

REQUEST FOR PROPOSAL
FOR
IRRIGATION MAINTENANCE SERVICES



Response Deadline

February 14, 2024

12:00 PM Central Standard Time (CST)

To:
Nora Dinsmore
Brushy Creek MUD
16318 Great Oaks Drive
Round Rock, TX 78681

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT

REQUEST FOR PROPOSAL FOR IRRIGATION MAINTENANCE SERVICES

1. INTRODUCTION

Brushy Creek Municipal Utility District (the “District”) is accepting pricing proposals from qualified contractors (“Vendors”) to provide Irrigation Maintenance Services for a 36-month period beginning approximately March 1, 2024 and ending February 27, 2027.

2. SCOPE OF SERVICES

2.1. General

The District seeks proposals for irrigation maintenance services for landscape irrigation facilities and equipment at District parks, medians, and other properties. The Vendor is to provide all labor, materials and equipment required for the proper maintenance of District irrigation facilities in accordance with the attached specifications.

2.2 Location and Frequency of Services

Attached as **Exhibit “A”** to this RFP is a list of locations for which irrigation maintenance services are to be performed by the contractor. The exhibit identifies each facility/property at which maintenance is to be performed. Each location shall be served once per month.

2.3 Specifications

Attached as **Exhibit “B”** are the applicable specifications for the irrigation maintenance services.

The specifications represent the general requirements for maintenance of District irrigation systems. Vendors shall be responsible for providing maintenance services that meet or exceed all of the requirements as set forth in the specifications, as well as providing equipment for the services.

3.0 INSTRUCTIONS TO PROPOSER

This procurement is intended to result in the selection of a Vendor that is most advantageous to the District, and that will result in the best and most economical irrigation maintenance services for the District. Vendor must describe in detail how it will meet the requirements of this RFP and may provide additional related information with its proposal. The proposal should be presented in a format that corresponds to, and references, the sections outlined in the Section 4.1 below. Responses to each section and subsection should be labeled to indicate which item is being addressed. Proposals should be straightforward and concise. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer.

The District is not liable for any costs incurred by Vendors before entering into a formal agreement with the District. Costs of developing the proposals and any other such expenses incurred by the Vendor in responding to the RFP are entirely the responsibility of the Vendor and shall not be reimbursed in any manner by the District.

1. Acceptance Period: Unless otherwise specified herein, proposals are firm for a period of 90-days.

2. Authorized Signatures: Every proposal must be signed by the person or persons legally authorized to bind the Proposer to a contract for the execution of the work. The name, address and telephone number of the firm represented must also be specified.

3. Award of Proposal: Award of a contract will be made to the Vendor offering the most advantageous proposal after consideration by the District of all Evaluation Criteria set forth in Section 4.5 below. The District shall not be obligated to accept the lowest priced proposal but will make an award based on the best interests of the District after all factors have been considered.

4. Cancellation of Solicitation: The District may cancel this solicitation at any time.

5. Compliance with Laws: All proposals and maintenance services shall comply with current federal, state, and other laws and regulations relative thereto.

6. Documents to be returned with the Proposal: Failure to completely execute and submit required documents before the Submittal Deadline may render a proposal to be deemed non-responsive. The documents that must be returned by the Submittal Deadline are listed in Section 4.1 Items to be Provided with Proposal Submittals.

4. PROCEDURAL INSTRUCTIONS

4.1. Items to be Provided with Proposals Submittals:

All proposals must include the following items:

1. Cover letter – signed letter stating that the Vendor has the capability of performing the irrigation maintenance services requested by the District.
2. Pricing- Vendor shall specify the pricing for the irrigation maintenance services within the District to include the materials and equipment and labor according to attached specifications.
3. Questionnaire and Information Form – (Exhibit “E”).
4. Experience- Vendor must identify at least two (2) examples of similar work to that which is requested that the vendor is currently performing or has performed within the past 24 months.
5. Insurance- Vendor shall specify the types and amounts of insurance that it holds.
6. References- Vendor must identify three references, including the name, title, and daytime telephone number of the references.
7. Conflict of Interest Statement – Vendor shall submit their responses to the Conflict of Interest Statement in Section 5.0.
8. Licenses - Vendor must furnish documentation demonstrating that the supervisor of all work is a licensed irrigator.

4.2 Questions

Questions regarding the procurement process or the irrigation maintenance services sought by the District **must be in writing via e-mail** to n.dinsmore@bcmud.org no later than **12:00 PM (CST) February 7 2024**. The subject line shall read: **“Questions for Irrigation Maintenance Services”**. Questions will be compiled and all questions and answers will be sent to all known interested vendors and published on District’s website as an Addendum by October 12, 2023. (www.bcmud.org).

4.3. Timeline –

Procurement package distributed to Vendors:

January 12, 2024

Advertisement Dates:

Jan 17th & Jan 24, 2024

Mandatory meeting/site visit

January 30, 2024, 10:00 a.m.

Meet at Brushy Creek Community Center Lobby

16318 Great Oaks Drive

Round Rock, TX 78681

Written Questions due from Vendors:

February 7, 2024

Proposals due from Bidders:

February 14, 2024 12:00pm

To Board for Approval:

February 22, 2024

Implementation Date:

March 2024

4.4. Vendor Proposals

Proposals must conform to the requirements set forth herein. Sealed Proposals and required information must be submitted to the attention of:

Nora Dinsmore

Procurement Specialist

Brushy Creek Municipal Utility District

16318 Great Oaks Drive

Round Rock, TX 78681

by **12:00 PM (CST) on February 14, 2024**. Any proposals received after the above date and time will not be considered. Sealed Proposals may be hand delivered or sent by postal service.

