

## EXHIBIT C

### CONSTRUCTION CONTRACT

#### (Brushy Creek MUD Cat Hollow Park and Pool Restroom Renovation Project)

This Construction Contract ("Agreement") is entered into by and between **Brushy Creek Municipal Utility District**, a conservation and reclamation district of the State of Texas created and operating pursuant to Chapters 49 and 54 of the Texas Water Code ("Owner"), and \_\_\_\_\_, a Texas \_\_\_\_\_ ("Contractor"). Together, Owner and Contractor are referred to herein as the "Parties."

#### Recitals

WHEREAS, Owner seeks to engage Contractor to renovate the Cat Hollow Park and Pool Restroom facility located at 8600 O'Connor Drive, Round Rock, Texas (the "Property") in accordance with plans and specifications furnished by Owner (the "Project"); and

WHEREAS, Contractor has agreed to complete the Project on behalf of Owner 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 provide all labor, equipment, tools, machinery, transportation, storage, supervision and services necessary, required or reasonably inferable, whether or not expressly set forth in any bid documents, to prosecute and complete in a single phase the installation of the Project in accordance with the plans and specifications set forth in Exhibit "A" (collectively, the "Construction Documents") attached hereto and the terms and conditions of this Agreement (the "Work"). The Work shall be performed by Contractor in accordance with all applicable regulatory requirements and the Construction Documents. In the event of any conflict between the terms and conditions of this Agreement, the Construction Documents or any bidding documents, the terms and conditions of this Agreement shall control.
- b. **Changes in the Work.** Owner, 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 Owner's authorized representative and Contractor ("Change Order"). The cost or credit to Owner from a change in the Work, together with any revisions to the completion date, shall be determined by mutual agreement between Owner and Contractor. Additionally, Owner 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 Owner and Contractor unless Contractor timely delivers a written objection to Owner 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 \_\_\_\_ (\_\_\_\_) days after the “Commencement Date”. The Contractor shall achieve Final Completion of the Work, as that term is defined herein, within \_\_\_\_ (\_\_\_\_) 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 Owner 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 Owner can utilize the Work for its intended use. At the time of Substantial Completion, any outstanding Work must be minor in nature, so that Owner could utilize the Project on that date without inconvenience or interference, and so that the completion of the Work by Contractor would not materially interfere with or hamper Owner in the use or enjoyment of the Project. Further, as a condition to substantial completion, Contractor must certify that all remaining Work is of a “punchlist” nature, and will be completed within 10 calendar days, or as otherwise agreed by Owner.
- 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 this Agreement. The Work will not be deemed finally complete until final inspection by and approval of Owner.
- 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. Owner shall not dictate or determine the schedule of the working hours of Contractor; provided, however, that Owner 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 Owner which will be furnished to Contractor upon request.
- e. **Extensions of Time and Limitations of Delay Damages.** If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes or unusual delays in deliveries (to the extent not avoidable or caused by the Contractor), fire or other unavoidable casualties, abnormal adverse weather (rain days) conditions not reasonably anticipatable, or any other causes that Contractor could not reasonably avoid, then the date required for Completion shall be extended by Change Order for such reasonable time. In the event that, as a result of all such delays, other than those caused by Owner's intentional interference, the required date of Completion is extended for a period beyond thirty (30) days from the required date of Completion, if any, the fixed or maximum amount of compensation, if any, shall be equitably adjusted to reflect the actual, direct, and reasonable costs incurred by the Contractor as a result of such excess delay. An extension of time and the recovery expressly provided herein shall be the Contractor's sole remedy for any delay in the Contractor's commencement or progress of the Work, unless the delay shall have been caused by acts constituting intentional interference by Owner, and then, only to the extent that such acts continue after the Contractor has provided written notice to Owner of such interference. Owner's reasonable exercise of any of its rights or remedies under this Agreement, regardless of the extent or frequency, shall not under any circumstances be construed as intentional interference with the Contractor's performance of the Work.

