



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

**REQUEST FOR QUALIFICATIONS
RFQ 18-0054**

Construction Materials Testing Services

NIGP CLASS and ITEM

925	35
925	46

Issue Date: Friday, May 4, 2018
Response Due Date and Time (Central Time):
Thursday, June 7, 2018 @ 11:00 a.m.
Location for Delivery: as stated above

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1. INTRODUCTION

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

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

The SJRA is exempt from Federal Excise and State Sales Tax.

2. OVERVIEW OF SAN JACINTO RIVER AUTHORITY?

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

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

3. PROJECT REQUIREMENTS AND PROJECT DESCRIPTION

The SJRA has identified the need for a Consultant to provide professional services for Construction Materials Testing (CMT) for water, wastewater and raw water construction projects a Rate Study. SJRA’s fiscal year begins on September 1 and ends on August 31 for its financial operations. The Consultant shall furnish all required labor, materials, supplies and travel required in connection with the project. The SJRA expects that the project staff will include individuals with expertise in water, wastewater and raw water CMT services for a governmental entity.

Background

The SJRA is soliciting Statements of Qualifications (SOQs) from Engineering Consultant(s) to provide necessary CMT services required to support the various system improvement projects in the following SJRA Operation Divisions: Flood Management, Groundwater Reduction Plan (GRP), Highlands, Lake Conroe and The Woodlands.

Efforts are on-going in the Operating Divisions to construct and maintain future and existing facilities as well as other improvements. The SJRA anticipates multiple projects including, but not limited to, siphon construction/improvements, canal levee improvements, water and wastewater pipeline and facility improvements, lift stations construction/improvements, pump station construction/improvements, sedimentation removal and related activities.

The SJRA will review and accept proposals from qualified consultants for each of the twelve (12) areas of service(s) requested below. Qualified firms may submit qualification proposals for one (1) area of service, multiple areas of service, or all areas of service. The SJRA requires that the firm submit a separate proposal for each of the service(s) that a firm desires to be considered. SJRA will “shortlist” the consultants and maintain a list of Consultants for each area of services identified below. Those firms that are not chosen for the “shortlist” will be notified via written communication.

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

Anticipated Consultant Scope of Work

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

The SJRA may consider requiring the CMT Consultant(s) to provide the following testing and inspection services in the field and laboratory and provide materials engineering support that may generally include but may not be limited to the following:

1. CONCRETE
2. AGGREGATES
3. HOT MIX ASPHALT
4. STRUCTURAL STEEL INCLUDING WELDING AND BOLTING
5. PIPE WELD INSPECTION
6. PROTECTIVE COATINGS, INCLUDING SURFACE PREPARATION
7. MASONRY, INCLUDING MORTAR AND GROUT
8. FIREPROOFING

- 9. SOILS
- 10. STABILIZED SOILS
- 11. PAVEMENT BASE MATERIALS
- 12. SPECIAL INSPECTIONS AND ANALYSES

A. CMT Consultant shall prepare and provide test reports detailing project site and laboratory activities performed, executed tests, test results, national and local testing standards, and compliance as required by the construction contract documents.

B. CMT Consultant shall attend scheduled monthly progress/coordination meetings.

C. CMT Consultant shall attend unscheduled meetings as requested by the SJRA or Owner's Representative.

D. CMT Consultant shall coordinate with the SJRA or Owner's Representative on all CMT Consultant project site activities including immediate notification of failed field and laboratory test results.

E. CMT shall utilize SJRA's SharePoint® electronic document management system.

F. CMT Consultant reports shall be distributed by CMT Consultant in accordance with the construction contract documents; minimum distribution shall include the SJRA or Owner's Representative, Principal Architect/Engineer, and construction contractor.

G. CMT Consultant shall provide advice to the SJRA/Owner's Representative and Principal Architect/Engineer to assist with issues resolution.

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

Anticipated Schedule

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

- Contract Award by SJRA – TBD

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

4. MINIMUM QUALIFICATIONS

The following minimum requirements must be demonstrated in order for the submission to be **considered responsive** to the SJRA. Any submission received, which is determined to not meet

these mandatory requirements *may be* disqualified and rejected as non-responsive. Refer to Item 15 for general provisions and SJRA reservations of rights, in regards to this solicitation.

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

5. SCHEDULE OF EVENTS

The SJRA reserves the right to change the dates indicated below:

Issue Solicitation:	05/04/2018
Non-Mandatory Pre-Submittal Conference	05/16/2018 at 10:00 AM CDT
Deadline for submission of questions:	05/30/2018 at 10:00 AM CDT
Deadline for submission of responses:	06/07/2018 at 11:00 AM CDT
Evaluate and rank initial results (shortlist):	week of 06/11/2018
Interview(s) with top ranked teams (if required):	TBD
Evaluate and rank shortlisted teams:	TBD
Negotiation with top ranked team:	TBD

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

6. PRE-SUBMITTAL CONFERENCE

A non-mandatory pre-submittal meeting will be held at **10:00 am on Wednesday, May 16, 2018** at the **SJRA- General & Administration Building (G&A Main Conference Room) at 1577 Dam Site Road, Conroe, TX 773704.**

Internet link to meeting location (Google Maps):

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

6. CONTRACT TERM

Award of CMT Services

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

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

8. PRICING

Do not submit pricing information with your initial proposal submission.

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

9. ADDENDA

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

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

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

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

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

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

C. Section 1 (Letters)

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

D. Section 2 (Firm Qualifications and Experience)

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

E. Section 3 (Personnel)

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

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- Experience directly relevant to the specific aspects and anticipated services for this project including five (5) recent assignments of similar nature including the project name, location, client, project description, work/services performed under the direct supervision of the individual, completion of key deliverables, budget and schedule adherence and client name, title/position, current phone number and email address.
- iii. Support Resources. The name, position/title, education, applicable registration or certification, other qualifications, role/responsibility for this project, current location and direct experience, and capabilities of support resources who will be directly assigned to the project. The personnel cited shall be designated as to whether they are an employee of the RFQ respondent or the employee of a subconsultant to the RFQ respondent.

F. Section 4 Support Services

The submittal should include a work plan and explanation of the methodology to be followed in performing the CMT services. The explanation should include the following:

- i. Number of crews and crew size
 - ii. Position/Title of crew members
 - iii. In-house review staff.
 - iv. Experience with SJRA or in Montgomery and Harris County
- G. Section 5 (Additional Information)** - Provide other information pertinent to the project regarding the team and its support resources.

In-House Laboratory capabilities

- i. Size of Lab
- ii. Capabilities relevant to the specific aspects and anticipated services of the construction materials testing services
- iii. Type of test performed in-house

Ability to respond to emergencies

- iv. Provide information related to firm's ability to have a technical professional and crew available to respond to emergency repair work where materials testing services are required within six (6) hours of being notified by phone or email. Include information on similar agreements with other Clients including references.

H. Other Information

I. The RFQ process allows for negotiation of the requirements of this solicitation, however, the terms and conditions of the PSA are ***not negotiable***. The respondent shall note any exceptions to the solicitation document, on **Attachment B – Submission Exceptions Form**. The exceptions will be reviewed to ensure they meet the minimum requirements and the proposal submission shall be ranked in accordance with the evaluation criteria. The

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SJRA reserves the right to accept, reject or negotiate the exceptions provided. ***Complete, sign and return Attachment B – Submission Exceptions Form.*** Additional pages may be added as necessary, and will not count against the page limitations. ***Do not mark or change the text of the solicitation document, exceptions shall be noted only on Attachment B – Submission Exceptions Form.*** If no exceptions are taken, the respondent shall sign in the appropriate signature block and return ***Attachment B – Submission Exceptions Form***, with their proposal submission.

