

**REQUEST FOR PRICING**  
**FOR**  
**PURCHASE OF NEW TRANE INTELLIPAK REMOTE CONDENSER**  
**FOR**



**Response Deadline**

**July 11, 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](mailto:n.dinsmore@bcmud.org)**

**BRUSHY CREEK MUNICIPAL UTILITY DISTRICT**  
**REQUEST FOR PRICING FOR PURCHASE AND INSTALLATION OF**  
**NEW TRANE INTELLIPAK REMOTE CONDENSER**

**1. INTRODUCTION**

Brushy Creek Municipal Utility District (the “District”) is seeking pricing for the purchase, delivery and installation of a new Trane Intellipak Remote Condenser. It is the intent of this specification to provide a new Trane Intellipak remote condenser that currently has leaking coils and motors that are not working. The condenser shall be fully assembled and completely equipped by the vendor with all features necessary for proper operation of all of its components, and shall be fully functional. A more detailed description of the services to be performed by the Vendor is set forth in Exhibit A to this RFP.

The District reserves the right to reject any or all proposals, to waive technical or legal deficiencies, and to accept any proposal that may deem to be in the best interests of the District.

Vendors submitting pricing must respond in writing to all requirements of this Request for Pricing (RFP). Responses should reflect detailed considerations of the issues and opportunities presented by this specific project. Any additional information or tasks that are felt to be relevant by the responding firms should be included together with the submittal requirements.

**2. EVALUATION CRITERIA**

The criteria for award of a contract will be based on a complete analysis of each vendor’s response. Specifically, each proposal will be judged according to the criteria set forth in Section 4.6 of this RFP, and the District shall award the contractor to the vendor whose proposal is most advantageous to the District.

**3. GENERAL INSTRUCTIONS TO PROPOSER:**

**3.1 General Instructions to Proposer**

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 vendor to a contract for the execution of the services. The name, address and telephone number of the vendor must also be specified.
3. Award of Contract: Award of a contract will be made by the District to the Vendor whose proposal is most advantageous to the District after consideration of all Evaluation Criteria set forth in Section 4.6 of this RFP, as determined by the Board of Directors of the District. The criteria set forth in Section 4.6 are not listed in any order of preferences. The District shall not be obligated to accept the lowest priced proposal, but will make an award that is most advantageous the District after all factors have been considered.
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 4.2: Items to be Provided with Proposal Submittals.

7. Prices: All Proposals shall give the price proposed, both in writing and in figures, shall give all other information requested herein, and shall be signed by the Vendor's authorized representative. Proposals prices shall include everything necessary for the completion and fulfillment of the purchase agreement and equipment warranty.

### 3.2 Reservation of Rights

The District reserves the right to undertake such investigation as it deems necessary to evaluate the qualifications of the vendor and to evaluate the proposal submitted. Vendors may be requested to execute releases for information. Failure to provide a release upon request will result in disqualification.

The District reserves the right to reject any or all proposals, to waive technical or legal deficiencies, and to accept any proposal that may deem to be in the best interest of the District and to negotiate the terms and conditions of any proposal leading to execution of an Agreement for Services.

### 3.3 Specifications (Exhibit A)

Attached as Exhibit A are the specifications regarding the services to be performed in connection with furnishing and installation of a New Trane Intellipak Remote Condenser. Vendors shall be responsible for providing the equipment, delivery and installation that meets or exceeds all of the requirements as set forth in the specifications, and making such equipment fully functional.

## 4. PROCEDURAL INSTRUCTIONS

### 4.1. Intent

This procurement is intended to result in the selection of a vendor to provide a New Trane Intellipak Remote Condenser that is most advantageous to the District. Vendor must describe in detail how he will meet the requirements of this RFP 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 4.2 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 RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the proposal.

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 RFP are entirely the responsibility of the Vendor and shall not be reimbursed in any manner by the District.

