



San Jacinto River Authority

REQUEST FOR QUALIFICATIONS

RFQ # 12-005, Wastewater Conveyance System Capacity/Condition Assessment

RFQ OVERVIEW

The Woodlands Division of the San Jacinto River Authority (SJRA) is soliciting Statements of Qualifications (SOQs) from parties interested in undertaking the following project: **Wastewater Conveyance System Capacity/Condition Assessment**

Statements of Qualifications (SOQs) will be accepted prior to October 5, 2011, 2 P.M. CST at the SJRA General and Administrative Building, 1577 Dam Site Road, Conroe, TX 77304. Responses received after the above-mentioned date and time will not be considered, and will be returned to the offeror in the condition they were delivered. All communications regarding this RFQ must be made in writing and electronically to Julie Allen, Woodlands Division Buyer.

San Jacinto River Authority
Attn: Julie Allen
Purchasing Department
1577 Dam Site Road
Conroe, Tx 77304
jallen@sjra.net

Any other contact with SJRA staff, consultants, or advisors regarding this contract may eliminate that firm from contract award consideration.

The proposed schedule for this Request for Qualifications is as follows:

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|---------------------------------------|---------------------------------------|
| Release RFQ to Consultants: | Monday, September 19, 2011 |
| Deadline for Questions and Inquiries: | Friday, September 30, 2011 |
| SOQ Submissions Due: | Wednesday, October 5, 2011, 2:00 P.M. |

GENERAL INFORMATION

Efforts are on-going in The Woodlands Division to evaluate, rehabilitate and maintain the wastewater conveyance system. The SJRA has identified the need to perform a wastewater conveyance system capacity/condition assessment. The goal of this assessment will be to determine the current condition and capacity of the wastewater collection system and will serve as a guide to continue assessment and rehabilitation efforts. The assessment will involve the following:

- Review and evaluate existing collection system data including previous CCTV, Lift Station run times and rainfall data.
- Develop system recommendations including cost and schedule for immediate system rehabilitation.
- Develop a plan to continue rehabilitation efforts including prioritized inspections and rehabilitation.
- Make recommendations on annual evaluations and rehabilitation cost to prevent collection system failures and SSOs.
- Supplement data with additional CCTV, modeling, lift station inspection and flow monitoring as needed to perform the assessment.

Anticipated deliverables include the following:

- Draft Wastewater System Assessment report
- Final Wastewater System Assessment report
- Other deliverables as related to additional system data acquisition

SJRA is requesting a Statement of Qualifications from qualified firms to provide wastewater conveyance system capacity/condition assessment services. The respondent firm shall include appropriately qualified, experienced and licensed professionals to provide these as well as other services required.

Instructions to Proposers

Statement of Qualifications Requirements:

1. SOQs shall not exceed ten (10) pages including transmittal letter and attachments; and excluding covers and plain section dividers. SOQs shall be printed on single side 8 ½" x 11" pages with not less than 1 inch margins, not less than 1.25 line spacing, and not less than 11 point font.
2. Transmittal Letter – Provide a transmittal letter signed by an officer of the respondent firm who has the authority to commit the firm.
3. General Information of the respondent firm in the following list format:
 - a. Firm name
 - b. Corporate address
 - c. Primary contact name, phone number, and email address
 - d. Website address
 - e. Federal tax identification number
 - f. Number of years firm in business
 - g. Type of organization(s) (individual, partnership, or corporation)
 - h. Date of organization (month and year)
 - i. Location(s) of business
 - j. Name(s) and date(s) of predecessor organization(s)
 - k. Number and type of professionals and corresponding registrations/certifications

