



**San Jacinto River Authority
Purchasing Department
1577 Dam Site Road
Conroe, Texas 77304**

REQUEST FOR QUALIFICATIONS

RFQ #20-0085

**Professional Services
for
Materials Testing**

NIGP CLASS and ITEM

925	00
925	35
925	46

Issue Date: July 3, 2020
Response Due Date and Time (CDT):
July 29, 2020 @ 11:00 a.m.
Location for Delivery: as stated above

TABLE of CONTENTS

I. GENERAL 3

II. DEFINITIONS..... 3

III. NOTICE to RESPONDENTS..... 3

IV. STANDARD TERMS and CONDITIONS 5

V. BACKGROUND and CURRENT CIRCUMSTANCES..... 8

VI. SCOPE of WORK 9

VII. SUBMISSION REQUIREMENTS 9

VIII. EVALUATION and SELECTION PROCESS 11

IX. CERTIFICATION and ACKNOWLEDGMENT 14

X. SJRA PROFESSIONAL SERVICES AGREEMENT **EXHIBIT A**

I. GENERAL

In accordance with the provisions of Chapter 49 of the Texas Water Code, Texas Government Code 2254 (Professional Services Procurement Act), and Title 40 Code of Federal Regulations, Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), the San Jacinto River Authority (SJRA) is requesting qualifications based responses to contract with Professional Engineering Consultant(s) (“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 materials testing services for various projects.

This Request for Qualifications (RFQ) solicits information that will enable SJRA to select one or more Consultant(s) that shall provide professional services for construction materials testing.

II. DEFINITIONS

A. DEFINITIONS

In order to simplify the language throughout this request for qualifications, the following definitions shall apply:

Agreement – same as Contract, same as Professional Services Agreement (PSA)

San Jacinto River Authority – Same as SJRA; same as Authority

Board of Directors – The governing Board of the San Jacinto River Authority, given the authority to exercise such powers and jurisdiction of all Authority business as conferred by the State Constitution and Laws.

Contract – An agreement between the Authority and the successful Respondent to furnish the professional services described herein

Firm – the successful Respondent of this request

Proposal – same as SOQ/Statement of Qualifications

Respondent – Proposers responding to this Request for Qualification

RFQ– Request for Qualifications; this solicitation

SOQ – Statement of Qualifications; a firm’s response to this solicitation

III. NOTICE to PROPOSERS

A. NOTICE

Proposals are due at **11:00 a.m. on July 29, 2020** after which time all qualified proposals will be acknowledged at 1577 Dam Site Road, Conroe, Texas 77304. Proposals received after the specified deadline will be considered non-responsive.

A single PDF file may be emailed to cturney@sjra.net. The email and related attachment cannot be larger than 20 MB. Hard copies are not required.

Respondents may receive notice of solicitations from the San Jacinto River Authority from a variety of channels. Approved methods of dissemination include: San Jacinto River Authority website. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your Proposal non-compliant. San Jacinto

River Authority accepts no responsibility for the receipt or notification of solicitations through any other source.

B. QUESTIONS and INQUIRIES

Questions and inquiries about this Solicitation shall be submitted in writing via email to the following point of contact:

Cheryl K. Turney, C.P.M.
Purchasing Manager
Purchasing Department
cturney@sira.net

The deadline for written questions is **July 17, 2020 at @ 11:00 A.M. CST**. This deadline has been established in order to provide adequate time for SJRA staff to prepare responses to questions from Respondents to the best of their ability in advance of the due date and time.

Respondents shall not attempt to contact SJRA Board members, SJRA staff or Management directly about this RFQ from the date of release until award of the Contract. The SJRA intends to respond to all appropriate questions or concerns; however, the SJRA reserves the right to decline to respond to any question or concern. All material modifications, clarifications or interpretations will be incorporated into an addendum which will be publically posted. All addenda issued prior to the due date and time for responses are incorporated into the RFQ and must be acknowledged in the Proposal response. Only written information provided shall be binding. Oral or other interpretations shall not be binding and are held without legal effect.

