Conroe, TX 77304
(936) 588-7144
ggarza@sjra.net

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Respondents or their representatives are strictly prohibited from communicating with any SJRA Board member, or SJRA staff, consultants, or advisors regarding this opportunity from during the solicitation process time period, or until an award is made, except as noted above as the POC. Any other contact with the SJRA Board, SJRA staff, consultants, or advisors regarding this contract may eliminate that team from contract award consideration. All communications regarding this RFQ must be made in writing and electronically to POC as listed above.

All questions asked, and answers provided individually shall be posted electronically as an addendum to the solicitation. Email notice will not be provided, and respondents are encouraged to check the website frequently, for updates and addendums regarding this opportunity.

16. VALIDITY PERIOD

All Proposals will remain subject to acceptance for **ninety (90) days** after the date of the opening, but SJRA may, in its sole discretion, release any Proposal prior to that date. That period may be extended by mutual written agreement of the SJRA and the Respondent.

17. MODIFICATION AND WITHDRAWAL OF STATEMENT OF QUALIFICATIONS

Statement of Qualifications may be modified or withdrawn by a document duly executed and delivered to the place where SOQ's are to be submitted prior to the date and time for the submission of SOQs. If, within twenty-four (24) hours after Proposals are opened, any Respondent files a duly signed written notice with the SJRA and promptly thereafter demonstrates to the reasonable satisfaction of SJRA that there was a material or substantial mistake in the preparation of its SOQ.

18. CONFLICT OF INTEREST

No public official shall have interest in this opportunity except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, and Chapter 171.

Attachment D – Conflict of Interest Questionnaire contained in this solicitation. This form must be completed and submitted with any response. In accordance with the statutory provisions of Chapter 176.006 of the Texas Local Government Code, all respondents to this solicitation are required to file a public disclosure of certain information concerning persons doing business or seeking to do business with the SJRA, including affiliations and business and financial relationships such persons may have with SJRA Officers. By doing business or seeking to do business with SJRA, including submitting a response to the solicitation, the Respondent acknowledges that he/she has been notified of the requirements of Texas Local Government Code 176 and represents that the said Respondent in in compliance with the requirements. An explanation of the requirements of Chapter 176, applicable forms and a complete text of the law are available at <http://www.ethics.state.tx.us/forms/CIQ.pdf>.

Additional Requirement for Awarded Respondent only: Effective January 1, 2016, Texas Government Code 2252.908 requires government entities to ensure that all contracts, which require SJRA Board approval or have a value of at least one million (\$1,000,000) dollars, have met the following additional conflict of interest requirements:

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- The government entity may not enter into a contract unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the government entity.
- The disclosure of interested parties must be submitted electronically through the Texas Ethics Commission website at:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Provided your response is deemed as the best value to SJRA and a recommendation for award is approved, the above requirement shall be met prior to contract award by SJRA Board of Directors.

19. COMPANY DOES NOT BOYCOTT ISRAEL

Pursuant to Section 2270.002 of the Texas Government Code, the Contractor shall be required to execute contemporaneous with its execution of the Agreement a verification that Contractor does not Boycott Israel and Contractor will not Boycott Israel during the term of this Agreement. “Boycott Israel” as used herein means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. *Complete, sign, and return Attachment E – Verification Company Does Not Boycott Israel.*

20. GENERAL

This RFQ does not commit SJRA to enter into a contract, nor does it obligate it to pay any costs incurred in the preparation and submission of a statement of qualifications and subsequent discussions, interviews and/or presentations in anticipation of a contract. The cost of preparing the qualification submission and any subsequent materials or presentation shall be solely the responsibility of the prospective respondent. The SJRA reserves the right to:

- Determine which response is in the SJRA’s best interest;
- Reject any and all Statements of Qualifications received;
- Cancel the entire RFQ;
- Remedy technical errors in the RFQ process;
- Negotiate with any, all, or none of the Respondents to the RFQ;
- Request proposals from a short list of Respondents to the RFQ;
- Conduct interviews with a shortlist of Respondents to the RFQ, which may include a requirement to provide a presentation of the team’s proposed solution by the team’s proposed Project Manager;
- Waive informalities and irregularities;
- Modify the selection process;
- Select, approve, or disapprove all subconsultants; and

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- Revise the PSA based on review of laws passed by the Texas Legislature, recent case law or other circumstances.

21. SIGNING OF AGREEMENT

SJRA's Purchasing Department will transmit to the successful Respondent the required number of unsigned counterparts of the Agreement with all other written documents attached. Respondent shall sign and deliver the required number of counterparts of the Agreement and written Contract Documents to SJRA Purchasing Department ten (10) calendar days prior to SJRA Board of Directors Meeting for which a contract award is anticipated. Required insurances (certificates and/or endorsements) and Bonds shall be transmitted by respondent to SJRA Purchasing Department within ten (10) calendar days after SJRA's Board of Director's contract award. SJRA shall deliver one (1) fully signed counterpart to the awarded Contractor.

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SOLICITATION CHECKLIST

Check when Completed	Task to be Completed by Respondent
	Review Exhibit “A” – Professional Services Agreement
	Cover sheet
	Solicitation number
	Solicitation name
	Respondent’s name
	Solicitation Checklist
	Document how team meets minimum qualifications (see requirements in Item #4)
	Provide Statement of Qualifications and detail to support evaluation criteria
	Attachment A – Business Overview Questionnaire and Form <u>with signature</u>
	Attachment B – Submission Exceptions Form <u>with signature</u>
	Attachment C – References, Schedule and Budget Compliance Forms
	Attachment D – Conflict of Interest Questionnaire – <u>with signature</u>
	Attachment E – Verification Company Does Not Boycott Israel <u>with signature</u>
	Attachment F – Felony Conviction Notification <u>with signature</u>
	Attachment G – Acknowledgment <u>with signature</u>
	Hard Copy Submission: The SJRA requires one (1) original.
	Electronic Copy: The SJRA requires submission of one (1) electronic PDF copy via USB flash drive (memory data stick)

Submit response, with plain section dividers marking each section, in the following order:

Order for Submission	Document
1	Cover Sheet and Submission Materials
2	Table of Contents
3	Section 1
4	Sub-items D-H of Item #11
5	Completed Solicitation Checklist
6	Attachment A – Business Overview Questionnaire and Form
7	Attachment B – Submission Exceptions Form
8	Attachment C – References, Schedule and Budget Compliance Forms
9	Attachment D – Conflict of Interest Form
10	Attachment E – Verification that Company does not boycott Israel
11	Attachment F – Felony Conviction Notification
12	Attachment G – Acknowledgment, with Addendum acknowledgment