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

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

iv. Felony Conviction Notification Form – The individual or business must disclose any felony convictions for any team members that will be assigned to the SJRA project; ***complete, sign, and return Attachment F – Felony Conviction Notification.***

v. Acknowledgement Form - Submit a signed acknowledgement by authorized agent of the responding team; ***complete sign, and return Attachment G – Acknowledgement.***

11. SUBMITTAL INSTRUCTIONS

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

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

CONFIDENTIAL: STATEMENT OF QUALIFICATIONS

San Jacinto River Authority
Purchasing Department
RFQ 18-0054 CMT Services
1577 Dam Site Road

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Conroe, TX 77304

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

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

12. SUBMISSION FORMAT

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

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

13. CONFIDENTIALITY OF STATEMENT OF QUALIFICATIONS INFORMATION

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

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

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

14. EVALUATION PROCEDURES

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

Step 1: Initial Evaluation

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

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- a. Relevant experience, expertise, and qualifications of the Prime Consultant Firm and Proposed Sub-consultant Firms, if any **(30 points)**;
- b. In-House Laboratory capabilities **(15 points)**;
- c. Support Resources **(30 points)**;
- d. Ability to respond to emergency repairs within six (6) hours **(20 points)**;
- e. Responsiveness to the requirements of this RFQ **(5 points)**;

Respondent's submission of required documentation, and the respondent will be awarded points based on the total amount of "good faith" effort achieved and submitted for this project.

TOTAL POSSIBLE POINTS: 100 POINTS

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

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

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

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

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

Step 4: Negotiation

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

Step 5: Written Recommendation for Award

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

The successful respondent will be required to enter into a Professional Services Agreement, similar to Exhibit "A" of this solicitation. This RFQ and the successful respondents' response, or any part thereof, may be incorporated into and made a part of the final contract. The SJRA reserves the right

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to negotiate final terms and conditions of the contract. The SJRA also retains the right to revise the PSA based on review of laws passed by the Texas Legislature, results of recent case law or other considerations. The SJRA reserves the right to **reject any or all Statement of Qualifications**, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced, or conditional SOQs and to reject the SOQ of any Respondent, if the SJRA believes that it would not be in the best interest of the Project to make an award to that Respondent, whether because the SOQ is not responsive or the Respondent is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the SJRA.

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

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

Gilbert C. Garza, CPSM, CPPO
Senior Buyer, Purchasing Department
1577 Dam Site Road
Conroe, TX 77304
(936) 588-7172
sarevalo@sjra.net

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

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

16. VALIDITY PERIOD

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

17. MODIFICATION AND WITHDRAWAL OF STATEMENT OF QUALIFICATIONS

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

18. CONFLICT OF INTEREST

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

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

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

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

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

19. COMPANY DOES NOT BOYCOTT ISRAEL

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

20. GENERAL

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

- Determine which response is in the SJRA's best interest;
- Reject any and all Statements of Qualifications received;
- Cancel the entire RFQ;
- Remedy technical errors in the RFQ process;
- Negotiate with any, all, or none of the Respondents to the RFQ;
- Request proposals from a short list of Respondents to the RFQ;
- Conduct interviews with a shortlist of Respondents to the RFQ, which may include a requirement to provide a presentation of the team's proposed solution by the team's proposed Project Manager;
- Waive informalities and irregularities;
- Modify the selection process;
- Select, approve, or disapprove all subconsultants; and
- Revise the PSA based on review of laws passed by the Texas Legislature, recent case law or other circumstances.

21. SIGNING OF AGREEMENT

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

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SOLICITATION CHECKLIST

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

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

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

ATTACHMENT A-BUSINESS OVERVIEW QUESTIONNAIRE AND FORM

1. Team or Firm legal name:

2. Corporate address:

3. Address and phone number of Texas office supporting this project:

4. Primary contact name, phone number and email address:

5. Website address:

6. Federal tax identification number:

7. Texas Professional Licensing Registration Number (if any):

8. Number of years in business:

9. Organization Class (circle):

Partnership	Corporation	Individual	Association
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10. Date of organization (month and year):

11. Location(s) of business:

12. Name(s) and date(s) of predecessor organization(s):

13. Total number of employees located in Texas office(s) supporting this Project:

14. Number and type of professionals and corresponding registrations/certifications located in Texas office(s) supporting this Project:

15. Type and limits of insurance coverage – **Note: SJRA standard insurance requirements are stated in Exhibit “A” of this document. Teams who cannot meet these minimum standards will not be considered.**

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

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

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

Signature

Company

Date

ATTACHMENT C – REFERENCES / SCHEDULE & BUDGET COMPLIANCE

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

REFERENCE ONE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

CONTACT PERSON EMAIL: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE TWO

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

CONTACT PERSON EMAIL: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

REFERENCE THREE

GOVERNMENT/COMPANY NAME: _____

LOCATION: _____

CONTACT PERSON AND TITLE: _____

CONTACT PERSON EMAIL: _____

TELEPHONE NUMBER: _____

SCOPE OF WORK: _____

CONTRACT PERIOD: _____

ATTACHMENT D - CONFLICT OF INTEREST QUESTIONNAIRE

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

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

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

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

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

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

Name of Officer

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

- A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?
 Yes No

- B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?
 Yes No

- C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?
 Yes No

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

4 _____
I have no Conflict of Interest to disclose.

5 _____
Signature of vendor doing business with the governmental entity Date

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ATTACHMENT E

VERIFICATION COMPANY DOES NOT BOYCOTT ISRAEL

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

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

Contractor does not Boycott Israel; and

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

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

Contractor: _____

By: _____

[Signature of Affiant]

Printed Name: _____

Title: _____

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

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

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ATTACHMENT F
FELONY CONVICTION NOTIFICATION

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

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

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

Authorized Company Official's Name (Printed) _____
Date

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

Signature of Company Official _____
Date

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

Signature of Company Official _____
Date

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

Signature of Company Official _____
Date

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

Signature of Company Official _____
Date

ATTACHMENT G - ACKNOWLEDGMENT

The undersigned agrees this submission becomes the property of SJRA after the official opening.

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

The period for acceptance of this submission will be **ninety 90 calendar days** unless a different period is noted.

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

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

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

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

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

Acknowledge receipt of following addenda to the solicitation:

Addendum No 1 Dated _____ Received _____

Addendum No 1 Dated _____ Received _____

Addendum No 1 Dated _____ Received _____

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

Tel. No. _____
Email. _____

AUTHORIZED

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

EXHIBIT “A”

(Professional Services Agreement)

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**PROFESSIONAL SERVICES AGREEMENT
CONTRACT NO. _____**

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

and

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

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

The Parties hereby agree as follows:

ARTICLE 1 – SCOPE OF SERVICES

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

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

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

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

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ARTICLE 2 – TERM OF AGREEMENT

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

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

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

ARTICLE 3 – COMPENSATION AND PAYMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 – COST RECORDS

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

ARTICLE 6 – OWNERSHIP OF WORK PRODUCT AND TECHNOLOGY

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

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

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

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

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

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

ARTICLE 7 – INDEPENDENT CONTRACTOR RELATIONSHIP

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

ARTICLE 8 – WARRANTY PERIOD; GUARANTEES

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

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

ARTICLE 9 – INDEMNIFICATION

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

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

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

ARTICLE 10 – LIMITATION OF LIABILITY

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

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

ARTICLE 11 – INSURANCE

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

(a) **Kinds of Claims**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 13 – FORCE MAJEURE

