

REQUEST FOR PRICING
FOR
RESERVOIR & WET WELL CLEANING AND SLUDGE REMOVAL



Response Deadline

September 22, 2014

12:00 PM Central Standard Time (CST)

To:
Tami Nagar
Brushy Creek MUD
16318 Great Oaks Drive
Round Rock, TX 78681
OR
t.nagar@bcmud.org

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT

REQUEST FOR PRICING FOR RESERVOIR & WET WELL CLEANING & SLUDGE REMOVAL

1. INTRODUCTION

Brushy Creek Municipal Utility District (the “District”) is accepting pricing proposals from qualified vendors to clean and remove sludge and vegetation from a reservoir and wet well used for treated water located within the District.

2. SCOPE OF SERVICES

2.1. General

Staff is seeking pricing proposals from qualified vendors to provide the specified reservoir and wet well cleaning and sludge removal. Removal of sludge and vegetation means that the sludge and vegetation must be removed and hauled away from our facility. The vendor is to provide all labor, equipment and process machinery required for the proper cleaning and removal of sludge and vegetation of the reservoir and wet well used for treated water as described in the Specifications Section (2.3) of this pricing proposal.

2.2. Location of Reservoir

Brushy Creek Municipal Utility District
Water Treatment Facility
2300 Sam Bass Road
Round Rock, TX 78681

Attached for your information are property information pages with photos of the water treatment facility and a map identifying the location of the Water Treatment Facility.

2.3 Specifications

Sludge and Vegetation Removal on:

- One 8-million gallon reservoir
 - Approximately 300' x 250'
 - 1' sludge depth with approximately 3' dunes in a few areas and inches in other areas
- One 82,280 gallon wet well
 - Approximately 20' x 22' x 25'
 - 3' to 5' of sludge
- Any damages to reservoir or pond done by the vendor will be repaired by vendor with Brushy Creek MUD's approval.
- All equipment used for the proposed job must be properly disinfected for treated water application.
- The following standard insurance policies shall be required each in an amount not less than \$1,000,000.
 - General Liability Policy
 - Workers' Compensation Policy (Statutory)
 - Automobile Liability Policy
- Vendor shall provide a written report upon completion of services.

3. PROCEDURAL INSTRUCTIONS

3.1. Intent

This procurement is intended to result in the selection of a vendor that is most advantageous to the District, and that will result in the best and most economical reservoir and wet well cleaning service, process, and cost.

3.2. Items to be Provided with Pricing Submittals:

All pricing submittals must include the following items:

1. Pricing- Vendor shall specify the pricing for the services outlined in the Specifications section of this pricing proposal.
2. Work Plan/Timeline- Vendor shall submit a project work plan and timeline outlining the project plans and the timeline of each step; including target completion date.
3. Experience- Vendor must identify at least two examples of similar work to that which is requested that the vendor is currently performing or has performed within the past 24 months.
4. Conflict of Interest Statement – Vendor shall submit their responses to the Conflict of Interest Statement in Section 4.0.
5. Questionnaire and Information form– Vendor shall submit a completed Vendor Questionnaire form.
6. Insurance- Vendor shall specify the types and amounts of insurance that it holds.
7. References- Vendor must identify three references, including the name, title, and daytime telephone number of the references.

3.3 Questions

Questions regarding the procurement process or the specifications and nature of the service sought by the District must be in writing via e-mail to t.nagar@bcmud.org no later than **5:00 p.m.** (CST) September 5, 2014. The subject line shall read: ***“Questions for WTF Reservoir and Wet Well Cleaning”***. All questions asked will be compiled and answered in one email and will be sent via email by the end of the business day on September 8, 2014 to all vendors who receive the Request for Pricing Proposal.

3.4. Timeline –

Procurement package distributed to Vendors:

Monday, August 18, 2014

Site Visit to Water Treatment Facility

Friday, August 29, 2014

10:00 a.m.

Questions from Vendors due by:

5:00 p.m. Friday, September 5, 2014

Answers to Questions from Vendors distributed on:

Monday, September 8, 2014

Pricing due from Contractors:

12:00 p.m., Monday, September 22, 2014

Staff Recommendation to Board of Directors:

October 9, 2014

Estimated Implementation & Completion Date:

Service to be performed between October - December, 2014,

dates to be agreed upon by Vendor and BCMUD

3.5. Vendor Pricing Proposals

Pricing Proposals must conform to the requirements set forth herein. Pricing Proposals and required information must be submitted to the attention of:

Tami Nagar
Administrative Services Specialist
Brushy Creek Municipal Utility District
16318 Great Oaks Drive
Round Rock, TX 78681

OR

t.nagar@bcmud.org

by **12:00 PM (CST) on Monday, September 22, 2014**. Any pricing proposals received after the above date and time will not be considered.

