



San Jacinto River Authority

Contract # 18-0060

Maintenance and Emergency Repairs of the Wholesale Water Transmission, Distribution and Wastewater Collections Systems



MISCELLANEOUS SERVICES AGREEMENT

Project: _____ Annual Agreement for Maintenance and Emergency Repairs of the Wholesale Water Transmission,
Distribution and Wastewater Collection Systems

Project Location: _____ SJRA – MAIN LOCATION/G&A BUILDING – 1577 DAM SITE RD., CONROE, TX 77304

THE PARTIES

The SJRA: The SAN JACINTO RIVER AUTHORITY (marked by an X)

- General and Administration Division - PO Box 329, Conroe, TX 77305 936-588-3111*
- GRP Division - PO Box 329, Conroe, TX 77305 936-588-3111*
- Lake Conroe Division - PO Box 329, Conroe, TX 77305 936-588-1111*
- Highlands Division – PO Box 861, Highlands, TX 77562 281-843-3300*
- Woodlands Division – PO Box 7537, The Woodlands, TX 77387 281-367-9511*

(Contact Person / Phone/ e-mail) _____

and

Contractor: _____

(Address for Written Notice) _____

(Contact Person / Phone/email) _____

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

ARTICLE 1 WORK OF THE CONTRACT

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

Annual Agreement for Maintenance and Emergency Repairs of the Wholesale Water Transmission, Distribution and Wastewater Collection Systems

1.2 Changes in the Work may be accomplished after execution of this Agreement, and without invalidating this Agreement, by a written Contract Amendment. A Contract Amendment is a written instrument prepared by SJRA and signed by SJRA and Contractor, stating their agreement upon all of the following: (1) the change in the Work; (2) the amount of the adjustment, if any, in the Contract Price; and (3) the extent of the adjustment, if any, in the Contract Time. All changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Contract Amendment.

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

ARTICLE 2 CONTRACT TIME

2.1 Contractor shall achieve Final Completion of all Work within N/A calendar days after the EXECUTION BY BOTH PARTIES of this Agreement, subject to adjustments of the Contract Time executed in writing and agreed to by the Parties.

2.2 The Parties recognize that time is of the essence for this Agreement and that the SJRA will suffer financial loss if the Work is not completed within the Contract Time. The Parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding actual loss suffered by the SJRA if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Parties agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay the SJRA N/A for each day beyond the Contract Time.

2.3 Notwithstanding the terms and provisions of paragraph 2.2 above, the Parties agree and acknowledge that in the event no sum is inserted in the blank in paragraph 2.2 or the sum of zero (0) dollars is inserted in the blank in paragraph 2.2, SJRA shall be entitled to recover any and all actual damages incurred if the Contractor fails to complete the Work within the Contract Time.

2.4 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by acts of God, fire, industry-wide material, equipment or labor shortages, or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment, provided that Contractor can establish that such delay was not reasonably avoidable and impacted the Project's timeline for completion, and Contractor delivered written notice of such delay to SJRA within one (1) working day of the date Contractor knew or should have known of the delay. Contractor shall not be entitled to any damages for delay, hindrances or interferences to the Work except to the extent: 1) such delay, hindrance or interference is caused by SJRA or a party for whom it is responsible; and 2) such delay, hindrance or interference continues for more than three (3) working days after Contractor has provided SJRA with written notice of the delay, hindrance or interference, the cause of the delay, hindrance or interference, and the action that must be taken to cure the delay, hindrance or interference. Any damages recoverable by Contractor from SJRA for any delay, hindrance or interference to the Work are limited to Contractor's extended field general conditions overhead, and adjustment of the Contract Time and such damages shall be Contractor's sole and exclusive remedy for any such delay, hindrance or interference to the Work.

ARTICLE 3 CONTRACT PRICE

3.1 The Contract Price for the Work shall be \$ _____

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

ARTICLE 4 PAYMENT PROCEDURES

4.1 Contractor shall submit invoices for payments due. The SJRA will make payments in compliance with the Texas "prompt payment law" which states that payments for goods and services are due 45 days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. (Ref Chapter 2251 of Texas Gov. Code).