All costs associated with the preparation and submissions of proposals are the sole responsibility of the Vendor. All proposals shall be signed and dated by an official authorized to bind the Vendor in legal matters. All submitted pricing proposals become the property of the District.

4.5. Selection Process

All proposals will be evaluated by District staff. Staff recommendations will be submitted to the Board of Directors for consideration at a regularly scheduled meeting following the proposal date deadline. The criteria that will be used to make the selection include the following, not necessarily in the order listed:

- (a) Cost for Services
- (b) Attendance at Site-Visit
- (c) Qualifications/Experience
- (d) References

If the District has experience with your firm and you do not list the District as a reference, the District reserves the right to use past experience to evaluate a proposal.

4.6 Rejection of Proposals

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

4.7 Confidential Information.

The District is subject to the Texas Public Information Act. Any information submitted to the District by a Vendor shall be available to the public, unless it is clearly marked "CONFIDENTIAL". If another party requests access to information marked confidential, then the District shall ask the Vendor if the information may be released. If the release is agreed to, the District shall release the information. If the release is denied, the matter shall be referred to the Texas Attorney General's Office where the Vendor shall be responsible for substantiating its confidentiality. The Attorney General's office shall rule on the matter. Pricing information contained in proposals or contracts is not considered confidential under the PIA and will be disclosed without making a request to the Texas Attorney General.

4.8 Agreement - (Exhibit F)

Attached to this request is the form of agreement to be entered into by the Vendor and District regarding the Irrigation Maintenance Services. The form of agreement is a part of this Request. Upon selection of a Vendor by the Board of Directors, the Vendor must execute the agreement. Failure to do so may constitute cause for the District to enter into an agreement with another Vendor.

5.0 CONFLICT OF INTEREST

The Board of Directors of the District, in compliance with Section 49.199 of the Texas Water Code, has adopted a Code of Ethics Policy, and the District is subject to the requirements of Chapters 171 and 176 of the Texas Local Government Code. In accordance with the District's policy and Texas law, please disclose the following information:

1. Whether or not any of the Board of Directors or Management Staff listed below, or a family relative thereof, has a substantial interest in the Contractor or its affiliates.
2. Whether or not any of the Board of Directors or Management Staff listed below, or a family relative thereof, has an employment or other business relationship with the Contractor or its affiliates.
3. Whether the Contractor has provided a gift to any of the Board of Directors or Management Staff listed below, or a family relative thereof.

Furthermore, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. **The District will not execute the Agreement with the contractor unless and until the contractor furnishes a Form 1295 in accordance with the requirements of the State of Texas and the Texas Ethics Commission.**

2024 Board of Directors

Brushy Creek Municipal Utility District

- Michael Tucker, President/Assistant Treasurer
- Cynthia Elkins, Place 4
- Kim Filiatrault, Vice President
- Rebecca Tullos, Treasurer
- Ken Reifschlager, Secretary

District Management Team

- Shean Dalton General Manager
- Nora Dinsmore, Procurement Specialist
- Angela Niemiec, Parks and Recreation Manager
- Chris Kifer, Property Maintenance Supervisor

Exhibit - A

2023 Irrigation Areas

Map ID	WCAD ID	Description	Address	Acreage	Type	Irrigation (Yes/No)	# Time Per Year Irrigation Maintenance	Total Annual Bid for Irrigation Maint.
95	N/A	Great Oaks right-of-way North	Sam Bass to Carmel	?	ROW	Y	12	\$
96	N/A	Great Oaks right-of-way South	620 to Hairy Man	?	ROW	Y	12	\$
3	R055351	Maintenance Facility	2300 GREAT OAKS DR ROUND ROCK, TX 78681	2.91	Misc	Y	12	\$
5	R059027	Shirley McDonald Park & Creekside Park & Pool	GREAT OAKS DR ROUND ROCK, TX 78681	11.16	Park	Y	12	\$
11	R089489	Pepper Rock Park	8609 PEPPER ROCK DR AUSTIN, TX 78717	4.88	Park	Y	12	\$
14	R315735	Cat Hollow Park	O'CONNOR DR ROUND ROCK, TX 78664	11.622	Park	Y	12	\$
31	R375744	Community Center (facility)	16318 GREAT OAKS DR ROUND ROCK, TX 78681	14.37	Park	Y	12	\$
31	R375744	Community Center (garden inside fence)	16318 GREAT OAKS DR ROUND ROCK, TX 78681	1.5	Park	Y	12	\$
31	R375744	Community Center (building expansion west side)	16318 GREAT OAKS DR ROUND ROCK, TX 78681	14.37	Park	Y	12	\$
32	R375745	Community Park Lot III (sports fields & trail)	GREAT OAKS DR ROUND ROCK, TX 78664	6.604	Park	Y	12	\$
47	R427327	Sendero Springs Park and Pool	3002 LUMINOSO LN E ROUND ROCK, TX 78681	5.495	Park	Y	12	\$
122	R526010	Sendero Valley Park	426 CASCADA ROUND ROCK, TX 78681	0.17	Park	Y	12	\$
123	R520611	Sendero Valley Park	430 CASCADA ROUND ROCK, TX 78681	0.14	Park	Y	12	\$
51	R449572	Shirley McDonald Great Oaks Connection (right of way strip on G.O. & trail)	GREAT OAKS DR ROUND ROCK, TX 78681	0.1902	Park	Y	12	\$
82	R499448	Highland Horizon Park & Pool	410 HIGHLAND HORIZON AUSTIN, TX 78717	0.96	Park	Y	12	\$
103	R499449	Highland Horizon Park Addition	420 HIGHLAND HORIZON AUSTIN, TX 78717	0.23	Park	Y	12	\$
76	R330006	North Park	Park Drive	4.9198	Park	Y	12	\$
85	R499582	Southern Cross Storm Pond	401 SOUTHERN CROSS DR AUSTIN, TX 78717	5.4	Park	Y	12	\$
54	R451319	Water Treatment Facility	SAM BASS RD ROUND ROCK, TX 78681	16.98	Water	Y	12	\$
16	R322857	Racine Woods Park	8174 RACINE TRL AUSTIN, TX 78717	0.623	Park	Y	12	\$