All costs associated with the preparation and submissions of proposals are the sole responsibility of the Offeror. All proposals shall be signed and dated by an official authorized to bind the Offeror in legal matters. All submitted pricing proposals become the property of the District.

3.6. Selection Process

All proposals will be evaluated by District staff. Its recommendations will be submitted to the Management for consideration at a regularly scheduled Staff meeting following the proposal date deadline.

The criteria that will be used to make the selection include the following, not necessarily in the order listed:

- (a) Cost -- 40%
- (b) Proposed process and timeline – 25%
- (c) Qualifications – 25%
- (d) References – 10%

If the District has experience with your firm and you do not list the District as a reference, the District reserves the right to use past experience for this proposal.

3.7 Confidential Information.

The District is subject to the Texas Public Information Act. Any information submitted to the District by an Offeror shall be available to the public, unless it is clearly marked "CONFIDENTIAL". If another party requests access to information marked confidential, then the District shall ask the Offeror if the information may be released. If the release is agreed to, the District shall release the information. If the release is denied, the matter shall be referred to the Texas Attorney General's Office where the Offeror shall be responsible for substantiating its confidentiality. The Attorney General's office shall rule on the matter. Pricing information contained in proposals or contracts is not considered confidential under the PIA and will be disclosed without making a request to the Texas Attorney General.

3.8 Agreement

Attached to this request is the form of Agreement to be entered into regarding the Reservoir and Wet Well Cleaning. The Agreement is a part of this request. Upon selection of a Vendor by the Board of Directors, the Vendor must execute the agreement. Failure to do so may constitute cause for the District to enter into an agreement with another Vendor.

4.0 CONFLICT OF INTEREST

The Board of Directors of Brushy Creek Municipal Utility District (the “District”), in compliance with Section 49.199 of the Texas Water Code, has adopted a Code of Ethics Policy. In accordance with this policy, please disclose the following information:

1. Whether or not any of the Board of Directors or Management Staff listed below has a substantial interest in the Contractor or its affiliates.
2. Whether or not any of the Board of Directors or Management Staff listed below has a direct or indirect contractual relationship with the Offeror or its affiliates.

2014
Board of Directors
Brushy Creek Municipal Utility District

- Rebecca Tullos, Board President
- Russ Shermer, Board Vice President
- Jeffrey D. Goldstein, Secretary
- Donna B. Parker, Assistant Secretary/Treasurer
- Shean Dalton, Treasurer

District Staff

- Mike Petter, General Manager
- David Gaines, Chief Administrative Officer
- Joey Miller, Utilities Coordinator
- Bill Carr, Water Treatment Facility

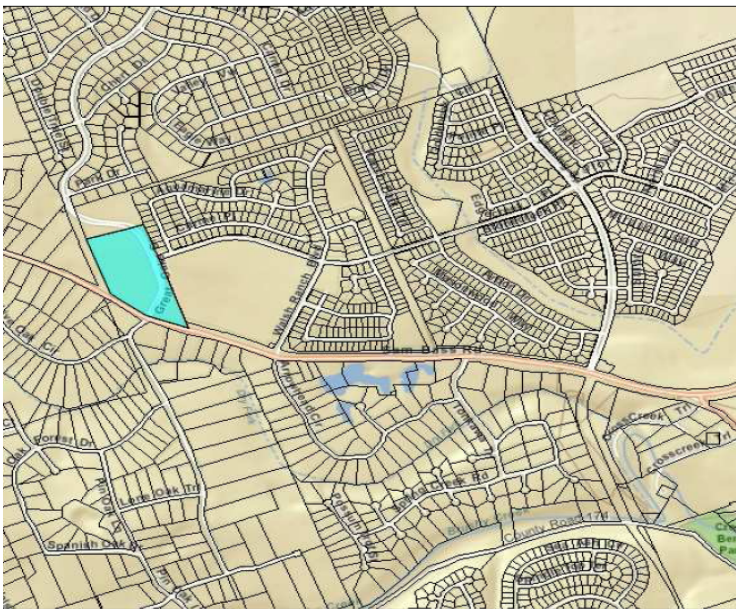


Brushy Creek MUD Property Inventory

ADDRESS	2300 Sam Bass Road Round Rock, TX 78681
WCAD ID	R451319
USE	Water Treatment Facility
MAP ID	54

Amenities/Comments:

- 16.98 acres
- Raw water storage ponds
- Water treatment plant and offices
- Clear well storage tanks
- Recycled water storage pond
- High service pump station
- Surface water transmission line termination
- Ground water transmission line termination
- North and south distribution mains
- LED sign
- Large District identity sign and water feature
- RPZ for median landscaping from Sam Bass to Carmel





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WCAD ID	R451319	MAP ID	54
USE	Water Treatment Facility	Additional Photos	





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Exhibit B

Questionnaire and Information Form

OFFEROR QUESTIONNAIRE AND INFORMATION FORM

Offeror MUST complete this form in its entirety. If a question is not applicable, Offeror should state "not applicable".