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ATTACHMENT A-BUSINESS OVERVIEW QUESTIONNAIRE AND FORM

1. Team or Firm legal name:
2. Corporate address:
3. Address and phone number of Texas office supporting this project:
4. Primary contact name, phone number and email address:
5. Website address:
6. Federal tax identification number:
7. Texas Professional Licensing Registration Number (if any):
8. Number of years in business:
9. Organization Class (circle):

Partnership	Corporation	Individual	Association
-------------	-------------	------------	-------------
10. Date of organization (month and year):
11. Location(s) of business:
12. Name(s) and date(s) of predecessor organization(s):
13. Total number of employees located in Texas office(s) supporting this Project:
14. Number and type of professionals and corresponding registrations/certifications located in Texas office(s) supporting this Project:
15. Type and limits of insurance coverage – **Note: SJRA standard insurance requirements are stated in Exhibit “A” of this document. Teams who cannot meet these minimum standards will not be considered.**

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16. Provide a detailed listing of all products and/or services that your company provides.
17. Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five (5) years under your current company name or any other company name? If so provide details of the issues and resolution if available. Include lawsuits where Owner was involved. (Notice: Failure to disclose this information during proposal submission, and later discovered, may result in contract termination at the Owner's option.)
18. Have you ever defaulted on or failed to complete a contract under your current company name or any other company name? If so, where and why? Give name and telephone number(s) of Project Owner(s).
19. Have you ever had a contract terminated by the Owner? If so, where and why? Give name and telephone number(s) of Owner(s).
20. Has your company implemented an Employee Health and Safety Program compliant with 29 CFR 1910 "General Industry Standards"
https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1910

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and/or 29 CFR 1926 “General Construction Standards”
https://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1926 as they apply to your Company’s customary activities?

I certify that our team meets the minimum qualifications as stated in this Main document.

Signature

Company

Date

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ATTACHMENT B - SUBMISSION EXCEPTIONS FORM

Any exceptions taken to this solicitation (**including any, requirements in the solicitation or scope of work**) must be itemized on the lines below. **SJRA will not accept any exceptions to the terms and conditions contained in Exhibit “A”- Professional Services Agreement.** Additional pages may be added as needed. If there are no exceptions, sign where indicated at the bottom of the page

Item # Description

The above exceptions (and any additional pages identified) are the **ONLY** exceptions to the specifications, General Provisions and Terms and Conditions, and/or sample Professional Services Agreement within this solicitation. I understand that the SJRA *shall not* accept additional exceptions **produced after final submission of this proposal.** I understand that SJRA may consider any exceptions during the initial evaluation process.

Signature
Company
Date

No Exceptions are taken to this solicitation, the Provisions, Requirements, or Terms and Conditions of the Sample Professional Services Agreement.

Signature
Company
Date

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ATTACHMENT C – REFERENCES / SCHEDULE & BUDGET COMPLIANCE

Please list three (3) customer references, **other than the SJRA**, who can verify the quality of service your company provides. The SJRA prefers customers of similar size and scope of work to this solicitation.

REFERENCE ONE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

CONTACT PERSON EMAIL: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE TWO

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

CONTACT PERSON EMAIL: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE THREE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

CONTACT PERSON EMAIL: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

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ATTACHMENT D - CONFLICT OF INTEREST FORM

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 Name of vendor who has a business relationship with local governmental entity.

2 Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4 I have no Conflict of Interest to disclose.

5 _____
Signature of vendor doing business with the governmental entity

Date

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ATTACHMENT E

VERIFICATION COMPANY DOES NOT BOYCOTT ISRAEL

BEFORE ME, the undersigned authority, on this day personally appeared _____
[name], _____ [title] of _____ [Contractor], and, upon oath, after first
being duly sworn, deposed and stated:

“My name is _____ and I am the _____ [title] of
_____ [Contractor], hereinafter referred to in this verification as ‘Contractor’. The facts
set forth herein are within my personal knowledge and are true and correct, and I am competent and authorized
to make this verification on behalf of Contractor.

Contractor does not Boycott Israel; and

Contractor will not Boycott Israel during the term of this Agreement; and

‘Boycott Israel’ as used herein means refusing to deal with, terminating business activities with, or
otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial
relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-
controlled territory, but does not include an action made for ordinary business purposes.”

Contractor: _____

By: _____
[Signature of Affiant]

Printed Name: _____

Title: _____

SUBSCRIBED AND SWORN TO before me on this ____ day of _____, 201_, by
_____, _____ [title] of _____ [Contractor], known
to me or proved through photo identification.

Notary Public in and for the State of Texas
My commission expires: _____

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**ATTACHMENT F
FELONY CONVICTION NOTIFICATION**

Any person and/or business entity that enters into a contract with the San Jacinto River Authority must give advance notice to the SJRA if any employee or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. The notice must also describe the role that the employee, owner, or operator will perform in executing the contract. The SJRA may require substitution of employees in the performance of the contract.

The SJRA may terminate a contract with a person or business entity if the SJRA determines that the person or business entity failed to give notice as required by this clause, misrepresented the conduct resulting in the conviction, or failed to substitute personnel at SJRA's request.

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

Authorized Company Official's Name (Printed)

Date

A. My firm is not owned or operated by anyone who has been convicted of a felony nor does it have any employees who have been convicted of a felony:

Signature of Company Official

Date

B. My firm has employee(s) or is owned or operated by the following individual(s) who has/have been convicted of a felony:

Signature of Company Official

Date

C. Provide a general description of the conduct resulting in the conviction of a felony.

Signature of Company Official

Date

D. Describe the role that the person(s) convicted of a felony will play in the performance of the contract.

Signature of Company Official

Date

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ATTACHMENT G - ACKNOWLEDGMENT

The undersigned agrees this submission becomes the property of the San Jacinto River Authority after the official opening.

The undersigned affirms he/she has familiarized himself with the requirements, scope of work, and matters that will be required for the work before submitting a response.

The undersigned agrees, if this submission is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specification. The period for acceptance of this submission will be **180 calendar days** unless a different period is noted.

The undersigned affirms that they are duly authorized to execute this contract, that this submission has not been prepared in collusion with any other respondent, nor any employee of the SJRA, and that the contents of this submission have not been communicated to any other respondent or to any employee of the SJRA prior to the acceptance of this submission.

Respondent hereby assigns to the SJRA any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

The undersigned affirms that they have read and do understand the specifications, all exhibits and attachments contained in this solicitation package.

The undersigned agrees that the solicitation package posted on the website are the official requirements and shall not alter the electronic copy of the requirements, terms, or conditions – were applicable, without clearly identifying changes.