Irrigation
Maintenance

Total Annual Bid:	\$
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Exhibit B
Irrigation Maintenance Specifications

I. General

- (a) The contractor shall provide a written report to the District monthly describing the dates and services performed by location during the preceding month. The monthly report shall be submitted with the monthly invoice and no later than the 15th of the month following the month services were provided. As more particularly described in the Agreement, failure to provide the report by the due date may result in a penalty of \$100 for each day that the report is late.
- (b) The Contractor shall have a licensed irrigator supervise all work conducted on the District's irrigation systems, and an irrigation technician or licensed irrigator conduct all repairs in accordance with the rules of the Texas Commission on Environmental Quality. Documentation of appropriate licenses must be submitted with the proposal.
- (c) All work performed under the contract will be scheduled, supervised and verified by the District's representative noted below or their designee:

Chris Kifer, Property Maintenance Supervisor

II. Irrigation Maintenance

Irrigation maintenance shall be done on a monthly basis. The monthly maintenance shall include:

1. Set and/or verify that all irrigation controllers are on the proper irrigation schedule as determined by the District;
2. Adjust irrigation heads, bubblers or drip lines to ensure proper coverage of landscape area;
3. Document any damage to the irrigation system and work with the District's representative to determine liability for the damage and a repair schedule;
4. Replace any non functional batteries in controllers and repair dripline breaks during the course of the irrigation check. Notate areas that were repaired on the month report. Invoice the District for these repairs separately from the monthly maintenance check invoice.
5. Notify the District's representative via telephone and email within 48 hours of finding non-functional irrigation;
6. Conduct irrigation system repairs as authorized by the District's representative;
7. Certify all backflow devices (on irrigation systems) annually in accordance with State and federal law and provide certification report to the District;
8. Provide a report each month for each irrigation location that specifies that the irrigation schedule was set or confirmed to be correct, that verifies all heads, bubblers and drip lines are properly adjusted, and that identifies any damage that is observed.

Damage that is identified during the monthly irrigation maintenance check shall be reported via telephone call and email to the District's representative as soon as the damage is identified.

The District and its staff shall dictate start, run times and frequency of irrigation. Irrigation schedules shall adhere to the District's watering schedule and applicable restrictions during drought (both are described in the District's Drought Contingency Plan) and the Contractor shall be required, as a part of this Contract, to reset the irrigation system controllers to comply with the Drought Contingency Plan watering restrictions immediately upon notification by the District.

If any irrigation systems or equipment fail between monthly checks, the contractor shall complete the repairs within one week after request by the District.

III. Reporting from the Contractor to the District

The contractor shall provide monthly reporting to the District. The report for the previous month shall be provided no later than the 15th of each month. The report shall be provided digitally via email to the District's representative.

The irrigation maintenance report shall include:

- Confirmation that irrigation schedule was set or confirmed to be correct for each area;
- Verification that all heads, bubblers and drip lines are properly adjusted;
- Documentation of any damage or loss of function (for example meter turned off, mainline broken, no water to beds or similar items that would cause the area to not be irrigated) that is observed.

Exhibit B Repair Pricing

Vendor's Average Cost for Typical Repairs (materials and labor)

Type of Repair:

Vendor Charges/Cost to District:

drip line break 2' (use of 2 barbed 1/2" coupler to repair)	
9v battery replacement	
dc latching solenoid replacement rainbird	
dc latching solenoid replacement hunter	
1" valve diaphragm replacement hunter (pgv)	
1" valve replacement hunter pgv	
1" diaphragm replacement rainbird dv	
1" valve replacement rainbird dv	
irrigation box replacement 6" round	
irrigation box replacement standard rectangle	
irrigation box replacement 10" round	
hunter pgp-06 rotor replacement with nozzle	
rainbird 6" 1800 SAM pop-up spray replacement with nozzle	
hunter 6" prospray pop up spray replacement with nozzle	
hunter node 100 - one station controller replacement	
hunter node 200 - two station controller replacement	
1" lateral line repair, pvc 4' section w/2 couplers	
3/4" lateral line repair, pvc 4' section w/2 couplers	
price per hour technician	
price per hour irrigator	

