# PROFESSIONAL SERVICES AGREEMENT

## (Project Name)

STATE OF TEXAS §
§
COUNTY OF WILLIAMSON §

This Agreement is entered into by and between the Brushy Creek Municipal Utility District, a Texas conservation and reclamation district ("District"), and Consultant Name ("Consultant"), both of which may be referred to herein singularly as "Party" or collectively as the "Parties."

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

### I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"District" is defined in the preamble of this Agreement and includes its successors and assigns.

"Consultant" is defined in the preamble of this Agreement and includes its successors.

"General Manager" shall mean the General Manager of the District and/or his designee.

### II. TERM

2.1 This Agreement shall become effective upon execution by the District and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, District retains the right to terminate this Agreement at the expiration of each of District's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

### III. SCOPE OF SERVICES AND PROJECT SCHEDULE

Consultant agrees to provide the services described in this Article III entitled Scope of Services and Project Schedule in exchange for the compensation described in Article IV. Compensation.

Scope of Services and Project Schedule are detailed in *Attachment "A"* which are incorporated by reference as if written and copied herein.

All work performed by Consultant hereunder shall be performed to the satisfaction of the General Manager. The determination made by General Manager shall be final, binding and conclusive on all Parties hereto. District shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to General Manager. District shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to General Manager; however, District shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should District elect not to terminate.

## IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by General Manager, of all services and activities set forth in this Agreement, District agrees to pay Consultant an amount not to exceed twenty-five thousand dollars ($25,000) as total compensation, to be paid to Consultant on a time and materials basis as further detailed in *Attachment "A"*.

4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by District. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the District.

4.3 Final acceptance of work products and services require written approval by District. The approval official shall be the General Manager. Payment will be made to Consultant following written approval of the final work products and services by the General Manager. District shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

## V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of District**;** and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant**.**

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, District has the right to use all such writings, documents and information as District desires, without restriction. Any use of such writings,

documents and information on extensions of this project or on any other project without specific adaptation by Consultant shall be at the District's sole risk and without liability to the Consultant.

## VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the District at their respective offices, at all reasonable times and as often as District may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by District and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that District shall have access to any and all such documents at any and all times, as deemed necessary by District**,** during said retention period. District may, at its election, require Consultant to return said documents to District prior to or at the conclusion of said retention.

6.3 Consultant shall notify District**,** immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that District will process and handle all such requests.

## VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 *Termination Without Cause.* This Agreement may be terminated by the District at any time without cause upon 15 calendar days' written notice, which notice shall be provided in accordance with Article VIII.

7.3 *Termination For Cause*. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, District may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.4 *Defaults With Opportunity for Cure.* Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. District shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, District shall have the right, without further notice, to terminate this Agreement in whole or in part as District deems appropriate, and to contract with another consultant to complete the work required in this Agreement. District shall also have the right to offset the cost of said new agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of District to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets
7.4.3 Failing to perform or failing to comply with any covenant herein required
7.4.3 Performing unsatisfactorily

The Parties agree that they will use good faith and reasonable efforts to resolve any dispute by agreement, which may include engaging in nonbinding arbitration, mediation or other alternative dispute resolution methods as recommended by the laws of the State of Texas, before initiating any lawsuit to enforce their respective rights under this Agreement. If the default is not cured during the 15-day period or any subsequent alternative dispute resolution agreed upon by the Parties, the non-defaulting Party may pursue all remedies available at law or in equity that it deems appropriate to redress such default (but not remedies at law including damages).

7.5 *Termination By Law.* If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to District or to such person(s) or firm(s) as the District may designate, at no additional cost to District, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant**,** or provided to Consultant**,** hereunder, regardless of storage medium, if so requested by District, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by District and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination

or expiration of this Agreement, Consultant shall submit to District its claims, in detail, for the monies owed by District for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of District and constitute a **Waiver** by Consultant of any and all right or claims to collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.9 *Termination not sole remedy.* In no event shall District's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of District's remedies, nor shall such termination limit, in any way, at law or at equity, District's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

If intended for District, to:
Brushy Creek Municipal Utility District
Attn: General Manager
16318 Great Oaks
Round Rock, TX 78681

If intended for Consultant, to:
Consultant Name
Attn: Contact Name
Address
Address

## IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the District, which shall be clearly labeled "*Project Name from title of PSA*" in the Description

of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The District will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the District. The District shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the District. No officer or employee, other than the District Attorney, shall have authority to waive this requirement.

9.2 The District reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by District Attorney based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will District allow modification whereupon District may incur increased risk.

