



San Jacinto River Authority

ADMINISTRATIVE OFFICE
P.O. Box 329 · Conroe, Texas 77305
(T) 936.588.3111 · (F) 936.588.3043

SJRA Miscellaneous On-Site Services Agreement

EXHIBIT 5



San Jacinto River Authority Contract # 20-0022

Mowing and Landscaping Maintenance Services

On-Site Miscellaneous Services Agreement With



San Jacinto River Authority

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SJRA Miscellaneous On-Site Services Agreement

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AGREEMENT Contract # 20-0022

Project: _____ Mowing and Landscaping Maintenance Services _____

Project Location: _____ Various Divisions _____

THE PARTIES

The SJRA: The SAN JACINTO RIVER AUTHORITY

- *General and Administration Division - PO Box 329, Conroe, TX 77305 936-588-3111*
- *GRP Division - PO Box 329, Conroe, TX 77305 936-588-1111*
- *Lake Conroe Division - PO Box 329, Conroe, TX 77305 936-588-1111*
- *Highlands Division – PO Box 861, Highlands, TX 77562 281-843-3300*
- *Woodlands Division – PO Box 7537, The Woodlands, TX 77387 281-362-4385*

(Contact Person / Phone / e-mail) _____

and

Contractor: _____

(Address for Written Notice) _____

(Contact Person / Phone / email) _____

The SJRA and the Contractor may be referred to herein individually as a "Party" and together as the "Parties".

FOR THE MUTUAL PROMISES SET OUT HEREIN THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 WORK OF THE CONTRACT

1.1 Contractor shall perform the Work and provide the Goods in accordance with the terms of this Agreement and any and all Attachments and Exhibits attached hereto and the documents enumerated in Article 7.1 below, all of which documents are incorporated herein (collectively the "Contract Documents"). Contractor shall provide all labor, materials, equipment, services, supervision, tools, facilities, utilities, and other items necessary for the proper and timely performance and completion of the following generally described work (herein the "Work") and supply of the following generally described goods (herein the "Goods"), in strict accordance with the terms of the Contract Documents and as reasonably inferable from the Contract Documents as necessary for such work to be complete and serviceable and such good to be fully and finally supplied:

Mowing and Landscaping Maintenance Services

1.2 Changes in the Work and changes with respect to the supply of the Goods may be accomplished after execution of this Agreement, and without invalidating this Agreement, by Change Order. A Change Order is a written instrument prepared by SJRA and signed by SJRA and Contractor, stating their agreement upon all of the following: (1) the change in the Work; (2) the amount of the adjustment, if any, in the Contract Price; and (3) the extent of the adjustment, if any, in the Contract Time. All changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order. A field directive or field order, or any other order, direction, instruction, clarification, information or request by SJRA or any of its consultants, or any other representative of SJRA, shall not be recognized as having any effect upon the Contract Price or the Contract Time, unless documented as a Change Order, and Contractor shall not have any claim for adjustment of the Contract Price or the Contract Time as a result thereof, unless Contractor shall, prior to complying therewith and in no event later than five (5) days from the date such directive, order, etc. was given, submit a written claim therefor.

1.3 Contractor shall obtain and pay for all construction permits, licenses and fees (as legally required) for prosecution of the Work and supply of the Goods, except as otherwise provided in the Contract Documents.



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ARTICLE 2 PERIOD OF SERVICE

This Contract shall become effective upon execution of this Agreement by SJRA and the Contractor, and shall remain in effect thru **XXXXX XX, 2020**, an initial one (1) year period. SJRA and the Contractor shall have the option to renew this contract for an additional four (4), one-year periods, which shall be automatic, unless either party notifies the other in written format that termination is requested. At the sole option of SJRA, the Contract may be further extended as an emergency extension, not to exceed a total of six (6) months. The Work to be undertaken and/or the supply of Goods pursuant to this Contract will be required to commence within fourteen (14) days of delivery of a notice to proceed, or issuance of a SJRA Purchase Order. Time is of the essence in this Agreement. The CONTRACTOR shall make all reasonable efforts to complete the Work and the supply of the Goods as expeditiously as possible and to meet the schedule established by the both Parties. The Work and the supply of the Goods shall be accomplished per the Scope of Services as identified in the contract documents

ARTICLE 3 CONTRACT PRICE

3.1 The SJRA will pay Contractor in current funds for Contractor's completion of the Work and supply of the Goods, in accordance with the Contract Documents, the Contract Price as follows:

- Unit prices for actual quantities of Work performed, Unit Price Schedule attached as **Attachment A**,
The unit prices are based upon the locations and mow frequency quantities stated in the Unit Price Schedule.
- Unit Price Items per Unit pricing Schedule
- Extra Services Items

3.2 Contractor shall pay only, and Contractor warrants and represents that the Contract Price includes only, those sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the laws and regulations of the State of Texas in the performance of this public works contract. SJRA is a political subdivision of the State of Texas and exempt from the payment of state and local sales, use and excise taxes.