## 3. Performance by Contractor.

- a. **Contractor’s General Obligations.** Contractor agrees to perform the Work diligently, using the Contractor’s best skill and attention, and in compliance with the highest applicable industry standards. The Work will be performed by Contractor in a good and workmanlike manner strictly in accordance with the Construction Documents and this Agreement. Contractor will also be responsible for proper storage and security for all equipment and materials required for the Work.

- 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 Owner or any other party. Contractor will be responsible for locating all utility lines and facilities, including buried pipelines and cables, in the vicinity of the Work site, and will perform the Work in such a manner as to avoid damaging such lines, cables, and facilities and, if required, Contractor will contact all utility companies applicable to the Work site(s) and obtain a written designation of the location of all utility lines and facilities on the site(s) prior to commencing any of the Work.
- c. **Labor and Materials.** Contractor shall furnish at its own cost and expense all services, labor, 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 Owner 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 Work site and 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 Owner 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 Owner, 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. Owner 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 Owner 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 Owner 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 the Construction Documents, 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 Owner not to be in accordance with the

requirements of this Agreement; Contractor shall correct it promptly after receipt of written notice from Owner to do so. If Contractor fails to correct defective or non-conforming Work within a reasonable time, Owner 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 perform the Work in such manner so as to preserve any and all manufacturer's warranties associated with the materials. The provisions of this Section shall survive Final Completion of the Work or any earlier termination of this Agreement.

- h. **Cleaning Up.** Contractor will confine its activities to areas designated by Owner and must maintain these areas in a neat and clean condition. All excess material and trash generated from the prosecution of the Work will be neatly stockpiled in the area designated by Owner and removed from the site as frequently as necessary to maintain the site in a neat and safe condition. Upon the completion of any portion of the Work, Contractor will remove all equipment, materials, supplies, and temporary structures from the area of the completed portion and leave the area in a neat and clean condition. Contractor will also keep all adjacent properties, public or private, including streets, free of dirt, trash, debris, or other materials relating to or resulting from the prosecution of the Work. At completion of the 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.
  - i. **Contractor's Representations and Additional Warranties.** Contractor represents and warrants to Owner that:

    - i. Contractor and its subcontractors 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 subcontractors hereunder;
    - iii. Contractor and its subcontractors are not parties to or bound by any agreement or contract or subject to any restrictions that would prevent the Contractor or its subcontractors from entering into and performing the obligations under this Agreement.
4. **Prevailing Wages.** Owner 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, Owner specifies the prevailing wage rate for public workers of Travis County as Owner'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.
5. **Payment.** Payment for the Work shall be made to Contractor by Owner as provided herein below.
- a. **Total Compensation.** Contractor is entitled to receive compensation for Work performed hereunder to Owner's satisfaction in the lump sum amount of \$\_\_\_\_\_ for all Work; provided, however, any additions or deletions in the scope of work specified by Owner may result in increases or decreases to the total compensation through Change Orders executed by both Parties.
  - b. **Progress Payments.** Contractor shall submit its applications for progress payments ("Application for Payment") to the District by the 5th of each month for Work completed during the previous calendar month. Owner shall pay Contractor for said work within ten (10) 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 Owner to be defective or nonconforming.

- c. **Retainage.** During the progress of the Work, Owner shall retain ten percent (10%) of each progress payment with the accumulated retainage held not to exceed 10% of the Contract Sum. However, if the District 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 Owner), shall be made by Owner to Contractor after Contractor has fully performed the Work to Owner'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 to District with each Application for Payment such documentation as may be required or requested by Owner 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 Owner 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. **Owner's Right to Withhold Payment.** Owner shall be entitled to withhold payment from Contractor to the extent reasonably necessary to protect Owner 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 Owner 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 Owner or the Owner Clients or another contractor, (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 Owner (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 Owner'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 Owner of all manufacturer or other warranties and guarantees required under or pursuant to the Work.
  - g. **Sales Tax.** Owner is a tax-exempt, political subdivision of the State of Texas. Accordingly, no sales tax will be charged to Owner or included in the Contract Sum.
  - h. **Effect of Final Payment.** The making of final payment by Owner will not constitute a waiver of claims by Owner. The acceptance of final payment by Contractor will constitute a waiver of claims by Contractor, except those previously made in writing and identified by Contractors as unresolved at the time of final application for payment.
6. **Termination.** This Agreement will continue in effect unless terminated by either Party as provided herein below.
- a. **Termination of the Agreement by Owner.** Owner may terminate the Agreement at any time for convenience (without cause) or for cause (due to Contractor's material breach). Owner may

