

EXHIBIT D

AGREEMENT FOR CONSTRUCTION OF THE HIGHLAND HORIZON POOL PUMP HOUSE ADDITION

This Agreement for Construction of the Highland Horizon Pool Pump House Addition ("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 provide select demolition for, and construction of, a single story masonry addition to the existing swimming pool pump house structure including electrical replacement, associated flatwork and fencing improvements (collectively, the "Project") located at the Highland Horizon Pool Facility, 416 Highland Horizon, Austin, TX 78717 (the "Property"); and

WHEREAS, Contractor has agreed to complete the Project at the Property 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 will furnish all labor, materials, tools, scaffolding, apparatus, supplies, equipment, machinery, transportation, storage, supervision, and services necessary, required, or reasonably inferable, whether or not expressly set forth in the Specifications (as defined below), to prosecute and complete in a single phase and in areas designated by BCMUD the Project (the "Work"). Contractor shall perform the Work in accordance with the plans and specifications set forth in **Exhibit "A"** (the "Specifications") attached hereto and the terms and conditions of this Agreement. The Work shall be performed by Contractor in accordance with all applicable regulatory requirements. 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 achieve Substantial Completion of the Work within ninety (90) days after the "Commencement Date". The Contractor shall achieve Final Completion of the Work, as that term is defined herein, within ten (10) days after the date of Substantial Completion. The Commencement Date shall be defined as the date for commencement of work set forth in a "Notice to Proceed" to be issued by BCMUD to Contractor after execution of this Agreement.

- b. **Substantial Completion.** Substantial Completion of the Work is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Plans so that BCMUD can utilize the Work for its intended use.
- c. **Final Completion.** Final Completion of the Work (sometimes referred to as “Completion of the Work”) means the actual completion of the Work, including any extras or change orders reasonably required or contemplated under this Agreement, other than warranty work or replacement or repair of the Work performed under the Contract.
- d. **Time of Performance.** Time is of the essence of this Agreement and with regard to Contractor’s performance of the Work. Contractor shall commence and proceed with its performance of the Work with reasonable diligence. BCMUD shall not dictate or determine the schedule of the working hours of Contractor; provided, however, that BCMUD may restrict the times during which Contractor accesses and performs Work on the Property and any portions thereof to normal working hours and days, consistent with written holiday schedules and policies of BCMUD which will be furnished to Contractor upon request.
- e. **Liquidated Damages.** The Contractor agrees that failure by Contractor to complete the Work in the specified time will cause harm to BCMUD, and further agree that the harm BCMUD would sustain and the actual measure of damages BCMUD would incur from the breach are incapable or very difficult of ascertainment. Therefore, the Contractor agrees that for each and every calendar day the Work or any portion thereof shall remain uncompleted after the expiration of the time limit(s) set in the Agreement, Contractor shall be liable to Owner for liquidated damages in the amount of \$500 for each such calendar day, which sum the parties agree is a reasonable forecast of the damages BCMUD will sustain per day that the Work remains uncompleted and in no way constitutes a penalty. Said \$500 per day shall also be considered an economic disincentive for late completion of the Work pursuant to Section 49.271(e), Texas Water Code. BCMUD shall have the option to deduct and withhold said amount from any monies that BCMUD otherwise owes the Contractor.

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.** 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.
- f. **Property Damage.** 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.

Without limitation, Contractor shall be responsible for all damage to any existing equipment to remain at the Property, including chemical pumps and pool equipment.

- g. **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.
- h. **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 or the Specifications, 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.
- i. **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 Work. 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.
- j. **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 Agreement shall constitute a breach of this Agreement and violation of the Districts rules.
- k. **Contractor's Representations and Additional Warranties.** Contractor represents and warrants to BCMUD that, with respect to Contractor and any subcontractor, a sub-subcontractor or anyone directly or indirectly employed by any of them ("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.

1. **Prevailing Wages.** BCMUD is subject to the provisions of Chapter 2258, Subchapter B, Texas Government Code, pertaining to prevailing wage rates. In accordance with Section 49.279, Texas Water Code, BCMUD specifies the prevailing wage rate for public workers of Williamson County as BCMUD's prevailing wage rate. Contractor agrees to pay not less than the specified prevailing wage rate to workers employed by it in the execution of the Work, and to comply with all applicable provisions of Chapter 2258, Subchapter B, Texas Government Code, including the recordkeeping required thereunder.