ARTICLE 4 PAYMENT PROCEDURES

4.1 Contractor shall submit no more than one (1) invoice per month, in a form acceptable to SJRA and including supporting documentation requested by SJRA, requesting payment for Work performed in accordance with the requirements of the Contract Documents during the prior month. The SJRA will make payments in compliance with the Texas "prompt payment law" which provides that payments owed by SJRA for goods and services are due no later than 45 days after the goods are received by SJRA, the services are completed, or an invoice for the goods or services is received, whichever is later, unless there is a bona fide dispute between SJRA and Contractor about the goods delivered or the services performed that causes the payment to be late, or the terms of a federal contract, grant, regulation, or statute prevent SJRA from making a timely payment with federal funds, or the invoice is not mailed to the person to whom it is addressed in strict accordance with any instruction on the purchase order relating to the payment. (Ref Chapter 2251 of Texas Gov. Code).

Unless otherwise requested by SJRA, invoices shall be (a) delivered electronically to ap@sjra.net with a copy to SJRA Division Representative and (b) rendered separately for each Division to avoid processing delays.

All invoices must be itemized. Invoices must be fully documented as to labor materials, and equipment provided.



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Each invoice shall include:

- Contractor's name, address and telephone number
- An invoice date and number
- SJRA Purchase Order number
- Seller's "remit to" address
- Line item for each location
- Period of Service encompassing the first to the last day of the month to encompass all work performed in the billing period is captured on a single invoice
- Unit Priced Items
- Extra Services items

Each invoice line should include:

- The address of location
- The contracted rate per location
- Date(s) of services/delivery
- Unit Priced Items at the contracted rates per location
- Extra Services Items itemized by time and materials

Specific requirements for this MSA:

- The Contractor and SJRA Purchasing shall agree on a template for the Contractor's invoices
- The Contractor shall submit a sample invoice and receive approval from SJRA Purchasing prior to the first invoice
- Billing period for each month shall begin on the first day of the month and end on the last day of the month
- Contractor shall endeavor to leave no partially completed areas at the end of each day; and, partially completed areas shall not be invoiced if not completed by the last day of the month.
- Sample Invoice Template provided in the RFP 20-0022 Table Two

Complete and accurate information is required for timely payment. If an invoice contains errors or fails to include required information, a corrected invoice should be submitted and payment delays will be incurred. The payment terms commence with performance of Work and/or the delivery of conforming Goods and the receipt of a correct invoice.

ARTICLE 5 CONTRACTOR OBLIGATIONS AND REPRESENTATIONS

5.1 Contractor has examined and carefully studied the Contract Documents and other related data identified in SJRA's request for bids, proposals or quotes for the Work and supply of the Goods.

5.2 Contractor has visited the site of the Work and become familiar with and is satisfied as to general, local, and site conditions that may affect cost, progress, and performance of the Work. Contractor has attended any mandatory pre-submittal conference or site visit required by SJRA, and had the opportunity to ask any questions of SJRA relevant to Contractor's performance and completion of the Work and supply of the Goods.

5.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work and supply of the Goods.

5.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site of the Work and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified in Contract Documents or made available to Contractor by SJRA, and (2) reports and drawings of hazardous environmental conditions, if any, at the site of the Work which have been identified in the Contract Documents.

5.5 Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface and subsurface) at or contiguous to the site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.



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5.6 Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for performance of the Work or supply of the Goods, at Contract Price, within Contract Time, and in accordance with the Contract Documents.

5.7 Contractor is aware of the general nature of any on-going operations and/or work to be performed by the SJRA and others at the site of the Work, and Contractor shall perform the Work and supply of the Goods, in such manner as to minimize any impact on any on-going operations and/or work to be performed by the SJRA and others at the site of the Work, and Contractor shall cooperate with SJRA and others to coordinate the Work with any on-going operations and/or work to be performed by the SJRA and others at the site of the Work.