- I. Type and limits of insurance coverage
4. Experience of the individual Project Manager – Provide the following information to clearly demonstrate the experience and capabilities of the individual:
 - a. Name
 - b. Position/Title within firm
 - c. Role/Responsibility, including availability and time commitment
 - d. Education
 - e. Applicable registration or certification
 - f. Years of experience directly related to performing waste water collection system assessments
 - g. Experience relevant to the specific aspects and anticipated services. Provide summary of experience and qualifications, and detailed descriptions of no more than five (5) recent assignments of similar nature using the following format:
 - i. Assignment name/location/client
 - ii. Project description
 - iii. Work/Services performed under direct supervision of the individual
 - iv. Completion date of project and/or key deliverables
 - v. Budget and schedule management adherence
 - vi. Client contact name, title/position, current phone number, and email address
5. Support Resources
 - a. Name
 - b. Position/Title
 - c. Firm name
 - d. Role/Responsibility
 - e. Education
 - f. Applicable registration or certification
 - g. Years of experience directly related to the specific aspects and anticipated services.
 - h. Experience relevant to the specific aspects and anticipated services.
6. Recent/Current Projects – Provide contact name, current phone number, and email address for all clients for which the respondent firm has completed similar inspection services in the United States within the last five calendar years, and for which the respondent firm is currently under contract to provide related services.
7. Potential Conflicts of Interest – Firms seeking to do business with SJRA are responsible for maintaining compliance with the applicable provisions of Chapter 176, Local Government Code, related to disclosure of conflicts of interest. The Conflict of Interest Questionnaire is available for downloading on the Texas Ethics Commission’s website at <http://www.ethics.state.tx.us/forms/CIQ.pdf> and should be submitted to SJRA under separate cover. The completed Conflict of Interest Questionnaire will be posted on SJRA’s website as required by Chapter 176.

Equal Employment Opportunity Requirements:

The SJRA highly encourages applicants to maintain non-discriminatory practices in their employment programs. This means applicants should not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age, handicap, or political belief or affiliation.

General

1. This RFQ does not commit SJRA to enter into a contract, nor does it obligate it to pay any costs incurred in the preparation and submission of Qualifications and subsequent discussions, interviews, and/or presentations in anticipation of a contract.
2. SJRA reserves the right to:
 - a. Reject any and all Statements of Qualifications received
 - b. Cancel the entire RFQ
 - c. Remedy technical errors in the RFQ process
 - d. Negotiate with any, all, or none of the respondents to the RFQ
 - e. Request proposals from a shortlist of respondents to the RFQ
 - f. Conduct interviews with a shortlist of respondents to the RFQ
 - g. Waive informalities and irregularities
 - h. Modify the selection process
3. SJRA retains the right to select, approve, or disapprove all subconsultants

Statement of Qualifications Scoring Process

Once the due date for SOQ submissions has passed, a panel of SJRA employees will review and score the SOQs based on the following criteria:

- Responsiveness to Requirements of this RFQ (**5 points**)
- Relevant experience, expertise, and qualifications of the proposed lead technical professional (**30 points**)
- Relevant experience, expertise, and qualifications of the proposed support resources (**15 points**)

TOTAL POSSIBLE POINTS: 50

Type and limits of insurance coverage – **Note: SJRA standard insurance requirements are stated in Article 11 of SJRA’s Standard Professional Services Agreement, a copy of which is provided in Exhibit A of this document.**

A copy of the SJRA Standard Professional Services Agreement (Contract) to be executed for the Work of this RFQ, is provided for review/reference in Exhibit A of this document. **Note: The SJRA will not entertain requests of firms to modify, change, or in any way, alter the INDEMNIFICATION language found in Article 9 of the Standard Professional Services Agreement. Firms who cannot or are unwilling to meet the terms and conditions of Article 9, should not submit an Statement of Qualifications for this project. No exception shall be made.**

PROFESSIONAL SERVICES AGREEMENT

SJRA Contract # 12-017

This 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 77305

and

____, a corporation 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 consulting, professional engineering and such other services (the "Services") related to wastewater conveyance system capacity/condition assessment in Montgomery County, Texas 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.

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

1.3 Terms, conditions, or other provisions contained in any 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.

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 services or 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 unless terminated earlier in writing in accordance with Article 12.

2.2 Notwithstanding the foregoing, this Agreement shall remain in effect for Work Orders issued and accepted during the term of this Agreement until such time as the Services under the Work Orders have been completed; 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.

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 appropriate backup documentation, releases and waivers of lien in forms acceptable to SJRA, covering all Services performed hereunder 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 for each such Work Order, (iv) the amount previously paid for each such Work Order, (v) descriptions of Services performed during the prior month for 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 their respective property or portion thereof or improvements thereon;

(c) uninsured damage to any Indemnitee 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.