BUSINESS AND CONTACT INFORMATION

Business Name: _____ Federal Tax ID # _____

Address: _____ City/State/Zip: _____

Contact Name: _____ Phone #: _____ Fax #: _____

E-Mail: _____ Web Site: _____

Number of Years been in Business: _____

Type of Business Entity: Corporation LLC LP LLP Other _____

In What State & Year Did Business Organize in Your Current Structure: _____

Full Legal Name of Parent or Holding Company, if any: _____

(Note: if there are several tiers of ownership, attach a corporate organizational chart)

Services Provided by Business: _____

CONTRACT INFORMATION/PERFORMANCE

In the past three (3) years, has Business:

- (a) Been engaged in any litigation? Yes No If yes, attach explanation.
- (b) Completed all contracts it was awarded? Yes No If no, attach details.
- (c) Been awarded a bonus for early completion of work? Yes No If yes, attach details.
- (d) Defaulted on a contract? Yes No If yes, attach details.
- (e) Been assessed liquidated damages? Yes No If yes, attach details.

The undersigned Offeror declares: (a) that it has reviewed and agrees to the Terms and Conditions, Scope of Work, and all other documents herein; (b) that through its authorized personnel it has personally examined the location of the proposed work and has determined the amount and character of the proposed work and the supervision, labor, tools, material as identified, and equipment, necessary to complete the same in compliance with the specifications and contract documents (if applicable); and (c) that Offeror has no conflict of interest, as defined in the RFP.

SIGNATURE: _____ **TITLE:** _____

PRINTED NAME: _____ **DATE:** _____

AGREEMENT FOR RESERVOIR AND WET WELL CLEANING AND REMOVAL OF SLUDGE AND VEGETATION

This Agreement for Reservoir and Wet Well Cleaning and Removal of Sludge and Vegetation (“Agreement”) is entered into by and between the Brushy Creek Municipal Utility District, a Texas conservation and reclamation district created and operating in accordance with Chapters 49 and 54 of the Texas Water Code, as amended (“BCMUD”), and _____, a Texas _____ (“Contractor”). Together, BCMUD and Contractor are referred to herein as the “Parties.”

Recitals

WHEREAS, BCMUD seeks to engage Contractor to clean, and remove sludge from, the reservoir and wet well generally located at BCMUD’s water treatment facility at 2300 Great Oaks Drive, Round Rock, Texas (the “Property”);

WHEREAS, Contractor desires to provide such services on behalf of the District in accordance with the terms and conditions set forth in this Agreement;

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, it is agreed as follows:

1. **Scope of Work.**

- a. **The Work.** Contractor hereby contracts and agrees to clean, and remove sludge and vegetation from, the reservoir and wet well located at the Property in accordance with certain plans and specifications (the “Plans”) that have been previously furnished to Contractor, and in accordance with all applicable regulatory requirements (“the Work”). Said Plans shall be signed and dated by the Parties and shall constitute the final Plans under which the Work will be constructed, and are hereby incorporated into this Agreement. In the event of any conflict between the terms and conditions of this Agreement, the Plans or any bidding documents, the terms and conditions of this Agreement shall control. The Work shall be undertaken by Contractor so as to not disrupt operation of BCMUD’s water treatment facility. Contractor shall ensure that no property of BCMUD is damaged. Without limitation, Contractor shall ensure that the integrity of the pond liners in the reservoirs at the Property are maintained at all times, and not otherwise damaged.
- b. **Ownership and Disposal of Waste Materials.** Upon cleaning and removal of the sludge and vegetation from the Property, the Contractor shall own all such materials, and shall be solely responsible for disposal of same in accordance with all applicable regulatory requirements.
- c. **Changes in the Work.** BCMUD, without invalidating this Agreement, may order changes in the Work, consisting of additions, deletions or other revisions. Such changes in the work shall be authorized by written change order signed by BCMUD’s authorized representative and Contractor (“Change Order”). The cost or credit to BCMUD from a change in the Work, together with any revisions to the completion date, shall be determined by mutual agreement between BCMUD and Contractor. Additionally, BCMUD has the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Completion Date and not inconsistent with the intent of this Agreement (“Construction Change Directive”). Such changes shall be effected by written Construction Change Directive and shall be binding on BCMUD and Contractor unless Contractor timely delivers a written objection to BCMUD reasonably disclosing the basis for its objection, no later than three (3) business days after its receipt of the Construction Change Directive. Contractor shall carry out such written Change Orders and Construction Change Directives promptly. No change in the Work, the Contract Sum, the Completion Date, or any other obligations of the Contractor under the Agreement shall be authorized and enforceable except pursuant to a duly executed Change Order, a binding Construction Change Directive, or a Modification to the Agreement.