EXHIBIT C

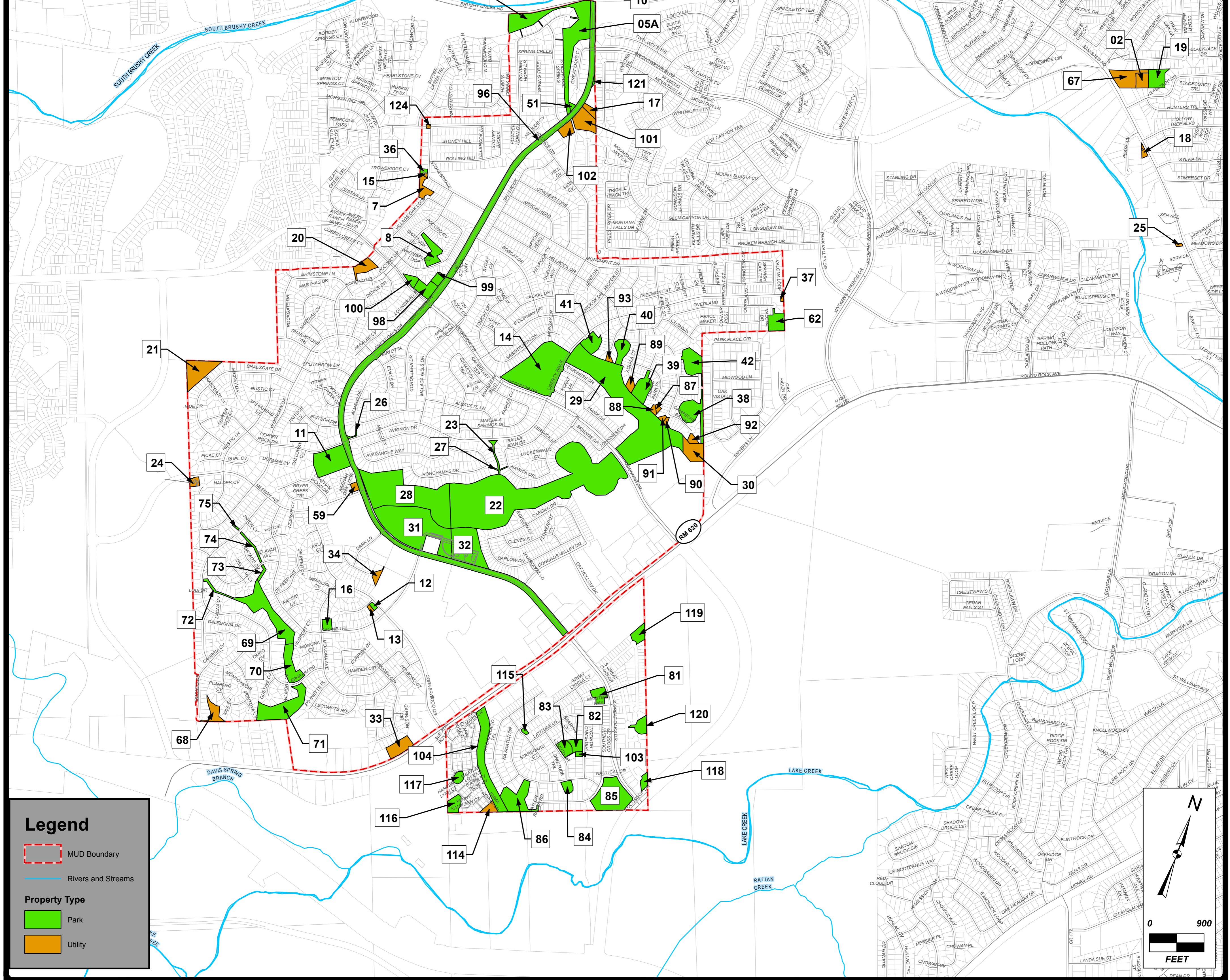
Subset or Location	Meter location	controller location	rotary	spray	tree bubbler	drip	turf	beds	time start	duration (min.)	Frequency (Days)	Notes
North Park	near water fountain	TREES THROUGHOUT PARK			X							
Creekside Park	inside pool fence	2 BEDS NEAR KIOSK & RESTROOM		X								
		2 BEDS NEAR BASKETBALL COURT		X								
Shirley McDonald Park	near 3701 Powell	TREES ON WEST SIDE OF PARK			X							
	Great Oaks area	CONTROLLER IN WELL BOX	X	X	X	X						
Racine Woods Park	8208 Monona	NEAR WATER Fountain			X							
Subset or Location	Meter location	controller location	rotary	spray	tree bubbler	drip	turf	beds	time start	duration (min.)	Frequency (Days)	Notes
Highland Horizon Park and Pool	416 Highland Horizon Dr. NE corner	FRONT L OF ENTRY		X			X					
		FRONT OF PLAYSCAPE		X			X					
		R SIDE OF PLAYSCAPE		X			X					
		FRONT OF BLDG		X			X					
		L SIDE OF BLDG	X				X					

		BEHIND & L SIDE OF PLAYSCAPE	X					X					
		R SIDE OF BLDG NEAR FENCE	X					X					
		BACK L OF POOL	X					X					
		BEHIND POOL		X				X					
		FRONT R OF PARKING LOT		X				X					
		ON THE STREET				X		X					
		BUBBLERS FRONT L OF BLDG			X								
		BUBBLERS ON LL SIDE OF PERIMETER			X								
		BUBBLERS ON FRONT R			X								
		DRIP IN FRONT OF BEDS				X			X				
		LANDSCAPIN G behind BB COURT				X							
		LANDSCAPIN G in front of BB COURT				X							
Subset or Location	Meter location	controller location	rotary	spray	tree bubbler	drip	turf	beds	time start	duration (min.)	Frequency (Days)	Notes	