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

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

ARTICLE 14 – SUCCESSORS, ASSIGNMENT AND SUBCONTRACTING

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

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

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

ARTICLE 15 - SEVERABILITY

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

ARTICLE 16 –EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

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

ARTICLE 17 – LICENSE REQUIREMENTS

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

ARTICLE 18 – ENTIRE AGREEMENT

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

ARTICLE 19 – GOVERNING LAW

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

ARTICLE 20 – DISPUTE RESOLUTION

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

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

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

ARTICLE 21 – CONFIDENTIALITY

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

ARTICLE 22 – COMPANY DOES NOT BOYCOTT ISRAEL

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

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

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

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

CONSULTANT:

By: _____

Date: _____

ATTEST:

SJRA:

San Jacinto River Authority

By: _____

Jace A. Houston
General Manager

Date: _____

ATTEST:

ATTACHMENT A

A.1. 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 **Exhibit B and the SJRA Purchase Order**. CONSULTANT will submit and SJRA will pay monthly invoices based on the mutually agreed upon percentage of the project completed.

EXHIBIT “B”

(GRP RATE ORDER for PARTICIPANTS)

SAN JACINTO RIVER AUTHORITY

RATE ORDER

(GRP PARTICIPANTS)

Order No. _____

*ADOPTED MAY 25, 2017
EFFECTIVE SEPTEMBER 1, 2017*

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SAN JACINTO RIVER AUTHORITY

RATE ORDER

(GRP PARTICIPANTS)

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

RECITALS

WHEREAS, the San Jacinto River Authority (the "Authority"), is a conservation and reclamation district, body politic and corporate and a governmental agency of the State of Texas created and operating under the provisions of Chapter 426, Acts of the 45th Texas Legislature, Regular Session, 1937, as amended, enacted pursuant to the provisions of Section 59 of Article XVI of the Texas Constitution (the "Act"); and

WHEREAS, the Authority is authorized by the Act, and the general laws of the State to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend, inside and outside its boundaries, any and all works, improvements, facilities, plants, equipment and appliances necessary to provide a water supply system for serving its needs and/or the needs of its customers; and

WHEREAS, the Authority has entered into certain contracts (the "Customer Contracts") for the financing, construction and operation of the Woodlands Water Supply System (as defined in the Customer Contracts) to serve the conservation and reclamation district customers of the Woodlands Division of the Authority; and

WHEREAS, each of the Customer Contracts has been amended and supplemented by a written addendum, dated as of November 10, 2009 (the "Addenda"), in order to address compliance with groundwater reduction requirements imposed by the Lone Star Groundwater Conservation District (the "Conservation District") and that are applicable to the Authority and the Woodlands Water Supply System; and

WHEREAS, the Authority has entered into contracts (the "GRP Contracts") with certain Large Volume Groundwater Users (as defined in the District Regulatory Plan of the Conservation District) in order to address compliance with groundwater reduction requirements imposed by the Conservation District that are also applicable to the water supply systems of such Large Volume Groundwater Users; and

WHEREAS, the Addenda and the GRP Contracts provide, in pertinent part, that the Authority will: (a) develop, implement, administer and enforce a groundwater reduction plan ("GRP") for the Woodlands Water Supply System and the water supply systems of such other participating Large Volume Groundwater Users (collectively, and inclusive of the Authority, the "Participants"); (b) plan, design, permit, construct, operate, maintain and administer a surface water treatment and transmission system, including all related facilities, improvements, appurtenances, property and interests in property and contract rights needed therefor, and administrative facilities needed in connection therewith (the

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"Project"; (c) furnish and sell treated surface water from the Project to certain of the Participants, as feasible and necessary to implement the GRP; (d) assess fees on the pumpage of groundwater wells operated by the Participants; and (e) utilize revenues derived from such treated surface water sales and pumpage fees to finance the Project and the GRP, including the pledge of such revenues to the payment of, and as security for, the bonds or other obligations of the Authority issued or incurred to finance or refinance the Project and the GRP; and

WHEREAS, the Board of Directors of the Authority deems it necessary and proper at this time to establish certain fees, rates and charges applicable to the Participants, as authorized and required under the Addenda and the GRP Contracts, in order to: (a) achieve and maintain compliance with the rules of the Conservation District and the GRP; (b) develop, implement, administer and enforce the GRP; (c) accomplish the purposes of the Addenda and the GRP Contracts, including making available alternative water supplies; (d) recoup certain losses, damages, costs, interest or expenses; (e) purchase, lease, reserve, option or contract for alternative water supplies, by, through or with third parties or the Authority; (f) meet operation and maintenance expenses related to the Project and the GRP; (g) pay certain capital costs, as well as the principal of and interest on certain notes, bonds and/or other obligations issued or incurred, or to be issued or incurred, in connection with the Project, the GRP or the Authority's obligations under the Addenda or the GRP Contracts; (h) satisfy all rate covenants relating to any of such notes, bonds and/or other obligations of the Authority; and (i) establish, accumulate, maintain or replenish one or more operating, debt service, contingency or emergency reserve funds, as deemed reasonably necessary by the Authority;

NOW THEREFORE, BE IT ORDERED BY THE BOARD OF DIRECTORS OF THE SAN JACINTO RIVER AUTHORITY THAT:

ARTICLE I

FINDINGS; EFFECTIVE DATE; PRIOR RATE ORDER

Section 1.01: Findings. Each of the recitals stated in this Rate Order are hereby adopted as findings of fact of the Board of Directors. All statutory and contractual requirements and conditions have been met for the establishment of fees, rates, and charges under this Rate Order.

Section 1.02: Effective Date; Prior Rate Order. This Order shall be effective as of September 1, 2017 (the "Effective Date"). That certain prior Rate Order adopted by the Authority on June 23, 2016, designated as Order No. 2016-O-01, shall be repealed and superseded hereby in all respects as of the Effective Date.

ARTICLE II

DEFINITIONS; INTERPRETATIONS; REFERENCES

Section 2.01: Definitions. In addition to terms defined elsewhere in this Rate Order, and unless the context requires otherwise, the following terms used in this Rate Order shall have the following meanings and, to the extent applicable, shall serve to supplement terms defined elsewhere in this Rate Order:

"Act" is defined in the recitals hereto and means and includes any amendments to the Act.

"Addenda" is defined in the recitals hereto and means and includes any amendments or supplements to the Addenda.

"Authority" is defined in the recitals hereto and means and includes the legal successors or assigns of the Authority.

"Authority Meters" has the meaning ascribed to such term in the GRP Contracts.

"AWS Well" means any groundwater well operated by any Participant, whether currently in operation or placed into operation hereafter, that produces water qualifying as an "Alternative Water Source" under the Rules.

"AWS Wells" means each and every AWS Well, collectively, whether one or more.

"Conservation District" is defined in the recitals hereto and means and includes the legal successors or assigns of the Conservation District.

"Contract Quantity" has the meaning ascribed to such term in the GRP Contracts.

"Conversion Date" means the date upon a Converted Participant shall begin making payment for Surface Water.

"Converted Participant" means a Participant receiving Surface Water from the Project.

"Converted Participant's Receiving Facilities" means the water plant or other water system facilities at the Point of Delivery where a Converted Participant receives Surface Water from the Project.

"Customer Contracts" is defined in the recitals hereto and means and includes any amendments or supplements to the Customer Contracts.