C. SCHEDULE of IMPORTANT DATES

The SJRA will generally comply with the following schedule for the selection process, subject to changes necessary to ensure fairness and to accommodate unanticipated events:

Release RFQ		July 3, 2020
Deadline for Questions and Inquiries	11:00 A.M. CST	July 17, 2020
Proposals Closing Date and Time	11:00 A.M. CST	July 29, 2020
SJRA’s Review of Proposals		August 2020
Date for Finalist Interviews or Presentations (if any)		August 2020
Earliest Award by SJRA		August 2020

D. FINALIST INTERVIEWS and/or PRESENTATIONS

Respondents reasonably subject to being selected based on the criteria set forth in this RFQ may be given an opportunity to make a presentation and/or interview with the Selection Committee. Following any presentation and/or interviews, the successful Firm(s) will be selected based on demonstrated competence and qualifications; and contract negotiations will begin with the most highly qualified Firm(s) as determined by the SJRA. If a satisfactory contract cannot be negotiated with the most highly qualified firm(s), as set out herein, the SJRA shall formally end negotiations with such firm(s) and shall select the next most qualified firm. The SJRA shall negotiate with such firm(s) at a fair and reasonable price. This process will continue until a successful agreement can be reached by both parties. However, the SJRA may, in its sole discretion, negotiate and award a contract without presentations or interviews, based solely on information supplied in the Statements of Qualifications submitted.

IV. STANDARD TERMS and CONDITIONS

A. **ADDENDA**

Respondents are required to acknowledge addenda with their submission. Respondents will be responsible for monitoring the San Jacinto River Authority website at <http://www.sjra.net/purchasing/bidopportunities/> to ensure they have downloaded and signed all addenda required for submission with their submission.

B. **BUSINESS PRACTICES**

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

C. **DISCLOSURE**

At the due date and time there will be no disclosure of contents of any Proposal to competing Respondents, and all Proposals will be kept confidential during the negotiation process. Except for trade secrets and confidential information which the Firm identifies as proprietary, all Proposals will be open for public inspection after the contract award.

D. **DISCLOSURE of INTERESTED PARTIES**

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the SJRA Board before the contract may be signed; or (2) have a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission (“TEC”) is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission’s electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the SJRA.
2. The copy of Form 1295 submitted to the SJRA must contain the unique certification number from the TEC. The form must be filed with the SJRA pursuant to §2252.908 Texas Government Code, “at the time the business entity submits the signed contract” to the SJRA.
3. The SJRA, in turn, will electronically acknowledge the disclosure form on the TEC website not later than the 30th day after the date the SJRA receives the disclosure of interested parties from the business entity.

E. **CHANGES IN PERSONNEL**

Should there be a change in key personnel included in the SOQ after the due date and time, but before a contract is awarded, Respondents must notify the SJRA immediately. This may result in further evaluation. Should a change in key personnel occur after the contract is awarded, the Firm will be required to notify SJRA as soon as practicably possible. SJRA may terminate the Agreement for convenience should the change in key personnel be unacceptable to SJRA.

F. PERSONAL INTEREST

Respondents shall comply with all applicable ordinances and with state law pertaining to conflict of interest and required disclosures, including, but not limited to, TEXAS LOCAL GOVERNMENT CODE, Chapter 171.

G. PRIORITY of DOCUMENTS

In the event there are inconsistencies between the RFQ terms and conditions, scope of work or Agreement terms and conditions contained herein, the latter will take precedence.

H. PROHIBITED FIRMS

1. SJRA will not conduct business with Respondents who have failed to comply with their state contracts and have been debarred from doing business with the State of Texas.
2. Successful Respondent must affirm, in any resulting contract, that (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of any resulting Contract. This section may not apply if the Company is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Company has ten (10) or more fulltime employees and (ii) the Contract has a value of \$100,000.00 or more to be paid under the terms of the Contract.
3. Successful Respondent must affirm, in any resulting contract, that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization.

I. PUBLIC INFORMATION

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The SJRA assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information.

J. RECEIPT of SOQs

Statement(s) of Qualifications must be received by the SJRA prior to the time and date specified. The time proposals are received shall be determined by the system time on the computer of the SJRA point of contact named above. Please note that the SJRA is not responsible for high internet/email traffic/demand at or near the time the response packages are due and that firms submitting their response package during peak traffic times risk their submittal not being received by the due date and time.

K. REIMBURSEMENTS

There is no express or implied obligation for the San Jacinto River Authority to reimburse responding Respondents for any expenses incurred in preparing Proposals in response to this request and the San Jacinto River Authority will not reimburse firms for these expenses, nor will the SJRA pay any subsequent costs associated with the provision of any additional information or presentation, or to procure a contract for these services.

L. REPRESENTATIONS and RESPONSIBILITIES

By submitting a proposal in response to this RFQ, Respondent represents that it has carefully read and understands all elements of this RFQ; has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the work; and has full knowledge of the scope, nature, quality and quantity of services to be performed.

By submitting a proposal in response to this RFQ, the Respondent represents that it has not relied exclusively upon any technical details in place or under consideration for implementation by the SJRA, but has supplemented this information through due diligence research and that the Respondent sufficiently understands the issues relative to the indicated requirements.