4.2 Final payment, constituting the entire unpaid balance of the Contract Price, will be made by the SJRA to Contractor upon final completion and acceptance of the Work by the SJRA.

4.3 [This section RESERVED for additional payment procedures such as deposits, payments for materials, periodic payments for long-term projects, etc. Changes to this section should be reviewed by an SJRA attorney.]

ARTICLE 5 CONTRACTOR REPRESENTATIONS

5.1 Contractor represents:

5.1.1 Contractor has examined and carefully studied these Contract Documents and attachments.

5.1.2 Contractor has visited the site and become familiar with and is satisfied as to general, local, and site conditions that may affect cost, progress, and performance of the Work.

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

5.1.4 Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in Contract Documents and (2) reports and drawings of an environmental condition, if any, at the site which has been identified in Contract Documents.

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

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

- 5.1.7 Contractor is aware of general nature of work to be performed by the SJRA and others at the site that relates to the Work as indicated in Contract Documents.
- 5.1.8 Contractor has correlated information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract.
- 5.1.9 Contractor has given the SJRA written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract, and the written resolution thereof by the SJRA is acceptable to Contractor.
- 5.1.10 Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 6 INDEMNIFICATION; MISCELLANEOUS PROVISIONS

6.1 Indemnification.

6.1.1 To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless the SJRA and its officers, directors, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

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

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

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

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

6.4 **Termination of Contract.** SJRA may terminate this Contract at any time upon **thirty (30)-calendar** days written notice. Upon the Contractor's receipt of such notice, the Contractor shall cease work immediately. The Contractor shall be compensated for the services satisfactorily performed prior to the termination date.

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

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

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

6.8 **Independent Contractor.** It is understood and agreed that the relationship of Contractor to SJRA shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make the Contractor the agent, servant, or employee of SJRA, or (2) create any partnership, joint venture, or other association between SJRA and Contractor. Contractor shall be solely responsible for all means, methods, techniques and safety measures utilized in performance of the Work.

6.9 **Safety.** Contractor agrees that it shall be solely responsible for the safety of its employees, and Contractor shall be solely responsible for the establishment and enforcement of all safety precautions, programs and practices in connection with

the Work as necessary to protect all persons and property from injury, death, loss or damage arising out of or related to the Work, including but not limited to the erection and maintenance of barricades, installation of warning signage, and institution of other traffic and/or pedestrian control measures, and Contractor shall at all times comply with all health, safety and environmental federal, state and local laws, codes, regulations, ordinances and permits applicable to the Work, including but not limited to the Occupational Safety and Health Act of 1970 as amended and the regulations thereto, and all requirements of the Texas Commission on Environmental Quality.

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

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

6.12 **Insurance Requirements.** Contractor will provide proof of insurance in the amounts stated in Attachment B.

6.13 **Additional Insured.** All policies of insurance and certificates issued for this contract, with the exception of Workers' Compensation Insurance, shall name SJRA as an additional insured for and to the extent of liabilities assumed under this Agreement. Contractor shall provide SJRA a copy of the change endorsement showing the SJRA as an additional insured on any applicable insurance policies.

6.14 **Notice of Cancellation or Material Coverage Changes.** Contractor will provide SJRA notice of any cancellation or material coverage changes involving policies of insurance related to this Agreement.

6.15 **Waiver of Subrogation.** All insurance required pursuant to this contract shall provide for waivers of all subrogation rights against SJRA.