terminate the Agreement immediately following delivery of a written notice of termination to Contractor. If termination is for cause, at Owner'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 Owner's notice of termination, Contractor shall stop all Work immediately but, unless expressly directed in writing by Owner to the contrary, shall take such actions reasonably necessary for the protection and preservation of the Work. In the event of termination for cause, Owner 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 Owner, and may finish the Work by whatever reasonable method Owner 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 Owner exceeds the amount due by Contractor to Owner, including all damages which Owner 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. Owner 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 Owner's material breach). Contractor may deliver a written notice of termination of the Agreement to Owner setting forth in reasonable detail the basis for such termination and providing Owner with a period of not less than ten (10) calendar days to cure such default. If Owner 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 Owner. Contractor access to the Property shall cease upon the effective termination of the Agreement; however, prior to leaving the Property, 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. Owner 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 Owner directives regarding the return of all materials purchased by Owner. Contractor shall provide reasonable cooperation to Owner 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 Owner to Contractor, shall be and remain the sole and exclusive property of Owner 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 Owner prior to termination, Contractor shall immediately deliver to Owner at such place or places as may be designated by it, any and all other property of Owner in its possession or under its control.
7. **Relationship of Parties.** The Parties understand and agree that Contractor shall provide the Work to Owner as a non-exclusive independent contractor, with all of its attendant rights and liabilities, and not as an agent or employee of Owner. 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 Owner

or be eligible for any employee benefits from Owner and, except as may be required by lawful authority, Owner will make no deductions or payment for taxes, insurance, bonds or other sums. The name "Owner" 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 Owner in the collection of money, extension of credit, acceptance of service of process, or to make any commitment that would bind Owner 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 Owner. Contractor acknowledges and agrees that nothing herein shall entitle or render Contractor eligible to participate in any benefits or privileges provided by Owner for its employees.

8. **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 any 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. 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.
  
9. **Insurance.**
  - a. 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 Owner and with limits no less than those states as follows:
    - i. 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 Owner 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 Owner for any and all injuries suffered by Agents;
    - ii. 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
    - iii. 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.
  - b. All of the above-listed insurance must be maintained in force throughout the term of this Contract and must be written by insurance companies authorized to sell insurance where work is being performed and have an A.M. Best's rating of B++ VII or better. All insurance policies must provide that they may not be cancelled or modified without 30 days' prior written notice to Owner and that they are primary and noncontributory over any insurance that may be carried by Owner.

- c. All such insurance shall be primary. All policies shall include a waiver of subrogation in favor of Owner, and all policies shall require at least thirty (30) days prior written notice to Owner of any intention to cancel, terminate or reduce coverage provided thereby. Owner 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 Owner 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 Owner, Contractor shall furnish Owner 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 Owner 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. Owner 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.
- d. 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 Project. 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, and that Contractor will provide such certification to Owner before the subcontractor performs any work on the Project.

10. **Performance and Payment Bonds.** In accordance with Chapter 2253, Texas Government Code and Section 49.275 of the Texas Water Code, Contractor must provide Owner with the following: (i) a performance bond in the amount of the Contract Sum and in a form and substance, and with a surety, satisfactory to Owner prior to commencement of the Work if the Contract Sum is in excess of \$100,000; and (ii) a payment bond in the amount of the Contract Sum and in a form and substance, and with a surety, satisfactory to Owner prior to commencement of the Work if the Contract Sum is in excess of \$25,000. The Contract Sum shall be adjusted to reflect Contractor's costs to a surety in connection with furnishing such bonds.