5.8 Contractor has correlated information known to Contractor, information and observations obtained from visits to the site of the Work, reports and drawings identified in the Contract Documents or made available to Contractor by SJRA, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

5.9 Contractor has given SJRA written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by SJRA is acceptable to Contractor.

5.10 The Contract Documents are generally sufficient to indicate and convey understanding of all requirements for performance and furnishing of the Work.

5.11 Contractor does not have any contracts with and does not provide supplies or services to any organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189 (a "Foreign Terrorist Organization"); or the United States government has affirmatively declared Contractor to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a Foreign Terrorist Organization.

5.12 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 as **Exhibit 2** and incorporated herein.

5.13 Contractor warrants that (1) all materials and equipment furnished under this Agreement will be new and of good quality unless otherwise expressly provided herein; (2) all Work will be performed in a good and workmanlike manner, and free from defects in material and workmanship; and (3) all Work and Goods provided, will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including any substitutions not properly approved and authorized in writing by SJRA, may be considered defective. The Contractor shall promptly correct all Work and Goods provided, rejected by SJRA as failing to conform to the requirements of the Contract Documents. The Contractor shall bear all costs of correcting such rejected Work or rejected Goods, including but not limited to the costs of uncovering the Work, and costs of repairing or replacing other work or Goods, property or improvements of SJRA damaged as a result of Contractor's defective Work, defective Goods, or Contractor's correction of its defective Work or defective Goods, and any additional inspections or testing required. In addition to the Contractor's other obligations including but not limited to any other implied or express warranties under the Contract Documents, the Contractor shall, for a period of one year after completion of the Work, correct all Work and supplied Goods, not conforming to the requirements of the Contract Documents, at Contractor's sole cost and expense. If the Contractor fails to correct non-conforming Work and supplied Goods, within a reasonable time, SJRA may correct it and Contractor shall promptly pay SJRA all costs of correction. Nothing contained in this paragraph 5.13 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents or at law or in equity. Establishment of the one-year period for correction of Work and supplied Goods, as described in this paragraph 5.13 relates only to the specific obligation of the Contractor to correct the Work and supplied Goods, and has no relationship to the time within which the obligation to comply with the Contract Documents and any implied warranties may be sought to be enforced, nor to the time within which legal proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work and supplied Goods.

5.14 Contractor shall not subcontract the performance of the entire Work, supply of Goods, or the supervision and direction of the Work without SJRA's prior written consent. Contractor shall not employ any subcontractor, whether initially or as a substitute, against whom SJRA may have reasonable objection. Contractor shall enter into written agreements with all subcontractors which specifically bind the subcontractors to the applicable terms and conditions of the Contract Documents for the benefit of SJRA. Contractor shall be fully responsible to SJRA for all acts and omissions of its subcontractors and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such subcontractor or other person or organization any contractual relationship between SJRA and any such subcontractor or other person or organization, nor shall it create any obligation on the part of SJRA to pay or to see to the payment of any moneys due any such subcontractor or other person or organization except as may otherwise be required by applicable law. Contractor shall pay each subcontractor and other persons and organizations performing or furnishing any of the Work their appropriate share of payments made to Contractor not later than ten (10) days after Contractor's receipt of payment from SJRA. To the extent allowed by Texas law, SJRA shall be deemed to be a third party beneficiary to each subcontract and may, if SJRA elects, following a termination of the Contractor, require that the subcontractor(s) perform all or a portion of unperformed duties



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and obligations under its subcontract(s) for the benefit of SJRA, rather than the Contractor. In the event that SJRA elects to invoke its right under this section, SJRA will provide written notice of such election to the terminated Contractor and the affected subcontractor(s).

5.15 In accordance with Chapter 2258 of the Texas Government Code, Contractor shall pay and shall require that each of its subcontractors pay not less than the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft or type of worker needed to execute the Work, and the prevailing rate for legal holiday and overtime work, as determined by SJRA. Such prevailing rates are those determined by the United States Department of Labor, and are available at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determination website at www.wdol.gov

5.16 Contractor shall maintain a work force adequate to accomplish the Work within the Contract Time. Contractor agrees to employ only orderly and competent workers, skillful in performance of the Work. Contractor and any subcontractor, and their respective employees, may not use or possess any alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or SJRA property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job. Subject to the applicable provision of Texas law, Contractor and any subcontractor and their respective employees, may not use or possess any firearms or other weapons while on the job or on SJRA property. If the SJRA or and SJRA Division representative notifies Contractor that any of worker or representative is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of Texas Law or this Agreement, or has possessed or was under the influence of alcohol or drugs on the job, Contractor shall immediately remove such worker or representative, including any officer or owner of Contractor, from performing the Work, and may not employ such worker or representative again on the Work without SJRA's prior written consent. Contractor shall at all times maintain good discipline and order on SJRA property in all matters pertaining to this Work.