2. **Time of Completion.**

- a. **Completion Time.** The Contractor shall achieve Substantial Completion of the Work within ten days after the date of commencement. The Contractor shall achieve Final Completion of the Work, as that term is defined herein, within twenty five (25) days after the date of Substantial Completion. The commencement date shall be defined as the date of commencement of work, as set forth in a “Notice to Proceed” to be issued by BCMUD to Contractor after execution of this Agreement and the Plans by the Parties.
- b. **Substantial Completion.** Substantial Completion of the Work is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Plans so that BCMUD can utilize the Work for its intended use.

- c. **Final Completion.** Final Completion of the Work (sometimes referred to as “Completion of the Work”) means the actual completion of the Work, including any extras or change orders reasonably required or contemplated under this Agreement, other than warranty work or replacement or repair of the Work performed under the Contract.
- d. **Time of Performance.** Time is of the essence of this Agreement and with regard to Contractor’s performance of the Work. Contractor shall commence and proceed with its performance of the Work with reasonable diligence. BCMUD shall not dictate or determine the schedule of the working hours of Contractor; provided, however, that BCMUD may restrict the times during which Contractor accesses and performs Work on the Property and any portions thereof to normal working hours and days, consistent with written holiday schedules and policies of BCMUD which will be furnished to Contractor upon request.
- e. **Extensions of Time and Limitations of Delay Damages.** If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes or unusual delays in deliveries (to the extent not avoidable or caused by the Contractor), fire or other unavoidable casualties, abnormal adverse weather conditions not reasonably anticipated, or any other causes that Contractor could not reasonably avoid, then the date required for Completion shall be extended by Change Order for such reasonable time. In the event that, as a result of all such delays, other than those caused by BCMUD’s intentional interference, the required date of Completion is extended for a period beyond thirty (30) days from the required date of Completion, if any, the fixed or maximum amount of compensation, if any, shall be equitably adjusted to reflect the actual, direct, and reasonable costs incurred by the Contractor as a result of such excess delay. An extension of time and the recovery expressly provided herein shall be the Contractor’s sole remedy for any delay in the Contractor’s commencement or progress of the Work, unless the delay shall have been caused by acts constituting intentional interference by BCMUD, and then, only to the extent that such acts continue after the Contractor has provided written notice to BCMUD of such interference. BCMUD’s reasonable exercise of any of its rights or remedies under this Agreement, regardless of the extent or frequency, shall not under any circumstances be construed as intentional interference with the Contractor’s performance of the Work.

3. Performance by Contractor.

- a. **Contractor’s General Obligations.** Contractor agrees to perform the Work diligently, using the Contractor’s best skill and attention, and in compliance with the highest applicable industry standards.
- b. **Review of Field Conditions by Contractor.** Contractor agrees and acknowledges that it has carefully examined the Property, has adequately investigated the nature and conditions of the Property, has familiarized itself with conditions affecting the difficulty of the Work, and has agreed to the Work based on its own examination, investigation, and evaluation, and not in reliance upon any opinions or representations of BCMUD or any other party.
- c. **Labor and Materials.** Unless otherwise agreed to in writing by BCMUD, Contractor shall furnish at its own cost and expense all services, labor, materials, equipment, tools, transportation, facilities, and all other things necessary for the proper execution and completion of the Work.
- d. **Supervision and Construction Procedures; Safety.** Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Contractor shall be responsible to BCMUD for acts and omissions of Contractor’s employees, subcontractors and their agents and employees, and any other persons or entities performing portions of the Work for or on behalf of Contractor or any of its subcontractors. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees and other persons present on the Property or performing the Work, (b) the materials and equipment used in the performance of the Work, and (c) other real and personal property at the site or adjacent thereto.
- e. **Compliance with Laws.** Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to the performance of the Work, including those bearing on safety of persons and property and their protection from damage, injury or loss. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, a subcontractor, a sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable for and for which Contractor is responsible hereunder, except for damage or loss attributable to acts or omissions of BCMUD and not attributable to the fault or negligence of Contractor.
- f. **Payment to Subcontractors.** Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from BCMUD, out of the amount paid to Contractor on account of such subcontractor’s or supplier’s portion of the Work, the amount to which such subcontractor or supplier is entitled, reflecting percentages actually retained from payments to Contractor on account of such subcontractor’s or supplier’s portion of the Work.

Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in similar manner. BCMUD shall have no obligation to pay or see to the payment of money to a subcontractor or supplier except as may otherwise be required by law.

