

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 _____, 2017 (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: _____