The undersigned understands they will be responsible for monitoring the SJRA Purchasing Website at: <http://brazosbid.cstx.gov/admin/login.asp> to ensure they have downloaded and signed all addendum(s) required for submission with their response. I certify that I have made no willful misrepresentations in this submission, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this submission will be investigated, with my full permission, and that any misrepresentations or omissions may cause my submission to be rejected.

Acknowledge receipt of following addenda to the solicitation:

Addendum No 1 Dated _____ Received _____

Addendum No 1 Dated _____ Received _____

Addendum No 1 Dated _____ Received _____

**NAME AND ADDRESS OF COMPANY:
REPRESENTATIVE:**

Tel. No. _____
Email. _____

AUTHORIZED

Signature _____
Date _____
Name _____
Title _____
Fax No. _____

EXHIBIT “A”

(Professional Services Agreement)

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PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. _____

This Professional Services Agreement (the "Agreement") is made and entered into effective as of the _____ day of _____, 201_, by and between the San Jacinto River Authority, a conservation and reclamation district of the State of Texas, ("SJRA") with general and administration offices located at 1577 Dam Site Road, Conroe, Texas 77304,

and

_____, a [corporation, LP, LLC, partnership] organized under the laws of the State of _____, ("CONSULTANT") with principal offices located at _____.

SJRA and CONSULTANT are sometimes referred to herein collectively as the "Parties" or individually as a "Party".

The Parties hereby agree as follows:

ARTICLE 1 – SCOPE OF SERVICES

1.1 CONSULTANT agrees to perform professional services (the "Services") related to _____ as are requested from time to time by SJRA, which Services shall be set forth more particularly in Purchase Orders, issued SJRA and accepted by CONSULTANT. Each Purchase Order shall constitute a separate and independent agreement between CONSULTANT and SJRA.

1.2 Purchase Orders shall contain the schedule, price, and payment terms applicable to the Services within the scope of such orders. Time is of the essence to this Professional Services Agreement and all Purchase Orders will incorporate and be governed by and subject to the terms, conditions, and other provisions of this Agreement. Purchase Orders shall become effective when an acknowledged copy thereof is signed by a duly authorized officer of CONSULTANT, returned to SJRA and countersigned by SJRA. The specific terms of a Purchase Order may not be modified unless such modifications are agreed to in writing by SJRA and CONSULTANT.

1.3 Unless the Purchase Order specifically states the term, condition, or other provision of this Agreement that is being modified, terms, conditions, or other provisions contained in any Purchase Order or any proposal attached to or incorporated in to a Purchase Order that conflict with any terms, conditions, or other provisions of this Agreement shall have no effect and shall be deemed stricken and severed from such Purchase Orders, and the balance of the terms, conditions, and other provisions contained in such Purchase Orders shall remain in full force and effect. Modifications of the terms, conditions, or other provisions of this Agreement with respect to a particular Purchase Order shall not modify the terms, conditions or other provisions of this Agreement with respect to any other Purchase Order.

1.4 Nothing herein shall obligate SJRA to issue, or CONSULTANT to accept, any Purchase Orders. Further, the Parties agree that nothing in this Agreement shall prohibit the Parties, or either of them, from entering into agreements other than this Agreement for professional services or other work.

ARTICLE 2 – TERM OF AGREEMENT

2.1 This Agreement shall be effective for a term of one (1) year from the date first set forth above and shall be automatically renewed without action by either Party for subsequent terms of one year unless terminated earlier in writing in accordance with Article 12.

2.2 Notwithstanding the foregoing, this Agreement shall apply to and remain in effect for Purchase Orders issued and accepted during the term of this Agreement until such time as the Services under such Purchase Orders have been completed; provided however, that, pursuant to Article 12, either Party shall have the right to terminate any Purchase Order for cause and SJRA shall have the right to terminate any Purchase Order for convenience.

2.3 Consultant's obligations under Articles 5, 6, 8, 9, 10, 11, 18, 19 and 20 shall survive the expiration of termination of this Agreement or any Purchase Order.

ARTICLE 3 – COMPENSATION AND PAYMENT

3.1 SJRA agrees to pay CONSULTANT, and CONSULTANT agrees to accept, as full and complete compensation for Services properly performed by CONSULTANT in accordance with this Agreement and applicable Purchase Order, the rates and charges agreed upon for a specific Purchase Order. Paragraphs A.1 or A.2 of Attachment A, which is attached hereto and incorporated herein by reference, shall be used to negotiate the compensation payable for each Purchase Order issued hereunder.

3.2 On or before the tenth day of each calendar month, CONSULTANT shall submit an invoice to SJRA, together with backup documentation required by SJRA and releases and waivers in forms acceptable to SJRA, covering all Services performed under any Purchase Order by CONSULTANT and its subconsultants, subcontractors and suppliers during the preceding calendar month. CONSULTANT shall separately itemize on each invoice: (i) each Purchase Order for which payment is sought, (ii) the amount budgeted for each such Purchase Order, (iii) the amount of payment requested for each such Purchase Order, (iv) the amount previously paid for each such Purchase Order, (v) descriptions of Services performed during the prior month for each such Purchase Order, and (vi) the total payment requested by such invoice. SJRA shall pay the amount it agrees to be due within thirty (30) days after receipt of such complete invoice and backup documentation.

3.3 SJRA shall have the right but not the obligation to withhold all or any part of payment requested in any invoice to protect SJRA from loss or expected loss because of:

(a) Services that are not in compliance with this Agreement or the applicable Purchase Order or any failure of CONSULTANT to perform Services in accordance with the provisions of this Agreement or the applicable Purchase order;

(b) third party suits, stop notices, claims or liens arising out of Services performed for which CONSULTANT is responsible pursuant to this Agreement and asserted or filed against SJRA or any of their respective property or portion thereof or improvements thereon provided that CONSULTANT fails to provide SJRA with sufficient evidence that CONSULTANT's insurance is adequate or shall cover the claim(s);

(c) uninsured damage to any Indemnified Party which results from CONSULTANT's failure to obtain or maintain the insurance required by this Agreement or from any action or inaction by CONSULTANT or

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any of its subcontractors, subconsultants, or suppliers which excuses any insurer from liability for any loss or claim which would, but for such action or inaction, be covered by insurance; or

(d) any failure of CONSULTANT to pay any subcontractor, subconsultant, or supplier of CONSULTANT the correct, undisputed, and contractually obligated amount for acceptable services received and for acceptable supplies received. CONSULTANT will not include in its billings to SJRA any amount in a subcontractor or supplier invoice which it has not paid or does not intend to pay within the terms and conditions of the applicable subcontract agreement or supplier purchase order.