5.17 Contractor agrees to assign and hereby assigns to SJRA any rights it may have to bring antitrust suits against its manufacturers or suppliers for overcharges on materials incorporated in the Work growing out of illegal price fixing agreements. Contractor further agrees to cooperate with SJRA should SJRA wish to prosecute suits against manufacturers or suppliers for illegal price fixing.

5.18 Contractor shall be fully responsible to SJRA for all acts and omissions of the subcontractors, manufacturers, or suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such subcontractor, manufacturer, or supplier or other person or organization any contractual relationship between SJRA and any such subcontractor, supplier, manufacturer or other person or organization, nor shall it create any obligation on the part of SJRA to pay or to see to the payment of any moneys due any such subcontractor, manufacturer or supplier or other person or organization except as may otherwise be required by laws and regulations.

5.19 Contractor shall be solely responsible for efficiently scheduling and coordinating the Work of subcontractors, manufacturers, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor in order to avoid any delays or inefficiencies in the prosecution of the Work. Contractor shall require all subcontractors, manufacturers, suppliers and such other persons and organizations performing or furnishing the any of the Work to communicate with the designated SJRA Division representative through Contractor.

5.20 Contractor shall pay each subcontractor, manufacturer and supplier their appropriate share of payments made to Contractor not later than ten (10) Calendar Days from Contractor's receipt of payment from SJRA. To the extent allowed by Texas law, SJRA shall be deemed to be a third party beneficiary to each subcontract and may, if SJRA elects, following a termination of the Contractor, require that the subcontractor(s) perform all or a portion of unperformed duties and obligations under its subcontract(s) for the benefit of SJRA, rather than the Contractor; however, if SJRA requires any such performance by a subcontractor for SJRA's direct benefit, then SJRA shall be bound and obligated to pay such subcontractor the reasonable value for all Work performed by subcontractor to the date of termination of the Contractor, less payments to Contractor for such subcontractor's work, and for all Work performed by subcontractor thereafter. In the event that SJRA elects to invoke its right under this section. SJRA will provide written notice of such election to the terminated Contractor and the affected subcontractor(s).

5.21 Contractor shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized directly or indirectly, in the performance of the Work or the formulation or any of the exhibits or attachments hereto. SJRA reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event Contractor shall, to the extent provided in this subsection, indemnify and save harmless SJRA from all costs and expenses of such defense as well as satisfaction of all judgments entered against SJRA. SJRA shall have the right to stop the Work and /or terminate this Agreement at any time in the event SJRA discovers that Contractor's work methodology includes the use of any infringing design, device, material or process.



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ARTICLE 6 INDEMNIFICATION; MISCELLANEOUS PROVISIONS

6.1 Indemnification.

6.1.1 To the fullest extent permitted by laws and regulations, Contractor shall defend, indemnify and hold harmless the SJRA and its officers, directors, employees, agents, consultants, and other contractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work or the supply of the Goods, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work or the Goods themselves), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by Contractor, any subcontractor, or any supplier to perform any of the Work or supply any of the Goods, or anyone for whose acts Contractor, any subcontractor, or any supplier may be liable, AND EVEN IF ANY SUCH CLAIM, COST, LOSS OR DAMAGE IS CAUSED IN PART BY THE NEGLIGENT ACT OR OMISSION OF SJRA.

6.1.2 In any and all claims against the SJRA or any of its officers, directors, employees, agents, consultants, or other contractors by any employee (or the survivor or personal representative of such employee) of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by Contractor, any subcontractor, or any supplier to perform any of the Work or to supply any of the Goods, or anyone for whose acts Contractor, any subcontractor, or any supplier may be liable, the indemnification obligation under this article shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

6.1.3 Contractor's obligations under this Agreement to defend, indemnify and hold harmless SJRA shall not be limited in any way by any insurance required of Contractor by this Agreement or otherwise provided or maintained by Contractor. Any insurance obligations of Contractor under this Agreement are independent from Contractor's obligations under this Agreement to defend, indemnify and hold harmless SJRA.