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

ARTICLE 7 ENUMERATION OF CONTRACT DOCUMENTS

7.1 The following documents are considered a part of the Contract Documents and incorporated into this Agreement:

Document Title

- Solicitation/Quote/Bid documents, and requirements
- Contractor's Proposal or Bid response, including required exhibits:
 - Attachment A – Business Overview and Questionnaire Form
 - Attachment B – Exceptions Form
 - Attachment C – References Form
 - Attachment D – Conflict of Interest Form
 - Attachment E – Company Does Not Boycott Israel Form
 - Attachment F – Felony Conviction Notification Form
 - Attachment G – Executed Acknowledgement Form
- Attachment H - Affidavit of All Bills Paid (as required)
- Exhibit 4 of RFP – Negotiated Pricing Sheet
- Certificate of Insurance – (see Attachment D for requirements)
- _____

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

7.3 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Montgomery County, Texas.

7.4 This Contract represents the entire and integrated agreement between SJRA and the Contractor and supercedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

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

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

**ARTICLE 8
SIGNATURES**

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

CONTRACTOR:

(If Joint Venture)

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

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

SAN JACINTO RIVER AUTHORITY

APPROVED:

By: _____
SJRA Authorized Signature

Title:

Date:

(Effective Date of Contract)

EXHIBIT 4 - PRICING
[Attach Negotiated Pricing and Rate Schedule]

**ATTACHMENT D
SJRA'S INSURANCE REQUIREMENTS OF CONTRACTOR**

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

1.0 Contractor Insurance Representations to SJRA.

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

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

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

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

2.0 Conditions Affecting All Insurance Required Herein.

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

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

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

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

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

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

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

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

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

3.0 Intentionally Omitted.

4.0 **Insurance Required.**

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

4.2 Commercial General Liability Insurance

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

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

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

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

4.2.4 Required Endorsements.

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

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

4.3 Auto Liability Insurance

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

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

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

4.3.4 Required Endorsements.

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

4.4 Workers' Compensation/Employer's Liability Insurance

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

4.5 Excess Liability Insurance

4.5.1 Coverage. Such insurance shall be excess over and be no less broad than all coverages described above (with the exception of Worker's Compensation) and shall include a drop-down provision.

4.5.2 Form. This policy shall have the same inception and expiration dates as the Commercial General Liability insurance required above.

4.5.3 Amount of Insurance. Coverage shall be provided with a limit of not less than \$2,000,000.

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

4.5.5 Additional insured status shall be provided in favor of the SJRA. Notwithstanding the foregoing, if Subchapter C of Chapter 151 of the Texas Insurance Code applies to the Contract, this Additional Insured obligation shall not require or provide coverage the scope of which is prohibited under Subchapter C of Chapter 151 of the Texas Insurance Code for an agreement to indemnify, hold harmless or defend. This Excess Liability Insurance shall be primary to and shall seek no contribution from all insurance available to the SJRA, with SJRA's insurance being excess, secondary and non-contributing.

5.0 **Evidence of Insurance.**

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

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

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

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

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

Attachment H (As Required)

AFFIDAVIT OF BILLS PAID

STATE OF TEXAS
COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ party to that certain Contract numbered _____ entered into on the _____ day of _____, 20____, between **San Jacinto River Authority** (Owner) and _____ (Contractor) for the erection, construction, and completion of certain improvements and/or additions upon the following described premises, to wit:

Said party being by me duly sworn states upon oath that the said improvements have been erected and completed in full compliance with the above referred to Contract and the agreed plans and specifications therefore.

Deponent further states that he has paid all bills and claims for materials furnished and labor performed on said Contract and that there are no outstanding unpaid bills or legal claims for labor performed or materials furnished upon said job.

This affidavit is being made by the undersigned realizing that it is in reliance upon the truthfulness of the statements contained therein that final and full settlement of the balance due on said Contract is being made, and in considerations of the disbursement of funds San Jacinto River Authority, deponent expressly waives and releases all liens, claims and rights to assert a lien on said premises and agrees to indemnify and hold San Jacinto River Authority safe and harmless from and against all losses, damages, costs, and expenses of any character whatsoever specifically including court costs, bonding fees, and attorney fees, arising out of or in any way relating to claims for unpaid labor or material used or associated with construction of improvements on the above-described premises.

By _____

Subscribed and sworn to before me, the undersigned authority, on this the _____ day of _____, 20____.

Notary Public in and for _____ County.