3.4 CONSULTANT agrees to pay in full (less any applicable retainage) as soon as reasonably practicable, but in no event later than thirty (30) days following payment from SJRA, all subcontractors, subconsultants, and any other persons or entities supplying labor, supplies, materials, or equipment in connection with Services that are owed payment by CONSULTANT out of such payment made to CONSULTANT by SJRA. Further, provided that SJRA paid CONSULTANT in accordance with the terms of this Agreement and any particular Purchase order, CONSULTANT shall defend and indemnify SJRA against any claims for payment asserted or filed by any such person or entity against SJRA, its project or property or CONSULTANT.

ARTICLE 4 – STANDARD OF CARE; COORDINATION OF SERVICES; SAFETY; COST ESTIMATES; EQUAL EMPLOYMENT OPPORTUNITY; THIRD PARTY REVIEW

4.1 CONSULTANT shall perform, supervise and direct the Services, and otherwise discharge its obligations under this Agreement and any Purchase Order: (a) with the professional skill and care ordinarily provided by competent professionals practicing in the same or similar locality and under the same or similar circumstances and professional license; and (b) as expeditiously as is prudent considering the ordinary professional skill and care of a competent professional (collectively, the CONSULTANT’s “Standard of Care”).

4.2 Consistent with its Standard of Care, CONSULTANT shall (a) perform its Services in accordance with all applicable laws, codes, ordinances and regulations; (b) perform its Services in an efficient manner; and (c) keep SJRA apprised of the status of Services, coordinate its activities with SJRA, and accommodate other activities of SJRA at sites that Services impact. CONSULTANT shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

4.3 CONSULTANT shall be responsible for its own activities at sites including the safety of its employees, and that of its subconsultants, subcontractors and suppliers but shall not assume control of or responsibility for the site. Construction contractors of SJRA shall have sole responsibility for providing materials, means, and methods of construction, for controlling their individual work areas and safety of said areas for all parties, and for taking all appropriate steps to ensure the quality of their work and the safety of their employees and of the public in connection with their performance of work or services provided under contracts with SJRA. However, CONSULTANT shall notify SJRA if it observes violations of safety regulations or ordinances or quality of work deficiencies by SJRA’s construction contractors. CONSULTANT shall comply with the site safety program and rules established by the construction contractors.

4.4 To the extent that CONSULTANT provides to SJRA any estimate of costs associated with construction, it is recognized by the Parties that neither CONSULTANT nor SJRA has control over the cost of the labor, materials, or equipment, over a construction contractor’s methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, CONSULTANT cannot and

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does not warrant or represent that bids or negotiated prices will not vary from SJRA's budget for the project or from any estimate of the cost of work or evaluation prepared or agreed to by CONSULTANT.

4.5 With respect to providing Services hereunder, CONSULTANT agrees to meet at the time applicable (i) Equal Employment Opportunity ordinances, rules and regulations, and (ii) Affirmative Action ordinances, rules and regulations.

4.6 CONSULTANT acknowledges and agrees that projects of SJRA may be subject to review and approval by other third parties. Accordingly, as and when requested by SJRA, CONSULTANT shall submit such information and cooperate with the other third parties to the extent necessary to undergo any such review or obtain any such approval.

4.7 CONSULTANT does not represent Work Product to be suitable for reuse on any other project or for any other purpose(s). If SJRA reuses any Work Product without CONSULTANT's specific written verification or adaptation, such reuse will be at the risk of SJRA, without liability to CONSULTANT.

ARTICLE 5 – COST RECORDS

5.1 CONSULTANT shall maintain records and books in accordance with generally accepted accounting principles and practices. For Services provided by CONSULTANT under cost reimbursable, time and material or unit price Purchase orders, during the period of this Agreement and for five (5) years thereafter, CONSULTANT shall maintain records of direct costs for which SJRA is charged. SJRA shall at all reasonable times have access to such records for the purpose of inspecting, auditing, verifying, or copying the same, or making extracts therefrom. SJRA's audit rights for fixed unit rate or time and materials Purchase orders shall extend to review of records for the purpose of substantiating man-hours worked, units employed, and third party charges only. Except to the extent audit rights are granted to SJRA by applicable law, SJRA shall have no audit rights with respect to the portion of Purchase orders compensated on a lump sum basis.

ARTICLE 6 – OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY

6.1 All studies, plans, reports, drawings, specifications, cost estimates, software, computations, and other information and documents prepared by CONSULTANT, its subconsultants, subcontractors, and/or suppliers, in connection with Services or any project of SJRA are and shall remain SJRA's property upon creation (collectively, "Work Product") provided, however, that Work Product shall not include pre-existing proprietary information of CONSULTANT, its subconsultants, subcontractors, and/or suppliers ("CONSULTANT Proprietary Information"). To this end, CONSULTANT agrees and does hereby assign, grant, transfer, and convey to SJRA, its successors and assigns, CONSULTANT's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. CONSULTANT confirms that SJRA and its successors and assigns shall own CONSULTANT's right, title, interest in and to, including without limitation the right to use, reproduce, distribute (whether by sale, rental, lease or lending, or by other transfer of ownership), to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "work made for hire" as defined in 17 U.S.C. Section 201(b). In addition, CONSULTANT hereby grants SJRA a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, modify, create derivative works from and distribute to third parties CONSULTANT Proprietary Information in connection with SJRA's exercise of its rights in the Work Product, operation, maintenance, repair, renovation, expansion, replacement, and modification of projects of SJRA or otherwise in connection with property or projects in which SJRA has an interest (whether by SJRA or a third party). CONSULTANT shall obtain other assignments, confirmations, and licenses substantially similar to the provisions of this paragraph from all of its

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subconsultants, subcontractors, and suppliers. Work Product is to be used by CONSULTANT only with respect to the project in connection with which such Work Product was created and is not to be used on any other project. CONSULTANT and its subconsultants, subcontractors, and suppliers are granted a limited, nonexclusive, non-transferable, revocable license during the term of their respective agreements under which each is obligated to perform Services to use and reproduce applicable portions of the Work Product appropriate to and for use in the execution of Services. Submission or distribution to comply with official regulatory requirements for other purposes in connection with Services is not to be construed as publication in derogation of SJRA's copyright or other reserved rights. CONSULTANT shall deliver all copies of the Work Product to SJRA upon the earliest to occur of SJRA's request, completion of Services in connection with which Work Product was created, or termination of this Agreement. CONSULTANT is entitled to retain copies of its Work Product for its permanent project records.

