

**MINUTES OF VIDEOCONFERENCE MEETING NO. 2361  
COMMISSIONERS OF  
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7**

Place: 4749 Twin City Highway, Suite 300  
Port Arthur, Texas

Date: December 7, 2021

Present: Commissioners  
Richard Beaumont  
Lester Champagne  
James Gamble, Sr.  
Matthew Vincent  
Phil Kelley, General Manager  
Pete Steele, Attorney

Absent: Albert Moses, Jr.

Visitors: Allen Sims, DD7  
Dean Depew, DD7  
Garrett Boudoin, DD7  
Kim Carroll, Texan Engineering & Consulting, LLC (Via Zoom)  
Brandon Monk, Representative for Mid-County Plaza, LLC (Via Zoom)

The meeting was called to order at 2:00 p.m. by Chairman Beaumont after ascertaining that the Notice of Meeting had been posted in accordance with the law.

Commissioner Vincent gave the invocation.

Minutes of Meeting No. 2360

The Minutes of Meeting No. 2360 was approved as read.

Consider Sale of Surplus Property

Mr. Phil Kelley requested the declaration of and approval to sell certain surplus property. A list of miscellaneous items was submitted as follows:

#	YEAR	QTY	DESCRIPTION	VIN/SN	UNIT #
1	2009	1	Massey Ferguson 573	BS41007	7
2	2009	1	Massey Ferguson 573	BS41006	9
3	2007	1	ExMark LAS25KC604	757231	2
4	2007	1	ExMark LAS25KC604	721047	3

5	1992	1	Ford 6640 w/Side Mower	BD 01517	8
6	1978	1	16VA- Detroit Engine	4678	
7	1978	1	16VA- Detroit Engine	4680	
8	1978	1	16VA- Detroit Engine	4684	
9	1978	1	16VA- Detroit Engine	4685	
10	1978	1	16VA- Detroit Engine	4686	
11	1978	1	16VA- Detroit Engine	4760	
12	1965	1	12VA-Detroit Engine	61898	
13	1965	1	12VA-Detroit Engine	25771	
14		1	25HP Big Foot Outboard	548465	
15		2	Dell Precision CPU	T1700	
16		2	Dell Optiplex CPU	2030	
17		1	Dell CPU	Unknown	
18		1	Brother Printer	HL30C	
19		1	Epson Workforce Printer	WF2760	
20		2	Samsung Monitor	2253BW	
21		1	Samsung Monitor	S24D300H	

Commissioner Champagne moved to declare the subject property as surplus and to be sold. Commissioner Gamble seconded the motion. The motion carried.

Award Contract for Grant Application Development and Grant Management for 2021-2023

Mr. Allen Sims, District Engineer, submitted a recommendation letter on behalf of the Administrative Committee that reviewed the Request for Professional Services for Grant Application Development and Grant Management for 2021-2023 Funding of Hazard Mitigation Grant Program (HMGP), Building Resilient Infrastructure and Communities Grant Program (BRIC), and/or Flood Mitigation Assistance Grant Program (FMA) Grant Projects. Three (3) proposals were received, and a committee consisting of Allen Sims, Kirby Johnson and Barron Cook conducted an independent complete review of the proposals and scored each proposal. The criteria for the scoring and maximum points for each category is included in the recommendation letter. Mr. Sims

stated the scoring was close, with Tidal Basin and Jeffrey S. Ward & Associates, Inc. being the closest because each company has done a lot of similar work. The main difference came down to the regional experience, and the committee recommends that the District award the contract and enter negotiations with Jeffrey S. Ward & Associates, Inc. In the event a contract cannot be negotiated with the selected firm, negotiations will be terminated, and the next highest scoring respondent will be notified regarding negotiation of a contract. Commissioner Gamble moved to award the contract for Professional Services for Grant Application Development and Grant Management for 2021-2023 to Jeffrey S. Ward & Associates, Inc., to authorize the District's Manager to begin negotiation of a contract for services and if a contract cannot be negotiated with the selected firm, negotiations will be terminated, and the next highest scoring respondent will be notified regarding negotiation of a contract. Commissioner Vincent seconded the motion. The motion carried.

Consider Resolution Authorizing Environmental Services with LJA Environmental Services/Berg Oliver Associated with the Sabine Pass to Galveston Bay Project

Resolution No. 482 Authorizing Environmental Services with LJA Environmental Services, LLC was presented to the Board for consideration. Mr. Phil Kelley stated he had previously explained to the Board that on Contract 3 in the Valero Refinery on the Sabine Pass to Galveston Bay Project, the District feels there needs to be additional soil testing completed before acquiring easement to build the project. Concerning Contract 3b, there is also another area near the Port of Port Arthur that needs additional testing, and the levee breach area, which will be the location of Contract 2, will also require

more contamination investigation. It is the District's understanding that any monies spent will go toward the District's thirty-five (35%) local cost share as work-in-kind. The proposal is a general services contract that will cover the environmental work that needs to be done in connection with the Sabine Pass to Galveston Bay Project, as well as any general environmental services the District may need. Mr. Allen Sims stated a work authorization detailing the scope of services requested and costs will be issued by the District each time services are needed. The period of performance will be ongoing until terminated by either party. The Master Services Agreement has been reviewed by the District's attorney who has some concerns, and Mr. Sims requested the Board to authorize entry into the Agreement subject to the attorneys agreeing upon the language. Mr. Phil Kelley stated by doing a Master Services Agreement, when the District does any type of channel improvements and needs environmental services, the Agreement will cover this type of work as well. Mr. Sims advised the Board that Horizon Environmental, who has done a lot of work for the District, and another highly rated company Berg-Oliver, have both been purchased by LJA Engineering and merged into one company to form LJA Environmental Services, LLC. Commissioner Vincent moved to approve Resolution No. 482 Authorizing Master Services Agreement with LJA Environmental Services, LLC subject to approval of language by the District's attorney. Commissioner Champagne seconded the motion. The motion carried. A copy of Resolution No. 482 is attached hereto and made a part of these minutes.

Sabine Pass to Galveston Bay Project Summary

Mr. Allen Sims gave a brief update on the Sabine Pass to Galveston Bay Project (SP2GB). Contract 1 is still in construction and hoped to be complete by January or February 2022. There is an issue with the overhead power lines that were relocated prior to commencement of construction that will require additional relocation. The District met this morning with the Corps' Chicago District over the proposed alignments on Contract 2, and an agreement was reached to change the existing alignment to be relocated between the Union Pacific Railroad Track and Highway 87 adjacent to where the breach occurred. Union Pacific ("UP") has advised it wants to modify its bridge, so hopefully their modifications can be worked into the Contract 2 modifications in hopes to make it easier to get UP's permission for right-of-entry on its property to perform the work. Contract 3 has reached a 100% design with some environmental exceptions. Contract 3A is 95% complete. Minor modifications are being made with anticipated completion early next year and going to bid mid-year 2022. Contract 3B is at 100% complete with one area still needing to be checked for an environmental issue. Contract 3B should be ready to be bid within the next month or two. The District is talking with the Corps' Memphis District to get started on the scope of design on Contract 4. Design scope is still underway on Contract 5, and District staff met with the Corps and EPA on how Contract 5 will impact the Starlake Superfund Project.