### 4.2. Items to be Provided with Proposal Submittals:

All proposals must include the following information; failure to completely execute and submit the required documents before the Submittal Deadline may render a proposal non-responsive:

1. Cover letter - signed letter stating that the Vendor has the capability of and appropriate HVAC licensing to remove and install the condenser requested by the District. The District requires the vendor to have a TACLA "C" license.
2. Price Proposal Form - Vendor shall specify the pricing of the new Trane condenser unit with the equipment and labor costs broken down. This should include the cost of the crane needed to remove the old condenser and install the new condenser and all other costs required to complete the requested services.

3. Warranty Information – Vendor shall include warranty of the condenser including the vendors policy on transporting the condenser during warranty work.
4. Work Plan/Timeline – Vendor must be able to work in the timeframe established by the District. This timeframe is during the months of September or October 2016. The work plan/timeline submitted by the Vendor must indicate the estimated length of time of usage for the crane and the length of time the condenser will be offline, **Exhibit A**.
5. References- Vendor shall identify three current references, including name, title, and daytime telephone number of references.
6. Conflict of Interest Statement –Vendor shall submit their responses to the Conflict of Interest Statement set forth in Section 5.0 below.
7. Vendor Questionnaire and Information Form – **Exhibit B**
8. Completed and signed W-9 Tax Form
9. Photos of proposed equipment and other such documentation regarding the equipment features and requirements as indicated in the technical specifications desired.
10. Insurance – Vendor shall specify the types and amounts of insurance that it holds.
11. Contract or Agreement - A copy of the Agreement to be executed by the Vendor and the District for the services that are the subject of this RFP is set forth as **Exhibit C** to this RFP. **The District will not entertain requests by vendors to modify, change, or in any way alter the contract, including the indemnification provisions set forth therein. Vendors that cannot or are unwilling to meet the terms and conditions of the Agreement should not submit a Proposal.**

**Failure to include the above referenced items at the time of proposal submittal will disqualify the vendor.**

#### 4.3 Questions

Questions regarding the New Trane Intellipak Remote Condenser RFP sought by the District **must be in writing via e-mail** to [n.dinsmore@bcmud.org](mailto:n.dinsmore@bcmud.org) no later than **12:00 PM** (CST) Monday June 27, 2016. The subject line shall read: ***“Questions for Trane Intellipak Remote Condenser RFP”***. Answers, if any, made by the District will be sent in writing to all know proposal Vendors and will be published on our website as an Addendum. ([www.bcmud.org](http://www.bcmud.org))

#### 4.4. Timeline

**Proposal package distributed to Vendors:**

Monday, June 6, 2016

**Advertisement in the Round Rock Leader:**

June 11 & 18, 2016

**Questions Due from Vendors By:**

12:00 p.m. June 27, 2016

**RFP Response due from Vendors:**

12:00 p.m. July 11, 2016

**Staff Recommendation to Board of Directors:**

**Thursday, July 28, 2016**

**Estimated Purchase Date:**

**August 2016**

**4.5. Vendor Pricing Proposals**

Proposals must conform to the requirements set forth herein. Proposals and required information must be submitted in writing either by hand delivery, postal service mail or electronic mail to the attention of:

Nora Dinsmore, Administrative Services Specialist  
Brushy Creek Municipal Utility District  
16318 Great Oaks Drive  
Round Rock, TX 78681  
n.dinsmore@bcmud.org

by **12:00 PM (CST) on Monday July 11, 2016**. Any proposals received after the above date and time will not be considered. No oral proposal information or modifications will be accepted.

All proposals shall be signed and dated by an official authorized to bind the Vendor in legal matters. All submitted pricing proposals become the property of the District.

**4.6. 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) Price and Warranty
- (b) Timeline/Delivery/Availability of Equipment
- (c) Vendor Qualifications

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.