6.2 **Assignment of Contract.** No assignment of any rights under or interests in this Agreement will be binding on another Party hereto without the written consent of the Party sought to be bound, and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

6.3 **Successors and Assigns.** The SJRA and Contractor each binds itself, its partners, successors, permitted assigns, and its legal representatives to the other Party hereto, its partners, successors, permitted assigns, and its legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

6.4 **Termination of Contract.** SJRA may terminate this Agreement without cause and for its convenience at any time upon **thirty (30)** days' written notice. Upon the Contractor's receipt of such notice, the Contractor shall cease work immediately. The Contractor shall be compensated for the services satisfactorily performed and goods satisfactorily delivered, prior to the termination date.

6.5 **Dispute Resolution.** This Agreement and any disputes related to it shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflict or choice of law principles. Contractor agrees and acknowledges that Contractor's obligations under this Agreement must be performed in whole or in part in Montgomery County, Texas, and venue of any and all legal proceedings between SJRA and the Contractor shall lie in Montgomery County, Texas. If Contractor brings any claim against SJRA and Contractor does not prevail with respect to such claim, Contractor shall be liable for all attorneys' fees and costs incurred by SJRA as a result of such claim.

6.6 **Disclosure of Interested Parties.** Pursuant to Texas Government Code Section 2252.908, Contractor shall submit a disclosure of interested parties (Form 1295) to SJRA at the time Contractor submits this signed Agreement to SJRA. Contractor may use the following link to access filing instructions for the disclosure of interested parties form: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

6.7 **Conflict of Interest.** Contractor shall submit a signed Conflict of Interest Questionnaire, at the time Contractor submits this signed Agreement to SJRA. If Contractor affirms that there are no Conflicts of Interest, Contractor shall indicate so by writing name of Contractor's firm and "No Conflicts" on the Conflict of Interest Questionnaire form and signing the form. Contractor may use the following link to access the Conflict of Interest Questionnaire form: https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm.

6.8 **Independent Contractor.** It is understood and agreed that the relationship of Contractor to SJRA shall be that of an independent contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make the Contractor the agent, servant, Contract # 20-0022
SJRA On-Site MSA (Rev. 10/19/2018)



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or employee of SJRA, or (2) create any partnership, joint venture, or other association between SJRA and Contractor. Contractor shall be solely responsible for all means, methods, techniques and safety measures utilized in performance of the Work and the supply of the Goods.

6.9 **Safety.** Contractor agrees that it shall be solely responsible for the safety of its employees, and Contractor shall be solely responsible for the establishment and enforcement of all safety precautions, programs and practices in connection with the Work as necessary to protect all persons and property from injury, death, loss or damage arising out of or related to the Work and to the supply of the Goods, including but not limited to the erection and maintenance of barricades, installation of warning signage, and institution of other traffic and/or pedestrian control measures, and Contractor shall at all times comply with all health, safety and environmental federal, state and local laws, codes, regulations, ordinances and permits applicable to the Work and to the supply of the Goods, including but not limited to the Occupational Safety and Health Act of 1970 as amended and the regulations thereto, and all requirements of the Texas Commission on Environmental Quality.

6.10 **Use of Premises.** Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the site of the Work and areas identified in and permitted by the Contract Documents, and other land and areas permitted by laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the site of the Work with construction equipment or other materials or equipment. During the progress of the Work and on a daily basis, Contractor shall keep the site of the Work free from any accumulations of waste materials, rubbish and other debris resulting from the Work. Contractor shall provide such personnel, waste containers and/or equipment necessary to maintain an orderly, clean and safe work site. Contractor shall keep all streets, access streets, driveways, and areas of public access, walkways, and other designated areas clean and open at all times. Contractor shall remove all waste materials, rubbish and debris from and about the site of the Work at the end of each work day. At the completion of the Work, Contractor shall also remove all tools, appliances, construction equipment and machinery, and surplus materials. Contractor shall leave the site of the Work clean, and restore to original condition all property not designated for alteration by the Contract Documents. If the Contractor fails to clean up at the end of each work day or restore the site of the Work at the completion of the Work, SJRA may do so and the cost thereof will be charged against the Contractor and may be offset against any sum otherwise due Contractor.

6.11 **Legal Compliance.** Contractor shall comply with all federal, state and local laws, codes, regulations, ordinances and permits applicable to performance of the Work, including but not limited to all wage and employment laws, and the Immigration Reform and Control Act of 1986, as amended, and Contractor shall maintain and require that its subcontractors maintain any and all licenses required for performance of the Work.