### Manager's Miscellaneous Reports

Since the date of the last Commissioner's meeting, the following work has been done:

#### HFPL Maintenance/Herbicide Crew

Herbicide Application:

- See below.

Levee:

- Cut and weed eat gates and fence lines at various locations on HFPL.

Misc.:

- Rodair Gully Lat. 4 repair.
- Checked crossings and flap gates.

Contractor:

- GP Evans Contractors: Mowing Areas-5, 6, 6A, 7 and 8
- Ducks Dragline Service: Rodair Gully Lat. 4 Repair

#### Control Center Operation and Pump Station Maintenance Report

Mr. Dean Depew submitted photographs reflecting blasting and repairing of discharge pipes at Pump Station No. 7.

#### Construction Notes - Alligator Bayou Pump Station Annex November 8, 2021 – November 26, 2021

Monday, November 8:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendent (1) on site (Terrell) with (6) operators/laborers reported.

Allco is digging dirt out from around the sheet pile on the inside and outside of the cofferdam.

Tuesday, November 9:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendents (2) on site (Joe and Terrell) with (6) operators/laborers reported.

Allco is digging dirt out from around the cofferdam sheet pile.

Wednesday, November 10:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendents (2) on site (Joe and Terrell) with (6) operators/laborers reported.

Allco is repositioning support beams and driving sheet pile on the inside of the cofferdam to help stabilize the supporting soil.

Thursday, November 11:

Alligator Project; DD7 is not working on site in observance of the Veterans' Day holiday break.

Friday, November 12:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy. The site conditions were dry.

Allco superintendents (2) on site (Joe and Terrell) with (6) operators/laborers reported.

Allco is digging dirt from the middle of the cofferdam.

Monday, November 15:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco's superintendents (2) on site (Terrell and Joe) with (6) operators/laborers reported.

Allco is digging dirt from the middle of the cofferdam and water-jetting down the sides of the sheet pile.

Tuesday, November 16:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendents (2) on site (Joe and Terrell) with (6) operators/laborers reported.

Diver Dan on site with (3) personnel reported.

Allco is working with Diver Dan to cut sheet pile off the cofferdam.

Wednesday, November 17:

Alligator Project; Allco worked on site today. Weather conditions were cloudy. The site conditions were dry.

Allco superintendents (2) on site (Joe and Terrell) with (6) operators/laborers reported.

Allco is moving back on the cofferdam with the support beams for equipment. They are also removing some wooden mats.

Thursday, November 18:

Alligator Project; Allco worked on site today. Weather conditions were cloudy. The site conditions were dry.

Allco superintendents (2) on site (Joe and Terrell) with (6) operators/laborers reported.

Allco is driving sheet pile across the inside of the cofferdam to keep the supporting soil from sluffing under the equipment's weight.

Friday, November 19:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco superintendents (2) on site (Terrell) with (6) operators/laborers reported.

Allco is excavating dirt on both sides and out of the middle section of the cofferdam.

Monday, November 22:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco's superintendents (2) on site (Terrell and Joe) with (6) operators/laborers reported.

Allco is moving the equipment support beams back along the cofferdam and digging dirt out from the middle of the dam.

Tuesday, November 23:

Alligator Project; Allco did work on site today; however, DD7's site representative was off, so a daily report was not generated.

Wednesday, November 24:

Alligator Project; DD7 and Allco are not working on site in observance of the Thanksgiving holiday break.

Thursday, November 25:

Alligator Project; DD7 and Allco are not working on site in observance of the Thanksgiving holiday break.

Friday, November 26:

Alligator Project; DD7 and Allco are not working on site in observance of the Thanksgiving holiday break.



Mr. Phil Kelley stated that he and Allen Sims will be traveling to Bay City tomorrow to attend a Gulf Coast Protection District ("GCPD") Board meeting along with Jefferson County's appointee Allen Ritter. After the Board meeting, there will be a side meeting with the General Land Office ("GLO") office and Orange County to go over funding for the Sabine to Galveston Bay Project (S2G). Mr. Kelley and Mr. Sims will also attend this meeting and answer questions about what the District's plans are for the current project and how much of the \$200 million funding the District will need over the next two (2) years. Mr. Sims stated he had asked Nicole Sunstrum, Executive Director of the GCPD, to put the District on the agenda of each meeting to give an update on the District's project. This will keep the District in line and in front of the GCPD Board. The next Board meeting will be held here in Jefferson County on January 12, 2022, and Mr. Kelley has reserved a room at the ISTC building and will arrange for transportation and lunch for the meeting. Mr. Kelley will keep the Board informed as plans progress.

#### Permits

Mammoet USA South – Proposed Piperack Modules Crossing the HFPL at Ramp G. Mr. Garrett Boudoin recommended approval with a \$550.00 permit fee and no bond required subject to the special conditions contained within the permit. Commissioner Gamble moved to approve Mr. Boudoin's recommendation. Commissioner Champagne seconded the motion. The motion carried.

Mid-County Plaza, LLC – Proposed Detention Pond's Discharge Entering Viterbo Ditch (Lateral C-11). Mr. Garrett Boudoin recommended approval with a \$250.00 permit

fee and no bond required subject to the special conditions contained within the permit.

Commissioner Champagne moved to approve Mr. Boudoin's recommendation.

Commissioner Vincent seconded the motion. The motion carried.

Checks & Purchase Orders

Maintenance Fund

Ck. No. 19381 - Dan Delich Consulting

\$1,580.23 – Legislative Consulting

Ck. No. 19382 – Dannenbaum Engineering Corp.

\$22,338.38 - Engineering Fees, Sabine Pass to Galveston Bay Project and Groves Detention HMGP Project

Ck. No. 19383 – Duck's Dragline Service, Inc.

\$13,800.00 – Rental LS250X3 Trackhoe 11/15-11/30/21 and Rental LS250X4 11/15-11/30/21

Ck. No. 19384 – FILMR LLC

\$180.00 – Social Media Posts

Ck. No. 19385 – Funchess, Mill, White & Co., P.C.

\$2,300.00 – Accounting Services

Ck. No. 19386 – Function 4 LLC

\$197.38 – Rental Konmin Copier

Ck. No. 19387 – GP Evans Contractors

\$35,100.00 – Mowing Levee

Ck. No. 19388 – Groves Equipment Rental Co., Inc.

\$2,140.00 – Rental 15 Ton Crane, 11/17-12/16/21 and Credit

Ck. No. 19389 – James Gamble, Sr.