Sendero Park and Pool	4203 Pasada Ln N. Corner near pool handicap ramp	FRONT & L SIDE OF BEDS		X								
	controller located inside pool in storage area	PARKING LOT PERIMETER NEAR BEDS		X								
		L SIDE OF TURF		X								
		BEHIND POOL TURF		X	X							
		L BERM TURF	X									
		R BERM TURF	X									
		ON PARKING LANE			X							
	controller located inside pavilion storage closet	PLAYFIELD AREA	X									
		PLAYFIELD AREA	X									
		AROUND BB COURT		X								
Subset or Location	Meter location	controller location	rotary	spray	tree bubbler	drip	turf	beds	time start	duration (min.)	Frequency (Days)	Notes
Sendero Valley Park	Cascada Ln. near sidewalk Behind large Limestone Block	zone 1				X		X				
		zone 2				X		X				

		zone 3				X		X				
		zone 4	X					X				
		zone 5	X					X				
		zone 6	X					X				
		zone 7		X				X				
		zone 8		X				X				
		zone 9		X				X				

Parcel ID	Address	Area	Type
01	BRUSHY BRND DR ROUND ROCK, TX 78681	0.13	WELL
02	1000 LAMAR MASS RD ROUND ROCK, TX 78681	0.37	WELL
03	GREAT OAKS DR ROUND ROCK, TX 78681	0.05	FACILITY
04	NOT ON MAP		
05	SHIRLEY MCDONALD PARK	0.05	PARK
06	GREAT OAKS DR BRUSHY CREEK NORTH	0.05	PARK
07	1000 LAMAR MASS RD ROUND ROCK, TX 78681	0.37	WELL
08	1000 LAMAR MASS RD ROUND ROCK, TX 78681	0.37	WELL
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102	1000 LAMAR MASS RD ROUND ROCK, TX 78681	0.37	WELL
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123	1000 LAMAR MASS RD ROUND ROCK, TX 78681	0.37	WELL
124	1000 LAMAR MASS RD ROUND ROCK, TX 78681	0.37	WELL



JOB NO.	50873-02
DATE	Jun 2016
DESIGNER	ASL
CHECKED	CS
DRAWN	AL
SHEET	1

BRUSHY CREEK MUD

2016 PROPERTY INVENTORY

PAPE-DAWSON ENGINEERS

7800 SHOAL CREEK BLVD | AUSTIN, TEXAS 78757 | PHONE: 512.454.8711
SUITE 220 WEST | FAX: 512.459.8867

TEXAS BOARD OF PROFESSIONAL ENGINEERS, FIRM REGISTRATION # 470

Brushy Creek
Municipal Utility District

Exhibit E

Questionnaire and Information Form

BIDDER QUESTIONNAIRE AND INFORMATION FORM

Bidder MUST complete this form in its entirety. If a question is not applicable, Bidder should state "not applicable".

BUSINESS AND CONTACT INFORMATION

Business Name: _____ Federal Tax ID # _____

Address: _____ City/State/Zip: _____

Contact Name: _____ Phone #: _____ Fax #: _____

E-Mail: _____ Web Site: _____

Number of Years been in Business: _____

Type of Business Entity: Corporation LLC LP LLP Other _____

In What State & Year Did Business Organize in Your Current Structure: _____

Full Legal Name of Parent or Holding Company, if any: _____

(Note: if there are several tiers of ownership, attach a corporate organizational chart)

Services Provided by Business: _____

CONTRACT INFORMATION/PERFORMANCE

In the past three (3) years, has Business:

- (a) Been engaged in any litigation? Yes No If yes, attach explanation.
- (b) Completed all contracts it was awarded? Yes No If no, attach details.
- (c) Been awarded a bonus for early completion of work? Yes No If yes, attach details.
- (d) Defaulted on a contract? Yes No If yes, attach details.
- (e) Been assessed liquidated damages? Yes No If yes, attach details.

The undersigned Bidder declares: (a) that it has reviewed and agrees to the Terms and Conditions, Scope of Work, and all other documents herein; (b) that through its authorized personnel it has personally examined the location of the proposed work and has determined the amount and character of the proposed work and the supervision, labor, tools, material as identified, and equipment, necessary to complete the same in compliance with the specifications and contract documents (if applicable); and (c) that Bidder has no conflict of interest, as defined in the RFP.

SIGNATURE: _____ TITLE: _____

PRINTED NAME: _____ DATE: _____

Exhibit F

Agreement for Irrigation Maintenance Services

STATE OF TEXAS §

COUNTY OF WILLIAMSON §

This Agreement for Irrigation Maintenance Services (“Agreement”) is entered into between **Brushy Creek Municipal Utility District**, a conservation and reclamation district of the State of Texas (the “District”), and _____, a _____ (“Contractor”). The District and Contractor are collectively referred to herein as the “Parties” or individually as a “Party.”

Recitals

A. Whereas, the District owns a number of tracts of real property for which it desires to retain a qualified contractor to perform irrigation maintenance services; and

B. Whereas, the Contractor has agreed to provide irrigation maintenance services at the District’s properties in accordance with the terms and conditions of this Agreement.