6.2 CONSULTANT agrees that all information provided by SJRA in connection with Services shall be considered and kept confidential ("Confidential Information"), and shall not be reproduced, transmitted, used, or disclosed by CONSULTANT without the prior written consent of SJRA, except as may be necessary for CONSULTANT to fulfill its obligations hereunder; provided, however, that such obligation to keep confidential such Confidential Information shall not apply to any information, or portion thereof, that:

- (a) was at the time of receipt by CONSULTANT otherwise known by CONSULTANT by proper means;
- (b) has been published or is otherwise within the public domain, or is generally known to the public at the time of its disclosure to CONSULTANT;
- (c) subsequently is developed independently by CONSULTANT, by a person having nothing to do with the performance of this Agreement and who did not learn about any such information as a result of CONSULTANT's being a party to this Agreement;
- (d) becomes known or available to CONSULTANT from a source other than SJRA and without breach of this Agreement by CONSULTANT or any other impropriety of CONSULTANT;
- (e) enters the public domain without breach of the Agreement by or other impropriety of CONSULTANT;
- (f) becomes available to CONSULTANT by inspection or analysis of products available in the market;
- (g) is disclosed with the prior written approval of SJRA;
- (h) was exchanged between SJRA and CONSULTANT and ten (10) years have subsequently elapsed since such exchange; or
- (i) is disclosed to comply with the Texas Open Records Act or in response to a court order to comply with the requirement of a government agency.

6.3 CONSULTANT shall not be liable for the inadvertent or accidental disclosure of Confidential Information, if such disclosure occurs despite the exercise of at least the same degree of care as CONSULTANT normally takes to preserve and safeguard its own proprietary or confidential information.

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6.4 CONSULTANT will advise SJRA of any patents or proprietary rights and any royalties, licenses, or other charges which CONSULTANT knows or should know in the exercise of its Standard of Care impacts any design provided by CONSULTANT in connection with any Services, and obtain SJRA's prior written approval before proceeding with such Services. CONSULTANT shall not perform patent searches or evaluation of claims, but will assist SJRA in this regard if requested, on the basis set forth herein. There will be no charge for CONSULTANT's existing patents.

ARTICLE 7 – INDEPENDENT CONTRACTOR RELATIONSHIP

7.1 In the performance of Services hereunder, CONSULTANT shall be an independent contractor with the authority to control and direct the performance of the details of Services and its own means and methods. CONSULTANT shall not be considered a partner, affiliate, agent, or employee of SJRA and shall in no way have any authority to bind SJRA to any obligation.

ARTICLE 8 – WARRANTY PERIOD; GUARANTEES

8.1 If within a period of one (1) year following completion of Services under a Purchase order, it is discovered that such Services were not performed in accordance with CONSULTANT's Standard of Care, CONSULTANT shall be obligated to re-perform such Services at its own expense. If CONSULTANT is unable to re-perform such Services as expediently or in the manner required for SJRA's needs, CONSULTANT agrees to pay SJRA's reasonable costs associated with having another consultant perform such corrective services. The obligations of CONSULTANT under this Paragraph 8.1 are in addition to other rights and remedies of SJRA available to it pursuant to this Agreement or applicable law.

8.2 CONSULTANT agrees to assign SJRA the warranty or guarantee of any subconsultant, subcontractor, supplier or manufacturer of items of services, supplies, machinery, equipment, materials, or products provided by CONSULTANT hereunder and cooperate and assist SJRA in SJRA's enforcement thereof. CONSULTANT's responsibility with respect thereto is limited to such assignment, cooperation, and alliance. The representations and warranties of CONSULTANT under this Agreement and Purchase orders are made in lieu of any other warranties or guarantees and CONSULTANT makes no other warranties whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, and CONSULTANT shall have no liability to SJRA based upon any theory of liability that any such other warranty was made or breached.

ARTICLE 9 – INDEMNIFICATION

9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS SJRA AND ITS BOARD, DIRECTORS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, (COLLECTIVELY, THE "INDEMNITEES"), FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, DEMANDS, SUITS, CAUSES OF ACTION, SETTLEMENTS, LIABILITIES, COSTS, FINES, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE AND NECESSARY COURT COSTS, EXPERTS' FEES AND ATTORNEY'S FEES) (COLLECTIVELY, "LOSSES"), ARISING IN FAVOR OF OR BROUGHT BY ANY THIRD PARTY, TO THE EXTENT CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, COMMITTED BY CONSULTANT, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY PURCHASE ORDER, EVEN IF SUCH LOSSES ARE CAUSED IN PART BY THE NEGLIGENCE OR FAULT, BREACH OR

VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE OR BREACH OF CONTRACT OF AN INDEMNITEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF AN INDEMNITEE; PROVIDED, HOWEVER, THAT CONSULTANT'S OBLIGATION TO INDEMNIFY AND HOLD HARMLESS SHALL NOT EXTEND TO THE PORTION (IF ANY) OF SUCH LOSSES THAT ARE CAUSED BY THE NEGLIGENCE OR FAULT, BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD OR RULE OR BREACH OF CONTRACT OF AN INDEMNITEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF AN INDEMNITEE OTHER THAN CONSULTANT OR ITS AGENT OR EMPLOYEE OR SUBCONTRACTORS OF ANY TIER.

9.2 TO THE FULLEST EXTENT PERMITTED BY LAW, AND TO THE EXTENT A DEFENSE IS NOT PROVIDED FOR THE INDEMNITEES UNDER AN INSURANCE POLICY AS REQUIRED UNDER SECTION 11.1(f) HEREOF OR THE INDEMNITEES' ATTORNEYS' FEES ARE NOT OTHERWISE RECOVERED UNDER THE INDEMNITY PROVISION SET FORTH IN SECTION 9.1 HEREOF, CONSULTANT SHALL, UPON FINAL ADJUDICATION OF THE LOSSES AS DEFINED IN SECTION 9.1 HEREOF AND WITHIN THIRTY (30) DAYS FOLLOWING THE DATE OF A WRITTEN DEMAND, REIMBURSE THE INDEMNITEES FOR ALL REASONABLE ATTORNEY'S FEES INCURRED TO DEFEND AGAINST THE LOSSES IN PROPORTION TO CONSULTANT'S LIABILITY TO ANY THIRD PARTY FOR SUCH LOSSES.

ARTICLE 10 – LIMITATION OF LIABILITY

10.1 Neither Party hereto shall be liable to the other Party or its affiliates for any loss of profit, loss of revenue, loss of use or any other indirect, consequential or special damages excluding fines and penalties levied by a regulatory agency, even if caused by the sole or concurrent negligence of a party, whether active or passive, and even if advised of the possibility thereof.

10.2 Nothing herein shall be construed as creating any personal liability on the part of any board member, any officer, employee, or agent of SJRA.