\$270.00 – Health Insurance Payment

Ck. No. 19390 – Jefferson Central Appraisal District

\$85,242.47 – First Quarter 2022 Entity Allocations

Ck. No. 19391 – Johnny's Towing & Recovery

\$125.00 – Rental of Transport Truck 12/2/21

Ck. No. 19392 – LJA Surveying, Inc.

\$15,640.00 – Rodair Gully Easement, Main Outfall and Mains A, B and C  
Bathymetric Study

Ck. No. 19393 – M & S Unlimited Services, LLC

\$850.00 – Rental of Transport Truck for Two (2) Moves

Ck. No. 19394 - Mazzanti & Associates LLC

\$2,500.00 – Legislative Consulting Fees

Ck. No. 19395 – Nerbert Frelow

\$2,400.00 – Rental of Dump Truck, 11/15-11/19/21

Ck. No. 19396 – Pittsburg Bottom Line Company

\$5,000.0 – PR Main #2 Railroad Control for Concrete Repair

Ck. No. 19397 - Ray Russo

\$1,600.00 – Legislative Consulting Fees

Ck. No. 19398 – Richard Beaumont

\$207.58 – Health Insurance Payment

Ck. No. 19399 – Ron Lewis & Associates

\$3,500.00 – Legislative Consulting Fees

Ck. No. 19400 – Ronnie Hollier

\$66.89 – Travel Reimbursement for Election Seminar 2021

Ck. No. 19401 – Survey Support, Inc.

\$675.00 – Survey Services Loop Extension

Ck. No. 19402 – Texan Engineering & Consulting, LLC

\$13,230.00 – HMGP Projects, Permits and General Services

Ck. No. 19403 – U.S. Postmaster

\$130.00 – Box 3244 Yearly Rental

Ck. No. 19404 – United States Postal Service

\$500.00 – Postage Meter Postage

Ck. No. 19405 - Waukesha-Pearce Industries

\$16,522.00 – Rental of Komatsu Motor Grader 10/27-11/24/21,  
Pickup Charge for Komatsu Motor Grader and Rental Komatsu Dozer 11/9-12/7/21

Ck. No. 19406 – Wells Fargo Remittance System

\$784.20 – Travel & Meeting, Notary and Office Supplies Cost

Ck. No. 19407 – Tidal Basin Government Consulting, LLC

\$4,331.25 – Rodair Gully Detention HMGP Project Imelda and  
A-3-A Detention HMP Project Harvey

Ck. No. 19408 – Sigma Engineers, Inc.

\$1,749.20 – Main Office Upgrade

Ck. No. 5018 – Survey Support, Inc.

\$8,100.00 - Sabine Pass to Galveston Bay Project

Ck. No. 5019 – Tolunay-Wong Engineers, Inc.

\$87,634.00 – Sabine Pass to Galveston Bay Project

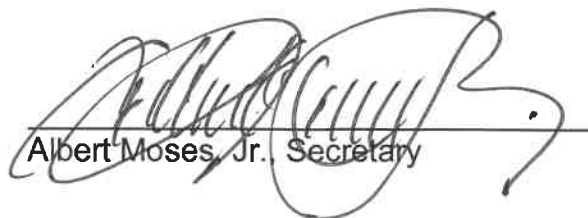
Commissioner Vincent moved that the checks from the Maintenance Fund be approved for payment. Commissioner Champagne seconded the motion. The motion carried.

Chairman Beaumont asked if there was any other business to come before the Board. Commissioner Champagne asked if the apartment project that is being constructed at Avenue H and Twin City Highway in Nederland has been approved for a permit. Mr. Kelley said the permit had been approved; however, it was a year process and was very lengthy.

Commissioner Champagne asked for a status on the property purchase of 3033 Oak West in Nederland. Mr. Kelley stated the closing has been postponed several times, and closing is currently set for December 22, 2021. There is an issue with the Bank that holds to property in giving a clear title. Mr. Pete Steele, the District's attorney,

said there is a Small Business Administration ("SBA") lien involved, and the Bank is working with the SBA to get this resolved.

At 2:24 p.m., Commissioner Champagne moved that the meeting be adjourned. Commissioner Vincent seconded the motion. The motion carried.



Albert Moses, Jr. Secretary



Richard Beaumont, Chairman

**RESOLUTION NO. 482  
AUTHORIZING MASTER SERVICES AGREEMENT  
WITH LJA ENVIRONMENTAL SERVICES**

STATE OF TEXAS	§
	§
COUNTY OF JEFFERSON	§

WHEREAS, Jefferson County Drainage District No. 7 (the "District") desires to enter into a Master Services Agreement with LJA Environmental Services ("LJA") pertaining to various environmental services from time to time on an "as required" basis in connection to general projects, as well as in particular the Sabine Pass to Galveston Bay Project; and

WHEREAS, the District will issue a Work Authorization detailing the scope of services requested, and LJA will furnish all labor, supervision, management, facilities, materials, tools, equipment, supplies and services necessary to provide said services; and

WHEREAS, the period of performance shall be ongoing unless and until terminated by either party as detailed within the Master Services Agreement; and

WHEREAS, the District wishes to authorize the District's General Manager to execute the Master Services Agreement on behalf of the District.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7:

THAT it is in the best interest of the District to enter into a Master Services Agreement with LJA Environmental Services pertaining to various environmental services and authorize its General Manager to execute the attached Master Services Agreement on behalf of the District.

That payments required by the District under the Agreement will be paid from current revenues available to the District.

That the General Manager be, and hereby is, authorized to take any and all action and is authorized to execute any and all instruments, documents, or filings in connection with the accomplishment of the transactions outlined in this resolution and to certify the adoption of such resolutions to such parties which such General Manager deems necessary or appropriate.

I, Albert Moses, Jr., Secretary of the Board of Commissioners of Jefferson County Drainage District No. 7, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Commissioners of Jefferson County Drainage District No. 7, at their meeting No. 2362 held on the 7<sup>th</sup> day of December, 2021, upon motion made by Commissioner Vincent and seconded by Commissioner Champagne and adopted unanimously by said Board, a quorum being present.

Given under my hand this 7<sup>th</sup> day of December, 2021.

  
Secretary  
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7

## MASTER SERVICES AGREEMENT

This Master Services Agreement made and entered into by and between the Jefferson County Drainage District No. 7 a subdivision of the State of Texas and LJA Environmental Services a Texas Limited Liability Corporation, hereinafter called and referred to as " LJAES " or as the "Consultant".

WHEREAS, JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 requires a consultant to perform Environmental Services on an "as required" basis; and

WHEREAS, LJAES. was found to be one of the highly qualified firms to perform the required services; and

WHEREAS, JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 wishes to engage LJAES for the performance of these Environmental Services on an "as required" basis.