Now, Therefore, for and in consideration of the payment terms and performance obligations herein described, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

SECTION 1. SERVICES TO BE PROVIDED

1.1 Scope of Work. Contractor agrees to provide irrigation maintenance services (the “Services”) on behalf of the District. The parks, trails, greenbelts, medians, and other locations at which the Services shall be provided by Contractor, along with a description of the services and frequency of performance, are set forth on **Exhibit A** attached hereto. The Contractor shall provide all labor, equipment and process machinery required for the Services.

1.2. Specifications

1.2.1 Contractor shall perform all service in accordance with the specifications attached hereto as **Exhibit B** (Specifications). The Specifications are hereby incorporated into, and made a part of, this Agreement.

1.2.2 The Parties agree that the Specifications represent the general requirements for maintenance of District irrigation systems. The Contractor shall be responsible for providing Services that meet or exceed all of the requirements as set forth in the Specifications.

1.3 Changes in Work. The District may request additional Services or changes in the Services. If so, changes in the Services shall only be initiated by a written change order (“Change Order”) signed by an authorized representative of each Party. Verbal Change Orders shall have no effect, except in cases of an emergency threatening personal injury or property damage.

1.4 Additional Maintenance. The District may from time to time request that the Contractor perform maintenance services at individual District properties more frequently than the schedule set forth on Exhibit “A” attached hereto. The Contractor agrees to perform any additional maintenance services requested by the District and shall be entitled to additional compensation for such additional Services in accordance with Section 3.2 below.

1.5 Penalties for Non-Performance. The District may assess penalties for non-performance of the Services or for Contractor's failure to perform the Services on a timely basis. A penalty of \$100 per day may be assessed and deducted by the District from the monthly payment for each day that one or more of the Services (including submittal of the required reports) is not completed on time and after the District has notified the Contractor in writing and given the Contractor at least three business days to complete the incomplete Services and notify the District of completion. For example, if irrigation equipment at a District property is scheduled to be maintained on November 1, 2023 but is not maintained and the District notifies the Contractor of the missed maintenance on November 3, 2023, the Contractor would have until November 8, 2023 to complete the missed maintenance and notify the District of completion. For each day after November 8th that the maintenance is not completed and Contractor fails to provide notice of completion to the District, the District may assess the Contractor a \$100 per day penalty that would be deducted from the next month's payment. These penalties are a non-exclusive remedy for Contractor's nonperformance, and the District reserves for all purposes the right to terminate this Agreement for nonperformance by the Contractor.

SECTION 2. TERM

2.1 This Agreement shall commence on November 1, 2023 and shall terminate on September 30, 2026, unless expressly extended by a Change Order or earlier terminated in accordance with the terms of this Agreement.

2.2 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.

2.3 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.

2.4 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 3. PRICE

3.1 The monthly price to be paid by the District to Contractor for the Services shall be \$_____per month.

3.2 In the event that the District requests that Services be performed by Contractor at individual properties of the District more frequently than set forth on Exhibit A attached hereto, then the District shall provide compensation for such additional services at the "price per additional time" rate identified in Exhibit A attached hereto.

SECTION 4. PAYMENT

4.1 Payments will be made within thirty days after the District receives a correct invoice for completed Services.

4.2 Invoices for payment under this Agreement shall be sent to:

Brushy Creek Municipal Utility District
Accounts Payable
ap@bcmud.org
16318 Great Oaks Drive
Round Rock, Texas 78681

In no event shall Contractor invoice the District more than once a month.

THE DISTRICT WILL NOT AUTHORIZE PAYMENT FOR ANY AMOUNT OVER THE PRICE SET FORTH HEREIN UNLESS THE OVERCHARGE HAS BEEN REQUESTED OR APPROVED IN WRITING BY THE DISTRICT.

SECTION 5. INDEPENDENT CONTRACTOR

Contractor shall perform in all respects as an independent contractor and not as an employee, partner, joint venture or agent of the District. The Services to be performed by Contractor shall be subject to the District's review, approval and acceptance, but the detailed manner and method of performance shall be under the control of Contractor. The accuracy, completeness and scheduling of the Services and the application of proper means and methods for performance of the Services are entirely the responsibility of Contractor. Contractor shall be solely responsible for hiring, supervising and paying its employees, subcontractors and suppliers. Contractor shall be solely responsible for payment of all (i) compensation, including any employment benefits, to its employees, (ii) taxes, including withholding for federal income tax purposes, employment and unemployment taxes, and (iii) such other expenses as may be owed to Contractor's employees. However, because Contractor's Services may be associated in the minds of the public with District, Contractor shall ensure that all Services by its employees, subcontractors and agents are performed in an orderly, responsible and courteous manner.

SECTION 6. LICENSES AND PERMITS

6.1 Contractor shall procure and maintain at its expense all licenses and permits necessary for it to perform the Services.

6.2 Contractor shall ensure that its and its subcontractors' employees and other trades-people are all properly licensed to perform their respective portions of the Services.

SECTION 7. GOVERNING LAWS, REGULATIONS & STANDARDS

7.1 This Agreement shall be governed, interpreted and enforced under the laws of the State of Texas, without regard to its conflict of law principles. In the event of litigation between the Parties arising out of this Agreement issued under it, venue for such litigation shall be in a court of competent jurisdiction in Williamson County, Texas.

7.2 Contractor shall be aware of and shall comply with all federal, state and local laws, ordinances, codes (including applicable professional codes) and regulations applicable to the Services. If any of the Services fails to comply with such laws, ordinances, codes and regulations, Contractor shall bear any expense arising from that failure, including the costs to bring the Services into compliance.