The failure or omission of Respondent to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing at the site or other details shall in no way relieve any Respondent from any obligations with respect to its proposal or to the contract.

M. STANDARD FORM of AGREEMENT

The SJRA's Professional Services Agreement is attached as Exhibit A. Successful Firm(s) will be required to execute this Agreement. All Respondents shall be required to thoroughly read and understand the terms, conditions and provisions in this Agreement. All required Certificates of Insurance and endorsements will be required before contract award. Any exceptions taken to the SJRA's Professional Services Agreement must be indicated in your Response. Failure to note any exceptions will be acknowledgement that you accept the terms and conditions without modifications. SJRA may consider the proposed changes in the evaluation process.

N. VENUE

Any contract awarded as a result of this RFQ shall be governed by and construed in accordance with the laws of the State of Texas, and venue for any action related to this contract will be Montgomery County, Texas.

O. WITHDRAWAL of PROPOSALS by RESPONDENT

A proposal may be modified or withdrawn by the Respondent any time prior to the time and date set for the receipt of proposals in accordance with the following guidelines.

1. Respondent shall notify the Purchasing Department in writing of its intention to withdraw a previously submitted proposal.
2. If a change in the proposal is requested, the modification must be worded by the Respondent as to not reveal the contents of the proposal.
3. Proposals withdrawn and modified must be resubmitted to the Purchasing Department no later than the time and date set for the receipt of proposals.
4. No proposal can be withdrawn after the time set for the receipt of proposals and for a minimum of ninety (90) days thereafter.

P. WITHDRAWAL by SJRA

The SJRA makes no guarantees or representations that any award will be made and reserves the right to cancel this solicitation for any reason, including:

1. Reject any and all proposals received as a result of this RFQ.
2. Waive or decline to waive any informality and any irregularities in any statement of qualifications or responses received.

3. Negotiate changes in the Scope of Work or services to be provided.
4. Withhold the award of contract(s).
5. Select Firm(s) it deems to be most qualified to fulfill the needs of the SJRA.
6. Terminate the RFQ process.

V. BACKGROUND and CURRENT CIRCUMSTANCES

A. SAN JACINTO RIVER AUTHORITY

The San Jacinto River Authority (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.” 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 San Jacinto River watershed, excluding Harris County. This includes all of Montgomery County and parts of Walker, Waller, San Jacinto, Grimes, Fort Bend and Liberty Counties. SJRA is one of 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.

SJRA’s general offices are located at 1577 Dam Site Road, Conroe, Texas 77304. SJRA has six (6) major operating divisions: The General and Administrative Division, Flood Management Division, Lake Conroe Division, Woodlands Division, Highlands Division, and Groundwater Reduction Plan (GRP) Division. More information can be accessed here: <http://www.sjra.net/about/>.

B. CURRENT CIRCUMSTANCES

The SJRA Technical Services Division supports all of the operating divisions with the implementation of their 10-year project plans, each of which are available on www.sjra.net. These projects include various capital and renewal/replacement initiatives for the divisions. SJRA is in need of third-party construction materials testing to support construction efforts for each of the projects. Additionally, projects may arise that are not on the 10-year project plan that also necessitate third-party materials testing.

SJRA is seeking to secure one or more Consultants that can assist with various materials testing as they arise on projects over the next three (3) fiscal years—FY2021 through FY2023 (September 1, 2020 through August 31, 2023). The most highly qualified Consultant(s) will be selected either for individual project assignments or for a master Professional Services Agreement that may be renewed annually, from which work orders for specific project assignments will be issued. Please note, a Firm does not have to be proficient in all desired testing services described in Section VI below. Respondents should clearly indicate which services are available.

VI. SCOPE of WORK

Consultant shall provide materials testing services on an on-call basis for specific projects. Services shall consist of testing typically required for the construction or investigation of utilities, structures, civil works, facilities, and other projects as needed. Testing may include, but is not limited to:

- Soils
- Base Materials
- Flexible base stockpiles
- Aggregate
- Concrete
- Asphaltic Concrete
- Portland cement
- Masonry
- Coring Services
- Structural Steel
- Pipe welding
- Coating systems
- Non-Destructive Testing, including ground penetrating radar/geophysical survey
- Fireproofing
- Accessibility Inspections
- Special Inspections

Consultant may be required to perform site visits, document site observations, participate in progress meetings, upload reports to Sharepoint, verify compliance with specifications, flag nonconforming test results, and other services to support construction quality assurance.

SJRA reserves the right to solicit other consultants for materials testing within the three-year (3-yr) term.