"Effective Date" is defined in Section 1.02 hereof.

"Fees" means the Pumpage Fee, the Import Fee and the Surface Water Fee, collectively.

"GRP" is defined in the recitals hereto and means and includes any amendments or supplements to the GRP.

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"GRP Administrator" has the meaning ascribed to such term in the GRP Contracts.

"GRP Contracts" is defined in the recitals hereto and means and includes any amendments or supplements to the GRP Contracts.

"GRP Drought Contingency Plan" means the Drought Contingency Plan for San Jacinto River Authority GRP Division, adopted by the Board of Directors of the Authority on March 27, 2014, and any amendments or supplements thereto.

"GRP Water Conservation Plan" means the Water Conservation Plan for San Jacinto River Authority GRP Division, adopted by the Board of Directors of the Authority on March 27, 2014, and any amendments or supplements thereto.

"Import Fee" means the fee imposed under Section 3.02(a) hereof.

"Initial-Conversion-Obligation-Adjusted Total Qualifying Demand" or "ICO-Adjusted Total Qualifying Demand" has the meaning ascribed to such term under the Plan and generally means (a) for Total Qualifying Demand of 10 million gallons or greater, 70 percent of the Total Qualifying Demand or 10 million gallons, whichever amount is greater, and (b) for Total Qualifying Demand of less than 10 million gallons, the original Total Qualifying Demand.

"ORS" means the online reporting system offered and maintained by or on behalf of the Authority, currently the "TrueBill" system or any successor system.

"Participant" means any of the Participants, without distinction.

"Participant Meters" has the meaning ascribed to such term in the GRP Contracts.

"Participants" is defined in the recitals hereto and means and includes the Authority, and any Large Volume Groundwater User that executes a GRP Contract with the Authority.

"Payment Commencement Date" has the meaning ascribed to such term in a Participant's GRP Contract with respect to such Participant, or August 1, 2010, with respect to the Authority, if applicable.

"Plan" means the District Regulatory Plan adopted by the Conservation District and includes any amendments, revisions or supplements thereto as may be adopted by the Conservation District on or after the Effective Date.

"Point of Delivery" has the meaning ascribed to such term in the GRP Contracts.

"Project" is defined in the recitals hereto and means and includes any and all extensions, modifications, enlargements or improvements to the Project permitted under the Addenda and the GRP Contracts.

"Pumpage Fee" means the fee imposed under Section 3.01(a) hereof.

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"Surface Water Fee" means the fee imposed under Section 3.03 hereof applicable to Surface Water delivered by and through the Project to a Converted Participant.

"Surface Water" means treated surface water delivered by and through the Project (i.e., "Water" as defined under the GRP Contracts).

"Total Qualifying Demand" has the meaning ascribed to such term under the Plan and generally means the final volume of groundwater that a permit holder is authorized under the terms of a permit issued by the Conservation District to produce from Wells in the Gulf Coast Aquifer (Chico, Evangeline and Jasper Aquifers) in calendar year 2009, as determined by the Conservation District in accordance with the Plan.

"Well" means any groundwater well operated by any Participant, whether currently in operation or placed into operation hereafter, that is subject to the groundwater reduction requirements set forth in the Plan. Accordingly, such term does not include any AWS Well.

"Wells" means each and every Well, collectively, whether one or more.

Section 2.02: Interpretations. The article, section, subsection and paragraph headings of this Rate Order are included herein for convenience of reference purposes only and shall not constitute a part of this Rate Order or affect its interpretation in any respect. Except where the context otherwise requires, words imparting the singular number shall include the plural and vice versa. References to an entity refer to the legal successors of such entity, and to the board of directors, officers, or other officials of such entity where appropriate.

Section 2.03: References. For the avoidance of doubt, any reference in this Rate Order to a document shall mean such document and all exhibits thereto, as amended or supplemented from time to time.

ARTICLE III

FEES AND RATES

Section 3.01: Pumpage Fee.

(a) *General.* Each Participant shall pay a Pumpage Fee of \$2.64 per 1,000 gallons of groundwater pumped from its Wells during each whole or partial calendar month, beginning on the later of the Effective Date or the Payment Commencement Date stated in such Participant's GRP Contract. Such pumpage of groundwater shall be metered by Participant in accordance with Article VIII hereof and reported to the Authority in accordance with Article IV hereof. Payment of the Pumpage Fee shall be remitted to the Authority in accordance with Article V hereof.

(b) *Exception.* Notwithstanding paragraph (a) above, no Pumpage Fee shall be due with respect to Wells acquired by Participant that is a municipality if such Wells were formerly owned or operated by a conservation and reclamation district or entity that functioned under a groundwater reduction plan separate from the GRP, and such Participant has notified the Authority in writing that the Wells owned or operated by the district or entity will remain part of the groundwater reduction plan

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that is separate from the GRP. If a Participant is exempt, in whole or in part, from paying a Pumpage Fee pursuant to the above, then Participant shall submit a statement describing with reasonable detail the basis on such exemption in place of, or along with, payment to the Authority under Article V hereof.

Section 3.02: Import Fee.

(a) *General.* Each Participant shall pay an Import Fee of \$2.64 per 1,000 gallons of water imported by Participant from any person or entity, during each whole or partial calendar month, beginning on the later of the Effective Date or the Payment Commencement Date stated in such Participant's GRP Contract. Such importation of water shall be metered by Participant as in accordance with Article VIII hereof and reported to the Authority in accordance with Article IV hereof. Payment of the Import Fee shall be remitted to the Authority in accordance with Article V hereof.

(b) *Exceptions.* Notwithstanding paragraph (b) above, no Import Fee shall be due if –

- (1) such imported water was supplied to a Participant from another Participant;
- (2) such imported water was derived from the re-use of water (from any source) or wastewater effluent;
- (3) such imported water was derived from water withdrawn from an AWS Well; or
- (4) such importation is necessary due to an emergency impacting the ability of Participant to meet its water demands, the period of importation lasts for less than fifteen (15) consecutive days, and Participant has not imported water during more than thirty (30) days during the current calendar year.

If a Participant is exempt, in whole or in part, from paying an Import Fee pursuant to the above, then Participant shall submit a statement describing with reasonable detail the basis for the exemption along with, or in place of, payment to the Authority under Article V hereof.

Section 3.03: Surface Water Fee. Each Converted Participant shall pay a Surface Water Fee of \$2.83 per 1,000 gallons of Surface Water delivered by and through the Project to the Converted Participant's Receiving Facilities during each whole or partial calendar month, beginning on the later of the Effective Date or the Conversion Date. Such delivery of Surface Water shall be metered at the Point(s) of Delivery by Authority in accordance with Article VIII hereof and reported to the Converted Participant in accordance with Article IV hereof. Payment of the Surface Water Fee shall be remitted to the Authority in accordance with Article V hereof.

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ARTICLE IV

REPORTING

Section 4.01: Self-Reporting.

(a) *Measurement of Groundwater.* Each Participant shall be responsible for measuring the amount of groundwater pumped from each of its Wells and/or AWS Wells by reading the Participant Meters on the Payment Commencement Date and on the first day of every month thereafter.

(b) *Measurement of Imported Water.* Each Participant shall be responsible for measuring the amount of water imported from any non-Participant by reading the Participant Meters on the Payment Commencement Date and on the first day of every month thereafter. A Participant shall not be responsible for measuring the amount of water imported from another Participant.