3.4 CONSULTANT agrees to pay in full (less any applicable retainage) as soon as reasonably practicable, but in no event later than thirty 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 made such payments to CONSULTANT, CONSULTANT shall defend and indemnify SJRA against any liens or claims of lien asserted or filed by any such person or entity against SJRA or CONSULTANT or its project or property.

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

4.1 CONSULTANT shall perform, supervise and direct the Services, using reasonable skill and attention, in a good and workmanlike manner and in the best reasonable and expeditious and economical manner consistent with the interests of SJRA, shall exercise the degree of care, skill, and diligence in the performance of the Services in accordance with and consistent with industry standards for similar circumstances, shall utilize reasonable skill, efforts, and judgment in furthering the interests of SJRA, and shall furnish efficient administration and supervision in connection with Services and this Agreement (CONSULTANT's "Standard of Care").

4.2 Consistent with its Standard of Care, CONSULTANT shall keep SJRA apprised of the status of Services, will 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 or responsibility for the site. Construction contractors of SJRA shall have sole responsibility for providing materials, means, and methods of construction, for controlling their individual work areas and safety of said areas for all parties, and for taking all appropriate steps to ensure the quality of their work and the safety of their employees and of the public in connection with their performance of work or services provided under contracts with SJRA. CONSULTANT shall comply with the site safety program and rules established by the construction contractors.

4.4 To the extent that CONSULTANT provides to SJRA any estimate of costs associated with construction, it is recognized by the Parties that neither CONSULTANT nor SJRA has control over the cost of the labor, materials, or equipment, over a construction contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from SJRA's budget for the project or from any estimate of the cost of work or evaluation prepared or agreed to by CONSULTANT.

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

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

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

ARTICLE 5 – COST RECORDS

5.1 CONSULTANT shall maintain records and books in accordance with generally accepted accounting principles and practices. For Services provided by CONSULTANT under cost reimbursable, time and material or unit price 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 manhours 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 compensated on a lump sum basis.

ARTICLE 6 – OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY

6.1 All studies, plans, reports, drawings, specifications, cost estimates, software, computations, and other information and documents prepared by CONSULTANT, its subconsultants, subcontractors, and/or suppliers, in connection with Services or any project of SJRA are and shall remain SJRA's property upon creation (collectively, "Work Product") provided, however, that Work Product shall not include pre-existing proprietary information of CONSULTANT, its subconsultants, subcontractors, and/or suppliers ("CONSULTANT Proprietary Information"). To this end, CONSULTANT agrees and does hereby assign, grant, transfer, and convey to SJRA, its successors and assigns, CONSULTANT's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration. CONSULTANT confirms that SJRA and its successors and assigns shall own CONSULTANT's right, title, interest in and to, including without limitation the right to use, reproduce, distribute (whether by sale, rental, lease or lending, or by other transfer of ownership), to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "work made for hire" as defined in 17 U.S.C. Section 201(b). In addition, CONSULTANT hereby grants SJRA a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, modify, create derivative works from and distribute to third parties CONSULTANT Proprietary Information in connection with SJRA's exercise of its rights in the Work Product, operation, maintenance, repair, renovation, expansion, replacement, and modification of projects of SJRA or otherwise in connection with property or projects in which SJRA has an interest (whether by SJRA or a third party). CONSULTANT shall obtain other assignments, confirmations, and licenses substantially similar to the provisions of this paragraph from all of its subconsultants, subcontractors, and suppliers. Work Product is to be used by CONSULTANT only with respect to the project in connection with which such Work Product was created and is not to be used on any other project. CONSULTANT and its subconsultants, subcontractors, and suppliers are granted a limited, nonexclusive, non-transferable, revocable license during the term of their respective agreements under which each is obligated to perform Services to use and reproduce applicable portions of the Work Product appropriate to and for use in the execution of Services. Submission or distribution to comply with official regulatory requirements for other purposes in connection with Services is not to be construed as publication in derogation of SJRA's copyright or other reserved rights. CONSULTANT shall deliver all copies of the Work Product to SJRA upon the earliest to occur of SJRA's request, completion of Services in connection with which Work Product was created, or termination of this Agreement.

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, on the basis set forth herein. There will be no charge for CONSULTANT's existing patents.