VII. SUBMISSION REQUIREMENTS

Proposals must be prepared simply and economically, providing a straightforward, concise description of Respondent's ability to meet all requirements and specifications of this RFQ. Emphasis should be focused on completeness, clarity of content and responsiveness to all requirements and specifications of this RFQ.

The proposal must be submitted electronically via email. A single PDF file may be emailed to cturney@sjra.net. The email and related attachment cannot be larger than 20 MB.

Any SOQ that does not meet all of the minimum requirements contained herein will be considered non-responsive and will not be evaluated. These minimum requirements are considered pass or fail criteria and include:

- 1. SOQ must be received by the due date and time;**
- 2. The page limitations noted below must be strictly adhered to; page limits do not apply to a cover letter, tabs, forms, or comments on the Professional Services Agreement.**

3. Certification must be signed and returned with SOQ; including acknowledgement of any addenda issued.

SOQs that pass the minimum requirements listed above will be evaluated, rated, and ranked, in accordance with the criteria provided below. The SJRA may request additional information, site visits, interviews, or presentations from the Respondent as part of the evaluation process.

The SJRA requires comprehensive responses to every section within this RFQ. To facilitate the review of the responses, Firms shall follow the described proposal format. The intent of the proposal format requirements is to expedite review and evaluation. It is not the intent to constrain Firms with regard to content, but to assure that the specific requirements set forth in this RFQ are addressed in a uniform manner amenable to review and evaluation. The proposal format shall be clearly identified in the responses and conform to the criteria as outlined in “A” through “H” as specified in the criteria listed below.

A. Firm introduction (5 points, 2 page maximum)

Briefly introduce your firm, providing a summary of the administration, organization and staffing of your firm (including staff’s certifications), include multiple offices, if applicable. Provide an organizational chart indicating the positions and names of the core team which will undertake this engagement.

B. Competence and qualifications of the individual who will be directly responsible for the management and delivery of the proposed work (Project Manager) (15 points, 1 page maximum)

SJRA is interested in the individual's experience as a project manager on projects similar to that described in the solicitation. Only one individual should be designated as Project Manager and must be a licensed engineer in the State of Texas at the time of submission and must be employed by the Firm and not by a sub-consultant. Demonstrate project management experience, technical competency, qualifications and compliance with legal requirements including:

- (a) documented experience managing projects similar to work described in the solicitation;
- (b) descriptions and examples of specific projects or studies of a similar nature completed by the individual as described in the solicitation and their role in the work (minimum 3, preferred 5);
- (c) educational background;
- (d) license status, to include Texas registration number and expiration date ;
- (e) formal project management training plus any certifications and/or accreditations offered by organizations such as the Project Management Institute (preferred, not required); and
- (f) availability and other commitments (specific projects, role, duration) over next 12 to 36 months.

C. Firm’s material testing facility certifications, equipment, testing capabilities, and testing methods (25 points, 2 page maximum)

Describe the Firm’s certified testing capabilities, available equipment, calibration procedures, etc. Also, indicate whether the test facilities and/or test methods are accredited or certified by one of the accreditation agencies (CCRL, AASHTO, A2LA, etc.). Please note, a Firm does not have to be proficient in all desired testing services described in Section VI above. Respondents should clearly indicate which services are available.

D. Firm’s support personnel experience (15 points, 1 page maximum)

SJRA is interested in the technical qualifications and experience of the individual project team members of the Firm who will support the Project Manager. Demonstrate technical competency and qualifications in list format with the following information:

- (a) proposed role on project;
- (b) location;
- (c) years of experience;
- (d) educational background;
- (e) license status, to include Texas registration number and expiration date where applicable; and
- (f) summary of relevant experience.

E. Experience of the Firm (specifically with other governmental or public entities) based upon previous work similar to that of the type considered (15 points, 2 page maximum)

SJRA is interested in the Firm's history with similar projects as described in the solicitation. Include history of work performed for other governmental or public entities. **List no more than five projects meeting these criteria which have been completed within the last five years.** Include the project description, name of the team leader, description of the Firm’s role, cost of the project or study, year of the work, and name and phone number of the Client’s contact who can respond to questions about the work. Provide:

- (a) applicability of projects similar in nature as described in the solicitation; and
- (b) role of firm in the project or study.

F. Experience of the firm on past SJRA projects based upon previous work similar to that of the type considered (10 points, 1 page maximum)

SJRA will consider the past performance of the Firm on SJRA projects in awarding this work. The Firm should include the name of the project, project manager, and date of completion for projects with SJRA within the past five (5) years.

G. Ability to respond promptly to SJRA’s requests for services (15 points, 1 page maximum)

Describe the Firms procedures and ability to respond to work requests for both scheduled and emergency type services.