6.12 **Insurance.** Contractor shall obtain and maintain insurance as provided in **Attachment B** attached hereto and incorporated herein.

6.13 **SJRA's Rights and Remedies.** All rights and remedies of SJRA under the Contract Documents are cumulative and in addition to all other rights and remedies available to SJRA at law or in equity.

6.4 **Warranty.** Contractor shall provide a one (1) year warranty document. This warranty shall obligate the Contractor to provide all equipment, materials, workmanship, and labor at no charge during the Warranty period, and to correct any defect excluding any damage caused by misuse, abuse, vandalism, or acts of God.

6.15 **Shipping Terms of Sale.** SJRA shipping terms of sale is FOB Destination.

6.16 **Removal, Transportation and Return of SJRA's Property, Equipment or Parts.** Contractor is responsible for any damages occurring to SJRA property, equipment or parts while Contractor, or any subcontractor or third party acting on behalf of Contractor, is (i) working on SJRA property, equipment or parts; or (ii) transporting SJRA property, equipment or parts.



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EXHIBIT 5 ARTICLE 7 ENUMERATION OF CONTRACT DOCUMENTS

7.1 In addition to this Agreement and all Attachments and Exhibits hereto, the following Contract Documents are incorporated into this Agreement:

Document Title

- Unit Price Schedule - **Attachment A**
- Insurance Requirements – **Attachment B**
- Contractor’s Certificate of Insurance Document(s)
- Exhibit 1** – Not used for this agreement
- Exhibit 2** – Not used for this agreement
- Exhibit 3** – Required Forms

7.2 The Contract Documents may only be amended, modified, or supplemented in writing agreed to and signed by the Parties.

7.3 The Contract Documents represent the entire and integrated agreement between SJRA and the Contractor and supersede all prior and contemporaneous negotiations, representations, or agreements, either written or oral.

7.4 To the extent there are any conflicts between the terms and provisions of this Agreement and the other Contract Documents, this Agreement shall control.

ARTICLE 8 SIGNATURES

8.1 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, SJRA and Contractor agree that this Agreement may be executed using electronic signatures only at the option and in the sole discretion of SJRA, 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 SJRA regarding electronic signatures shall apply. SJRA reserves the right to require an original, hard copy executed Agreement. This Agreement is effective as of the date of signature by the SJRA General Manager or his designee.

CONTRACTOR:

(If Joint Venture)

By: _____
 Name: _____
 Title: _____
 Date: _____
 Tax Identification Number: _____

By: _____
 Name: _____
 Title: _____
 Date: _____
 Tax Identification Number: _____

SAN JACINTO RIVER AUTHORITY

APPROVED:

By: _____
 Jace A. Houston
 Title: General Manager
 Date: _____
 (Effective Date of Contract)



San Jacinto River Authority

ADMINISTRATIVE OFFICE
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(T) 936.588.3111 · (F) 936.588.3043

SJRA Miscellaneous On-Site Services Agreement

EXHIBIT 5

ATTACHMENT A

[Attach Contractor's Unit Price Schedule]



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EXHIBIT 5 ATTACHMENT B SJRA'S INSURANCE REQUIREMENTS OF CONTRACTOR

For purposes of this Attachment B, "ISO" means Insurance Services Office.

1.0 Contractor Insurance Representations to SJRA.

1.1 It is expressly understood and agreed that the insurance coverages required herein:

1.1.1 Represent SJRA's minimum requirements and are not to be construed to void or limit Contractor's indemnity obligations as contained in the Contract, nor represent in any manner a determination of the insurance coverages Contractor should or should not maintain for its own protection; and

1.1.2 Are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under the Contract. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of the Contract.

1.2 Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Contract. If Contractor shall fail to remedy such breach, Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to SJRA from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by SJRA. In the event of any failure by Contractor to comply with the insurance requirements of the Contract, SJRA may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that SJRA shall have no obligation to do so and if SJRA shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

2.0 Conditions Affecting All Insurance Required Herein.

2.1 Cost of Insurance. All insurance coverage shall be provided at Contractor's sole expense.

2.2 Maintenance of Insurance. All insurance coverage shall be maintained in effect with limits not less than those set forth below at all times during the performance of the Work and through the correction period of paragraph 5.13 of the Agreement, and for such longer periods of time as may be set forth herein.