- g. **Warranties of the Work; Correction of Defective Work.** Contractor warrants to BCMUD that materials and equipment furnished in the performance of the Work will be of good quality and new unless otherwise required or permitted by BCMUD, that the performance of the Work will be free from defects not inherent in the quality required or permitted and that the performance of the Work will comply with applicable laws and regulations. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranties shall commence on the Completion Date. Contractor shall promptly correct any Work determined by BCMUD to be defective or to fail to conform to the requirements of this Agreement, whether discovered before or after the Completion Date. Costs of correcting such defective or nonconforming Work shall be at Contractor's expense. In addition to the foregoing, if, within one year after the date for commencement of warranties established herein, any of the Work is deemed by BCMUD not to be in accordance with the requirements of this Agreement; Contractor shall correct it promptly after receipt of written notice from BCMUD to do so. If Contractor fails to correct defective or non-conforming Work within a reasonable time, BCMUD may correct such defective or non-conforming Work and may deduct the reasonable cost thereof from any payment then or thereafter due contractor. Additionally, Contractor agrees to assign to BCMUD, as a condition of final payment hereunder, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.
 - h. **Licenses, Permits, and Fees.** Contractor shall be responsible for obtaining any and all licenses and any other legal, statutory and regulatory qualifications, permits and approvals for Contractor and Agents, so that Contractor may perform the Work in full and complete compliance with the legal, statutory and regulatory requirements of Texas and each other applicable jurisdiction. Contractor shall comply with all federal, state and local laws, ordinances, rules and regulations, which are now or may become applicable to the Services. Unless the Parties agree, BCMUD shall pay the fee for any required building permit and any other governmental fee required for the proper execution and completion of the Work, including fees for inspections.
 - i. **Cleaning Up.** Contractor shall keep the Property site and surrounding area free from waste materials, packaging, and other debris or rubbish accumulated in connection with the Construction Work by collecting and removing such waste materials, packaging, and other debris or rubbish from the Property site or placing it in locations designated by BCMUD on a daily basis. At completion of the Construction Work, Contractor shall remove from and about the job site and surrounding area waste materials, rubbish, Contractor's tools, construction equipment, machinery, and surplus material. Failure to comply with the clean up requirements set forth in this Contract shall constitute a breach of this Agreement and violation of the Districts rules.
 - j. **Contractor's Representations and Additional Warranties.** Contractor represents and warrants to BCMUD that, with respect to Contractor and each of the Agents:
 - i. Contractor and Agents are authorized and licensed, if applicable, to perform the Work, or their respective portion thereof, in Texas and any other applicable jurisdiction;
 - ii. Contractor has the full right, power, legal capacity and authority to enter into, execute and deliver this Agreement and to perform the obligations to be performed by Contractor or Agents hereunder;
 - iii. Contractor and Agents are not parties to or bound by any agreement or contract or subject to any restrictions that would prevent the Contractor or Agents from entering into and performing the obligations under this Agreement.
 - k. **Responsibility for Damages.** Contractor shall be responsible for all damages caused to the Property. By way of example and without limitation, Contractor shall be responsible for the costs of repairs and/or replacement of any facilities or equipment damaged by Contractor in connection with performing the Work. Payment for such costs shall be made by Contractor in full to BCMUD within thirty (30) days of receipt of a written invoice for payment.
4. **Payment.** Payment for the Work shall be made to Contractor by BCMUD as provided herein below.
- a. **Total Compensation.** Contractor is entitled to receive compensation for Work performed hereunder to BCMUD's satisfaction in the amount of \$_____ (the "Contract Sum").
 - b. **Invoice for Payment.** Contractor shall submit its application for payment of the Contract Sum upon Final Completion of the Work. BCMUD shall pay Contractor for said work within thirty (30) calendar days after receipt of the properly submitted application for payment. As a condition to payment, Contractor will be required to furnish to BCMUD (a) a sworn representation and warranty by Contractor that it has properly performed and completed all Work, (b) a release and waiver of Contractor's statutory and constitutional lien rights (conditioned only upon Contractor's actual receipt of the final payment) in connection with the Work performed by Contractor, (c) a sworn representation and warranty by Contractor (a "bills paid affidavit") that it has fully paid all known bills

or obligations for Work, and (d) upon BCMUD's timely request, a bills paid affidavit and release of lien from each subcontractor and supplier who furnished labor and/or materials to the construction of improvements hereunder.

- c. **BCMUDs Right to Withhold Payment.** BCMUD shall be entitled to withhold payment from Contractor to the extent reasonably necessary to protect BCMUD as a result of (a) defective Work not remedied, (b) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to BCMUD is provided by the Contractor, (c) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (d) damage to BCMUD's property, facilities or equipment or to property of another contractor, or (e) the persistent failure to carry out the Work in accordance with the requirements set forth in the Agreement.