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 \$ [REDACTED] (the "Contract Sum"); provided, however, any additions or deletions in the scope of work specified by BCMUD may result in increases or decreases to the total compensation through Change Orders in accordance with Section 1(b) of this Agreement.
- b. **Progress Payments.** Contractor shall submit its applications for progress payments by the 5th of each month for work completed during the previous calendar month. BCMUD shall pay Contractor for said work within twenty-five (25) calendar days after receipt of a properly submitted application for payment. A progress payment made to Contractor shall not constitute acceptance of the Work thereafter determined by BCMUD to be defective or nonconforming.
- c. **Retainage.** During the progress of the Work, BCMUD shall retain 10% of each progress payment. However, if BCMUD at any time after 50 percent of the Work has been completed finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Final payment, constituting the entire balance of the Contract Sum (including any retainage withheld by BCMUD), shall be made by BCMUD to Contractor after Contractor has fully performed the Work to BCMUD's satisfaction and complied with all conditions to final payment required by this Agreement. The District shall not pay interest on amounts retained except as may otherwise be required by law.
- d. **Requirements for Progress Payments.** Contractor shall submit with each application for payment such documentation as may be required or requested by BCMUD to substantiate the amounts for which payment is requested, along with (a) a sworn representation and warranty by Contractor that it has properly performed and completed all Work for which payment is requested, (b) a release and waiver of Contractor's lien rights (conditioned upon Contractor's actual receipt of funds) in connection with the Work performed by Contractor through the applicable pay period, and (c) a sworn representation and warranty by Contractor (a "bills paid affidavit") that it has fully paid all known bills or obligations for Work covered in previously paid applications for payment. Upon request by BCMUD and as a further condition of payment, Contractor shall obtain similar releases and waivers of lien rights and bills paid affidavits from its subcontractors.
- e. **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) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (e) damage to property of BCMUD that is not repaired or replaced by Contractor to BCMUD's reasonable satisfaction, (f) reasonable evidence that the Work will not be completed within the time allowed for Completion, and that the unpaid balance of the Contract Sum will not be adequate to cover the damages for the anticipated delay, or (g) the persistent failure to carry out the Work in accordance with the requirements set forth in the Agreement.
- f. **Requirements for Final Payment.** As a condition to final 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, (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, and (e) the assignment and delivery to BCMUD of all manufacturer or other warranties and guarantees required under or pursuant to the Work.

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 BCMUD's 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 BCMUD's 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 Work 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.

As required by Section 406.096, Texas Labor Code, Contractor hereby certifies that Contractor provides workers' compensation insurance coverage for each employee of Contractor who will be employed on the Work. Further, Contractor agrees that each subcontractor which Contractor engages to perform work on the Project will be required to provide a written certification that the subcontractor provides workers' compensation insurance coverage for each employee of the subcontractor who will be employed on the Project.

9. **Payment Bonds.** In accordance with Chapter 2253, Texas Government Code and Section 49.275 of the Texas Water Code, Contractor must provide BCMUD with a payment bond in the amount of the Contract Sum and in a form and substance, and with a surety, satisfactory to BCMUD prior to commencement of the Work if the Contract Sum is in excess of \$25,000.

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.
- e. **Boycotts and Foreign Business Engagements.**
 - i. Contractor represents and warrants, for purposes of Chapter 2270 of the Texas Government Code, that at the time of execution and delivery of this Agreement, neither the Contractor, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Contractor, boycotts Israel. The Contractor agrees that, except to the extent otherwise required by applicable federal law, including, without limitation, 50 U.S.C. Section 4607, neither the Contractor, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Contractor, will boycott Israel during the term of this

Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this clause (i) has the meaning assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code.

- ii. Contractor represents and warrants, for purposes of Subchapter F of Chapter 2252 of the Texas Government Code, that at the time of execution and delivery of this Agreement neither the Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Contractor, (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller under Sections 806.051, 807.051 or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" as used in this clause (ii) has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

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

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT:

By: _____

Name: _____

Title: _____

Date: _____

Secretary

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

Exhibit “A”

Plans and Specifications for Work