ARTICLE 11 – INSURANCE

11.1 **General Requirements.** CONSULTANT shall, at all times during the performance of Services pursuant to Purchase orders issued under this Agreement and for not less than two years after the completion of any Services, provide and require all subconsultants and subcontractors to provide insurance coverage with companies lawfully authorized to do business in Texas and acceptable to SJRA and with forms acceptable to SJRA, which coverage will protect CONSULTANT from claims set forth below which may arise out of or result from CONSULTANT's Services and operations under this Agreement and any Purchase order for which CONSULTANT may be legally liable, whether such Services or operations are by CONSULTANT or a subconsultant or subcontractor of CONSULTANT or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and meeting not less than the minimum requirements set forth in this Article 11. Such insurance is to be provided at the sole cost of CONSULTANT and all subconsultants and subcontractors. The terms "subconsultant" and "subcontractor" for the purposes of this Article 11 shall include subconsultants and subcontractors of any tier.

(a) **Kinds of Claims**

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- (1) claims under workers' and workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to CONSULTANT's Services to be performed;
- (2) claims for damages because of bodily injury, occupational sickness or disease, or death of CONSULTANT's employees;
- (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than CONSULTANT's employees;
- (4) claims for damages insured by usual personal injury liability coverage which are sustained (i) by a person as a result of an offense directly or indirectly related to employment of such person by CONSULTANT, or (ii) by another person;
- (5) claims for damages other than to CONSULTANT's work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- (7) claims involving contractual liability insurance applicable to CONSULTANT's indemnification obligations under this Agreement; and
- (8) claims for errors and omissions in the provision of professional consulting services of the kind rendered by CONSULTANT pursuant to this Agreement.

(b) **Policies and Minimum Limits of Liability**

<u>Kinds of Insurance:</u>	<u>Limits of Liability*:</u>
A. Workers' Compensation Texas Operations Employer's Liability	Statutory Bodily Injury by Accident \$1,000,000 Each Accident Bodily Injury by Disease \$1,000,000 Each Employee Bodily Injury by Disease \$1,000,000 Policy Limit
B. Commercial General Liability Including but not limited to: 1. premises/operations 2. independent contractor 3. products and completed operations 4. personal injury liability with employment exclusion deleted 5. contractual	\$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations Aggregate \$1,000,000 Each Occurrence \$2,000,000 Personal and Advertising Injury \$300,000 Fire Damage Liability
C. Professional Liability	\$1,000,000 per claim \$3,000,000 Aggregate
D. Business Automobile Liability Including all Owned, Hired, and Non-owned Automobiles	\$1,000,000 Combined Single Limit Per Occurrence
E. Umbrella Liability	\$1,000,000 Per Occurrence \$1,000,000 Aggregate Bodily Injury and

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Property Damage

* Aggregate limits are per 12-month policy period unless otherwise indicated; defense costs shall be excluded from limits of liability of each policy other than Professional Liability Insurance; Commercial General Liability Insurance coverage limits shall be on a per-project basis.

(c) All required insurance shall be maintained with responsible insurance carriers acceptable to SJRA and lawfully authorized to issue insurance of the types and amounts set forth in this Article 11. Carriers should have a Best's Financial Strength Rating of at least "A-" and a Best's Financial Size Category of Class VIII or better, according to the most current edition of *Best's Key Rating Guide, Property-Casualty United States* or be of sufficient size and financial strength as adjudged by SJRA to meet the financial obligations evidenced in the certificate of insurance.

(d) All certificates shall be in a form reasonably acceptable to SJRA and each certificate must state to the extent permitted by Texas Insurance Code Chapter 1811 that the policy may not expire or be cancelled, materially modified, or nonrenewed unless the carrier and/or CONSULTANT gives SJRA thirty (30) days advance written notice. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, CONSULTANT shall, prior to such expiration, supply SJRA with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as is required by this Agreement. Any renewal or replacement policies shall be in form and substance satisfactory to SJRA and written by carriers acceptable to SJRA and meeting the requirements of this Article 11. CONSULTANT shall or shall cause the applicable carrier or carriers to give written notice to SJRA within thirty (30) days of the date on which total claims by any party against insurance provided pursuant to this Article 11 reduce the aggregate amount of coverage below the amounts required by this Article 11. In addition, CONSULTANT shall or shall cause the applicable carrier or carriers to provide SJRA with amendatory riders or endorsements to the Commercial General Liability Insurance policy that specify that the coverage limits apply on a per-project basis.

(e) With respect to all policies required in this Article 11, as soon as practicable prior to execution of this Agreement, CONSULTANT shall deposit with SJRA true and correct original certificates thereof, bearing notations or accompanied by other evidence satisfactory to SJRA that the requirements of this Article 11 are being met. If requested to do so by SJRA, CONSULTANT shall also furnish the originals or certified copies of the insurance policies for inspection including but not limited to copies of endorsements.

(f) All policies of insurance and certificates, with the exception of Professional Liability and Workers' Compensation Insurance, shall name the INDEMNITEES as additional insureds. Without limiting the foregoing, CONSULTANT's Commercial General Liability Insurance policy shall name the INDEMNITEES as additional insureds pursuant to ISO Additional Insured Endorsements CG 20-10-10-01 and CG 20-33-10-01 or their combined equivalents. Further, the CONSULTANT shall provide the INDEMNITEES any defense provided by its Commercial General Liability Insurance policy to the fullest extent allowed by law.

(g) CONSULTANT hereby waives all rights of recovery and damages against the INDEMNITEES to the extent such damages are covered or should have been covered by the insurance obtained or required to be obtained by CONSULTANT under this Agreement. All of CONSULTANT's policies of insurance, with the exception of Professional Liability Insurance, shall include a waiver of subrogation in favor of the INDEMNITEES.

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(h) The Parties intend that the CONSULTANT'S insurance shall be primary and non-contributing with respect to any other insurance maintained by SJRA and all policies of insurance obtained by CONSULTANT shall be endorsed to be primary and non-contributing with respect to any other insurance maintained by SJRA.

(i) If any policy required to be purchased pursuant to this Article 11 is subject to a deductible, self-insured retention or similar self-insurance mechanism which limits or otherwise reduces coverage, the deductible, self-insured retention, or similar self-insurance mechanism shall be the sole responsibility of CONSULTANT in the event of any loss and CONSULTANT hereby waives any claim therefore against any INDEMNITEE.

(j) CONSULTANT shall require and cause its subconsultants and subcontractors to purchase and maintain the insurance policies set forth in Paragraph 11.1(b) above with limits of liability commensurate with the amount of each subconsulting or subcontract agreement, but in no case less than \$500,000 per occurrence. CONSULTANT shall provide copies of insurance certificates for all such insurance to SJRA prior to any subconsultant's or subcontractor's performance of any Services.