NOW, THEREFORE, in consideration of the premises, and of the mutual promises and covenants hereinafter contained, the aforesaid parties to this Master Services Agreement have agreed and, by these premises, do agree as follows:

### ARTICLE 1

#### SERVICES TO BE PERFORMED

In response to the issuance of Work Authorizations by Jefferson County Drainage District No. 7., the Consultant shall, except as may be specified elsewhere in this Agreement, furnish all labor, supervision, management, facilities, materials, tools, equipment, supplies and services necessary to provide Environmental Services designated by the specific Work Authorization. All Services shall be performed in accordance with the "Scope of Services" described within each individual Work Authorization issued hereunder.

### ARTICLE 2

#### PERIOD OF PERFORMANCE

A. The period of performance under this Agreement shall be ongoing unless/until terminated by either party, with a thirty (30) day cancellation notice, which may be made with or without cause, in accordance with the terms and conditions of this Agreement.

B. The period of performance for each Work Authorization shall be as specified in that particular authorization. The Consultant agrees that it shall exert every reasonable effort necessary to meet the required performance schedule established in each Work Authorization. The Consultant agrees to notify JEFFERSON COUNTY DRAINAGE



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DISTRICT NO. 7. immediately if, at any time, it appears that the performance schedule set forth in each Work Authorization cannot be met.

C. If the "Scope of Services" involves dealing with any Federal, State or Local agency or municipality the Consultant cannot guarantee the response times of such agencies or municipalities, and shall not be held liable for any time delay(s) caused by the necessity to deal with, or seek approval from, any such agency or municipality.

### ARTICLE 3

#### WORK AUTHORIZATIONS

A. Performance of the Services contemplated in this Agreement shall be undertaken only upon the issuance of written Work Authorizations by an authorized signatory of JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7. The format for the Work Authorization itself shall be as indicated in the "Work Authorization" form in the form of Work Authorization Number 1 shown on Exhibit "A", except that JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 may add such other items of information as may be deemed necessary to accurately describe the requirements of that particular Work Authorization.

B. Work Authorizations will be sequentially numbered beginning with Work Authorization Number 1 and will be invoiced independently of each other. They may be amended by JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 in the same manner as they are issued.

C. JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 reserves the right to contract with other sources for the provision of similar services. This Agreement defines the terms and conditions of Work Authorizations issued hereunder and does not bind JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 from employing any other consultant or company which provides environmental services.

D. Work Authorizations issued prior to and in effect at the time of the expiration date of this Agreement shall continue to be in effect and performed by the Consultant until such time as all requirements have been met and delivered to JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7.

### ARTICLE 4

#### COMPENSATION AND FEE BASIS

The Consultant shall be compensated for services performed under the Master Service Agreement based upon the compensation terms set forth in the Work Authorizations. Such compensation shall be set forth in one of the following methods:

A. Lump Sum Fee: - Services described in the Work Authorizations may be priced

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based upon a Lump Sum Fee and shall be billed as a single and fixed fee, plus any allowable Reimbursable Expenses, as set forth in this Master Services Agreement or in a Work Authorization issued hereunder. The Fixed Fee will be set by the Consultant to cover work described in the Work Authorization. Amounts will be stated in Dollars and invoices for the work will not exceed the fixed figure without written modification of the Work Authorization executed by both JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 and the Consultant. The Fixed Fee will be invoiced upon the completion of the work described in the Work Authorization, or billed on a monthly progress billing based on an approximation of the percentage of the work performed, at the discretion of the Consultant.

B. Hourly Time and Materials: - Services described in a Work Authorization may be priced based upon an Hourly Fee basis plus any allowable Reimbursable Expenses, as set forth in this Master Services Agreement. Hourly Fees will be invoiced on a monthly billing based upon the number of hours spent on the work. The invoice shall show which individuals provided work, the amount of time spent by each individual in one quarter (0.25) hour increments, a description of the work, and the billing rate of the

C. Not to Exceed Fee: - Services described in a Work Authorization may be priced based upon a Not to Exceed Fee basis. The Not to Exceed Fee is based upon Hourly Fees and allowable Reimbursable Expenses, as described in "B." above, except that the total billing for time and Reimbursable Expenses shall be limited to a total amount, or an amount not to be exceeded, regardless of total actual charges. The Not to Exceed Fee shall be clearly set forth and described in all Work Authorizations which are to be limited by a Not to Exceed Fee. Jefferson County Drainage District No. 7.'s obligation for all services performed under a Not to Exceed Fee shall not exceed the total set forth in the Work Authorization.

## ARTICLE 5

### REIMBURSABLE EXPENSES

Reimbursable Expenses, such as outside photocopying, delivery charges, photographic reproduction, mileage, meals and lodging, if required, and other outside services, are considered allowable Reimbursable Expenses. Mileage shall be reimbursed at the IRS rate at the time of services. Meals and Lodging when out of town shall be reimbursed per day inclusive for nights away from the city where the Consultant has its office.

Non-Reimbursable Expenses, shall include all normal expenses of the Consultants business, including mailing charges, in-house photocopying, long distance telephone costs, in-house graphic systems, and local area travel.

## ARTICLE 6

### SUBCONSULTANTS AND SUBCONTRACTORS

Subconsultants, subcontractors, and other third parties may be retained by Consultant to assist in the work described in the Work Authorization for environmental services deemed necessary but not provided by the Consultant. The goal of subcontracting will be to coordinate all environmental services determined to be needed within the oversight of the Consultant, and to provide single source coordination and responsibility for Jefferson County Drainage District No. 7., and to provide efficiency to the goals of the project. All subconsultants and subcontractors will execute a Subcontract Agreement with the Consultant containing the same, or similar, terms and insurance requirements described in this Agreement.

## ARTICLE 7

### INVOICING AND PAYMENT

Invoices for lump sum work accomplished in less than thirty (30) days will be invoiced upon completion of the task. Lump sum work which requires more than thirty (30) days may, at the discretion of the Consultant, be billed on a monthly progress billing invoice based on the approximate percentage of completion.

Invoices for hourly work will be based upon the fees attached hereto and titled "Personnel Rate Schedule". Hourly invoices will be submitted to JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 on a monthly basis as work is performed.

It is understood that Payment for services, unless otherwise specified within a specific Work Authorization, will be made by JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 in accordance with the attached Personnel Rate Schedule or approved Work Authorization. Payment of all invoices is expected within thirty (30) days of the receipt of the invoice.

The Consultant shall submit invoices to the following address:

Jefferson County Drainage District No. 7.  
PO Box 3244  
Port Arthur, Texas 77643

## ARTICLE 8

### CONSULTANTS INSURANCE

The Consultant shall maintain in effect during the period of this contract insurance of the types and with minimum limits of liability as state below. Such insurance shall protect Consultant from claims which may arise out of or result from Consultant's operations whether such operations are performed by Consultant or by any subconsultant or by anyone for whose acts any of them may be liable.