5. **Termination.** This Agreement will continue in effect unless terminated by either Party as provided herein below.

- a. **Termination of the Agreement by BCMUD.** BCMUD may terminate the Agreement at any time for convenience (without cause) or for cause (due to Contractor's material breach). BCMUD may terminate the Agreement immediately following delivery of a written notice of termination to Contractor. If termination is for cause, at BCMUDs sole option, Contractor may be given time to cure such breach as specified in the notice, after which the Agreement will terminate immediately if the breach is not cured. Upon receipt of BCMUDs notice of termination, Contractor shall stop all work immediately but, unless expressly directed in writing by BCMUD to the contrary, shall take such actions reasonably necessary for the protection and preservation of the Work. In the event of termination for cause, BCMUD may take possession of the Property Site and of all materials, equipment, tools and construction equipment and machinery thereon owned by Contractor, require Contractor to assign its subcontracts to BCMUD, and may finish the Work by whatever reasonable method BCMUD may deem expedient. Contractor shall not be entitled to any further payment except to the extent of any amount by which the Work completed or installed by Contractor prior to termination and not previously paid for by BCMUD exceeds the amount due by Contractor to BCMUD, including all damages which BCMUD is entitled to recover against Contractor for breach of the Agreement. In the event that termination is for convenience, Contractor shall be paid for (a) the Work properly executed in accordance with the Agreement prior to the effective date of termination (to the extent not previously paid to or for the benefit of Contractor) and (b) the actual, reasonable costs necessarily incurred by Contractor to protect the Work following the termination as required herein. BCMUD shall not be responsible for damages or recoveries arising from the termination of the Agreement except as expressly provided herein.
- b. **Termination of the Agreement by Contractor.** Contractor may terminate the Agreement only for cause (due to BCMUDs material breach). Contractor may deliver a written notice of termination of the Agreement to BCMUD setting forth in reasonable detail the basis for such termination and providing BCMUD with a period of not less than ten (10) calendar days to cure such default. If BCMUD fails to cure the default within the time period stated in the initial notice of termination letter, Contractor may terminate the Agreement no less than five (5) calendar days following delivery of a final notice of termination letter to BCMUD. Contractor access to the Property Site shall cease upon the effective termination of the Agreement; however, prior to leaving the Property Site, Contractor shall take such actions reasonably necessary for the protection and preservation of the Work. In the event of Contractor's termination for cause, Contractor shall be entitled to recover (a) payment for the Work properly executed in accordance with the Agreement prior to the effective date of termination (to the extent not previously paid to or for the benefit of Contractor) and (b) the actual, reasonable costs necessarily incurred by Contractor to protect the Work following the termination as required herein, demobilize Contractor's workforce, and cancel Contractor's subcontracts. BCMUD shall not be responsible for damages or recoveries arising from the termination of the Agreement except as expressly provided herein.
- c. **Survival of Obligations following Termination.** Except as may be expressly agreed in writing by the Parties, all warranty obligations or other obligations of the Contractor to complete or repair defective Work arising under the Agreement shall survive any termination of such Agreement (other than Contractor's termination of the Agreement for cause). Further, in the event of termination for any reason and by any Party, Contractor agrees to comply with BCMUD directives regarding the return of all materials and equipment purchased by BCMUD. Contractor shall provide reasonable cooperation to BCMUD in effecting a smooth and orderly transition of all matters that were being handled by Contractor prior to termination. All records, including all documents, articles or items that may be supplied by BCMUD to Contractor or Agents, shall be and remain the sole and exclusive property of BCMUD and shall be surrendered to it upon demand (and, in any event, within five (5) days of termination). Upon the termination of the Agreement (or this Agreement) or upon the demand of BCMUD prior to termination, Contractor shall immediately deliver to BCMUD at such place or places as may be designated by it, any and all other property of BCMUD in its possession or under its control.