(k) If CONSULTANT fails to procure or to maintain in force the insurance required by this Article 11, SJRA may secure such insurance and the costs thereof shall be borne by CONSULTANT. CONSULTANT shall reimburse SJRA the cost of such insurance plus ten percent (10%) administrative charge within ten (10) days after billing by SJRA. Any sum remaining unpaid fifteen (15) days after billing by SJRA shall bear interest at the rate of twelve percent (12%) per annum until paid by CONSULTANT. Except to the extent prohibited by Subchapter C of Chapter 151 of the Texas Insurance Code, CONSULTANT shall defend, indemnify, and hold harmless the INDEMNITEES from and against any and all losses, claims, damages, and expenses (including, without limitations, court costs, costs of defense, and attorney fees), that any INDEMNITEE may incur as a result of CONSULTANT's failure to obtain or cause to be obtained the specific endorsements or insurance required pursuant to this Agreement. Failure of any INDEMNITEE to identify any deficiency in the insurance forms provided shall not be construed as a waiver of CONSULTANT's obligation to maintain such insurance and to cause such insurance to be maintained.

(l) CONSULTANT's compliance with the provisions of this Article 11 shall not be deemed to constitute a limitation of CONSULTANT's liability with respect to claims covered by insurance provided or required pursuant to this Article 11 or in any way limit, modify, or otherwise affect CONSULTANT's obligation under this Agreement or otherwise. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for CONSULTANT or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of this Agreement.

(m) If requested by SJRA, CONSULTANT shall furnish or shall cause to be furnished any such other insurance or limits as SJRA may reasonably deem necessary for any Purchase order or Orders and the cost thereof shall be charged to SJRA by appropriate modification of any such Order(s).

ARTICLE 12 – CHANGES; TERMINATION FOR CONVENIENCE; TERMINATION FOR CAUSE

12.1 SJRA may, at any time and from time to time, make written changes to Purchase orders in the form of modifications, additions, or omissions. In the event that any such change, through no fault of CONSULTANT, shall impact CONSULTANT's compensation or schedule, then (a) such changes shall be authorized by written change order issued by SJRA and accepted by CONSULTANT, and (b) an equitable adjustment shall be made to the Purchase order in writing duly executed by both Parties, to reflect the change in compensation and schedule.

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12.2 SJRA may for convenience terminate this Agreement, any Purchase order issued under this Agreement, or CONSULTANT's right to perform Services under this Agreement or any Purchase order by at any time giving seven (7) days written notice of such termination. In such event, SJRA shall have the right but not the obligation to assume all obligations and commitments that CONSULTANT may have in good faith undertaken or incurred in connection with the Services terminated, and SJRA shall pay CONSULTANT, as its sole and exclusive remedy, for Services properly performed to date of termination and for reasonable costs of closing out such Services provided SJRA has pre-approved such costs. CONSULTANT shall not be entitled to lost profit on unperformed Services or any consequential damages of any kind. Upon termination, CONSULTANT shall invoice SJRA for all services performed by CONSULTANT prior to the time of termination which have not previously been compensated. Payment of undisputed amounts in the final invoice shall be due and payable within thirty (30) days after receipt by SJRA and SJRA's receipt of all Work Product.

12.3 This Agreement or any Purchase order may be terminated by either Party in the event that the other Party fails to perform in accordance with its requirements and such Party does not cure such failure within ten (10) days after receipt of written notice describing such failure. In the event that SJRA terminates this Agreement or any Purchase order for cause, CONSULTANT shall not be entitled to any compensation until final completion of the then ongoing Services and any such entitlement shall be subject to SJRA's right to offset and/or recoup all damages and costs associated with finally completing such Services. If for any reason, CONSULTANT is declared in default and/or terminated by SJRA under any Purchase order with SJRA, SJRA shall have the right to offset and apply any amounts which might be owed to SJRA by CONSULTANT against any earned but unpaid amounts owed to CONSULTANT by SJRA under any Purchase order. In the event any Purchase order is terminated by SJRA, CONSULTANT shall promptly deliver to SJRA all Work Product with respect to such terminated Purchase order.

ARTICLE 13 – FORCE MAJEURE

13.1 Any delay in performance or non-performance of any obligation other than an obligation to make a payment as required under this Agreement or any Purchase order, of CONSULTANT contained herein shall be excused to the extent such failure of non-performance is caused by Force Majeure. "Force Majeure" shall mean fire, flood, act of God, earthquakes, extreme weather conditions, epidemic, war, riot, civil disturbance or unrest, imposition of martial law, restrictions imposed by civil authority, loss of control of civil authority, illegal activity, extreme unreliability or failure of the utility infrastructure, failure of the US banking system, loss of access to communication systems, sabotage, terrorism, or judicial restraint, but only to the extent that such event (i) is beyond the control of and cannot be reasonably anticipated by or the effects alleviated by CONSULTANT and (ii) prevents the performance of Services.

13.2 If CONSULTANT is affected by Force Majeure, CONSULTANT shall promptly provide notice to SJRA, explaining in detail the full particulars and the expected duration thereof. Notice will be considered prompt if delivered within five days after CONSULTANT first becomes aware that the event of Force Majeure will affect the performance of Services and the end of the restrictions, if any, on CONSULTANT's ability to communicate with SJRA. CONSULTANT shall use its commercially reasonable efforts to mitigate the interruption or delay if it is reasonably capable of being mitigated.

ARTICLE 14 – SUCCESSORS, ASSIGNMENT AND SUBCONTRACTING

14.1 SJRA and CONSULTANT bind themselves and their successors, executors, administrators and permitted assigns to the other party of this Agreement and to the successors, executors, administrators and permitted assigns of such other party, in respect to all covenants of this Agreement.

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14.2 No right or interest in this Agreement or any Purchase order shall be assigned by CONSULTANT or SJRA without the prior written consent of the other Party.

14.3 Prior to commencement of any part of the Services to be provided under any Purchase order with respect to which CONSULTANT has elected to subcontract, CONSULTANT will notify SJRA in writing of the identity of the particular subcontractor, subconsultant or supplier CONSULTANT intends to employ for the performance of such part of the Services and the scope of Services it will perform. SJRA shall have the right within twenty-one (21) calendar days of such written notice to disallow CONSULTANT's employment of any particular subcontractor, subconsultant or supplier, provided that any reasonable additional costs incurred by CONSULTANT as a result of such disallowance shall be borne by SJRA.

ARTICLE 15 - SEVERABILITY

15.1 If any provision or portion thereof of this Agreement or any Purchase order is deemed unenforceable or void, then such provision or portion thereof shall be deemed severed from the Agreement or such Purchase order and the balance of the Agreement or Purchase order shall remain in full force and effect.