H. COMMENTS/CHANGE REQUESTS to STANDARD FORM of AGREEMENT

A copy of the SJRA's Professional Services Agreement is attached to the RFQ. Please provide any comments or change requests to the Agreement with the proposal submittal. Failure to submit requested changes will affirm that the Firm willing to execute the Agreement without modification.

VIII. EVALUATION and SELECTION PROCESS

The SJRA has attempted to provide a comprehensive statement of requirements through this solicitation for the work contemplated. Written proposals must present Respondent’s qualifications and understanding of the work to be performed. Respondents are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals must be as thorough and detailed as possible so that the SJRA may properly evaluate capabilities to provide the requested services.

SJRA reserves the right to award contract(s) to one or more providers pursuant to this RFQ. The SJRA will first select the most highly qualified provider(s) for the services on the basis of demonstrated competence and qualifications; and then attempt to negotiate a contract with provider(s) at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider(s) for the services, the SJRA will formally end negotiations with that provider; select the next most highly qualified provider; and attempt to negotiate a contract with that provider at a fair and reasonable price. The SJRA will continue this process to select and negotiate with provider(s) until a contract is entered into.

By submission of a proposal, Respondent acknowledges acceptance of the evaluation process, the evaluation criteria, scope of work, approach and methodology, and all other terms and conditions set forth in this RFQ. Further, Firms acknowledge that subjective judgements must be made by the SJRA during this process.

A. CLARITY and QUALITY of PROPOSAL

Pass/Fail

Firms must provide comprehensive responses to every section within this RFQ in the described format. It is not the intent of the SJRA to constrain Firms with regard to content, but to assure that the specific requirements set forth in this RFQ are addressed in a uniform manner amenable to review and evaluation. Failure to do so may result in your Proposal being disqualified from further review and consideration.

B. EVALUATION CRITERIA

The SJRA will select one or more Firms based on demonstrated competence and qualifications. The SJRA has established specific, weighted criteria for selection. This section presents the evaluation criteria, description, and relative weight assigned to each (100 points maximum). The SJRA will evaluate each Respondent’s responses to the requirements contained in this RFQ.

- A. (5 points) Firm Introduction**
- B. (15 points) Competence and qualifications of the individual who will be directly responsible for the management and delivery of the proposed work (Project Manager)**
- C. (25 points) Firm’s material testing facility certifications, equipment, testing capabilities, and testing methods**
- D. (15 points) Firm’s support personnel experience**
- E. (15 points) Experience of the Firm (specifically with other governmental or public entities) based upon previous work similar to that of the type considered**
- F. (10 points) Experience of the firm on past SJRA projects based upon previous work similar to that of the type considered**
- G. (15 points) Ability to respond promptly to SJRA’s requests for services**

100 POINTS

TOTAL POINTS AVAILABLE

C. REFERENCE CHECKS

The SJRA reserves the right to check any reference(s), regardless of the source of the reference information. Information may be requested and evaluated from references. The SJRA reserves the right to use a third party to conduct reference checks. Only top scoring Respondents may receive reference checks and negative references may eliminate Respondents from further consideration.

D. INITIAL EVALUATION and RANKING

Following the Proposal evaluation(s), the SJRA will compile the final scores. If the Evaluation Committee determines that clarifying information is not required, the evaluation process is complete. The award recommendation will be made for the Respondent(s) which, in the SJRA's opinion, is the most highly qualified.

E. INVITATIONS FOR ORAL INTERVIEWS

The Evaluation Committee may conclude after completion of the Proposal evaluation(s) that oral interviews or presentations are required in order to determine the most qualified Respondent(s). The selection of firms to make presentations will be based on the initial evaluation and ranking. All Respondents may not necessarily be extended an invitation for oral interviews. The SJRA reserves the right to select Firms to interview that are most susceptible of being selected for an award of a contract.

F. ORAL INTERVIEWS, PRESENTATIONS or DEMONSTRATIONS (OPTIONAL)

Selected Firms may be given an opportunity for oral interviews, presentations, or demonstrations. The presentation process will allow Respondents to demonstrate their proposal offering and explain and/or clarify any unusual or significant elements related to their Proposals. At this stage, Respondents shall not be allowed to alter or amend their proposals. The Evaluation Committee will score each presenting Respondent.

G. FINAL EVALUATION and RANKING after ORAL INTERVIEWS

The Evaluation Committee will make its recommendation for award to the most highly qualified Respondent(s) based on a combination of the evaluation criteria and the oral interview, presentation, or demonstration (if utilized).

