

REQUEST FOR SERVICE
FOR
DISTRICT TREE REMOVAL SERVICE



Response Deadline

May 20, 2016

12:00 PM Central Standard Time (CST)

To:
Nora Dinsmore
Brushy Creek MUD

16318 Great Oaks Drive
Round Rock, TX 78681

n.dinsmore@bcmud.org

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT

REQUEST FOR SERVICES FOR TREE REMOVAL PROJECT

1. INTRODUCTION

Brushy Creek Municipal Utility District (the "District") is accepting pricing proposals from qualified vendors to provide tree removal services at various sites located within the District's parks, greenbelts and other properties.

2. SCOPE OF SERVICES

2.1. General

The District's Board of Directors has approved for Staff to seek pricing proposals from qualified vendors to provide tree removal services at various sites located within the District. The contractor is to provide all labor, equipment and process machinery required for the proper tree removal services as listed in accordance with the attached specifications.

Vendors who intend to provide pricing for this project MUST attend a mandatory walk-through of the various sites to be serviced with the District's Parks and Facilities Maintenance Coordinator, Rachel Hagan, 512-255-7871, ext. 405, or r.hagan@bcmud.org on Thursday, May 12, 2016 at 10am. Vendors attending walk-through will meet at 16318 Great Oaks Drive.

Conditions Qualifying Vendors

Each proposer shall submit with their proposal, supporting data regarding the qualifications of the contractor in order to determine whether the contractor is qualified and responsible:

- i. Satisfactory evidence that the contractor, or in the case of a joint venture, the principal partner, has been in existence as a going concern in tree trimming, removal and haul off for three years or longer.
- ii. Evidence that the contractor is licensed or permitted to do business in the State of Texas, County of Williamson.
- iii. Conformance with ANSI A300 standards for tree care operations and ANSI Z133 Safety Standards.

Observance of Laws

The contractor at all times shall observe and comply with all Federal, State, County and Local laws, bylaws, ordinances and regulations, including traffic laws in any manner affecting the conduct of the work.

Furthermore, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

Insurance Information

The selected contractor shall at all times during the term of the Agreement maintain in full force and effect the insurance types and amounts set forth in the signed Agreement. The selected

contractor shall furnish evidence satisfactory to the District to the effect that such insurance has been procured and is in force, and the certificates shall name the District as an additional insured.

Instructions to Proposer

This procurement is intended to result in the selection of a contractor that is most advantageous to the District, and that will result in the best and most economical tree removal services for the various sites located within the District. Vendor must describe in detail how he will meet the requirements of this service request and may provide additional related information with his proposal. The proposal should be presented in a format that corresponds to, and references, the sections outlined in the Section 3.1 below. Responses to each section and subsection should be labeled to indicate which item is being addressed. Proposals should be straightforward and concise. Emphasis should be concentrated on conforming to the services request instructions, responding to the service requirements, and on providing a complete and clear description of the offer.

The District is not liable for any costs incurred by Vendors before entering into a formal agreement. Costs of developing the proposals and any other such expenses incurred by the Vendor in responding to the service request are entirely the responsibility of the Vendor and shall not be reimbursed in any manner by the District.

1. Acceptance Period: Unless otherwise specified herein, proposals are firm for a period of 90-days.
2. Authorized Signatures: Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the work. The name, address and telephone number of the firm represented must also be specified.
3. Award of Proposal: Award will be made to the Proposer offering the most advantageous proposal after consideration of all Evaluation Criteria set forth within. The criteria are not listed in any order of preferences. The District will evaluate all proposals received in accordance with the Evaluation Criteria listed in Section 3.6. The District shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the District after all factors have been evaluated.
4. Cancellation of Solicitation: The District may cancel this solicitation at any time.
5. Compliance with Laws: All proposals shall comply with current federal, state, and other laws relative thereto.
6. Documents to be returned with the Proposal: Failure to completely execute and submit required documents before the Submittal Deadline may render a proposal non-responsive. The documents that must be returned by the Submittal Deadline are listed in *Section 3.1 Items to be Provided with Proposal Submittals.*

2.2 Specifications (Exhibit A)

Attached are the specifications regarding the tree removal services desired by the District.