(c) *Measurement of Surface Water.* The Authority shall be responsible for measuring the amount of Surface Water supplied to each Converted Participant by reading the Authority Meters on the Conversion Date and on the first day of every month thereafter. Such reading shall generally be conducted remotely but from time to time may be conducted by direct reading by the Authority or its agents.

(d) *Other Measurement.* In order to monitor Participant water demands, the GRP Administrator may implement reasonable procedures to directly or indirectly measure (1) water imported from another Participant, and (2) water demands met by a Participant with water derived from the re-use of water (from any source) or wastewater effluent. Such procedures shall not require the installation of meters unless such installation is at the cost and expense of the Authority.

(e) *Reporting.* Water usage measured by the Participant (even if zero) shall be reported to the Authority by submitting readings through ORS or, if applicable, by submitting readings on a completed reporting form provided by the Authority. Reports must be received by the Authority on or before the 10th day of the first calendar month for which water usage is required to be measured incurred (e.g., water usage measured during September, 2017, must be reported by October 10, 2017, and payment of any associated Fees will be due on November 18, 2017; water usage measured during October, 2017, must be reported by November 10, 2017, and payment of any associated Fees will be due on December 18, 2017; etc.). Surface Water usage measured by the Authority Meters shall be made available by the Authority to the Converted Participant through ORS. The GRP Administrator may provide a form to be submitted to the Authority in writing to supplement reporting through ORS with respect to any category of water usage that is not then supported through the ORS reporting system. In addition, the GRP Administrator will provide a form that may be submitted to the Authority in writing to report usage as an alternative to reporting same through ORS but only upon the request of Participant.

Section 4.02: Failure to Report. In the event a Participant fails or refuses to read its Participant Meters, the Authority shall have the right, but not the obligation, to read the Participant Meters. In the event that a Participant fails or refuses to read its Participant Meters on the Payment Commencement Date, the Authority shall have the right to read the Participant Meters on two or more occasions in order to calculate Participant's average daily usage and, based upon such calculation of average daily usage, to estimate the reading of the Participant Meters as of the Payment Commencement Date. If

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the Authority is required to read the Participant Meters, such Participant will be charged an inspection fee of \$250, and any Fees due under Article III hereof shall be calculated based upon the Authority's readings or average daily usage, if necessary, regardless of when the Authority reads the Participant Meters.

Section 4.03: Direct Reading. As provided in the GRP Contracts, the Authority may, by amendment, revision or restatement of this Rate Order, modify or repeal self-reporting procedures applicable to the Participant Meters and require readings by the Authority or its agents.

ARTICLE V

PAYMENT OF FEES

Section 5.01: Payment of Fees.

(a) *ORS Reporting.* Once all Participant Meter readings have been entered into ORS pursuant to Section 4.01 hereof, each Participant shall print its statement of Fees from the ORS and deliver the statement to the Authority with full payment, on or before the due date specified in Section 5.03 hereof.

(b) *Form Reporting.* If a Participant does not report through ORS, or must supplement reporting through ORS, then such Participant shall calculate Fees due the Authority for a given calendar month on the form provided by the GRP Administrator and deliver the completed form to the Authority with full payment, on or before the due date specified in Section 5.03 hereof.

Section 5.02: Manner and Method of Payment.

(a) All Fees due the Authority under Sections 5.01 hereof, and any other fees, rates or charges payable to the Authority under this Rate Order, shall be paid in money which is legal tender in the United States of America. Payments will be accepted only by check or money order made payable to the "San Jacinto River Authority", or by wire transfer according to written wiring instructions provided by the Authority. No cash will be accepted. Written wire instructions are available upon request.

(b) For purposes of submitting payments, ORS fee statements, reporting forms, or other documents pursuant to this Rate Order, the address of the Authority shall be as set forth below.

I. SAN JACINTO RIVER AUTHORITY

II. ATTN: GRP ADMINISTRATOR

III. GRP DIVISION
P.O. Box 329
Conroe, TX 77305

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Section 5.03: Due Date. A ORS fee statement or a completed reporting form, and payment of all Fees due under Article III hereof, must be received by the Authority on or before the 18th day of the second calendar month following the whole or partial calendar month for during which such Fees were incurred (e.g., water usage measured during September, 2017, must be reported by October 10, 2017, and payment of any associated Fees will be due on November 18, 2017; water usage measured during October, 2017, must be reported by November 10, 2017, and payment of any associated Fees will be due on December 18, 2017; etc.).

Section 5.04: Self-Remission. Each Participant shall be responsible for remitting payment to the Authority for Fees on or before the due date specified under Section 5.03 hereof. The Authority will not and shall not be obligated to send an invoice or bill to a Participant for Fees unless the Authority, except to the extent that the Authority reads the Participant Meters under Sections 4.02 or 4.03 hereof. In such case, the Fees and any related charges owed by a Participant hereunder shall be specified in a written invoice promptly delivered to such Participant by the Authority. Such invoice shall specify thereon a due date for payment, which due date shall not be less than ten (10) days after the date of the invoice.

ARTICLE VI

CONSERVATION DISTRICT PERMITTING; OTHER INFORMATION

Section 6.01: Applicability of Conservation District Permitting Requirements. The GRP provides that the Authority will reduce groundwater production from the Gulf Coast Aquifer (Chico, Evangeline and Jasper Aquifers) by certain Participants so that, collectively, all Participants achieve and maintain compliance with the Plan. This will be achieved primarily through the Authority's delivery of Surface Water to the Converted Participants and the consequent reduction in groundwater production from the Wells owned and operated by such Converted Participants. The development of other alternative water supplies (such as groundwater production from AWS Wells and water supplies developed from re-use projects) and the impacts of water conservation may further reduce groundwater production by Participants. Based upon the foregoing, the GRP is a "Joint GRP" as defined in and for all purposes of Phase II(B) of the Plan. The Authority, as administrator of the GRP, and all Participants are subject to the permitting requirements applicable to Joint GRPs under Phase II(B) of the Plan.

Section 6.02: Summary of Permitting Requirements; AWS Wells Excluded. (a) The Conservation District is to provide notice of Well permit renewals to the Authority and to all Participants included in the GRP on an annual basis. Under Phase II(B) of the Plan, the GRP Administrator is obligated to then prepare and provide to the Conservation District, not later than September 1, a schedule (the "Production Schedule") of the amount of groundwater each Participant will be authorized to produce from its Well(s) during the following calendar year. The Production Schedule must demonstrate that the Participants, collectively, will achieve the Initial Conversion Obligation for the aggregated Total Qualifying Demand of all Participants and otherwise meet the Conservation District's groundwater reduction requirements under the Plan. The Conservation District is to review and take action on the Well renewal permit application(s) and the accompanying Production Schedule in accordance with the Plan and the Conservation District's Rules.

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(b) Under Phase II(B) of the Plan, the Authority has no right or obligation to process renewal permits for AWS Wells owned, operated or maintained by Participants. Accordingly, each Participant shall be responsible for securing, renewing, and otherwise maintaining permits for the Participant's AWS Wells.

Section 6.03: Implementation of Permitting Requirements by GRP Administrator.

(a) *Production Schedule.* In order to timely process permit renewals for all Participant Wells included in the GRP, develop the Production Schedule, and otherwise comply with applicable permitting requirements under Phase II(B) of the Plan, the Authority hereby adopts the following procedures.