IX. CERTIFICATION and ACKNOWLEDGEMENT

The undersigned, as an authorized agent of the Respondent, hereby certifies:

- () The Respondent is in receipt of _____ addenda.
- () The Respondent certifies:
 - () that (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the Contract. This section does not apply if the Company is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Company has ten (10) or more fulltime employees and (ii) this Contract has a value of \$100,000.00 or more to be paid under the terms of this Contract pursuant to Texas Government Code, Chapter 2271, Section 2271.002.
 - () that it does not do business with Iran, Sudan, or a foreign terrorist organization pursuant to Texas Government Code, Chapter 2252, Section 2252.153.
- () The Respondent is qualified to perform the work and services outlined in this RFQ.
- () The Proposal has been arrived at independently and submitted without collusion with any other Respondent, SJRA staff or SJRA contractor, and the contents of the proposal have not been communicated by the Respondent or, to the Respondent’s best knowledge and belief, by any one of its employees or agents to any person not an employee or agent of the Respondent, and will not be communicated to any person prior to the SJRA’s final action on this RFQ prior to contract award. Nothing in this paragraph shall be construed to prevent or preclude two or more companies or persons from joining together to submit a proposal for the work.
- () The offers, terms and conditions of the Proposal will remain valid and effective and may be relied upon by the SJRA for a period of ninety (90) days following the Proposal closing date and time as identified in this RFQ or addenda.

Signed By: _____ Title: _____

Typed Name: _____ Company Name: _____

Phone No.: _____ Fax No.: _____

Email: _____

Bid Address: _____

P.O. Box or Street	City	State	Zip
--------------------	------	-------	-----

Order Address: _____

P.O. Box or Street	City	State	Zip
--------------------	------	-------	-----

Remit Address: _____

P.O. Box or Street	City	State	Zip
--------------------	------	-------	-----

Federal Tax ID No.: _____

DUNS No.: _____

Date: _____

EXHIBIT A
SJRA PROFESSIONAL SERVICES AGREEMENT

**PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. 20-0085**

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, limited partnership, limited liability company] 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 **Material Testing Services** as are requested from time to time by SJRA, which Services shall be set forth more particularly in Work Orders, the form of which is attached hereto as Attachment B, issued from time to time by SJRA and accepted by CONSULTANT. Each Work Order shall constitute a separate and independent agreement between CONSULTANT and SJRA.

1.2 Work 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 Agreement and all Work Orders. Work 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 Work Order may not be modified unless such modifications are agreed to in writing by SJRA and CONSULTANT.

1.3 All Work Orders incorporate and shall be governed by and subject to the terms, conditions, and other provisions of this Agreement; provided, however, that a Work Order may specifically state a term, condition, or other provision of this Agreement that is being modified thereby. Unless so stated, the terms, conditions, or other provisions contained in any Work Order or any proposal attached to or incorporated into a Work 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 Work Orders, and the balance of the terms, conditions, and other provisions contained in such Work Orders shall remain in full force and effect. Modifications of the terms, conditions, or other provisions of this Agreement with respect to a particular Work Order shall not modify the terms, conditions or other provisions of this Agreement with respect to any other Work Order.

1.4 Nothing herein shall obligate SJRA to issue, or CONSULTANT to accept, any Work 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 Paragraph 2.1, this Agreement shall apply to and remain in effect for Work Orders issued and accepted during the term of this Agreement until such time as Consultant's obligations in connection with the Services under such Work Orders have been completed and fulfilled; provided however, that, pursuant to Article 12, either Party shall have the right to terminate any Work Order for cause and SJRA shall have the right to terminate any Work Order for convenience.

2.3 Without limiting the generality of the foregoing Paragraph 2.2, 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 Work 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 Work Order, the rates and charges agreed upon for a specific Work 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 Work 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 Work Order by CONSULTANT and its subconsultants, subcontractors and suppliers during the preceding calendar month. CONSULTANT shall separately itemize on each invoice: (i) each Work Order for which payment is sought, (ii) the amount budgeted for each such Work Order, (iii) the amount of payment requested pursuant to each such Work Order, (iv) the amount previously paid pursuant to each such Work Order, (v) descriptions of Services performed during the prior month pursuant to each such Work 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 Work Order or any failure of CONSULTANT to perform Services in accordance with the provisions of this Agreement or the applicable Work 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 its 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 INDEMNITEE (hereinafter defined) 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 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.

Any failure by SJRA to exercise its right to withhold all or any part of payment requested in any invoice as provided in this Paragraph 3.3 shall not be and shall not be construed as (i) a waiver of SJRA's right to do so in the future, or (ii) evidence that any of the circumstances identified in Subparagraphs 3.3(a) through (d) above have not occurred.