Vendors who intend to provide pricing for this project MUST attend a walk-through of the various sites to be serviced with Rachel Hagan, 512-255-7871, ext. 405, or r.hagan@bcmud.org on Thursday, May 12, 2016 at 10am.

Vendors shall be responsible for providing the equipment and installation that meets or exceeds all of the requirements as set forth in the specifications.

3. PROCEDURAL INSTRUCTIONS

3.1. Items to be Provided with Pricing Submittals:

All pricing submittals must include the following items:

1. Pricing- Vendor shall specify the pricing for the removal of trees (see exhibit A), located within the District, to include the materials and equipment and labor according to attached specifications with materials and labor broken down.
2. Safety Protocols – Vendor shall follow the ANSI Z133 Safety Standards and indicate what general safety protocols are followed by Vendor.
3. 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. Vendor must provide the project Supervisor’s contact information.
4. Tree Removal Area Map – (Exhibit B).
5. Questionnaire and Information Form – (Exhibit C).
6. 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.
7. Insurance- Vendor shall specify the types and amounts of insurance that it holds.
8. References- Vendor must identify three references, including the name, title, and daytime telephone number of the references.
9. Conflict of Interest Statement –Vendor shall submit their responses to the Conflict of Interest Statement in Section 5.0.

3.3 Questions

Questions regarding the tree removal services sought by the District **must be in writing via e-mail** to n.dinsmore@bcmud.org no later than **12:00 PM (CST) May 16, 2016**. The subject line shall read: ***“Questions for District Tree Removal Services.”*** Questions will be compiled and all questions and answers will be sent to all vendors by 5:00 p.m. on May 18, 2016.

3.4. Timeline –

Request for Services package distributed to Vendors:

May 6, 2016

Mandatory Site Visit to Various Locations to be serviced

May 12, 2016 at 10am at 16318 Great Oaks Drive

Contact Rachel Hagan, 512-255-7871, ext. 405; or

r.hagan@bcmud.org

Questions due from Vendors

May 16, 2016

Responses due from Bidders:

May 20, 2016

*Estimated Implementation & Completion Date:

June-July, 2016

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:

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

by **12:00 PM (CST) on May 20, 2016**. 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 Bidder. All proposals shall be signed and dated by an official authorized to bind the Bidder 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. Staff recommendations will be submitted to the Board of Directors for consideration at a regularly scheduled 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 for Services;
- (b) Work plan/Timeline;
- (c) Safety Protocols; and
- (d) Qualifications/Experience.

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 Rejection of Proposals

The District reserves the right to reject any or all proposals, or any part of a proposal.

3.8 Confidential Information

The District is subject to the Texas Public Information Act. Any information submitted to the District by a Bidder 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 Bidder 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 Bidder 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.

4.0 Agreement - (Exhibit D)

Attached to this request is the form of the agreement to be entered into regarding the District Tree Removal Service. The agreement is a part of this request. Upon selection of a Bidder by the Board of Directors, the Bidder must execute the agreement. Failure to do so may constitute cause for the District to enter into an agreement with another Bidder.

5.0 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 Bidder or its affiliates.