2.3 Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies authorized to do business in the State of Texas and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide.

2.4 Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to SJRA in compliance with the requirements herein.

2.5 Limits of Liability. The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

2.6 Notice of Cancellation or Material Change in Coverage. Contractor and the insurer shall provide SJRA with thirty days prior written notice of cancellation or material change in coverage.

2.7 Waiver of Rights of Recovery and Subrogation. The Contractor hereby waives its rights of recovery from the SJRA with regard to all causes of property and/or liability loss and shall cause a waiver of subrogation endorsement to be provided in favor of SJRA on all insurance coverage carried by the Contractor, whether required herein or not.

2.8 Deductible/Retention. Except as otherwise specified herein, no insurance required herein shall contain a deductible or self-insured retention in excess of \$10,000 without prior written approval of SJRA. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at Contractor's sole risk. Contractor shall not be reimbursed for same. If the insurance contains a self-insured retention, the policy shall allow the self-insured retention to be paid or satisfied by a party other than the named insured.

2.9 Minimum Limits. The inclusion of required minimum insurance limits in the Contract Documents shall not be construed as limiting the SJRA's or other additional insured's rights under any policy with higher limits. The minimum insurance limits set forth in this Attachment B shall be deemed to be amended to any higher limits actually contained in Contractor's insurance policies.



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3.0 Intentionally Omitted.

4.0 Insurance Required.

4.1 The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of the Agreement and thereafter as required.

4.2 Commercial General Liability Insurance

4.2.1 Coverage. Such insurance shall cover liability arising out of all locations and operations of Contractor, including but not limited to liability assumed under the Contract Documents (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.

4.2.2 Form. Commercial General Liability Occurrence form (at least as broad as an unmodified current ISO edition of CG 00 01) to include, but not be limited to, coverage for the Contractor's premises, operations (including completed operations), products, and contractual assumption of tort liability.

4.2.3 Amount of Insurance. Coverage shall be provided with limits of not less than:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Product-Completed Operations Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000

4.2.4 Required Endorsements.

- a. Additional Insured. Additional insured status shall be provided in favor of the SJRA on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01 or their combined equivalent. It is the intent of the parties to this Agreement that this Additional Insured status shall include coverage for completed operations and for the SJRA's concurrent and sole negligence. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Contract, this Additional Insured obligation shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend.
- b. Designated Construction Project(s) Aggregate Limit. The aggregate limit shall apply separately to this Agreement through use of an ISO CG 25 03 05 09 endorsement or its equivalent.
- c. Notice of Cancellation or Material Change in Coverage, as required in 2.6, above.
- d. Primary and Non-Contributing Liability. All insurance coverage required of the Contractor shall be primary to and shall seek no contribution from all insurance available to SJRA, with SJRA's insurance being excess, secondary and non-contributing. This CGL coverage shall be endorsed to provide such primary and non-contributing liability coverage.
- e. Waiver of Rights of Recovery and Subrogation, as required in 2.7, above.

4.2.5 Continuing Commercial General Liability Insurance. Contractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least three (3) years following Date of Final Completion of the Work to be performed under the Contract.

4.3 Auto Liability Insurance

4.3.1 Coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

4.3.2 Form. Business Auto form (at least as broad as an unmodified current ISO edition of CA 00 01).

4.3.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000.

4.3.4 Required Endorsements.



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- a. Notice of Cancellation or Material Change in Coverage, as required in 2.6, above.
- b. Waiver of Rights of Recovery and Subrogation, as required in 2.7, above.
- c. Additional insured status in favor of the SJRA. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applied to the Contract, this Additional Insured obligation shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend.
- d. Primary and Non-Contributing Liability. All insurance coverage required of the Contractor shall be primary to and shall seek no contribution from all insurance available to SJRA, with SJRA's insurance being excess, secondary and non-contributing. This Auto Liability Insurance coverage shall be endorsed to provide such primary and non-contributing liability coverage.

4.4 Workers' Compensation/Employer's Liability Insurance

- 4.4.1 Amounts of coverage shall be no less than Statutory Limits; \$1,000,000 each Accident and Disease.