7.3 Contractor is solely responsible to ensure that its employees and those of its subcontractors and suppliers, who are not citizens of the United States, hold all documentation required under U.S. immigration law to lawfully work in the United States. **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS, DISTRICT, ITS AFFILIATES, THEIR BOARDS OF DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY EXPENSE (INCLUDING ATTORNEYS' FEES, COURT COSTS AND EXPERT WITNESS FEES), LOSS, FINE, SANCTION, PENALTY, LAWSUIT, JUDGMENT OR OTHER PROCEEDING ARISING IN CONNECTION WITH THE VIOLATION OR ALLEGED VIOLATION OF THIS OBLIGATION.**

7.4 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.

7.5 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.

7.6 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.

SECTION 8. INTOXICANTS & DRUGS: EMPLOYEE CONDUCT

Intoxicants or illegal drugs are prohibited on the District’s properties. Contractor shall not at any time allow personnel for whom it is responsible on the jobsite if they are under the influence of any substance that may impair their performance. Contractor shall promptly remove from the jobsite any person who is or appears to be under the influence of any of these substances or is otherwise unsafe or disorderly. Contractor shall ensure that its employees, subcontractors and their employees avoid excessive noise, exceeding speed limits or reckless driving, use of weapons or trespass on land not owned by or under easement to District. If private property must be entered or crossed to perform the Services, Contractor shall obtain permission from the property owner before entering.

SECTION 9. WARRANTIES

Warranty of the Services. Contractor warrants that all Services shall be performed in a good and workmanlike manner consistent with industry standards and to any higher standard required in this Agreement, including the attached Specifications. Contractor shall correct, without delay and at its own expense, any portion of the Services that does not meet the warranty.

The Contractor shall be responsible for damage to the District’s equipment and/or property, the workplace and its contents by its work, negligence in work, its personnel and equipment.

SECTION 10. GENERAL INDEMNITY

10.1 CONTRACTOR SHALL INDEMNIFY AND HOLD THE DISTRICT AND ITS BOARD OF DIRECTORS, EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES (JOINTLY “CLAIMS”), INCLUDING REASONABLE ATTORNEYS’ FEES, ARISING OUT OF, OR RESULTING FROM OR ARISING UNDER THIS AGREEMENT, OR ANY CLAIMED DEFECT IN THE SERVICES, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT OR GROSSLY NEGLIGENT ACT OR WILLFUL MISCONDUCT OF CONTRACTOR, ANY SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT, OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE.

10.2 THE FOREGOING INDEMNITY PROVISION SHALL BE DEEMED AN INDEPENDENT COVENANT AND SHALL SURVIVE COMPLETION OF OR ANY TERMINATION OF THE AGREEMENT OR ANY CLAIMED BREACH THEREOF.

SECTION 11. INSURANCE

The 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 work as a result of this bid by the successful bidder, its agents, representatives, volunteers, employees or subcontractors.

Certificates of Insurance and endorsements shall be furnished to the District and approved by the District before commencement of Services.

The following standard insurance policies shall be required each in an amount not less than \$1,000,000:

- General Liability Policy
- Automobile Liability Policy
- Worker's Compensation Policy (Statutory)

SECTION 12. HEALTH AND SAFETY REQUIREMENTS

12.1 General. Contractor shall perform all Services required by this Agreement in a safe and healthy manner. During the course of Services, the Contractor is directly responsible for; shall comply with; and enforce all laws, rules, regulations, and good industry practices applicable to worker safety and health.

12.2 Scope of Health and Safety Requirements. Contractor and its agents employed by District are responsible for complying with and enforcing these requirements; Contractor will manage all its subcontractors on site and will be accountable for subcontractor performance with respect to health and safety.

12.3 Limitation of Liability. District shall not be liable for damages or expenses related to any suspension or stoppage of work, loss of business, or other special, incidental, consequential or punitive damages in connection with any failure on the Contractor's part to establish, enforce, or adequately monitor its health and safety program.

SECTION 13. ASSIGNMENT

This Agreement is to be considered a personal services contract. Contractor may not assign this Agreement without the consent of District. Any permitted assignee must notify the District in writing that it accepts the assignment on the same terms and conditions contained in this Agreement. No permitted assignment shall limit Contractor's responsibility for performance of this Agreement. Attempted assignment or delegation of this Agreement, including obligations under it, without the written consent of District shall be void, and not merely voidable.

SECTION 14. TERMINATION FOR CONVENIENCE

14.1 District shall have the right to terminate this Agreement for its convenience at any time. After receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due at that point in the Agreement:

- (1) Stop all ongoing Services;
- (2) Place no further subcontracts or orders for materials or Services;
- (3) Terminate all subcontracts;
- (4) Cancel all materials and equipment orders, as applicable; and
- (5) Take any action that is necessary to protect and preserve all property related to this Agreement that is in the possession of the Contractor.

14.2 In the event of a termination under Section 14.1, District shall pay for Services completed as of the date of termination. If the date of termination is other than the end of a month, then the compensation for Services rendered through the date of termination shall be prorated according to the Services completed prior to termination (relative to the total quantity of Services to be performed in a month).

SECTION 15. NOTICES

All notices or other communications required under this Agreement may be made in writing and sent either by mail or fax to the other Party.