**2016
Board of Directors
Brushy Creek Municipal Utility District**

- Rebecca Tullos, Board President
- Russ Shermer, Board Vice President
- Kim Filiatrault, Secretary
- Shean Dalton, Treasurer
- Donna B. Parker, Assistant Secretary/Treasurer

District Staff

- Mike Petter, General Manager
- David Gaines, Chief Administrative Officer
- Rachel Hagan, Parks and Facilities Maintenance Coordinator

Exhibit A

Tree Removal Service Specifications

Scope of Services:

The Work consists of providing tree removal services for various specified areas as indicated and agreed upon during the Vendor's site visit with the District's Parks and Facilities Maintenance Coordinator. The selected Contractor will assume full responsibility for removal of trees as identified by the District that are dead, storm damaged, diseased, deteriorated, or pose a safety hazard to the public. Services include cutting all stumps flush with the ground, debris removal and disposal, and clean up associated with these arborist activities. The Contractor will be expected to work cooperatively with the District and to adapt to developing circumstances should they arise. The Contractor will be responsible for:

1. Assessing the feasibility of removing identified trees, vines, shrubs and other plant material and providing a cost proposal and proposed work schedule and timeline.
2. Working as a member of the support team and interfacing with the District's Parks and Facilities Maintenance Coordinator.
3. Identifying temporary construction or temporary access easements and Right-of-Way limits required for the removals.
4. Completing the removal within the agreed timeframe and within budget.
5. Defining traffic control plans for the trails and sidewalks to control traffic on the trail near arboricultural work being performed. Using safe driving speeds on the trails, remaining under 5 mph in all vehicles.
6. Assuming any consequences resulting from any and all aspects of the removal.

Equipment:

The Contractor must demonstrate to the satisfaction of the District that the maintenance equipment to be used in the Work is in good working condition and suitable for performing the Work required. Operate all work equipment in a safe manner so as not to create a hazard to the public.

Quality Assurance:

The services are to be performed by tree workers, who through related training and on the job experience are familiar with the techniques and hazards of this work including trimming, maintenance, repairing, and removal, and equipment in such operations.

Safety Standards:

Contractor is to follow all ANSI Z133 Safety Standards and indicate what general safety protocols are followed by the Contractor.

All equipment to be used and all work to be performed shall be in full compliance with the most current revision of American National Standards Institute (ANSI), standard Z133. These standards are made part of the Agreement by this reference.

The Contractor shall be responsible for ensuring that all work is performed in good standing with the International Society of Arboriculture (ISA) and in compliance with ANSI A300 standards for tree care operations.

The Contractor is responsible for ensuring that all work is done in a safe and responsible manner. Any damage done to either the District's property or private property shall be the responsibility of the Contractor to repair or to make arrangements to repair with the District's approval. This shall be done prior to final payment of Agreement.

Clean-Up:

Contractor is to remove all dead wood and trees, including limbs, logs, vines lumber and similar materials daily. All debris from tree removal process shall be cleaned up each day before the work crew leaves the site. All logs, branches, vines and brush shall be removed from the site.

It shall be the responsibility of the Contractor to remove and dispose of all logs, brush, vines and debris resulting from the tree removal operations at no additional cost to the District.

Contractor is to cut all stumps flush with the ground.

Liability for Damage to Property:

Any healthy tree damage caused by the Contractor shall be repaired immediately at no additional cost to the District. Any healthy tree damaged beyond repair will be removed and replaced by the Contractor at no additional cost to the District. The replacement tree will be of a size and species acceptable to the District Parks and Facilities Maintenance Coordinator.

Healthy tree root systems must be protected during the phase of service.

Tree Removal:

Contractor shall be experienced in the removal of trees, vines, shrubs and other plant material in accordance with standards set forth by the arboriculture industry as specified in ANSI Z133 and ANSI A300 standards for tree care operations.

A shaded fuel break (indicated as a red line on the mapping) shall be trimmed 30' in from the private property line, onto the District's property. This fuel break shall include trimming of trees and shrubs up to 10' high in this area. Trees and shrubs over a 1" diameter shall remain in the shaded fuel break. If the height of these trees or shrubs is less than 10' the Park and Facility Maintenance Coordinator shall be consulted to determine if the plant material should be removed or left in place. This area shall also have all vines removed at soil level and cut and or pulled out of tree canopies, and removed from surface growth on ground. All dead wood, fallen trees, branches, vines and plant debris piles shall be removed from this area. Portions of the properties are Federally protected environmental preserves. These areas cannot have vehicular traffic in the preserve boundaries or any fuel or

chemicals poured (re-fueling, mixing and similar activities on site.) Plant materials may be pulled out by wench or hand to an area with the brush chipper. These areas are indicated in green in the mapping.