(1) On an annual basis, the GRP Administrator shall determine, in his or her reasonable discretion, the proposed amount of groundwater each Participant will be authorized to produce from its Well(s) during the following calendar year. In making such determination, the GRP Administrator shall for each Participant (i) estimate the Participant's projected water demands for the following calendar year based upon the Participant's historical water demands and projected water demands, as reflected in the Participant's GRP Contract, and based upon the Participant's actual reported production from its Well(s), and (ii) estimate the sources of supply necessary to meet the Participant's projected water demand for the following calendar year, including but not limited to the Participant's ICO-Adjusted Total Qualifying Demand, Surface Water to be delivered to the Participant, if any, and any other alternative water supplies that may be used to supplement or supplant groundwater production from the Participant's Well(s). To the extent that a Participant's projected water demands exceed the Participant's sources of supply, the GRP Administrator shall allocate additional groundwater production from the Gulf Coast Aquifer made available through the GRP to such Participant.

(2) Not later than July 1, the GRP Administrator shall provide each Participant with written notice of the proposed amount of groundwater each Participant will be authorized to produce from its Well(s) during the following calendar year. Each Participant shall have the opportunity to submit written comments to same to the GRP Administrator at the address specified in the notice or, if no address is so specified, at the address set forth in Section 5.02(b) hereof. Any comments must be received by the GRP Administrator on or before August 15.

(3) The GRP Administrator shall reasonably consider all comments received from the Participant and, in connection therewith, prepare a final Production Schedule for the GRP and all Participants.

(4) On or before September 1, the GRP Administrator shall submit the final Production Schedule to the Conservation District for review and approval.

(b) *Renewal Filings.* The GRP Administrator shall sign renewal application(s) on behalf of all the Participants and their Wells included in the GRP, and take all other actions necessary to secure the annual renewal of permits for such Wells by the Conservation District. To the extent required by the Conservation District, each Participant shall execute any necessary permit renewal application materials reasonably requested by the GRP Administrator. Unless otherwise extended by the GRP Administrator, such materials shall be provided to the GRP Administrator no later than thirty (30) days following receipt of a written request for same.

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(c) *Notice of Renewal.* If not otherwise provided by the Conservation District, the GRP Administrator shall provide each Participant with a copy of the renewed permit(s) for the Participant's Wells within thirty (30) days following receipt of same by the Authority.

Section 6.04: Amendments to Production Schedule and Conservation District Permits; Total Qualifying Demand.

(a) *Request for Amendment of Production Schedule and/or Permit Amount.* A Participant may from time to time submit a written request to the GRP Administrator for an increase, or a decrease, of the annual amount of groundwater authorized to be produced from the Participant's Well(s) under the Production Schedule and/or under the Participant's Conservation District permit(s). The GRP Administrator shall consider the request and approve of same if, after giving effect to such request, the GRP Administrator determines that the Participants will achieve the Initial Conversation Obligation for the aggregate Total Qualifying Demand of all Participants. If the request is approved, the GRP Administrator shall notify the Participant in writing and prepare an amendment to the Production Schedule to reflect the approved request. Further, the GRP Administrator shall file and prosecute an application with the Conservation District to reflect the approved request, as and if required by the Conservation District. Each Participant shall execute any necessary amendment application materials reasonably requested by the GRP Administrator to file and prosecute such an amendment. Unless otherwise extended by the GRP Administrator, such materials shall be provided to the GRP Administrator no later than thirty (30) days following receipt of a written request for same. If the request is denied or conditioned, the GRP Administrator shall notify the Participant in writing of the reasons therefor.

(b) *Approval of Production Schedule and/or Permit Amendment by Conservation District.* The GRP Administrator shall provide the Participant requesting an amendment to the Production Schedule with written notice of the approval or denial of such request within thirty (30) calendar days thereafter. Notice of approval of a request shall be accompanied by a revised Production Schedule reflecting approved request. Further, if a permit amendment must be approved by the Conservation District to reflect an amendment pursuant to subsection (a), above, the GRP Administrator shall notify the Participant of same within thirty (30) calendar days of approval by the Conservation District and provide the Participant with a copy of the Conservation District approval and the amended permit.

(c) *Adjustment of Permitting Fees.* If a request for a permit increase or decrease is approved pursuant to a request made under subsection (a), above, the GRP Administrator shall issue an invoice or credit to the Participant for associated Conservation District perming fees in accordance with Section 6.06 hereof.

(d) *Total Qualifying Demand.* In order to ensure that the Total Qualifying Demand of the Participants, collectively, is available for allocation in accordance with the GRP and the Production Schedule, no Participant shall sell, transfer, or otherwise dispose of Total Qualifying Demand without the prior written consent of GRP Administrator, which consent must receive prior approval by the Review Committee and the Authority's Board of Directors.

Section 6.05: Permits Binding; Penalties and Disincentive Fees. (a) Under Phase II(B) of the Plan, the Conservation District's approval of a Participant's Well permit application and the applicable

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information in the Production Schedule shall be a condition of the renewed permit and shall be binding upon the Authority, as administrator of the GRP, and upon the Participant.

(b) If a Participant produces groundwater from its Well(s) in excess of the total authorized production reflected under the Conservation District permit for the Well(s), the Participant shall pay the Authority for any Conservation District disincentive fees or penalties assessed against the GRP as a result. The GRP Administrator shall provide a written invoice to the Participant for any disincentive fees or penalties due hereunder. Such invoice shall specify thereon a due date for payment, which due date shall not be less than ten (10) days from the date of the invoice. All disincentive fees or penalties invoiced hereunder shall be in addition to, and not in substitution for, any other Fees or amounts owed the Authority.

Section 6.06: Pass-Through of Permitting Fees. (a) Under Phase II(B) of the Plan, the Authority is responsible for payment of all Conservation District permitting fees (including, but not limited to, water use fees, groundwater transport fees, and administrative fees) associated with all Participant Well permits in the GRP. Accordingly, the GRP Administrator shall pass-through such fees to the Participants by providing a written invoice to each Participant, on a quarterly basis, for Conservation District permitting fees due in respect of the Participant's Well permit(s). Such invoice shall specify thereon a due date for payment, which due date shall not be less than sixty (60) calendar days from the date of the invoice.

(b) If a request for an increase of the annual amount of groundwater authorized to be produced from a Participant's Well(s) is approved pursuant to Section 6.04 hereof, the GRP Administrator shall pass-through any resulting Conservation District permitting fees to the Participant by providing a written invoice for same to the Participant. Such invoice shall specify thereon a due date for payment, which due date shall not be less than sixty (60) days from the date of the invoice, or the date that is ten (10) calendar days before payment is due from the Authority to the Conservation District, whichever occurs first in time. As an alternative to the foregoing, at the option and discretion of the GRP Administrator, the GRP Administrator may add any such Conservation District permitting fees to the next ensuing quarterly invoice provided to the Participant under subsection (a), above.

(c) If a request for a decrease of the annual amount of groundwater authorized to be produced from a Participant's Well(s) is approved pursuant to Section 6.04 hereof, the GRP Administrator may pass-through a credit for Conservation District fees paid or due with respect to the reduction, subject to the ability of the GRP Administrator to allocate the reduction in pumpage to other Participants requesting an increase in pumpage and to collect additional permitting fees from such other Participants to pass-through the credit. As and if approved, such credit shall be due from and paid by the Authority within sixty (60) days from the date of receipt of such credit from the Conservation District. As an alternative to foregoing, at the option and discretion of the GRP Administrator, the GRP Administrator may apply any such Conservation District credit to the next ensuing quarterly invoice provided to the Participant under subsection (a), above.