To the District:

Brushy Creek Municipal Utility District
Attn: General Manager
16318 Great Oaks Drive
Round Rock, Texas 78681
Phone: 512-255-7871

To the Contractor:

SECTION 16. AGREEMENT NON-EXCLUSIVE

The Agreement is not exclusive. Contractor has the right to perform services for others during the term of the Agreement, and District has the right to hire others to perform the same or similar tasks.

SECTION 17. SEVERABILITY

This Agreement is severable and if any one or more parts of it are found to be invalid, such invalidity shall not affect the remainder of this Agreement if it can be given effect without the invalid parts.

SECTION 18. THIRD PARTY BENEFICIARIES

There are no third party beneficiaries to this Agreement and the provisions of this Agreement shall not create any legal or equitable right, remedy or claim enforceable by any person, firm or organization other than the Parties and their permitted successors and permitted assigns.

SECTION 19. INTEGRATION & AGREEMENT MODIFICATION

This Agreement contains the entire and integrated agreement between Contractor and District as to its subject matter and supersedes all prior and contemporaneous negotiations, correspondence, understandings, representations and agreements, written or oral, related to it.

**Brushy Creek Municipal
Utility District:**

Contractor:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

Description of District Facilities and Frequency of Services to be Provided at Each Facility

Exhibit B
Irrigation Maintenance Specifications

I. General

- (a) The contractor shall provide a written report to the District monthly describing the dates and services performed by location. The monthly report shall be submitted with the monthly invoice and no later than the 15th of the following month services were provided.
- (b) The Contractor shall have a licensed irrigator supervise all work conducted on the District's irrigation systems, and an irrigation technician or licensed irrigator conduct all repairs in accordance with the rules of the Texas Commission on Environmental Quality. Documentation of appropriate licenses must be submitted with the proposal.
- (c) All work performed under the contract will be scheduled, supervised and verified by the District's representative noted below or their designee:

Rachel Hagan, Parks and Facilities Maintenance Coordinator

II. Irrigation Maintenance

Irrigation maintenance shall be done on a monthly basis. The monthly maintenance shall include:

- 1. Set and/or verify that all irrigation controllers are on the proper irrigation schedule as determined by the District;
- 2. Adjust irrigation heads, bubblers or drip lines to ensure proper coverage of landscape area;
- 3. Document any damage to the irrigation system and work with the District's representative to determine liability for the damage and a repair schedule;
- 4. Replace any non functional batteries in controllers and repair dripline breaks during the course of the irrigation check. Notate areas that were repaired on the month report. Invoice the District for these repairs separately from the monthly maintenance check invoice.
- 5. Notify the District's representative via telephone and email within 48 hours of finding non-functional irrigation;
- 6. Conduct irrigation system repairs as authorized by the District's representative;
- 7. Certify all backflow devices annually in accordance with State and federal law and provide certification report to the District;
- 8. Provide a report each month for each irrigation location that specifies that the irrigation schedule was set or confirmed to be correct, that verifies all heads, bubblers and drip lines are properly adjusted, and that identifies any damage that is observed.

A copy of the monthly irrigation maintenance report shall be provided to the District in paper and electronic form by the 15th of the month following the month that the maintenance was performed. Damage that is identified during the monthly irrigation maintenance check shall be reported via telephone call and email to the District's representative as soon as the damage is identified.

One handheld (Hunter Wireless Valve Programmer) device for checking and programming the Hunter Wireless Valve Controllers shall be provided by the District. This device shall be returned to the District in proper condition immediately upon termination of the Contract and as a condition of final payment.

The District and its staff shall dictate start, run times and frequency of irrigation. Irrigation schedules shall adhere to the District's watering schedule and applicable restrictions during drought (both are described in the District's Drought Contingency Plan) and the Contractor shall be required, as a part of this Contract, to

reset the irrigation system controllers to comply with the Drought Contingency Plan watering restrictions immediately upon notification by the District.

If any irrigation systems or equipment fail between monthly checks, the contractor shall complete the repairs within one week after request by the District.

III. Reporting from the Contractor to the District

The contractor shall provide monthly reporting to the District. The report for the previous month shall be provided no later than the 15th of each month. The report shall be provided digitally via email to the District's representative.

The irrigation maintenance report shall include:

- Confirmation that irrigation schedule was set or confirmed to be correct for each area;
- Verification that all heads, bubblers and drip lines are properly adjusted;
- Documentation of any damage or loss of function (for example meter turned off, mainline broken, no water to beds or similar items that would cause the area to not be irrigated) that is observed.

Exhibit B Repair Pricing

Vendor's Average Cost for Typical Repairs (materials and labor)

<u>Type of Repair:</u>	<u>Vendor Charges/Cost to District:</u>
drip line break 2' (use of 2 barbed 1/2" coupler to repair)	
9v battery replacement	
dc latching solenoid replacement rainbird	
dc latching solenoid replacement hunter	
1" valve diaphragm replacement hunter (pgv)	
1" valve replacement hunter pgv	
1" diaphragm replacement rainbird dv	
1" valve replacement rainbird dv	
irrigation box replacement 6" round	
irrigation box replacement standard rectangle	
irrigation box replacement 10" round	
hunter pgg-06 rotor replacement with nozzle	
rainbird 6" 1800 SAM pop-up spray replacement with nozzle	
hunter 6" prospray pop up spray replacement with nozzle	
hunter node 100 - one station controller replacement	
hunter node 200 - two station controller replacement	
1" lateral line repair, pvc 4' section w/2 couplers	
3/4" lateral line repair, pvc 4' section w/2 couplers	
price per hour technician	
price per hour irrigator	