Contractor shall notify the District's Parks and Facilities Maintenance Coordinator of trees that have a major defect that may present a hazard to the public.

Maintenance of Traffic:

The Contractor will be required to maintain ingress and egress to all businesses and dwellings and easy access to fire hydrants.

The Contractor shall mark all hazards within the project limits with well-maintained signs, barricades, warning and/or channelizing devices.

Disc Golf Shaded Fuel break trimming 2016

EXHIBIT B

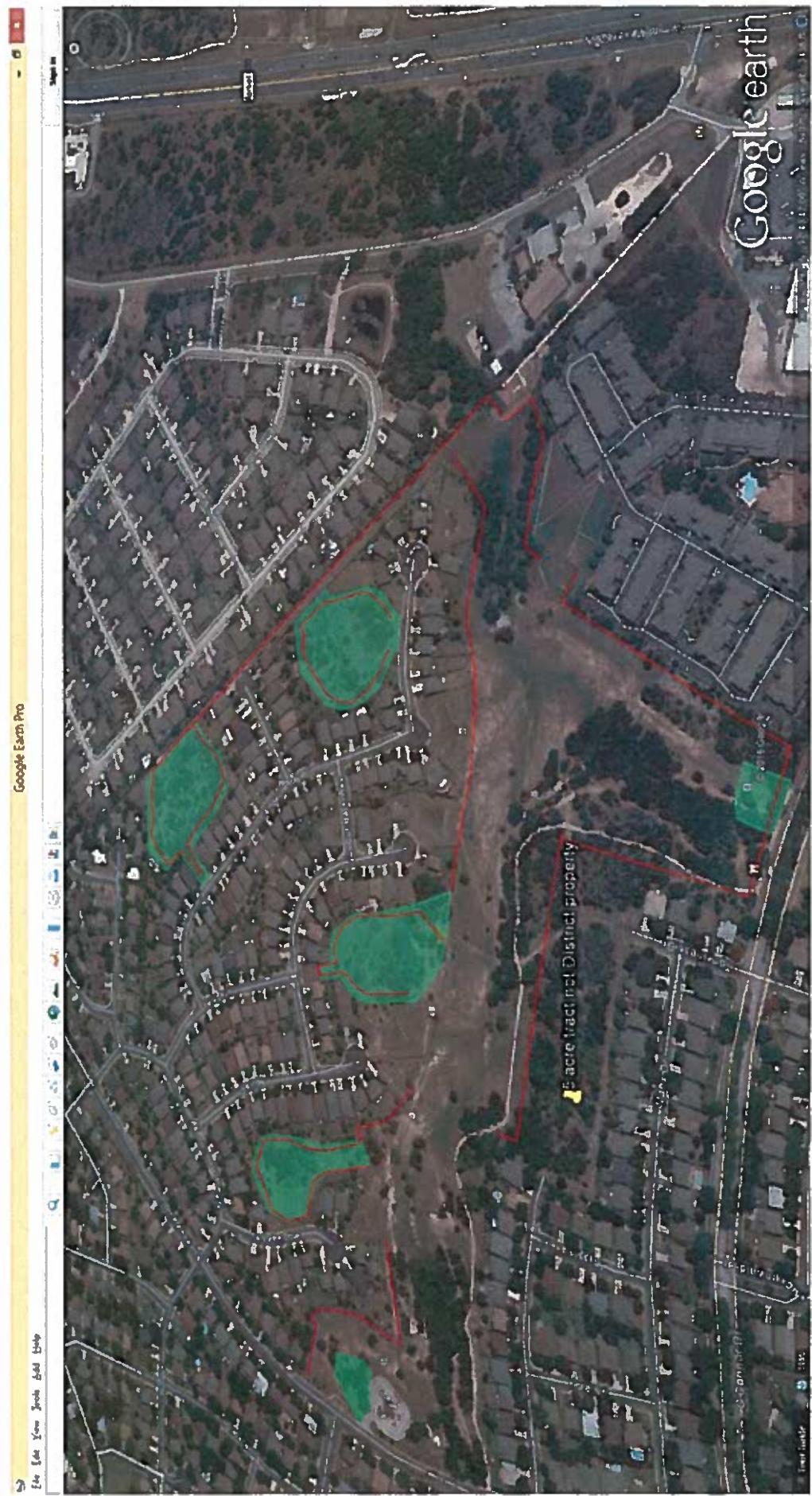


Exhibit C

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: _____

EXHIBIT D

AGREEMENT FOR COMMERCIAL TREE REMOVAL SERVICE

STATE OF TEXAS §

COUNTY OF WILLIAMSON §

This Agreement for Commercial Tree Removal Service ("Agreement"), dated as of this _____ day of _____, 2016 (the "Effective Date"), by and between Brushy Creek Municipal Utility District, a Texas conservation and reclamation district (the "District"), and _____, a Texas corporation ("Contractor"), evidences that:

RECITALS

WHEREAS, the District desires to retain Contractor to provide Tree Removal Service for various sites located within the District, in Round Rock, Texas;

WHEREAS, Contractor agrees to provide such Tree Removal Service in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and Contractor contract and agree as follows:

AGREEMENT

I.

ENGAGEMENT OF INDEPENDENT CONTRACTOR

Engagement of Contractor. The District hereby engages Contractor to provide Tree Removal Service (the "Services", as more particularly described in Section 2.1 below) at the various sites within the District, during the term of this Agreement. Contractor acknowledges and agrees that this Agreement is non-exclusive with respect to the District, and the District may utilize the services of others to perform other tree removal or trimming services from time to time. The manner in which the Services are to be performed shall be determined by Contractor.

Section 1.1 Term of Engagement. The term of this Agreement shall commence on the Effective Date and continue for a period of twelve months (12) until it terminates according to its terms.