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 has paid CONSULTANT in accordance with the terms of this Agreement and any particular Work Order, CONSULTANT shall defend and indemnify SJRA from and 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; LEGAL COMPLIANCE; THIRD PARTY REVIEW

4.1 CONSULTANT shall perform, supervise and direct the Services, and otherwise discharge its obligations under this Agreement and any Work Order: (a) with the professional skill and care ordinarily provided by competent engineers practicing 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 engineer (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 persons, 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. Without assuming any control over, responsibility for or liability whatsoever with respect to the construction contractor obligations of the foregoing sentence, 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, any such estimate shall be developed in accordance with CONSULTANT's Standard of Care, but 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 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 CONSULTANT hereby agrees that the following terms, conditions, verifications, certifications, and representations apply to and are incorporated into this Agreement for all purposes:

(a) With respect to providing Services hereunder, CONSULTANT shall comply with any applicable Equal Employment Opportunity and/or Affirmative Action ordinances, rules, or regulations during the term of this Agreement.

(b) Pursuant to Texas Local Government Code Chapter 176, CONSULTANT shall submit a signed Texas Ethics Commission ("TEC") Conflict of Interest Questionnaire ("CIQ") at the time CONSULTANT submits this signed Agreement to SJRA. TEC Form CIQ and information related to same may be obtained from TEC website by visiting <https://www.ethics.state.tx.us/forms/conflict/>. If CONSULTANT certifies that there are no Conflicts of Interest, CONSULTANT shall indicate so by writing name of CONSULTANT's firm and "No Conflicts" on the TEC Form CIQ.

(c) If CONSULTANT is a privately held entity, then pursuant to Texas Government Code Section 2252.908 and the rules promulgated thereunder by the TEC, CONSULTANT shall submit a completed and signed TEC Form 1295 with a certificate number assigned by the TEC to SJRA at the time CONSULTANT submits this signed Agreement to SJRA. TEC Form 1295 and information related to same may be obtained from TEC website by visiting <https://www.ethics.state.tx.us/filinginfo/1295/>. CONSULTANT agrees and acknowledges that this Agreement shall be of no force and effect unless and until CONSULTANT has submitted said form to SJRA, if and to the extent such form is required under Government Code § 2252.908 and the rules promulgated thereunder by the TEC.

(d) As required by Chapter 2271, Texas Government Code, CONSULTANT hereby verifies that CONSULTANT, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott Israel and will not boycott Israel through the term of this Agreement. The term "boycott Israel" in this paragraph has the meaning assigned to such term in Section 808.001 of the Texas Government Code, as amended.

(e) Pursuant to Chapter 2252, Texas Government Code, CONSULTANT represents and certifies that, at the time of execution of this Agreement, neither CONSULTANT, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, is engaged in business with Iran, Sudan, or any terrorist organization, and is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.

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 Work 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 Work 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 Work Orders or Services 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 to 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 and 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 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 agrees that all Work Product will be maintained according to the provisions of the Public Information Act, Chapter 552, Texas Government Code, and the Local Government Records Act, Chapters 201 through 205, Texas Local Government Code, each as amended. 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 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.

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, pursuant to a written change order in accordance with Paragraph 12.1, below. 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 Work Order, it is discovered that such Services were not performed in accordance with CONSULTANT’s Standard of Care, SJRA, in its sole discretion, may: (1) direct CONSULTANT to re-perform and CONSULTANT shall re-perform such Services at its own expense, and as expediently or in the manner required for SJRA’s needs; or (2) retain such other consultant or consultants as necessary to perform such corrective services, and CONSULTANT agrees to pay SJRA’s costs associated with having such other consultant or consultants perform such corrective services, and any other damages incurred by SJRA as a result of such default. 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 assistance. The representations and warranties of CONSULTANT under this Agreement and Work 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.

8.3 CONSULTANT warrants and represents that: (i) CONSULTANT 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 (ii) the United States government has affirmatively declared CONSULTANT 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.

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 (EACH AN “INDEMNITEE” AND 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 ATTORNEYS’ FEES) (COLLECTIVELY, “LOSSES”), INCLUDING WITHOUT LIMITATION THOSE BROUGHT AGAINST OR INCURRED OR SUFFERED BY ANY ONE OR MORE OF THE INDEMNITEES AND THOSE 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 WORK 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 ATTORNEYS' 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, 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 Work 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 of policies 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 Work 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**

- (1) claims under workers' 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 \$2,000,000 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 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.