ARTICLE 7 – INDEPENDENT CONTRACTOR RELATIONSHIP

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

ARTICLE 8 – WARRANTY PERIOD; GUARANTEES

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

8.2 CONSULTANT agrees to assign SJRA the warranty or guarantee of any supplier or manufacturer of items of services, supplies, machinery, equipment, materials, or products provided by CONSULTANT hereunder and cooperate and assist SJRA in SJRA's enforcement thereof. CONSULTANT's responsibility with respect thereto is limited to such assignment, cooperation, and alliance.

8.3 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.

ARTICLE 9 – INDEMNIFICATION

9.1 To the fullest extent permitted by law, CONSULTANT shall defend, indemnify, and hold harmless SJRA and its board, directors, officers, and employees, (collectively, the "Indemnitees"), from and against claims, losses, damages, demands, suits, causes of action, settlements, liabilities, costs, fines, judgments, and expenses (including, without limitation, reasonable and necessary court costs, experts' fees and attorney's fees) (collectively, "Losses"), arising in favor of or brought by any third party, based upon, in connection with, relating to, or arising out of CONSULTANT's willful or negligent acts, errors or omissions (or those of any of its subcontractors, subconsultants, or suppliers or any of its or their

respective employees or any party for whom any may be legally liable), under or in connection with this Agreement or any Work Order.

9.2 To the fullest extent permitted by law, SJRA shall defend, indemnify, and hold harmless CONSULTANT and its directors, officers, and employees, from and against claims, losses, damages, demands, suits, causes of action, settlements, liabilities, costs, fines, judgments, and expenses (including, without limitation, reasonable and necessary court costs, experts' fees and attorney's fees) (collectively, "Losses"), arising in favor of or brought by any third party, based upon, in connection with, relating to, or arising out of SJRA's instructions, directions and orders (or those of any of its directors, officers, and agents) under or in connection with this Agreement or any Work Order.

ARTICLE 10 – LIMITATION OF LIABILITY

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

10.2 Nothing herein shall be construed as creating any personal liability on the part of any board member, any officer, employee, or agent of the 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 through one year beyond the expiration of the latest warranty period for any Work Order required by Paragraph 8.1 of this Agreement, provide and require all subconsultants and subcontractors to provide insurance coverage with companies lawfully authorized to do business in Texas and acceptable to SJRA, which coverage will protect CONSULTANT from claims set forth below which may arise out of or result from CONSULTANT's operations under this Agreement and for which CONSULTANT may be legally liable, whether such 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' and workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to CONSULTANT's Services to be performed;
- (2) claims for damages because of bodily injury, occupational sickness or disease, or death of CONSULTANT's employees;
- (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than CONSULTANT's employees;
- (4) claims for damages insured by usual personal injury liability coverage which are sustained (i) by a person as a result of an offense directly or indirectly related to employment of such person by CONSULTANT, or (ii) by another person;
- (5) claims for damages other than to CONSULTANT's work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(6) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

(7) claims involving contractual liability insurance applicable to CONSULTANT's indemnification obligations under this Agreement; and

(8) claims for errors and omissions in the provision of professional consulting services of the kind rendered by CONSULTANT pursuant to this Agreement.

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

| <u>Kinds of Insurance:</u> | | <u>Limits of Liability*:</u> |
|-----------------------------------|---|---|
| A. | Workers' Compensation Texas Operations Employer's Liability | Statutory Bodily Injury by Accident \$500,000 Each Accident Bodily Injury by Disease \$500,000 Each Employee Bodily Injury by Disease \$500,000 Policy Limit |
| B. | Commercial General Liability Including but not limited to: 1. premises/operations 2. products and completed operations 3. personal injury liability with employment exclusion deleted 4. contractual, owned, non-owned, and hired vehicles or mobile equipment | \$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations Aggregate \$1,000,000 Each Occurrence \$2,000,000 Personal and Advertising Injury |
| C. | Professional Liability | \$1,000,000 per claim \$3,000,000 Aggregate |
| D. | Business Automobile Liability Including all Owned, Hired, and Non-owned Automobiles | \$1,000,000 Combined Single Limit Per Occurrence |
| E. | Umbrella Liability | \$1,000,000 Per Occurrence \$1,000,000 Aggregate Bodily Injury and 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.

(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 VI 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 that the policy may not expire or be cancelled, materially modified, or nonrenewed unless the carrier and/or CONSULTANT therefore 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

(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.