6. **Relationship of Parties.** The Parties understand and agree that Contractor shall provide the Services to BCMUD as a non-exclusive independent contractor, with all of its attendant rights and liabilities, and not as an agent or employee of BCMUD. Nothing in the Agreement or otherwise is intended or will be construed to create a joint venture, partnership, employment or similar relationship. Neither Contractor nor any of Contractor's employees, representatives or agents will be deemed to be employed by BCMUD or be eligible for any employee benefits from BCMUD and, except as may be required by lawful authority, BCMUD will make no deductions or payment for taxes, insurance, bonds or other sums. The name "BCMUD" may not be used by Contractor in any manner tending to give the impression that any authority has been delegated to Contractor or Agents other than that as an independent contractor. Neither Party shall have the authority to bind the other to any contract or agreement whatsoever. Nothing in the Agreement shall be interpreted as authorizing Contractor or Agents to act for BCMUD in the collection of money, extension of credit, acceptance of service of process, or to make any commitment that would bind BCMUD to any contract or agreement. Contractor has sole authority and responsibility to hire, fire and otherwise controls its employees and neither Contractor nor its employees are employees of BCMUD. Contractor acknowledges and agrees that nothing herein shall entitle or render Contractor eligible to participate in any benefits or privileges provided by BCMUD for its employees.
7. **Taxes.** Contractor agrees to timely withhold and pay all taxes and fees assessed on Contractor or required of Contractor to pay or withhold to, for, or with respect to Agents or any other person in connection with or incident to the performance of the Agreement, by the United States, any state and any governmental agency, as well as unemployment compensation insurance, social security, or any other taxes upon Contractor and Agents. Contractor agrees to require the same agreements and be liable for any breach of such agreements by any of the Agents. Contractor acknowledges that Contractor is responsible for payment of all income taxes, including estimated quarterly payments. Contractor shall pay all sales tax for taxable materials and labor or services (to the extent such labor or services are taxable) purchased by or furnished to Contractor by its subcontractors and suppliers. All subcontracts shall be separated so that no sales tax is incurred, charged or paid on non-taxable labor or services.
8. **Insurance.** As an independent contractor, Contractor acknowledges that it is solely responsible for providing its own insurance coverage, including, but not limited to, unemployment compensation and workers' compensation to its employees, and that such coverage shall be maintained by Contractor in the statutory limits which are presently in effect or which may be in effect in each of the applicable jurisdictions where Contractor will perform the Work. Without limiting the foregoing, Contractor shall, at Contractor's sole cost and expense, maintain the following insurance with insurers satisfactory to BCMUD and with limits no less than those states as follows:
 - a. Statutory Workers Compensation Insurance (statutory coverage) and Employer's Liability insurance with limits of not less than \$500,000 per occurrence. Such policy shall be endorsed to name BCMUD as "alternate employer" to prevent Contractor's workers' compensation carrier from denying coverage based on a claim of employment status. Such alternate employer endorsement shall not imply an employer/employee relationship the Parties. Contractor hereby waives all claims and causes of action against BCMUD for any and all injuries suffered by Agents;
 - b. Commercial General Liability insurance providing coverage against liability arising out of or based on any act, error or omission of Contractor or any of the Agents under this Agreement, with limits of not less than \$500,00 for each occurrence of bodily injury and property damage liability, \$1,000,000 general aggregate and products/completed operations coverage; and
 - c. Business Automobile Liability insurance with a limit of not less than \$500,000 per occurrence for bodily injury and property damage liability written to cover all owned, hired and non-owned automobiles arising out of the use thereof by or on behalf of the Contractor and Agents.

All such insurance shall be primary. All policies shall include a waiver of subrogation in favor of BCMUD, and all policies shall require at least thirty (30) days prior written notice to BCMUD of any intention to cancel, terminate or reduce coverage provided thereby. BCMUD shall be named as additional insureds on the commercial general liability and business automobile liability policies. Prior to the commencement of the Work, Contractor shall furnish to BCMUD a Certificate of Insurance, endorsements, or evidence of coverage signed by authorized representatives of the companies providing the coverage required under the terms of the Agreement. Upon request and without expense to BCMUD, Contractor shall furnish BCMUD with certified copies of said insurance policies signed by authorized representatives of the insurance companies. Failure to secure the insurance coverages, or the failure to comply fully with any of the insurance provisions of the Agreement as may be necessary to carry out the terms and provisions of the Agreement shall be deemed to be a material breach of the Agreement. The lack of insurance coverage does not reduce or limit Contractor's responsibility to indemnify BCMUD as set forth in the Agreement. Any and all deductibles and premiums associated with the above-described insurance policies shall be assumed by, for the account of, and at the sole risk of the Contractor. BCMUD

reserves the right to review the insurance coverage requirements of the Agreement. Contractor shall require similar insurance levels from its sub-contractors and other Agents.