(d) In the event that the amount of groundwater actually produced from the Participants' Wells in a given year is less than the annual amount of groundwater projected to be produced from the Participants' Wells in such year, as shown on the current Production Schedule for such year, the GRP Administrator shall file an application with the Conservation District for a credit of permit fees paid by the GRP. Any credit approved by the Conservation District shall be passed through to the Participants on a pro-rata basis (based on amount of under production) and shall be applied to the next

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ensuing quarterly invoice provided to the Participant under subsection (a), above; provided, however, a Participant must have actually produced 75% or more of the groundwater authorized to be produced in such year in order to be eligible to receive such credit unless such requirement is waived by the GRP Administrator in his or her sole discretion.

Section 6.07: Notice of Permit Filings. A Participant shall provide the GRP Administrator with a copy of any permit application filed with the Conservation District within ten (10) business days after filing, but only if such filing (1) requests a permit for the installation of a new Well or AWS Well, (2) relates to the removal, abandonment or closure of an existing Well or AWS Well, (3) requests an increase or decrease in annual groundwater pumpage, or (4) relates to the transfer, assignment or termination of a Conservation District permit held by Participant.

Section 6.08: Other Documents or Information. A Participant shall provide the GRP Administrator with copies of documents or other reasonably available or ascertainable information, data or materials that, as determined by GRP Administrator, is necessary in connection with the implementation of the GRP. Unless otherwise extended by the GRP Administrator, such documents, information, data or materials shall be submitted to the GRP Administrator no later than thirty (30) days following receipt of a written request for same.

ARTICLE VII

LATE FEES; INTEREST CHARGES; COLLECTIONS

Section 7.01: Late Fees. Fees due under Article III hereof shall be increased by 5% if not paid on or before the due date specified under Section 5.03 hereof. Amounts due under Article VI hereof shall be increased by 5% if not paid on or before the due date specified on an invoice therefor. Any other amounts due under this Rate Order shall be increased by 5% if not paid on or before the due date specified on an invoice therefor.

Section 7.02: Interest Charges. Overdue amounts (including applicable late fees) shall accrue interest at 12% per annum (i.e., 1% per month) for each whole or partial calendar month such payment is past due.

Section 7.03: Invoice for Late Fees and Interest Charges. The Authority will provide a written invoice to a Participant for any late fees or interest charges due under Section 7.01 and/or 7.02 hereof. Such invoice shall specify thereon a due date for payment, which due date shall not be less than ten (10) days from the date of the invoice.

Section 7.04: Collection Costs. If the Authority is required to incur costs to collect an overdue account, all such costs, including reasonable attorney's fees, court costs and expenses, shall be paid by the delinquent Participant, and the Authority shall be entitled to collect such costs in any suit for collection of a delinquent account.

ARTICLE VIII

METERING AND CALIBRATION

Section 8.01: Maintenance and Testing of Meters. The provisions of Section 5.03 of the GRP Contracts, relative to the maintenance, testing and calibration of Participant Meters and Authority Meters, are incorporated herein for all purposes. The provisions of Section 5.05 of the GRP Contracts, relative to the resolution of disputes concerning tests of Participant Meters and/or Authority Meters, are incorporated herein for all purposes.

In the event that Participant fails or refuses to test and calibrate the Participant Meters in accordance with such provisions of the GRP Contracts, the Authority shall have the right, but not the obligation, to test and calibrate the Participant Meters. If the Authority so tests and calibrates the Participant Meters, such Participant will be charged a fee of \$250 plus the Authority's actual and direct expenses for such testing and calibration. Such fee shall be specified in a written invoice promptly delivered to such Participant by the Authority, and the invoice shall specify thereon a due date for payment, which due date shall be less than then (10) days after the date of the invoice.

Section 8.02: Audits. The Authority shall have the right to audit the readings from Participant Meters by examining the books and records of a Participant, reading such Participant Meters, or by any other means and methods prescribed by the Authority.

Section 8.03: Right to Enter Land. The Authority and its representatives shall have the right to enter upon the land of a Participant, at any reasonable time in order to audit the readings of the Participant Meters, to read Participant Meters in the event a Participant has failed or refused to do so, to directly read any Authority Meters, or to perform testing and calibration of the Participant Meters in the event Participant has failed or refused to do so.

Section 8.04: Adjustments. The provisions of Section 5.04 of the GRP Contract, relative to the adjustment of pumpage measured by inaccurate Participant Meters and/or Authority Meters, are incorporated herein for all purposes.

ARTICLE IX

CONVERSION TO SURFACE WATER

Section 9.01: Terms of Service. Surface Water shall be provided by the Authority and received and used by a Converted Participant in accordance with the terms and conditions set forth in the GRP Contract. Without limiting the foregoing, the Authority specifically incorporates by reference the following provisions of the GRP Contracts: Section 4.09 (Contract Quantity, relating to force majeure, penalties for failure to take the Contract Quantity, and use of groundwater wells and other sources of supply to meet demands); Section 4.10 (Warranties Regarding Water); Section 4.12 (Passing of Title to Water; Re-use); Section 10.02 (Delivery Limitations); and Section 12.03 (Continuation of Service).

Section 9.02: Failure to Take Contract Quantity. If a Participant fails or refuses to timely connect to the Project in accordance with Section 4.07 of the GRP Contracts, or if a Converted Participant has connected to the Project and fails or refuses to at least take the Contract Quantity

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designated by the GRP Administrator, the GRP Administrator may impose penalties under Section 11.03 hereof.

ARTICLE X

DROUGHT CONTINGENCY AND WATER CONSERVATION

Section 10.01: Updating and Submittal of Plans. In accordance with Section 3.05 of the GRP Contracts, all Participants must adopt and enforce a water conservation plan (see 30 T.A.C. §§ 288.1-288.7), as well as a drought contingency plan (see 30 T.A.C. §§ 288.20-288.22), that meets the minimum requirements adopted by the Authority under the GRP Water Conservation Plan and the GRP Drought Contingency Plan. Unless otherwise extended by the GRP Administrator, such plans shall be submitted to the GRP Administrator no later than thirty (30) days following receipt of a written request for same.

Section 10.02: Drought Management Surcharge. The goal of the GRP Drought Contingency Plan is to reduce the total water demand of all Participants by targeted percentages in response to various stages of drought or due to emergency conditions. Accordingly, the GRP Administrator may impose a surcharge on water usage to enforce the GRP Drought Contingency Plan during any whole or partial calendar month in which Stages 2 through 4 of the GRP Drought Contingency Plan has been triggered, or during any Emergency Water Supply Condition under the GRP Drought Contingency Plan. The surcharge on Fees shall only apply to the extent that Participant's actual water usage (as determined by the Authority based upon reporting information submitted pursuant to Article IV hereof) exceeds targeted water usage (as calculated pursuant to Section 3.6 of Drought Contingency Plan and reduced by the applicable percentage). The surcharge on Fees shall be calculated based upon the maximum civil penalty rate that may be imposed by the Conservation District on Large Volume Groundwater Users that are not part of a GRP under the Plan (currently \$4.00 per 1,000, which is subject to increase hereafter) unless a lesser rate is determined to be sufficient to achieve compliance by the GRP Administrator. The surcharge shall be in addition to any other Fees or other amounts due to the Authority.

ARTICLE XI

PENALTIES; RECOVERY; VIOLATION OF RATE ORDER

Section 11.01: Generally Applicable Penalties.

(a) *Reporting.* A Participant shall be subject to penalties for failure or refusal to report water usage to the Authority in accordance with Section 4.01 hereof.

(b) *Calibration.* A Participant shall be subject to penalties for failure or refusal to timely calibrate its Participant Meters in accordance with Section 8.01 hereof and/or the GRP Contracts.