II.

DUTIES OF INDEPENDENT CONTRACTOR

Section 2.1 Services.

(a) Contractor shall provide the necessary Tree Removal Services at the required locations within the District, that information which has been provided to the Contractor.

Section 2.2 Access. Contractor shall perform the Services at the specified times for the District's specified locations. The District shall provide access to Contractor for purposes of performing the Services.

Section 2.3 Equipment, Tools, Materials or Supplies. Contractor shall supply, at Contractor's sole expense, all labor, equipment, tools, materials and/or supplies necessary for the provision of the Services under this Agreement.

Section 2.4 Standard of Performance. Contractor shall provide Services in a professional and workmanlike manner consistent with the standards of the trade and with the standards and business policies of the District, and shall comply with all applicable local, state and federal laws, rules and regulations. Contractor must follow the professional code of conduct and adhere to ANSI safety standards, the safety of the District's trail users, and the safety of the Contractor's own workers. In the event Contractor hires employees to assist Contractor in providing the Services to the District under this Agreement, both parties expressly acknowledge that Contractor is not doing so in any capacity of the District as a representative, and Contractor shall be ultimately responsible for the quality of the Services and for ensuring such employees' compliance with professional standards and applicable laws. Contractor shall be solely responsible for any salary, benefits or other compensation of any such employees.

Section 2.5 Correction of Defective Services. In the event that Contractor fails to perform any of the Services to the District's reasonable satisfaction, the District shall bring such defective Services to the attention of Contractor. Contractor shall promptly correct the defective Services. No additional compensation shall be made by the District to Contractor in connection with correcting defective Services.