(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 therefor 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 a 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 attorneys' 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. CONSULTANT's obligations under this Agreement to defend, indemnify and/or hold harmless INDEMNITEES shall not be limited in any way by any insurance required of CONSULTANT by this Agreement or otherwise provided or maintained by CONSULTANT. Any insurance obligations of CONSULTANT under this Agreement are independent from CONSULTANT's obligations under this Agreement to defend, indemnify and/or hold harmless INDEMNITEES. 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 Work 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 Work 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 Work Order in writing duly executed by both Parties, to reflect the change in compensation and schedule.

12.2 SJRA may for convenience terminate this Agreement, any Work Order issued under this Agreement, or CONSULTANT's right to perform Services under this Agreement or any Work 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 Work 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 Work 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 Work 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 Work Order. In the event any Work Order is terminated by SJRA, CONSULTANT shall promptly deliver to SJRA all Work Product with respect to such terminated Work 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 Work Order, of CONSULTANT contained herein shall be excused to the extent such delay in performance or non-performance is caused by Force Majeure. "Force Majeure" shall mean fire, flood, act of God, earthquakes, extreme weather conditions, epidemic, pandemic, 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 reasonable control of and cannot be reasonably anticipated by or the effects cannot be reasonably 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.

14.2 No right or interest in this Agreement or any Work 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 Work 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; NON-WAIVER

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

15.2 Failure by SJRA in any instance to insist upon observance or performance by CONSULTANT of any term, condition or obligation of this Agreement shall not be deemed a waiver by SJRA of any such observance or performance. No waiver by SJRA of any term, condition, obligation or breach of this Agreement will be binding upon SJRA unless in writing, and then will be for the particular instance specified in such writing only. Payment of any sum by SJRA to CONSULTANT with knowledge of any breach will not be deemed a waiver of such breach or any other breach.

ARTICLE 16 – LICENSE REQUIREMENTS

16.1 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 Work Order.

ARTICLE 17 – ENTIRE AGREEMENT

17.1 This Agreement and all Work 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 Work Orders may be modified only in writing, signed by both Parties.

ARTICLE 18 – GOVERNING LAW; VENUE

18.1 This Agreement and Work Orders, and its and their construction and any disputes arising out of, connected with, or relating to this Agreement or Work Orders shall be governed by the laws of the State of Texas, without regard to its conflicts of law principles. Venue of all dispute resolution proceedings arising out of, connected with or relating to this Agreement, shall be in Montgomery County, Texas.

ARTICLE 19 – DISPUTE RESOLUTION

19.1 In the event of any dispute arising out of or relating to this Agreement, any Work 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 and place not later than forty-five (45) days after such dispute arises to attempt 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 construction, engineering, and/or public works operations. 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.

19.2 Any dispute arising out of or relating to this Agreement or any Work Order or any Services not resolved pursuant to Article 19.1, shall be resolved, by litigation in a court of competent jurisdiction.

19.3 Notwithstanding the foregoing, in the event SJRA and any other consultant and/or any contractor are involved in a dispute in connection with a project for which CONSULTANT has provided Services, and SJRA, in its sole discretion, determines that CONSULTANT's participation in any dispute resolution meeting or mediation proceeding between SJRA and any such consultant and/or contractor is necessary to the resolution of such dispute, CONSULTANT agrees to attend and participate at its own cost in any such dispute resolution meeting or mediation proceeding.

19.4 If CONSULTANT brings any claim against SJRA and CONSULTANT does not prevail with respect to such claim, CONSULTANT shall be liable for all attorneys' fees and costs incurred by SJRA as a result of such claim.

ARTICLE 20 – ELECTRONIC SIGNATURES; COUNTERPARTS

20.1 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, the Parties agree that this Agreement and any Work Order may be executed using electronic signatures at the option and in the 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.

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.

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

CONSULTANT:

Name _____

By: _____

Name
Title

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 Work Order. Professional is defined as a manager, supervisor, engineer, 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

2.86 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

2.75 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 Work Order. SJRA may ask CONSULTANT for a cost estimate for the scope of work prior to issuing the Work Order. The cost estimate will include a summary breakdown showing the labor hours and cost, subconsultant 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.

ATTACHMENT B

This Work Order is issued subject to, is governed by and incorporates by reference that certain Professional Services Agreement, Contract No. _____, between the SJRA and CONSULTANT effective _____, 2020.

Work Order Date: _____

CONSULTANT: _____

Type of Compensation: _____

Compensation: _____

Location of Services: (County) _____

Description of Services: _____

Deliverables: See Attached.

Schedule Requirements:

Commence Services: _____

Completion of Services: _____

Submittal Dates for Each Deliverable: See Attached.

Agreed to by:

SJRA

By: _____

Name: Jace A. Houston

Title: General Manager

and

[CONSULTANT]

By: _____

Name: _____