9. Indemnity.

- a. **General Indemnification.** Contractor agrees to indemnify, defend and hold harmless BCMUD or any of BCMUDs employees, directors, officers, managers, members, agents, affiliates or representatives (collectively “BCMUD Representatives”) from and against any and all claims, liability, demands, actions, judgments, settlements, penalties, losses, costs, damages, fines or expenses of any kind, including reasonable attorney’s fees and court costs, attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) incurred by BCMUD or BCMUD Representatives which arise out of: (1) any acts, errors, omissions, or negligence of Contractor or Agents, or other individuals for whom Contractor is liable; (2) the Work performed hereunder; (3) the breach of or the performance of the Agreement by Contractor; or (4) all claims or causes of action brought against BCMUD or BCMUD Representatives by any third party or by Agents arising from Contractor’s employment of, or the acts or omissions of any of the Agents, except to the extent that a claim, damage, loss or expense is caused by the gross negligence or intentional acts of BCMUD or BCMUD Representatives. **THE FOREGOING INDEMNITY IS INTENDED TO COVER ANY NEGLIGENCE OF BCMUD OR THE BCMUD REPRESENTATIVES OTHER THAN GROSS NEGLIGENCE AND WILLFUL OR KNOWING ACTS.** This provision relating to indemnification shall survive the termination of this Agreement and may be enforced by BCMUD, or its successors or assigns.
- b. **Indemnification for Lien Claims.** Contractor shall indemnify BCMUD and BCMUD Representatives against all lien claims and bond claims, including expenses, costs of bonds to remove liens, and attorneys’ fees related to such claims, which may be asserted by mechanics, material men, suppliers, subcontractors or equipment lessors of Contractor or its Agents or anyone claiming under any of them. In the event liens are placed on the Work or the Property, Contractor shall immediately obtain a bond to remove such lien, or provide such other alternative security as BCMUD deems appropriate. If bond claims or lien claims are filed by any subcontractors, material men, suppliers, mechanics or equipment lessors of Contractor or its Agents, BCMUD shall have the right to suspend payments to Contractor and either hold money due Contractor or, if satisfactory security is not timely furnished, make payments to said claimants and charge the payments against Contractor.
- c. **Indemnification for Defense Costs.** Contractor’s obligation to indemnify BCMUD and BCMUD Representatives against any attorneys’ fees or other costs or expenses incurred by BCMUD and BCMUD Representatives in connection with the defense of any claims or causes of action within the scope of this Section 9 shall be construed as a separate item of indemnification which shall be an absolute obligation of Contractor even if such claims or causes of action are invalid or groundless.

10. **Dispute Resolution/Mediation.** The Parties agree to meet and confer in good faith on all matters of common interest or all controversies, claims, or disputes which may arise under the Agreement. The Parties agree that all disputes arising out of or relating to the Agreement (other than those relating to use or disclosure of Confidential Information), which cannot be resolved through informal conference will be submitted to mediation prior to exercising any judicial remedies.

11. **Notices.** All notices and correspondence pertaining to the Agreement shall be in writing delivered by hand or certified mail, return receipt requested and postage prepaid, or by nationally recognized courier service, or by facsimile transmission, and shall be addressed as follows, unless a Party notifies the other in accordance with this Section 12 of a change of address or other information provided herein:

If to BCMUD:

Brushy Creek Municipal Utility District
16318 Great Oaks Drive
Round Rock, TX 78681
Attn: Mike Petter, General Manager
Telephone: (512) 255-7871
Fax: (512) 255-0332

If to the Contractor:

Notice shall be effective only upon receipt by the party being served, except notice shall be deemed delivered and received seventy-two (72) hours after posting by the United States Post Office, by the method described above. Confirmation of receipt of any facsimile sent must be received in order to presume that the transmission was received.

12. General Provisions.

- a. **Assignment.** This Agreement and Contractor’s obligation and duties to BCMUD hereunder are not transferable or assignable by Contractor. This Agreement may be assigned by BCMUD at any time, provided that, unless the Parties otherwise agree in writing, BCMUD shall remain financially responsible for any payments required to be made hereunder to Contractor. BCMUD will provide Contractor with notice of such assignment, if any.
- b. **Waiver.** Failure of BCMUD at any time to enforce any provisions of this Agreement shall not be construed to be a waiver or relinquishment of BCMUDs rights granted hereunder or of the future performance of such provision, and the obligations of Contractor with respect thereto shall continue in full force and effect. No provision of this Agreement will be deemed waived and no breach excused unless such waiver or consent will be in writing and signed by the Party giving the waiver or consent.
- c. **Choice of Law.** This Agreement is made under, and will be enforced and construed in accordance with the laws of the State of Texas. All claims, disputes or causes of action arising hereunder will be resolved pursuant to Section 10 of this Agreement. Should, for any reason whatsoever, any claim, dispute, or cause of action fail to be resolved pursuant to Section 10 of this Agreement, such claim, dispute, or cause of action shall be filed in the court of competent jurisdiction in Williamson County, Texas, which venue shall be exclusive.
- d. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute one of the same Agreements. Faxed signatures and countersignatures shall be deemed originals for all purposes and proper evidence of assent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date signed by the last signatory hereto.

CONTRACTOR:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

OWNER:

Brushy Creek Municipal Utility District

Signature: _____

Printed Name: _____

Title: _____

Date: _____

District Secretary: _____