III. COMPENSATION AND EXPENSES

Section 3.1 Compensation for Services. As consideration for the provision of the Services by Contractor, the District shall pay to Contractor an amount equal to _____ for the completion of the tree removal services as outlined during the site visit to the District properties. Contractor shall prepare and send an invoice to the District for Services rendered. The District shall provide payment for all completed Services within 30 days after receipt of invoice for payment. Interest on non-disputed invoices shall accrue at one and one-half percent (1.5%) per month on all non-disputed charges not timely paid within 30 days.

Section 3.2 Duration of Agreement and Price Adjustments.
The Contractor will honor the price quoted for twelve (12) months after the signing of the contract.

IV. REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties of Contractor. To induce the District to enter into this Agreement and to consummate the transactions contemplated by this Agreement, Contractor represents and warrants to the District as follows:

- (1) that Contractor possesses all skills necessary to perform its obligations hereunder, and is competent to perform such obligations;

(2) that the Services shall be performed in accordance with all applicable local, state and federal laws, regulations, and governmental requirements; and

(3) that Contractor shall be responsible for any damage to property, or injury to persons, arising out of the Services. In the event of any damage to, or loss of, District property arising out of the Services performed by Contractor, Contractor shall pay all costs and expenses incurred by the District within 10 days of receipt of an invoice for payment.

Section 4.2 Insurance. Contractor shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work as a result of this bid by the successful bidder, its agents, representatives, volunteers, employees or subcontractors. Certificates of Insurance and endorsements shall be furnished to the District and approved by the District before commencement of Services.

The following standard insurance policies shall be required each in an amount not less than \$1,000,000:

- General Liability Policy
- Automobile Liability Policy
- Workers' Compensation Policy (Statutory)

V. RELATIONSHIP OF PARTIES

Section 5.1 Independent Contractor. Contractor is an independent contractor and shall in no sense be considered an employee or agent of the District. Contractor will have no power or right to enter into contracts or commitments on behalf of the District.

Section 5.2 Taxes. The District shall not be responsible for, and shall not withhold or pay any federal, state or local income tax, nor payroll tax of any kind, on behalf of Contractor or any employees of Contractor. Contractor shall be responsible for the filing and payment of all income related taxes associated with Contractor. Contractor shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes, and agrees to indemnify the District against any and all liability should Contractor be considered an employee of the District by any governmental agency.

Section 5.3 Reimbursement of Expenses. Except as otherwise agreed in writing, the District shall not be liable to Contractor for any expenses paid or incurred by Contractor.

Section 5.4 Fringe Benefits/Workers' Compensation. Contractor, as one engaged in its own independently established business, is not eligible for, and shall not participate in, any employee pension, health, or other fringe benefit plans of the District. The District is not responsible for, and shall not provide, workers' compensation insurance for Contractor or employees of Contractor.

Section 5.5 Unemployment Tax. Contractor understands that the District shall not be making contributions on its behalf for unemployment compensation, and agrees to make whatever contributions are required of it as an employer.

**VI.
CONFIDENTIAL INFORMATION**

Section 6.1 Confidential Information. During the performance of the Services, Contractor and its personnel may be exposed to various sensitive information belonging to the District consisting of, but not limited to, access codes, methods of operation and other confidential information (collectively, the "Confidential Information"), which are acquired, developed and/or used by the District. Contractor acknowledges and agrees all Confidential Information is and will remain the property of the District.

Section 6.2 Use or Disclosure of Confidential Information. Contractor agrees it shall not use in any way or disclose any of the District's Confidential Information, either directly or indirectly, either during the term of this Agreement or at any time thereafter, except as required in the course of performance under this Agreement, to the extent such Confidential Information is publicly known, or as required by law. All files, records, documents, information, data, and similar items relating to the business of the District shall remain the exclusive property of the District and shall not be removed from the premises of the District under any circumstances.

Section 6.3 Enforcement. It is understood and agreed by the parties that unauthorized use or disclosure, or threatened unauthorized use or disclosure, of the District's Confidential Information will diminish the value of the Confidential Information. In the event Contractor breaches, or threatens to breach, this Article VI, the District shall be entitled, among other remedies, to injunctive relief prohibiting the Contractor from disclosing such information as well as monetary damages.