4.5 Excess Liability Insurance

- 4.5.1 Coverage. Such insurance shall be excess over and be no less broad than all coverages described above (with the exception of Worker's Compensation) and shall include a drop-down provision.
- 4.5.2 Form. This policy shall have the same inception and expiration dates as the Commercial General Liability insurance required above.
- 4.5.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$2,000,000.
- 4.5.4 Continuing Excess Liability Insurance. Contractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least three (3) years following Date of Final Completion of the Work to be performed under the Contract.
- 4.5.5 Additional insured status shall be provided in favor of the SJRA. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Contract, this Additional Insured obligation shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend. This Excess Liability Insurance shall be primary to and shall seek no contribution from all insurance available to the SJRA, with SJRA's insurance being excess, secondary and non-contributing.

5.0 Evidence of Insurance.

5.1 Provision of Evidence. Evidence of the insurance coverage required to be maintained by Contractor, represented by certificates of insurance, evidence of insurance consistent with the requirements of Chapter 1811 of the Texas Insurance Code, and endorsements issued by the insurance company or its legal agent, must be furnished to SJRA not later than 15 days prior to commencement of Work. New certificates of insurance, evidence of insurance, and endorsements shall be provided to SJRA prior to the termination date of the current certificates of insurance, evidence of insurance, and endorsements.

5.2 Form. All liability insurance required herein shall be evidenced by ACORD form 25, "Certificate of Insurance", or if such form is not filed with and approved or deemed approved by the Texas Department of Insurance, then on a form filed with and approved by or deemed approved by the Texas Department of Insurance and acceptable to SJRA.

5.3 Specifications. Such certificates of insurance, evidence of insurance, and endorsements shall specify the following, excluding, however, any such specifications as may be prohibited under Chapter 1811 of the Texas Insurance Code:

- 5.3.1 SJRA as a certificate holder with correct mailing address.
- 5.3.2 Insured's name, which must match that on this Contract.
- 5.3.3 Insurance companies affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of insurance company.
- 5.3.4 Producer of the certificate with correct address and phone number listed.
- 5.3.5 Additional insured status required herein.



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- 5.3.6 Amount of any deductibles and/or retentions.
 - 5.3.7 Cancellation and material change in coverage notification as required by the policy or any endorsement thereto in accordance with Section 3.6 of this Attachment B.
 - 5.3.8 Designated Construction Project Aggregate Limits required herein.
 - 5.3.9 Primary and non-contributing status required herein.
 - 5.3.10 Waivers of subrogation required herein.
- 5.4 **Required Endorsements.** A copy of the Commercial General Liability additional insured, waiver of subrogation and primary/noncontributing endorsement(s) or policy language shall also be provided.
- 5.5 **Failure to Obtain.** Failure of SJRA to demand such certificate or other evidence of full compliance with these insurance requirements or failure of SJRA to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- 5.6 **Copies.** Upon request of SJRA, Contractor shall provide to SJRA a copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to SJRA at least ten (10) days prior to the expiration of the previous policy.
- 5.7 **Commencement of Work.** Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Contract, shall not constitute a waiver by SJRA of any rights of SJRA. SJRA shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by SJRA.
- 6.0 Intentionally Omitted.
- 7.0 **Insurance Requirements of Contractor's Subcontractors and for Contractor's Property and Equipment.**
- 7.1 Insurance similar to that required of Contractor shall be provided by all subcontractors and sub-subcontractors (or provided by Contractor on behalf of subcontractors or sub-subcontractors) to cover operations performed under any subcontract agreement. Limits of subcontractors' coverage shall be per Contractor's standard requirements. Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors and sub-subcontractors. Contractor shall maintain certificates of insurance from all subcontractors and sub-subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from a subcontractor or sub-subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to SJRA upon request. Subcontractor's Commercial General Liability insurance policies shall name the SJRA as an additional insured.
- 7.2 Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering Contractor's or its subcontractor's property shall be Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, Contractor shall not be reimbursed for same. Should Contractor or its subcontractors choose to self insure this risk, it is expressly agreed that Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of SJRA.
- 8.0 **Release and Waiver.**
- Contractor hereby releases, and shall cause its subcontractors and sub-subcontractors to release, SJRA from any and all claims or causes of action whatsoever which Contractor and/or its subcontractors or sub-subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by Contractor and/or its subcontractors and sub-subcontractors pursuant to this Contract. Contractor shall be responsible for any Builder's Risk deductible applicable to the Work. Contractor waives all damages and rights of recovery against the SJRA and SJRA's separate contractors for damages caused by fire or other causes of loss to the extent covered by any Builder's Risk property insurance applicable to the Contractor's work under the Contract, except such rights as Contractor may have to proceeds of such insurance as Contractor's interest may appear.

END OF SECTION