11. **Indemnity.**

- a. **General Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL INDEMNIFY AND HOLD OWNER AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (COLLECTIVELY, THE "INDEMNITEES") HARMLESS FROM ALL CLAIMS, LIABILITIES, DAMAGES, LOSS, AND EXPENSE, INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES AND EXPENSES, ARISING OUT OF OR RESULTING FROM: (1) THE PERFORMANCE OF THE WORK, ATTRIBUTABLE TO PERSONAL INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT OR OTHER ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, OR ANY SUPPLIER, OR ANYONE, DIRECTLY OR INDIRECTLY, EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, OR (2) THE FAILURE OF THE WORK TO BE FIT FOR ITS INTENDED PURPOSE. THIS OBLIGATION WILL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY THAT WOULD OTHERWISE EXIST UNDER THIS AGREEMENT OR AT LAW OR IN EQUITY AS TO ANY OTHER PARTY OR PERSON. THIS INDEMNIFICATION WILL EXTEND TO CLAIMS, DEMANDS, OR LIABILITIES FOR INJURIES OCCASIONED AFTER COMPLETION OF THE WORK, AS WELL AS DURING THE WORK'S PROGRESS. **THE OBLIGATIONS IN THIS PARAGRAPH (A) APPLY WHETHER ALLEGED OR ACTUAL,**



**NEGLIGENT, OR GROSS NEGLIGENT ACTS OR OMISSIONS OR OTHER FAULT OF ANY INDEMNITEE CAUSED THE LOSS IN WHOLE OR IN PART; PROVIDED HOWEVER, IN THE EVENT OF ANY JOINT OR CONCURRENT LIABILITY BETWEEN AN INDEMNITEE AND CONTRACTOR, CONTRACTOR'S OBLIGATIONS HEREIN WILL BE REDUCED BY THE PERCENTAGE OF NEGLIGENCE OR FAULT APPORTIONED TO THE INDEMNITEE; AND (B) INCLUDE WITHOUT LIMITATION, CLAIMS BY THE CONTRACTOR'S CREW OR EMPLOYEES AGAINST THE INDEMNITEES.** This provision relating to indemnification shall survive the termination of this Agreement and may be enforced by Owner, or its successors or assigns.

- b. **Indemnification for Lien Claims.** CONTRACTOR SHALL INDEMNIFY OWNER AND INDEMNITEES 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 OWNER 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, OWNER 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 OWNER AND INDEMNITEES AGAINST ANY ATTORNEYS' FEES OR OTHER COSTS OR EXPENSES INCURRED BY OWNER AND INDEMNITEES IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS OR CAUSES OF ACTION WITHIN THE SCOPE OF THIS SECTION 11 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.
12. **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 that cannot be resolved through informal conference will be submitted to mediation prior to exercising any judicial remedies.
13. **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 Owner:

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

If to the Contractor:

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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.

**14. General Provisions.**

- a. **Assignment.** This Agreement and Contractor's obligation and duties to Owner hereunder are not transferable or assignable by Contractor.
- b. **Waiver.** Failure of Owner at any time to enforce any provisions of this Agreement shall not be construed to be a waiver or relinquishment of Owners 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 12 of this Agreement. Should, for any reason whatsoever, any claim, dispute, or cause of action fail to be resolved pursuant to Section 12 of this Agreement, such claim, dispute, or cause of action shall be filed in the court of competent jurisdiction in Travis 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 and electronic scanned signatures and countersignatures shall be deemed originals for all purposes and proper evidence of assent of this Agreement.
- e. **Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected thereby, and it is also the intention of the parties that, in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible, and is legal, valid, and enforceable.
- f. **Attorneys' Fees.** Any party to this Agreement who is the prevailing party in any legal proceeding against any other party brought under or in connection with this Agreement or the subject matter hereof will be additionally entitled to recover court costs and reasonable attorney's fees, and all other litigation expenses, including deposition costs, travel, and expert witness fees, from the non-prevailing party.
- g. **Authority.** Each party represents and warrants that it has the full right, power, and authority to execute this Agreement and all related documents. Each person executing this instrument on behalf of a party represents that he or she is an authorized representative of and has the authority to sign this document on behalf the respective party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be 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”**

**Plans and Specifications for Work**