1. WORKERS' COMPENSATION INSURANCE providing Statutory Benefits in accordance with the Workers' Compensation Act of the State of Texas and/or any other State or Federal law as may be applicable to the work being performed under this contract.
2. EMPLOYER'S LIABILITY INSURANCE with limits of liability not less than:
  - \$100,000 Each Accident
  - \$100,000 Each Employee for Disease
  - \$500,000 Policy Limit for Disease
3. COMMERCIAL GENERAL LIABILITY INSURANCE including, Personal Injury Liability and Contractual Liability with limits of liability not less than:
  - \$600,000 General Aggregate
  - \$300,000 Each Occurrence
4. AUTOMOBILE LIABILITY INSURANCE covering all owned, hired and non-owned motor vehicles used in connection with the work being performed under the Agreement with limits of liability not less than:
  - \$100,000 Each Person for Bodily Injury
  - \$300,000 Each Accident for Bodily Injury
  - \$100,000 Each Occurrence for Property Damage
5. PROFESSIONAL LIABILITY INSURANCE, with limits of liability not less than:
  - \$1,000,000 Aggregate
  - \$1,000,000 Each Claim

The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or 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 above.

Berg ♦ Oliver shall procure and maintain throughout the term of this Agreement, at its sole cost and expense, insurance of the types and in the minimum amounts set forth in this Agreement. Berg ♦ Oliver, and not Jefferson County Drainage District No. 7., shall be responsible for paying the premiums and deductibles, if any, that may from time to time be due under all of the insurance policies required of LJAES. LJAES shall obtain required insurance from such companies having a Bests rating of B+/VII or better and licensed or approved to transact business in the State of Texas. JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 and its agent and employees shall be added as additional insureds to all coverages required under this Agreement, except for worker's compensation insurance and professional liability insurance. In addition, all of the aforesaid



Headquarters: 14701 St. Mary's Lane, Suite 400, Houston, Texas 77079

t 713.953.5200 LJAENV.com

Regional Field Offices: Arlington • Austin • Corpus Christi • Katy • McKinney • Tulsa, OK

policies shall be endorsed to provide that they are primary coverages, and not in excess of any other insurance available to Jefferson County Drainage District No. 7., and without rights of contribution or recovery again JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 or from any such other insurance available to Jefferson County Drainage District No. 7.

Berg♦Oliver shall furnish to JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 certificates of insurance and any endorsement required hereunder issued by the insurance carrier evidencing compliance with the insurance requirements hereof. Certificates shall list Berg♦Oliver, the name of the insurance company, the policy number, the term of coverage, and the limits of coverage. LJAES shall cause its insurance companies to provide JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 with at least thirty (30) days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation, or nonrenewal of the insurance coverage required under this Agreement.

## ARTICLE 9

### INDEMNIFICATION AGREEMENT

Consultant agrees to and shall indemnify and hold harmless Jefferson County Drainage District No. 7., its directors and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs and attorney's fees, for bodily injury, sickness, disease or death of any person, or for damages to any property, including consequential damages or loss of use thereof, brought or recoverable by third parties against Consultant arising out of or resulting from any negligent (in whole or in part) act or omission by Consultant, its agents, contractors, supplier, or employee in the performance of this contract.

## ARTICLE 10

### COMPLIANCE WITH LAWS

The Consultant shall make reasonable efforts to give all notices and comply with all Federal, State and Municipal laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of this Agreement, including but not limited to, the laws referred to in the Agreement. If the Consultant or JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 observes that this Agreement is at variance therewith in any respect, the observing party shall promptly notify the other party in writing, and any necessary changes shall be adjusted by appropriate agreement modification.

## ARTICLE 11

### RESPONSIBILITY OF THE CONSULTANT

A. The Consultant shall be responsible for the professional quality, technical accuracy and the coordination of all services furnished by the Consultant under this Agreement. The

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Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its services.

B. The Consultant shall provide all necessary supporting calculations and Back-up documentation as requested by Jefferson County Drainage District No. 7., including all subcontracts, basis agreements and work orders.

## ARTICLE 12

### CONFIDENTIAL INFORMATION

All findings and supporting data are considered confidential to the extent of the law. Any other reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7 requests in writing to be kept as confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7. These obligations with regard to confidentially shall be for one (1) year after the completion of this Agreement but shall not apply to:

1. Information that was in the Consultant's possession prior to this Agreement;
2. Information that is or becomes in the public domain;
3. Information received lawfully from third parties that have no confidentiality obligations in connection with this Agreement; and
4. Information that is made pursuant to a valid Texas Open Records Act request.

## ARTICLE 13

### INDEPENDENT CONTRACTOR

It is understood and agreed that the Consultant shall be deemed to be an independent contractor in all its operations and activities hereunder; that the employees furnished by the Consultant to perform Services hereunder shall be deemed to be Consultant's employees or independent subconsultants and/or subcontractors; that Consultant employees shall be paid by Consultant for all services in this connection; and the consultant shall be responsible for all obligations and reports covering Social Security, Unemployment Insurance, Income Tax, and other reports and deductions required by State or Federal Law.

## ARTICLE 14

### SEVERABILITY

If any provision of this Agreement or the application thereof to any person or circumstances

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LJAES MSA

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is rendered or declared illegal for any reason and shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law.

**ARTICLE 15**  
**INTERPRETATION, JURISDICTION AND VENUE**

This Agreement shall be construed and interpreted solely in accordance with the laws of the State of Texas. Venue of any suit, right or cause of action arising under or in connection with this Agreement shall be exclusively in Harris County, Texas.

**ARTICLE 16**  
**ENTIRE AGREEMENT**

A. This Master Services Agreement sets forth the entire agreement between the parties with respect to the subject matter thereof, and supersedes and replaces all proposals, negotiations, representations, and implied obligations. The obligations, liabilities and remedies set forth herein are exclusive and shall operate as limitations on any action brought in connection with this Agreement, including an action in tort.

B. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and assigns, but shall not inure to the benefit of any third party or other person.

JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7., its entities, and the Contractor have executed this Agreement and it shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**JEFFERSON COUNTY  
DRAINAGE DISTRICT NO. 7**

**LJA ENVIRONMETNAL SERVICES**

By: \_\_\_\_\_

By: Susan Alford

Name: \_\_\_\_\_

Name: Susan Alford

Title: \_\_\_\_\_

Title: President



LJA ENVIRONMENTAL SERVICES

Headquarters: 14701 St. Mary's Lane, Suite 400, Houston, Texas 77079

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**ATTACHMENT A**  
**Personnel Rate Schedule**

<u>Personnel</u>	<u>Hourly Billing Rate</u>
Principal/Sr. Director	\$250.00
Project Director/Program Director	\$225.00
Director	\$235.00
Vice President/Senior Associate	\$200.00
Professional Geologist	\$200.00
Sr. Public Involvement Specialist	\$190.00
Senior Project Manager	\$190.00
Project Manager	\$180.00
Health/Safety Officer/Chemist	\$190.00
Sr. NEPA Specialist	\$170.00
Project Coordinator II	\$165.00
Soil Scientist	\$165.00
Architectural Historian	\$150.00
Cultural Resource Project Lead	\$150.00
Endangered Species Specialist	\$150.00
Sr. Wetland Biologist/Ecologist	\$150.00
Project Coordinator I	\$150.00
Jr. Public Involvement Specialist	\$130.00
Wetlands Biologist/Ecologist	\$140.00
NEPA Specialist	\$140.00
Sr. GIS Analyst / UAV Pilot	\$140.00
Cultural Resource Specialist	\$120.00
Cultural Resource Field Lead	\$110.00
GIS Analyst/CADD	\$110.00
Sr. Biologist	\$110.00
Field Biologist/Field Technician	\$105.00
Hazmat Technician/Administrator	\$115.00
Editor	\$100.00
Administrative/Word Processing	\$65.00
Specialist Subcontractors	Cost + 15%

Above rates include all normal expenses of BOA's business, including mailing charges, in-house photocopying, long distance telephone costs, in-house graphic systems, and local area travel, unless otherwise stated in the agreement. Expenses, such as travel beyond fifty (50) miles, outside photocopying, delivery charges, photographic reproduction, and other outside services, are considered reimbursable by the client at rate of cost +15%. Any extraordinary reimbursable expenses, in excess of \$250.00 must have authorization from the client. NOTE: The rate schedule is for the current fiscal year, with an effective date of January 1. Hourly rates are adjusted annually as inflation dictates. If this contract spans more than one fiscal year (ending December 31), hourly rates may be adjusted. Regardless of any rate adjustment, the "not to exceed" figures in a contract will not change.



## **ATTACHMENT B** **GENERAL CONDITIONS FOR SERVICES**

### **Article 1: Services by LJA**

**1.1 Standard of care.** LJA will perform the scope of services expressly described in this Agreement, after it is signed by both parties. The services performed by LJA will be conducted in a manner consistent with the degree of care and skill ordinarily exercised by competent consultants performing the same or similar services in the same locale acting under similar circumstances and conditions.

**1.2 Restoration.** LJA will exercise reasonable care to minimize damage to the site. However, Client acknowledges that some damage may occur in the normal course of performing the services, even if due care is exercised, and agrees that LJA will not be liable for such damage and will be entitled to additional compensation if it is asked to perform restoration services not expressly included in the scope of services.

**1.3 Reports and Investigations.** If LJA's performance of the services includes assessment, identification, or testing services, the number of investigations and observations LJA makes, the number of samples it collects, or the number of tests it performs are necessarily limited by budgetary and time constraints, and observations and samples by their specific locational nature may not exactly represent similar samples or observations in the immediate vicinity. LJA does not guarantee that all violations, problems, or sources of possible environmental condition will be identified, that all contaminants or environmental condition will be detected/identified, or that requirements, standards, or conditions will not change over time. Any report issued by LJA will set forth its findings and conclusions based on the limited information available from the observations, investigations, sampling, and/or testing conducted under this Agreement. In preparing its report, LJA may review and interpret information provided by Client, third parties, and regulatory agencies and will be entitled to rely on the accuracy of such information, including laboratory results, without performing an independent verification. LJA may include in its report a Statement of Limitations describing the limitations of its investigations and findings and indicating that the report is for Client's use only and will not be relied upon by any third party, except as expressly agreed in writing by LJA, and then only at such third party's own risk.

**1.4 Documents.** All reports and documents prepared and deliverable to Client pursuant to this Agreement will become Client's property upon full payment to LJA. LJA may retain file copies of such deliverables. All other reports, notes, calculations, data, drawings, estimates, specifications, and other documents and computerized materials prepared by LJA are instruments of LJA's services and will remain LJA's property. All deliverables provided to Client are for Client's use only for the purposes disclosed to LJA, and Client will not transfer them to others or use them or permit them to be used for any extension of the services or any other project or purpose, without LJA's express written consent.

**1.5 Services not included.** Unless expressly included in the scope of services, LJA's services will not include the following: (a) the detection, removal, treatment, transportation, disposal, monitoring, or remediation of any contamination of soil or groundwater at the site by petroleum or petroleum products (collectively called "oil") or hazardous, toxic, radioactive, or infectious substances, including any substances regulated under RCRA or any other federal, state, or local environmental laws, regulations, statutes, rules, standards, or ordinances (collectively called "Hazardous Materials"); (b) mechanical compaction of backfill; (c) dewatering before installation or filling tanks with liquid or ballast following installation; (d) pump-out or disposal of product, water, or other contents from existing tanks; (e) installation of anchor systems, foundations, shoring, or other support devices; (f) concrete, blacktop, water, sewer, electricity, or other outside services; (g) the removal of any soil or water; (h) installation of protective fencing or other structure; or (i) construction or monitoring. LJA will be entitled to additional compensation if it is asked to perform or provide such services listed above. LJA will not be responsible for damage to or imperfections in any concrete slabs it installs unless they are protected by Client from traffic for seven days.

**1.6 Estimates.** Any estimates of probable construction or implementation costs, financial evaluations,

feasibility studies, or economic analyses prepared by LJA will represent its best judgement based on its experience and available information. However, Client recognizes that LJA has no control over costs of labor, materials, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices. Accordingly, LJA does not guarantee that proposals, bids, or actual costs will not vary from opinions, evaluations, or studies submitted by LJA.

**1.7 Other Contractors.** Except to the extent expressly agreed in writing, LJA will not have any duty or authority to direct, supervise, or oversee any contractors of Client or their work or to provide the means, methods, or sequence of their work or to stop their work. LJA's services and/or presence at a site will not relieve others of their responsibility to Client or to others. LJA will not be liable for the failure of Client's contractors or others to fulfill their responsibilities, and Client agrees to indemnify, hold harmless, and defend LJA against any claims arising out of such failures.

**1.8 Litigation support.** LJA will not be obligated to provide expert witness or other litigation support related to its services, unless expressly agreed in writing. In the event LJA is required to respond to a subpoena, government inquiry, or other legal process related to the services in connection with a proceeding to which it is not a party, Client will reimburse LJA for its costs and compensate LJA at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.

**1.9 Warranty.** If manufactured products are purchased by LJA and furnished to Client or incorporated into the work, LJA will assign to Client any warranties provided by the manufacturer, to the extent they are assignable, and Client's sole resource will be against the manufacturer. NO FURTHER WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO ANY GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. Full risk of loss of materials and equipment furnished by LJA will pass to Client upon their delivery to Client's premises, and Client will be responsible for protecting them against theft and damage. However, until LJA is paid in full, it will retain title for security purposes only and the right to repossess the materials and equipment.