ARTICLE 16 –EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

16.1 The CONSULTANT shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract.

ARTICLE 17 – LICENSE REQUIREMENTS

17.1 The CONSULTANT and any subconsultant shall have and maintain any licenses, registrations and certifications required by the State of Texas or recognized professional organizations governing the Services performed under this Agreement and any Purchase Order.

ARTICLE 18 – ENTIRE AGREEMENT

18.1 This Agreement and all Purchase Orders issued under it contain the full and complete understanding of the Parties pertaining to their subject matter and supersede any and all prior and contemporaneous representations, negotiations, agreements or understandings between the Parties, whether written or oral. The Agreement and Purchase Orders may be modified only in writing, signed by both Parties. Venue shall lie in Montgomery County, Texas.

ARTICLE 19 – GOVERNING LAW

19.1 This Agreement and Purchase Orders, and its and their construction and any disputes arising out of, connected with, or relating to this Agreement or Purchase Orders shall be governed by the laws of the State of Texas, without regard to its conflicts of law principles.

ARTICLE 20 – DISPUTE RESOLUTION

20.1 In the event of any dispute arising out of or relating to this Agreement, any Purchase Order or any Services which SJRA and CONSULTANT have been unable to resolve within thirty (30) days after such dispute arises, a senior representative of CONSULTANT shall meet with the General Manager of SJRA at a mutually agreed upon time a place not later than forty-five (45) days after such dispute arises to attempt

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to resolve such dispute. In the event such representatives are unable to resolve any such dispute within fifteen (15) days after such meeting, either Party may, by written notice to the other, submit such dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon a mediator within twenty (20) days after such written notice of submission to mediation, the American Arbitration Association shall be empowered to appoint a qualified mediator pursuant to the American Arbitration Association Construction Industry Mediation Rules. If the dispute is technical in nature, the mediator appointed by the American Arbitration Association shall be qualified by at least ten (10) years' experience in delivery of professional services to governmental entities. The mediation shall be conducted within thirty (30) days of the selection or appointment of the mediator, as applicable. The mediation shall be held at a mutually agreeable location in Montgomery County, Texas. If the Parties are unable to agree on a location, the mediation shall be held at the offices of the American Arbitration Association closest to Conroe, Texas.

20.2 Any dispute arising out of or relating to this Agreement or any Purchase Order or any Services not resolved pursuant to Article 19.1, shall be resolved, by litigation or mutual agreement of the Parties, binding arbitration conducted pursuant to the Construction Industry Rules of the American Arbitration Association then in effect. Any arbitration shall be final and binding upon the parties and any award rendered therein shall be enforceable by any court of competent jurisdiction

ARTICLE 21 – CONFIDENTIALITY

21.1 Neither CONSULTANT nor any of its subconsultants shall publish or release any publicity or public relations materials of any kind concerning or relating to this Agreement, the Services or the activities of SJRA, unless such materials have first been reviewed and approved in writing by SJRA. This provision shall not apply to mandatory reports which CONSULTANT or its subconsultants are required by law to file with governmental authorities.

ARTICLE 22 – COMPANY DOES NOT BOYCOTT ISREAL

22.1 Pursuant to Section 2270.002 of the Texas Government Code, contemporaneous with CONTRACTOR's execution of this Agreement, CONTRACTOR shall execute the Verification Company Does Not Boycott Israel, attached hereto and incorporated herein.

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This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Duplicate copies of duly executed and delivered counterparts of this Agreement shall be deemed to have the same full force and effect as originals and may be relied upon as such. Notwithstanding the foregoing, OWNER and CONTRACTOR agree that this Agreement may be executed using electronic signatures at the option and in the discretion of OWNER, and, in such event, the provisions of the Uniform Electronic Transaction Act, Chapter 332, Texas Business and Commerce Code, as amended, and any applicable policies and procedures of OWNER regarding electronic signatures shall apply.

This Agreement will be effective on _____, (which is the effective date of the Agreement).

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year herein above first written.

CONSULTANT:

By: _____

Date: _____

ATTEST:

SJRA:

San Jacinto River Authority

By: _____

Jace A. Houston
General Manager

Date: _____

ATTEST:

ATTACHMENT A

Compensation terms for cost reimbursable and lump sum Services:

A.1. COMPENSATION BASED ON COST WITH MULTIPLIER

For professional and non-professional staff, SJRA will compensate CONSULTANT on the basis of a multiplier added to the Raw Salary Cost as shown in the table below for the Scope of Work specified in the Purchase Order. Professional is defined as a manager, supervisor, lead technical, scientist or other recognized profession. Typically, professional employees are salaried exempt employees. Typically, non-professional employees are hourly non-exempt employees. The Raw Salary Cost for salaried employees is defined as the annual base salary excluding bonuses, burdens, and benefits divided by 2080. For hourly personnel, the Raw Salary Cost is defined as the hourly wage paid to the employee exclusive of burdens and benefits. Any shift premiums or premiums paid for hours worked in excess of 40 per week will be added to the base hourly wage and will be considered a part of the Raw Salary Cost.

(a) RAW SALARY MULTIPLIERS

X.XX for professional and non-professional staff working at CONSULTANT or its subcontractor, subconsultant, or vendor offices

X.XX for professional and non-professional staff working in the field during construction or at SJRA offices for a minimum period of six (6) consecutive months

X.XX for construction inspectors working in the field

(b) EXPENSES

“Billable Expenses” include all costs and expenses directly attributable to performance of the services, which are in good accounting practice direct costs of the Services and not covered by the allowance for payroll burden and general office overhead and profit. Costs of outside services will be charged at actual invoice cost plus ten percent (10%). “Billable Expenses” include: subconsultants; travel expenses to and from locations outside Harris and Montgomery Counties; and copies of all deliverables submitted to SJRA. All Local vehicle use outside Harris and Montgomery Counties will be reimbursed at the current IRS allowable rate with no markup. All other expenses are considered to be covered by the allowance for payroll burden and general office overhead and profit and are non-billable expenses.

A.2. LUMP SUM COMPENSATION

SJRA will compensate CONSULTANT on the basis of a mutually agreed upon lump sum price for the scope of work specified in the Purchase Order. SJRA may ask CONSULTANT for a cost estimate for the scope of work prior to issuing the Purchase Order. The cost estimate will include a summary breakdown showing the labor hours and cost, sub consultant costs, and other direct costs included in the estimate. Labor rates to be used in preparing the estimate will be the actual salary or wage of the employee times the appropriate multiplier specified in A.1 (a) above. CONSULTANT will submit and SJRA will pay monthly invoices based on the mutually agreed upon percentage of the project completed.