

EXHIBIT E

AGREEMENT FOR TREE AND VEGETATION TRIMMING AND REMOVAL SERVICES

STATE OF TEXAS §

COUNTY OF WILLIAMSON §

This Agreement for Tree and Vegetation Trimming and Removal Services (“Agreement”), dated as of this ____ day of _____, 2019 (the “Effective Date”), by and between Brushy Creek Municipal Utility District, a conservation and reclamation district of the State of Texas (the “District”), and _____, a Texas _____ (“Contractor”), evidences that:

RECITALS

WHEREAS, the District desires to retain Contractor to provide vegetation and tree trimming and removal services at various sites located within the District, in Round Rock, Texas, for fire mitigation purposes; and

WHEREAS, Contractor has agreed to provide such services 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

Section 1.1 Engagement of Contractor. Contractor hereby contracts and agrees to provide all labor, materials, equipment, tools, machinery, transportation, storage, supervision and services necessary, required or reasonably inferable, whether or not expressly set forth in any bid documents or specifications, to prosecute and complete the vegetation and tree trimming and removal services more particularly described in **Exhibit “A”** in accordance with the specifications set forth in said exhibit (the “Specifications”) attached hereto and in accordance with the terms and conditions of this Agreement (the “Services”). The Services shall be performed by Contractor at the locations more particularly identified in **Exhibit “B”** attached hereto in accordance with all applicable regulatory requirements and the Specifications. In the event of any conflict between the terms and conditions of this Agreement, the Specifications or any bidding documents, the terms and conditions of this Agreement shall control.

Section 1.2 Schedule for Performance. A schedule for performance of the Services is attached hereto as **Exhibit “C”**, which scheduled is incorporated herein and made a part of this Agreement for all

purposes (the “Project Schedule”).

Section 1.3 Access. The District shall provide access to Contractor for purposes of performing the Services during all authorized times and dates for the Services.

Section 1.4 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 1.5 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 Contractors' 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 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 1.6 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.

Section 1.7 Supervision by Certified Arborist. Contractor agrees that all Services shall be supervised by an arborist certified by the International Society of Arboriculture (“ISA”). Prior to commencement of any Services, Contractor shall furnish to the District the license number and other evidence of ISA certification in reasonable detail for approval by the District.

II. COMPENSATION

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 Services. After completion of all Services to the reasonable satisfaction of the District, 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.

III. REPRESENTATIONS AND WARRANTIES

Section 3.1 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 3.2 Insurance. Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by Contractor, 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)

IV. RELATIONSHIP OF PARTIES

Section 4.1 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 4.2 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 4.3 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 4.4 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 4.5 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.

V. INDEMNIFICATION

Section 5.1 Indemnification. 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 THE PERFORMANCE OF THE SERVICES BY CONTRACTOR, INCLUDING 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, OR OBLIGATIONS HEREUNDER.

VI. TERM AND TERMINATION

Section 6.1 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 three (3) months from the Effective Date.

Section 6.2 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 6.3 Termination by Contractor. Notwithstanding any other provision herein, Contractor shall have the right to terminate this Agreement at any time after 30days 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.

VII. MISCELLANEOUS

Section 7.1 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. All notices hereunder from the District to the Contractor will be sufficient if sent by certified mail or facsimile transmission with confirmation of delivery, addressed to the Contractor at _____, Facsimile _____.

Section 7.2 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 7.3 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 7.4 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 7.5 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 7.6 Survival. Article V shall survive the termination of the Agreement.

Section 7.7 Boycott Israel Certification. For purposes of Chapter 2270 of the Texas Government Code, at the time of execution and delivery of the Contract, neither the Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of 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 the Contract. The terms “boycotts Israel” and “boycott Israel” as used in this clause has the meaning assigned to the term “boycott Israel” in Section 808.001 of the Texas Government Code.

Section 7.8 Terrorist Organization Certification. For purposes of Subchapter F of Chapter 2252 of the Texas Government Code, at the time of execution and delivery of the Contract, neither the Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the 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 herein has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

Section 7.9 Disclosure of Interested Parties. Contractor acknowledge that Government Code Section 2252.908 (“Section 2252.908”) requires business entities entering into a contract with a local government entity such as the District to complete a FORM 1295 promulgated by the TEC (which is available on the TEC website at <https://www.ethics.state.tx.us/forms/1295.pdf>) and to file it electronically with the TEC before the time the business entity executes and submits the contract to the local governmental entity. Contractor confirms that it has reviewed Section 2252.908, electronically filed a FORM 1295 with the TEC, and has provided the District with a completed FORM 1295 and certification of filing generated by the TEC’s electronic filing application, as required by Section 2252.908.

[The remainder of this page intentionally left blank.]

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: _____

Secretary: _____

CONTRACTOR:

By: _____

Name: _____

Title: _____

Exhibit “A”

Scope of Services and Specifications

Shaded Fuel Vegetation and Tree Trimming and Removal Service Specifications

Scope of Services:

The Services consist of providing all labor, equipment and materials required to provide vegetation and shaded fuel tree trimming and removal services at various District properties as indicated on the attached photographs. The selected Contractor will assume full responsibility for trimming and removal of trees and other vegetation as identified by the District that are dead, storm damaged, diseased, deteriorated, or pose a safety hazard to the public. Services include cutting all stumps flush with the ground, debris removal and disposal, and clean up associated with these arborist activities. The Contractor will be expected to work cooperatively with the District and to adapt to developing circumstances should they arise. The Contractor will be responsible for:

1. Trimming and removing trees, vines, shrubs and other plant material identified by the District and providing a cost proposal and proposed work schedule and timeline.
2. Interfacing with the District’s Parks and Facilities Maintenance Coordinator in the performance of the Services.
3. Identifying and utilizing proper ingress and egress routes required for the Services.
4. Completing the Services within the agreed timeframe and within budget.
5. Defining traffic control plans for the trails and sidewalks to control traffic on the trail near the Services being performed. Contractor must use safe driving speeds on the trails, remaining under 5 mph in all vehicles.

Equipment:

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

Quality Assurance:

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

Safety Standards:

Contractor is to follow all ANSI Z133 Safety Standards and indicate what general safety protocols are followed by the Contractor. All equipment to be used and all work to be performed shall be in full compliance with the most current revision of American National Standards Institute (ANSI), standard Z133. The Contractor shall be responsible for ensuring that all work is performed in good standing with the International Society of Arboriculture (ISA) and in compliance with ANSI A300 standards for tree care operations.

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

Clean-Up:

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

Liability for Damage to Property:

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

Tree Removal:

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

A shaded fuel break (indicated as a red line on the mapping) shall be trimmed 30' in from the private property line, onto the District's property. This fuel break shall include trimming of trees and shrubs up to 10' high in this area. Trees and shrubs over a 1" diameter shall remain in the shaded fuel break. If the height of these trees or shrubs is less than 10' the Park and Facility Maintenance Coordinator shall be consulted to determine if the plant material should be removed or left in place.

This area shall also have all vines removed at soil level and cut and or pulled out of tree canopies and removed from surface growth on ground. All dead wood, fallen trees, branches, vines and plant debris piles shall be removed from this area. Portions of the properties are Federally protected environmental preserves. These areas cannot have vehicular traffic in the preserve boundaries or any fuel or chemicals poured (refueling, mixing and similar activities on site.) Plant materials may be pulled out by wench or hand to an area with the brush chipper. These areas are indicated in green in the mapping.

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

Maintenance of Traffic:

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

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

Exhibit “B”
Maps of Project Sites

Exhibit "C"
Project Schedule