## Article 2: Responsibilities of Client

**2.1 Client requirements.** Client, to the best of its ability, without cost to LJA, will:

- (a) Designate to LJA a person to act as Client's representative;
- (b) Provide or arrange for access and make all provisions for LJA to enter any site where services are to be performed;
- (c) Furnish LJA with all reasonably available information pertinent to the services;
- (d) Furnish LJA with a legal description of the site and all available surveys, site plans, and relevant information about site conditions, topography, boundaries, easements, zoning, land use restrictions, and right-of-ways, if available and as needed;
- (e) Furnish LJA with all approvals, permits, and consents required for performance of the services except for those LJA has expressly agreed in writing to obtain;
- (f) Notify LJA promptly of all known or suspected Hazardous Materials at the site, of any contamination of the site by Oil or Hazardous Material, and of any OTHER CONDITIONS REQUIRING SPECIAL CARE, and provide LJA with any available documents describing the quantity, nature, location, and extent of such materials, contamination, or conditions;
- (g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the services, except for such notices LJA has expressly agreed in writing to give;
- (h) Before commencement of any drilling or excavation at a site, furnish LJA with a complete description (to the best of their ability) of all underground objects and structures at the site, including, but not limited to, wells, tanks, and utilities; and indemnify, hold harmless, and defend LJA against claims arising out of damages to underground objects or structures not properly defined;
- (i) Provide LJA with information concerning prior owners of the site and any current or historical uses of or activities on the site by Client, prior owners, or others, as needed;
- (j) Furnish to LJA any known contingency plans related to the site; and
- (k) Furnish to LJA any previous environmental audits and/or assessments related to the site.

**2.2 Hazards.** Client represents and warrants that it does not have any knowledge of Hazardous Materials

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or Oil, or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials except as expressly disclosed to LJA in writing.

**2.3 Confidentiality.** Client acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to LJA and agrees not to disclose it or otherwise make it available to others without LJA's express written consent.

**2.4 Health and safety.** Client acknowledges that it is now and will at all times remain in control of the project site, and Client acknowledges and agrees that it retains title to all conditions existing on the site and shall report to the appropriate public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety, or the environment. Client waives any claim against LJA for injury or loss arising from such conditions. Except as expressly provided herein, LJA will not be responsible for the adequacy of the health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. LJA will not be responsible for inspecting, observing, reporting, or correcting health or safety conditions or deficiencies of Client or others at Client's site. So as not to discourage LJA from voluntarily addressing health or safety issues while at Client's site, in the event LJA does address such issues by making observations, reports, suggestions, or otherwise, LJA will nevertheless have no liability or responsibility arising on account thereof. Client agrees to indemnify, hold harmless, and defend LJA to the fullest extent permitted by law against any and all claims arising out of such programs, activities, conditions, or deficiencies unless LJA is responsible for gross negligence with regard to its work.

### **Article 3: Changes; Delays; Excused Performance**

**3.1 Changes.** Unless this Agreement expressly provides otherwise, LJA's proposed compensation represents its best estimate of the costs, effort, and time it expects to expend in performing the services based on its reasonable assumption of the conditions and circumstances under which the services will be performed including, but not limited to, those stated in Section 3.2. As the services are performed, conditions may change or circumstances outside LJA's reasonable control (including changes of law or regulatory policy) may develop that would require LJA to expend additional costs, effort, or time to complete the services, in which case LJA will notify Client, and an equitable adjustment will be made to LJA's compensation. In the event conditions or circumstances require the services to be suspended or terminated, LJA will be compensated for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

**3.2 Assumptions.** Unless specified in writing, LJA's compensation is based on the assumption that: (a) there is no impact spoil or excavation of natural resources on or adjacent to the site that has not been disclosed to LJA by the client; (b) there is no contamination of soil or groundwater at the site by Oil or Hazardous Materials that has not been disclosed to LJA by Client, (c) LJA will not encounter any underground structures, utilities, boulders, rock, water, running sand, or other unanticipated conditions in the course of drilling or excavation; (d) tank installations will not require dewatering by LJA; and (e) if LJA's scope of services includes services related to petroleum facilities or storage tanks, groundwater will not cause tanks to float or require the use of Ballast. LJA will be compensated for any additional efforts expended or costs incurred in addressing such conditions.

**3.3 Force majeure.** LJA will not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of Client or its contractors, failure of Client or any government authority to timely review or to approve the services or to grant permits or approvals, or any other cause beyond LJA's reasonable control. In the event of such delay or failure, the time for performance will be extended by a period equal to the time lost plus a reasonable recovery period, and the compensation will be equitably adjusted to compensate for any additional costs LJA incurs due to any such delay.

**3.4 Disputes.** If any claim or dispute arises out of this Agreement or its performance, the parties agree to endeavor in good faith to resolve it equitably through negotiation or, if that fails, through nonbinding mediation under the rules of the American Arbitration Association, before having recourse to the courts. However, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitation, and LJA may pursue any property liens or other rights it may have

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to obtain security for the payment of its invoice.

#### **Article 4: Compensation**

**4.1 Rates.** Unless otherwise agreed in writing, LJA will be compensated for its services at its standard rates and will be reimbursed for costs and expenses (plus reasonable profit and overhead) incurred in its performance of the services.

**4.2 Invoices.** LJA may invoice Client on a monthly or other progress billing basis. Invoices are due and payable upon receipt by Client. On amounts not paid within 30 days of invoice date, Client will pay interest from invoice date until payment is received at the lesser of 1.5% per month or the maximum rate allowed by law. If Client disagrees with any portion of an invoice, it will notify LJA in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and will pay the portion not in dispute.

**4.3 Suspension, etc.** LJA may suspend or terminate the services at any time if payment is not received when due and will be entitled to compensation for the services previously performed and for costs reasonably incurred in connection with the suspension or termination.

**4.4 Collection.** Client will reimburse LJA for LJA's costs and expenses (including reasonable attorneys' and witnesses' fees) incurred for collection under this Agreement.

**4.5 Taxes, etc.** Except to the extent expressly agreed in writing, LJA's fees do not include any taxes, excises, fees, duties, or other government charges related to the goods or services provided under this Agreement, and Client will pay such amounts or reimburse LJA for any amounts it pays. If Client claims that any goods or services are subject to a tax exemption or direct payment permit, it will provide LJA with a valid exemption or permit certificate and indemnify, defend, and hold LJA harmless from any taxes, costs, and penalties arising out of the use or acceptance of same.

#### **Article 5: Insurance and Allocation of Risk**

##### **5.1 Insurance.**

LJA will maintain insurance coverage for Professional Liability, Commercial Liability, Auto, and Workers' Compensation in amounts in accordance with legal and business requirements. Certificates evidencing such coverage will be provided to Client upon request.