(f) All policies of insurance and certificates issued for this Article 11, with the exception of Professional Liability and Workers' Compensation Insurance, shall name the Indemnitees (as currently known and as later identified by mutual agreement when additional Participating Third Parties, if any are so identified) as additional insureds for and to the extent of liabilities assumed under this Agreement.

(g) All insurance required pursuant to this Article 11, with the exception of Professional Liability Insurance, shall provide for waivers of all subrogation rights against the Indemnitees.

(h) All insurance required pursuant to this Article 11 shall be primary for and to the extent of liabilities assumed under this Agreement in respect of any insurance maintained by SJRA.

(i) If any policy required to be purchased pursuant to this Article 11 is subject to a deductible, self-insured retention or similar self-insurance mechanism which limits or otherwise reduces coverage, the deductible, self-insured retention, or similar self-insurance mechanism shall be the sole responsibility of CONSULTANT in the event of any loss and CONSULTANT hereby waives any claim therefore against the Indemnitees except to the extent caused by an Indemnitee pursuant to Article 9.

(j) CONSULTANT hereby waives all claims it may have against the Indemnitees to the extent any of such claims are covered by insurance required to be furnished by CONSULTANT or its subconsultants and subcontractors under this Agreement, and even if such claims arise out of, relate to, or are based upon any Indemnitee's own negligence, breach of contract, violation of statute or other fault.

(k) 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 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.

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

(m) 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 pursuant to this Article 11 or in any way limit, modify, or otherwise affect CONSULTANT's obligation under this Agreement or otherwise. The insolvency, bankruptcy, or failure of any insurance company carrying insurance for CONSULTANT or any subcontractor, or the failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of this Agreement.

(n) 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, commitments, and claims that CONSULTANT may have in good faith undertaken or incurred in connection with the Services terminated, and SJRA shall pay CONSULTANT for Services properly performed to date of termination and for reasonable costs of closing out such Services. 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 the final invoice shall be due and payable within thirty (30) days after receipt by SJRA.

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 all damages and costs associated with finally completing such Services.

ARTICLE 13 – FORCE MAJEURE

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

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

ARTICLE 14 – SUCCESSORS, ASSIGNMENT AND SUBCONTRACTING

14.1 The SJRA and CONSULTANT bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and 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 major part of the work or services to be provided under any Work Order with respect to which CONSULTANT has elected to subcontract, CONSULTANT will inform SJRA of the identity of the particular subcontractor, subconsultant or supplier CONSULTANT intends to employ for the performance of such major part of the work or services. SJRA shall have the right 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 and provided that SJRA gives written notice of its disallowance of the subcontractor or subconsultant.

ARTICLE 15 - SEVERABILITY

15.1 If any provision of this Agreement or any Work Order or any portion 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.

ARTICLE 16 – LICENSE REQUIREMENTS

16.1 The CONSULTANT shall have and maintain any licenses and certifications required by the State of Texas or recognized professional organizations governing the services performed under this Agreement.

ARTICLE 17 – ENTIRE AGREEMENT

17.1 This Agreement and 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

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.

ARTICLE 19 – DISPUTE RESOLUTION

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

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

CONSULTANT:

By: _____

Date

ATTEST:

Secretary

SJRA:

San Jacinto River Authority

By: _____

Reed Eichelberger, P.E.
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

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

X.XX for construction inspectors working in the field

(b) EXPENSES

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

A.2. LUMP SUM COMPENSATION

SJRA will compensate CONSULTANT on the basis of a mutually agreed upon lump sum price for the scope of work specified in the 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

Contract # _____

WORK ORDER NO. 1

This Work Order is issued subject to and is governed by that certain Professional Services Agreement, Contract # _____, between SJRA and CONSULTANT effective _____, 201__.

Work Order Date: _____

CONSULTANT: _____

Type of Compensation: (Lump Sum / Cost Plus -Time and Materials with a Not-To-Exceed Maximum)

Compensation: _____

Location of Services: _____

Description of Services: _____

Deliverables: _____

Schedule Requirements: Commence Services: _____

Completion of Services: _____

Submittal Dates for Each Deliverable: _____

Agreed to by:

SJRA

By: _____

Name: _____

Title: _____

and

CONSULTANT

By: _____

Name: _____

Title: _____