(c) *Access to Meters.* A Participant shall be subject to penalties for failure or refusal to provide timely access to any Participant Meters or Authority Meters in accordance with Section 8.03 hereof and/or the GRP Contracts.

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(d) *Documents.* A Participant shall be subject to penalties for failure or refusal to timely provide the GRP Administrator with documents, information, data or materials requested under this Rate Order.

(e) *Water Conservation and Drought Contingency Plans.* A Participant shall be subject to penalties for failure or refusal to –

(1) timely submit the Participant's water conservation plan or drought contingency plan to the Authority in accordance with Section 10.01 hereof and/or the GRP Contracts;

(2) include provisions in the Participant's water conservation plan or drought contingency plan that meet minimum criteria established by the Authority in accordance with the GRP Contract; or

(3) implement or enforce the Participant's water conservation plan or drought contingency plan.

(f) *Bond Sale Documents.* If the Authority provides Participant with a written request that certain documentation be executed and returned to the Authority pursuant to Section 8.02 and/or Section 8.03 of the GRP Contracts, then Participant shall be subject to penalties when –

(1) the written request was delivered to Participant in accordance with the notice provisions of Section 13.03 of the GRP Contracts;

(2) the documentation was provided simultaneously with the written request; and

(3) the Participant does not execute and return the documentation to the Authority on or before the later of (i) the deadline specified in the written request, or (ii) the 30th day following receipt of the written request by Participant.

Section 11.02: Imposition of Penalty; Penalty Amount. The GRP Administrator shall be authorized to impose a penalty if permitted under Section 11.01 hereof or any other provision of this Rate Order. The penalty amount shall be determined at the discretion of the GRP Administrator, taking into consideration the relative water demands of such Participant compared to the demands of all Participants; provided, however, the penalty shall not exceed \$2,500 per day per violation.

Section 11.03: Additional Penalties Related to Conversion to Surface Water.

(a) *Connection to Project.* A Participant shall be subject to penalties for failure or refusal to timely connect to the Project as and if required under Section 4.04 of the GRP Contract.

(b) *Contract Quantity.* A Converted Participant shall be subject to penalties for failure or refusal to at least take the applicable Contract Quantity of Surface Water from the Project on a monthly basis.

(c) *Imposition of Penalty; Penalty Amount.* The GRP Administrator shall be authorized to impose a penalty if permitted under subsection (a) or (b), above. The penalty amount shall be

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determined on a monthly or other periodic basis by multiplying the Contract Quantity of Surface Water that was not taken from the Project (whether through a failure to connect to the Project under subsection (a) or as a result of a failure to at least take the Contract Quantity) by the maximum civil penalty rate that may be imposed by the Conservation District on Large Volume Groundwater Users that are not part of a GRP under the Plan (currently \$4.00 per 1,000, which is subject to increase hereafter) unless a lesser rate is determined to be sufficient to achieve compliance by the GRP Administrator.

Section 11.04: Invoice for Penalties. The GRP Administrator shall provide a written invoice to the Participant for any penalty imposed under this Article. Such invoice shall specify thereon a due date for payment, which due date shall not be less than ten (10) days from the date of the invoice. All penalties imposed under this Article shall be in addition to, and not in substitution for, any other Fees or amounts owed the Authority.

Section 11.05: Appeal of Penalty. A Participant that has been invoiced a penalty under this Article may appeal the penalty to the GRP Administrator. The final decision of the GRP Administrator shall be subject to further review by the Board of Directors of the Authority as specified in Section 9.03(f) of the GRP Contracts.

Section 11.06: Recovery. In addition to the payment of any Fees, penalties, surcharges or other amounts under this Rate Order, the Authority has and reserves the right under Section 4.11 of the GRP Contracts the right to recover from a Participant by any lawful means, including intervention in legal proceedings of a Participant, for any losses, damages, claims, expenses, costs, or judgments, including reasonable attorneys fees and court costs incurred by the Authority, and interest not to exceed the interest rate permitted by Section 2251.025, Texas Government Code, as amended.

Section 11.07: Violation of Rate Order. The adoption of this Rate Order is authorized by the Addenda and by the GRP Contracts and, therefore, any violation of this Rate Order shall be deemed a breach of such contracts. This Rate Order is also intended to set forth, in part, the rules and regulations of the Authority applicable to the GRP and the Project. The Authority is authorized to adopt rules and regulations under Section 10f of the Act and, therefore, any violation of this Rate Order shall be deemed a violation of such rules and regulations. The Authority may exercise any remedy specified under the Addenda or the GRP Contracts, or otherwise available in law or equity to the Authority, where a violation of this Rate Order occurs or is threatened to occur. The right to exercise any such remedy under the Addenda or the GRP Contracts shall not be deemed to be waived by the exercise of any remedies specified herein, specifically including but not limited to the imposition of penalties, which remedies shall be cumulative.

ARTICLE XII

MISCELLANEOUS

Section 12.01: Conflict with Addenda or GRP Contracts. In the event that any provision of this Rate Order is in conflict with any provision of the Addenda or the GRP Contracts, the terms and provisions of this Rate Order shall control unless the Addenda or GRP Contracts specifically provide otherwise.

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Section 12.02: Future Amendments. As determined necessary by the Authority, the Authority reserves the right to amend from time to time: (1) the rates, charges and fees contained in this Rate Order; and (2) any other terms and provisions of this Rate Order.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

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PASSED AND APPROVED on May 25, 2017.

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(SEAL)

CERTIFICATE

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

I, the undersigned General Manager of the San Jacinto River Authority (the "Authority"), hereby certify as follows:

1. That I am the duly qualified and acting General Manager of the Authority, and that as such, I have custody of the minutes and records of the Authority.

2. That the Board of Directors of the Authority convened in Regular Session on May 25, 2017, at the regular meeting place thereof, and the roll was called of the duly constituted officers and members of the Board of Directors, to-wit:

- | | |
|----------------------|---------------------|
| Lloyd B. Tisdale | President |
| Fredrick D. Koetting | Vice President |
| Gary T. Renola | Secretary |
| Ronald W. Anderson | Treasurer |
| James C. Alexander | Assistant Secretary |

and all of said persons were present, except Director(s) _____, thus constituting a quorum, whereupon, among other business, the following was transacted at such meeting: a written

RATE ORDER

(GRP PARTICIPANTS)

Order No. _____

was duly introduced for the consideration of the Board of Directors. It was then duly moved and seconded that such Order be adopted and, after due discussion, such motion, carrying with it the adoption of such Order, prevailed and carried by the following vote:

AYES: _____
NOES: _____

3. That a true and correct copy of such Order adopted at such meeting is attached to and follows this certificate; that such Order has been duly recorded in the minutes of the Board of Directors for such meeting; that the persons named in the above and foregoing Paragraph 2. were the duly chosen, qualified and acting officers and members of the Board of Directors as indicated therein, that each was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of such meeting, and that such Order would be introduced and considered for adoption at such meeting, and that each consented in advance, to the holding of such meeting for such purpose; that the canvassing of the officers and members of the Board of Directors present at and absent from such meeting and of the votes

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of each on such motion, as set forth in the above and foregoing Paragraph 2., is true and correct; that such meeting was open to the public as required by law; and that sufficient and timely notice of the hour, date, place and subject of such meeting was given and posted as required by Chapter 551, Texas Government Code, as amended.

SIGNED AND SEALED the ____ day of _____, 2017.

General Manager

(SEAL)