**5.2 Client indemnification.** Client agrees to indemnify and hold harmless LJA from and against any and all liabilities, demands, claims, fines, penalties, damages, forfeitures, and suits, together with reasonable attorneys' and witness' fees and other cost and expenses of defense and settlement, which LJA may incur, become responsible for, or pay out as a result of death or bodily injury or threat thereof to any person, destruction, or damage to any property, contamination of or adverse effect on natural resources or the environment, any violation of local, state or federal laws, regulations or orders, or any damages claimed by third parties to the extent arising in whole or in part out of Client's violation of law or breach of this Agreement or out of the negligence or willful misconduct of Client, its other contractors, agents, suppliers, or employees.

**5.3 LJA indemnification.** To the fullest extent permitted by law, LJA shall indemnify and hold harmless Client from and against loss, liability, and damages sustained by Client, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by LJA's the failure to adhere to the standard of care described herein

**5.4 Limitation of liability.** No employee or agent of LJA shall have individual liability to Client. LJA's aggregate liability for any and all claims arising out of this Agreement or out of any goods or services furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, tort, trespass, or any other theory of liability, will be limited to \$10,000 or the total compensation received by LJA from Client under this Agreement, whichever is the lesser. In no event will LJA be liable for special, indirect, incidental, or consequential damages, including commercial loss, loss of use, or lost profits, however caused, even if LJA has been advised of the possibility of such damages. **Any claim will be deemed waived unless made by Client in writing and received by LJA within one year after completion of the services with respect to which the claim is made.**

**5.5 Consequential Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING LOST REVENUES, PROFITS, DELAYS, OR OTHER ECONOMIC LOSS ARISING FROM ANY CAUSE

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INCLUDING BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER CAUSE WHATSOEVER, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY. REGARDLESS OF LEGAL THEORY, LJA SHALL BE LIABLE ONLY TO THE EXTENT THAT ANY DAMAGES SPECIFIED HEREIN ARE FOUND BY A FINAL COURT OF COMPETENT JURISDICTION TO HAVE BEEN THE SEVERAL LIABILITY OF LJA. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES THAT ARE INCONSISTENT WITH THIS PROVISION OF THE AGREEMENT ARE WAIVED.

**5.6 Employee injury.** Client agrees not to impede or to bring an action against LJA based on any claim or personal injury or death occurring in the course or scope of the injured or deceased person's employment with LJA and related to the services performed under this Agreement.

**5.7 Defense.** Any defense of LJA required to be provided by Client under this Agreement will be with counsel selected by LJA and reasonably acceptable to Client.

#### **Article 6: Hazardous Materials Provisions**

**6.1 Hazardous Materials.** Except to the extent expressly agreed in writing, LJA's services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal, or treatment of petroleum or petroleum products (collectively called "Oil") or of any hazardous, toxic, radioactive, or infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a site where LJA is to perform services or of contamination of the site by Oil or Hazardous Materials not previously disclosed to LJA in writing will entitle LJA to suspend its services immediately, subject to mutual agreement of terms and conditions applicable to any further services, or to terminate its services and to be paid for services previously performed. In no event will LJA be required or construed to take title, ownership, or responsibility for such Oil or Hazardous Materials.

**6.2 Manifests.** In the event that the scope of services includes the remediation of any Oil or Hazardous Materials, before LJA removes from a site any Oil or Hazardous Materials, Client will sign any required waste manifests in conformance with all DOT and other government regulations, listing Client as the generator of the waste. If someone other than Client is the generator of the waste, Client will arrange for such other person to sign such manifests. LJA will not directly or indirectly assume title to or own or be deemed to possess any materials handled or removed from any site, including Oil or Hazardous Materials. Nothing in this Agreement will be construed to make LJA a "generator" as defined in RCRA or any similar laws governing the treatment, storage, or disposal of waste. Except to the extent LJA's responsibilities expressly include identification of the waste, Client will provide waste material profiles, which accurately characterize the waste. If the services include transportation of Hazardous Materials or Oil, LJA may evaluate and recommend possible disposal sites for Client's use. However, under RCRA and CERCLA, the client, as generator, has ultimate responsibility for selection of the disposal site. Client acknowledges and agrees that it will evaluate and select the proper disposal site and be solely responsible therefore.

**6.3 Hazardous Materials indemnification.** Client acknowledges that LJA does not have any responsibility for preexisting Oil and Hazardous Materials at the site, any resultant contamination there from, or, except as expressly agreed in writing, for previous detection, monitoring, handling, storage, transportation, disposal, or treatment, that LJA's compensation is not commensurate with the unusually high risks associated with such materials, and that insurance is not reasonably available to protect against such risks. Therefore, for separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in addition to the indemnification provided in Section 5.2, Client agrees to indemnify, hold harmless, and defend LJA against all damages arising out of or related to Oil or Hazardous Materials located at or removed from the site, including damages such as the cost of response or remediation arising

out of application of common law or statutes such as CERCLA or other "Superfund" laws imposing strict liability.

#### **Article 7: Miscellaneous Provisions**

**7.1 Confidential information.** Although LJA generally will not disclose without Client's consent information provided by Client or developed by LJA in the course of its services and designated by Client as confidential (but not including information which is publicly available, is already in LJA's possession, or obtained from third parties), LJA will not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property, or welfare of human beings. LJA will advise Client (in advance, except in emergency) of any such disclosure.

**7.2 Notices.** Notices between the parties will be in writing and will be hand delivered or sent by certified mail or acknowledged telefax properly addressed to the appropriate party.

**7.3 Assignment, etc.** Neither the Client nor LJA will assign or transfer any rights or obligations under this Agreement, except that LJA may assign this Agreement to its affiliates and may use subcontractors in the performance of its services. Nothing contained in this Agreement will be construed to give any rights or benefits to anyone other than the Client and LJA, without the express written consent of both parties. The relationship between Client and LJA is that of independent contracting parties, and nothing in this agreement or the parties' conduct will be construed to create a relationship of agency, partnership, or joint venture.

**7.4 Governing Law, Venue, and Headings.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas without giving effect to any conflict or choice of law rules or principles under which the law of any other jurisdiction would apply. Each party hereby submits to the jurisdiction of the federal and state courts located in Harris County and agrees that such courts shall be exclusive forum and venue for resolving any legal suit, action or proceeding arising out of or relating to this Agreement. The headings in this Agreement are for convenience only and are not a part of the agreement between the parties.

**7.5 Survival.** All obligations arising prior to this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties will survive the completion of the services and the termination of this Agreement.

**7.6 Entire agreement.** This Agreement supersedes all prior agreements and, together with any work release document issued under this Agreement and signed by both parties, constitutes the entire agreement between the parties. Any amendments to this Agreement will be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order, or other document provided by Client modify or amend this Agreement, even if it is signed by LJA, unless LJA signs a written statement expressly indicating that such terms supersede the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings, which comprise this Agreement, the other writings will take precedence.