**4.7 Rejection of Proposals**

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

**4.8 Confidential Information**

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

#### **4.9      Taxes. Exempt**

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

#### **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, and Vendors are subject to the Conflicts Disclosure Statement requirements set forth in Chapter 176 of the Texas Local Government Code. In accordance with this policy, please disclose the following information:

1. Whether Vendor has an employment or other business relationship with any member of the Board of Directors of the District or staff person set forth below, or a family member of such person, that resulted in the person or family member receiving taxable income;
2. Whether the Vendor has given to any member of the Board of Directors of the District or staff person set forth below any gifts;
3. Whether or not any member of the Board of Directors or Management Staff listed below has an ownership interest in the Vendor or its affiliates; or
4. Whether or not any member of the Board of Directors or Management Staff listed below has a direct or indirect contractual relationship with the Vendor 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
- Betsy Schultz, Community Center Coordinator
- Nora Dinsmore, Administrative Services Specialist

## **Exhibit A**

### **Condenser RFP – details**

#### **Included in Proposals:**

- Recover Freon from the existing system
- Disposal of existing condenser
- Install Trane 60 ton Commercial SC Air-Cooled Condenser
  - Trane Model # CCRC0604
- Replace driers on the system
- Pull a triple evacuation on the system
- Install new R-22 Freon in the system
- Perform a comprehensive start-up with a certified technician
- Crane lift for removal and installation of condenser
  
- Work Plan/Timeline - Vendor must be able to work in the timeframe established by the District. This timeframe is during the months of September or October 2016. The work plan/timeline submitted by the Vendor must indicate the estimated length of time of usage for the crane and the length of time the condenser will be offline.

## Exhibit B

### Questionnaire and Information Form

#### VENDOR QUESTIONNAIRE AND INFORMATION FORM

Vendor MUST complete this form in its entirety. If a question is not applicable, Vendor 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 declares: (a) 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, materials, and equipment, necessary to complete the same in compliance with the specifications and contract documents (if applicable); and (b) that Vendor has no conflict of interest, as defined in the RFP.

SIGNATURE: \_\_\_\_\_ TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_ DATE: \_\_\_\_\_



## Exhibit C

### AGREEMENT FOR HVAC CONDENSER REMOVAL AND REPLACEMENT SERVICES

This Agreement for HCAV Condenser Removal and Replacement Services ("Agreement") is entered into by and between 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 remove an existing air conditioner condensor and install a new Trane Intellipak remote condensor at BCMUD's Community Center (the "Property"); and

WHEREAS, Contractor desires to provide such services on behalf of BCMUD 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 remove an existing air conditioner condensor and install a new Trane Intellipak remote condensor at BCMUD's Community Center in accordance with the specifications set forth in Exhibit "A" (the "Specifications") attached hereto (the "Work"). The Work shall be performed by Contractor in accordance with all applicable regulatory requirements and the Specifications. In the event of any conflict between the terms and conditions of this Agreement, the Specifications or any bidding documents, the terms and conditions of this Agreement shall control..
- b. **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 undertake and achieve Final Completion of the Work during the period set forth on Exhibit "A" attached hereto.
- b. **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.
- c. **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.

#### 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 and any warranties set forth in Contractor's Proposal, which are hereby incorporated by reference, 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.

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 or 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 BCMUD's 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 Work 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 \$1,000,000

- 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 \$1,000,000 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. **Performance and Payment Bonds.** Prior to or concurrently with the execution of this Agreement, Contractor shall furnish to BCMUD good and sufficient performance and payment bonds in accordance with Chapter 2253, Texas Government Code and Section 49.275 of the Texas Water Code. The performance and payment bonds shall each be in an amount equal to 100% of the Contract Sum. The Performance Bond shall include the one year warranty period required for the Work.

**10. 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; OR (3) THE BREACH OF OR THE PERFORMANCE OF THE AGREEMENT BY CONTRACTOR, 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 OF 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 10 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.

11. **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.
12. **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.

**13. 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 BCMUD's 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 11 of this Agreement. Should, for any reason whatsoever, any claim, dispute, or cause of action fail to be resolved pursuant to Section 11 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: \_\_\_\_\_

**Exhibit “A”**  
**Specifications**