9.3 A Consultant's financial integrity is of interest to the District; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the District, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an AM Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below:

**Brushy Creek Municipal Utility District**
**Insurance Requirements**

Consultant performing work on District property or public right-of-way for the Brushy Creek Municipal Utility District shall provide the District a certificate of insurance evidencing the coverage provisions identified herein. Consultant shall provide the District evidence that all subcontractors performing work on the project have the same types and amounts of coverage as required herein or that the subcontractors are included under the contractor's policy. The District, at its own discretion, may require a certified copy of the policy.

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the Brushy Creek Municipal Utility District.

Listed below are the types and amounts of insurance required. The District reserves the right to amend or require additional types and amounts of coverage or provisions depending on the nature of the work.

| Type of Insurance | Amount of Insurance | Provisions |
|---|---|---|
| Commercial General (Public) Liability to include coverage for:<br>Premises/Operations<br>Products/ Completed Operations<br>Independent Contractors<br>Personal Injury<br>Contractual Liability | $1,000,000 per occurrence | District to be listed as additional insured and provide 30 days' notice of cancellation or material change in coverage<br>District to be provided a waiver of subrogation<br>District prefers that insurer be rated B+V1 or higher by A.M. Best or A or higher by Standard & Poors |
| Business Auto Liability | $1,000,000 per occurrence | District to be provided a waiver of subrogation<br>The contractor agrees to maintain a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. |
| Workers' Compensation & Employers Liability | Statutory Limits and $500,000 / $500,000 / $500,000 | The contractor shall certify to the District that it maintains Workers' Compensation and Employers Liability that meets or exceeds these limits for each employee of the contractor employed on the project. In the event any portion of the work is subcontracted, the contractor shall furnish to the District a certificate from each subcontractor certifying the coverage for the subcontractor's employees, which coverage must meet or exceed these minimum requirements. |
| Professional Liability | $1,000,000 | |

Questions regarding this insurance should be directed to the Brushy Creek Municipal Utility District (512) 255-7871. A contract will not be issued without evidence of Insurance. District will only accept the ACORD 25 or ISO certificate of insurance forms.

9.4 The District shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the District, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the Parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to District at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

Brushy Creek Municipal Utility District
Purchasing Department
16318 Great Oaks, Round Rock, TX 78681

9.5 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the District, its officers, officials, employees, volunteers, and elected representatives as ***additional insured by endorsement under terms satisfactory to the District***, as respects operations and activities of, or on behalf of, the named insured performed under contract with the District, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the Brushy Creek Municipal Utility District where the District is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the District.
- Provide thirty (30) calendar days advance written notice directly to District of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to District. District shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.7 In addition to any other remedies the District may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the District shall have the right to order Consultant to stop work hereunder,

and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

9.9 It is agreed that, excepting Professional Liability, Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the Brushy Creek Municipal Utility District for liability arising out of operations under this Agreement.

9.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

9.11 Consultant and any of its Subcontractors are responsible for all damage to their own equipment and/or property.

## X. INDEMNIFICATION

**10.1 CONSULTANT covenants and agrees to INDEMNIFY and HOLD HARMLESS, the DISTRICT and the elected officials, employees, officers, directors, volunteers and representatives of the DISTRICT, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, or liability for damages caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the CONSULTANT or the CONSULTANT's agent, CONSULTANT under contract, or another entity over which the CONSULTANT exercises control. Such acts may include personal or bodily injury, death and property damage, made upon the DISTRICT directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any negligent or intentional acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of DISTRICT, its elected officials, employees, officers, directors, volunteers and representatives, in instances where such negligence causes personal injury, death, or property damage. In no event shall the indemnification obligation extend beyond the date with when the institution of legal or equitable proceedings for the professional negligence would be barred by any applicable statute of repose or statute of limitations.**

10.2 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the DISTRICT in writing within 24 hours of any claim or demand against the DISTRICT or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

**10.3 Duty to Defend – Consultant covenants and agrees to hold a DUTY TO DEFEND the DISTRICT and the elected officials, employees, officers, directors, volunteers and representatives of the DISTRICT, individually and collectively, from and against any and all claims, liens, proceedings, actions or causes of action, other than claims based wholly or partly on the negligence of, fault of, or breach of contract by the DISTRICT, the DISTRICT'S agent, the DISTRICT'S employee or other entity, excluding the CONSULTANT or the CONSULTANT'S agent, employee or sub-consultant, over which the DISTRICT exercises control. CONSULTANT is required under this provision and fully satisfies this provision by naming the DISTRICT and those representatives listed above as additional insured under the CONSULTANT'S general liability insurance policy and providing any defense provided by the policy upon demand by DISTRICT.**

**10.4 CONSULTANT is required to perform services to the District under the standard of care provided for in Texas Local Government Code § 271.904 (d)(1-2).**

10.5 Employee Litigation – In any and all claims against any Party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

10.6 Force Majeure -District agrees that the CONSULTANT is not responsible for damages arising from any circumstances such as strikes or other labor disputes; severe weather disruptions, natural disasters, fire or other acts of God; riots, war or other emergencies; or failure of any third party governmental agency to act in timely manner not caused or contributed to by CONSULTANT.

## XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

11.2 It is District's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: [list subs or Specify None]. Any deviation from this subcontractor list, whether in the form of

deletions, additions or substitutions shall be approved by District prior to the provision of any services by said subcontractor.

11.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the District, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. District shall in no event be obligated to any third party, including any subcontractor of Consultant**,** for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the District.

11.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the District Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

11.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, District may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to District under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to District, which District sustains as a result of such violation.

## XII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of District; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between District and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between District and Consultant. The Parties hereto understand and agree that the District shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the District.

## XIII. CONFLICT OF INTEREST

13.1 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the District, that no director of the District or relative of a director has a substantial interest in Consultant as defined under Chapter 171 of the Texas Local Government Code, and that Consultant does not have an employment, financial or other business relationship with any director or employee of the District, or with a relative of a director or family member, that requires a Conflict Disclosure Statement to be filed under Chapter 176 of the Texas Local Government Code.

13.2 Certificate of Interested Parties (TEC Form 1295). For contracts needing District Board approval, or any subsequent changes thereto requiring District Board approval, the District may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the District from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the District. The TEC Form 1295 must be provided to the District prior to the award of the contract. The District does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

## XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both District and Consultant, and, if applicable, subject to formal approval by the District Board of Directors.

## XV. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the District Board of Director Rules, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in

terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## XVI. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## XVII. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

## XVIII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. In case of District, such changes must be approved by the District Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## XIX. LAW APPLICABLE

19.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN TRAVIS COUNTY, TEXAS.**

19.2 Venue for any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in a court of competent

jurisdiction in Williamson County, Texas.

## XX. LEGAL AUTHORITY

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

## XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

## XXII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## XXIII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the Parties, and shall be incorporated herein for all purposes:

Attachment "A" - Scope of Services, including Project Description/Scope of Services; Fee Summary for Professional Services and Proposed Project Schedule.

## XXIV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties, in accordance with Article XIV. Amendments.

## XXV. MISCELLANEOUS DISTRICT CODE PROVISIONS

25.1 **Representations and Warranties by Consultant.** If Consultant is a corporation,

partnership or a limited liability company, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

25.2 **Franchise Tax Certification.** A corporate or limited liability company Consultant certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the *Texas Tax Code*, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

25.3 **Eligibility Certification.** Consultant certifies that the individual or business entity named in the Agreement is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

25.4 **Payment of Debt or Delinquency to the State or Political Subdivision of the State.** Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the Brushy Creek Municipal Utility District, regardless of when it arises, until such debt or delinquency is paid in full.

25.5 **Statutory Verifications**. Consultant makes the following representations and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended (the "*Government Code*"), with respect to this Agreement. As used in such verifications, "affiliate" means an entity that controls, is controlled by, or is under common control with Consultant within the meaning of Securities and Exchange Commission Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute of limitations, and shall not be liquidated or otherwise limited by any provision of this Agreement, notwithstanding anything in this Agreement to the contrary.

i. Not a Sanctioned Company. Consultant represents that neither Consultant, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of Consultant is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Government Code. The foregoing representation excludes Consultant and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of Consultant, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

ii. No Boycott of Israel. Consultant hereby verifies that Consultant and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of Consultant, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. As used in the foregoing verification, "boycott Israel" has the meaning provided in Section 2271.001, Government Code.

iii. No Discrimination Against Firearm Entities. Consultant hereby verifies that Consultant and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of Consultant, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning provided in Section 2274.001(3), Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in Section 2274.001(6) and (7) of the Texas Government Code.

iv. No Boycott of Energy Companies. Consultant hereby verifies that Consultant and any parent company, wholly- or majority-owned subsidiaries, and other affiliates of Consultant, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, "boycott energy companies" has the meaning provided in Section 2276.001(1), Government Code.

**EXECUTED** and **AGREED** to as of the dates indicated below.

| **BRUSHY CREEK MUNICIPAL UTILITY DISTRICT** | **CONSULTANT NAME** |
|---|---|
| _____ | _____ |
| *(Signature)* | *(Signature)* |
| Printed Name: _____ | Printed Name: _____ |
| Title: Board President | Title: _____ |
| Date: _____ | Date: _____ |