**VII.
INDEMNIFICATION**

Section 7.1 General. Contractor shall indemnify, defend and forever hold harmless the District and its officers, directors, employees, agents successors and assigns against and in respect of any and all liability, loss, claims, cost and expense (including reasonable attorneys fees and costs of litigation) that may be incurred by the District arising out of, in connection with, or that may be incurred as a result of Contractors being negligent or derelict in the performance of the Services, in connection with any malfeasance, theft or damages caused by Contractor or its personnel, or as a result of a breach by Contractor of any of the covenants or warranties given herein.

**VIII.
TERM AND TERMINATION**

Section 8.1 Term. This Agreement shall become effective as of the Effective Date upon execution by both parties. The Agreement shall remain in effect for a period of twelve (12) months from the Effective Date. This Agreement will renew automatically for up to four successive one-year terms unless the District or Contractor gives written notice of non-renewal to the other party at least 30 days prior to the expiration of the then-current term.

Section 8.2 Termination by the District.

(a) Notwithstanding any other provision herein, the District shall have the right to terminate this Agreement at any time and without cause by serving thirty (30) days prior written notice of termination upon

Contractor.

(b) In the event of theft, damage to property, or breach of this Agreement by Contractor, the District shall be entitled to terminate this Agreement immediately by providing written notice of termination to Contractor.

(c) After the effective date of termination, all obligations of the parties with respect to each other and under this Agreement immediately shall cease and be of no further force and effect, except for any liabilities, obligations or monies which shall have then accrued or which arise out of the authorized Services performed hereunder prior to the date of termination. Under no circumstances shall Contractor be entitled to incidental or consequential damages, or any claim for lost profits as a result of any termination of this Agreement by the District.

Section 8.3 Termination by Contractor. Notwithstanding any other provision herein, Contractor shall have the right to terminate this Agreement at any time after 30 days prior written notice to the District and without cause by serving written notice of termination upon the District. The termination notice shall specify the effective date of termination. Upon the request of the District, Contractor shall suspend all Services until the effective date of termination. After the effective date of termination, all obligations of the parties with respect to each other and under this Agreement immediately shall cease and be of no further force and effect, except for any liabilities, obligations or monies which shall have then accrued or which arise out of the authorized work performed hereunder prior to the date of termination, except for any obligations that expressly survive termination of the Agreement. Under no circumstances shall the District be entitled to incidental or consequential damages, or any claim for lost profits as a result of any termination of this Agreement or any action taken in good faith by Contractor.

IX. MISCELLANEOUS

Section 9.1 Notice. All notices hereunder from Contractor to the District will be sufficient if sent by certified mail or facsimile transmission with confirmation of delivery, addressed to the District to the attention of General Manager, Brushy Creek Municipal Utility District, 16318 Great Oaks Drive, Round Rock, Texas 78681, Facsimile (512) 255-0332.

Section 9.2 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas (exclusive of conflicts of law principles).

Section 9.3 Entire Agreement and Amendments. This Agreement represents the entire Agreement between the District and Contractor with respect to the subject matter of this Agreement. This Agreement may not be amended except in a writing signed by the party against whom such amendment is to be enforced.

Section 9.4 Assignments. Contractor may not assign or delegate this Agreement or any rights or obligations hereunder without the prior written consent of the District. Any attempted assignment or delegation in violation of the immediately preceding sentence will be void.

Section 9.5 Severability If any of the provisions of this Agreement are determined to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the remainder of

this Agreement, but rather the entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties will be construed and enforced accordingly.

Section 9.6 Survival. Articles IV, VI and VII shall survive the termination of the Agreement.

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

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT:

By: _____
Name: _____
Title: _____

CONTRACTOR:

By: _____
Name: _____
Title: _____