

INVITATION FOR BIDS

FOR

DISTRICT ACCESSIBILITY IMPROVEMENTS PROJECT



Response Deadline

Thursday February 14, 2024

12:00 PM Central Standard Time (CST)

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

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BRUSHY CREEK MUNICIPAL UTILITY DISTRICT
INVITATION FOR BIDS FOR DISTRICT ACCESSIBILITY IMPROVEMENTS
PROJECT

1. INTRODUCTION

Brushy Creek Municipal Utility District (the “District”) is accepting bids from qualified contractors to provide services related to District Accessibility Improvements as outlined in **Exhibit B** (the “*Project*”). The services include the demolition of existing asphalt and the installation of paving, striping, and playscape ramps to meet accessibility standards.

2. SCOPE OF SERVICES

2.1 General

The District is seeking bids from qualified contractors to provide all labor, equipment, tools, machinery, transportation, storage, supervision, and services necessary, required or reasonably inferable, whether or not expressly set forth in any bid documents for the scope set forth in **Exhibit B** and in accordance with the terms of the construction contract attached as **Exhibit C**.

2.3 Timeline for Construction

Time of completion is set forth in the construction contract attached as **Exhibit C**.

2.4 Location of Site

The work for the Project will be completed at several locations within the District as indicated in **Exhibit B**.

2.5 Scope and Specifications

Contractors shall be responsible for providing all labor, equipment, tools, machinery, and other services to complete the Project in accordance with the scope and specification indicated within **Exhibit B**.

3. PROCEDURAL INSTRUCTIONS

3.1 Intent

This procurement is intended to result in the selection of the contractor that is most advantageous to the District, and that will result in the best and most economical completion of the Project.

3.2 Items to be Provided with Pricing Submittals:

All bid submittals must include the following items:

- Cover Letter – signed letter stating that the contractor has the capability of performing the project requested by the District.
- Pricing – Contractor shall specify the pricing for the project to include the materials, equipment and labor according to **Exhibit B**.
- Experience – Contractor must identify at least two (2) examples of similar work to that which is requested that the contractor is currently performing or has performed within the past 24 months.
- Insurance – Contractor shall specify the types and amounts of insurance that it holds per **Exhibit C** (the contract).
- References – Contractor must identify three references,, including name, title and daytime telephone number of the references.
- Conflict of Interest – Contractor shall submit their response to the Conflict of Interest Statement referenced in Section 5.0.
- Bid Schedule Form – The Contractor shall completely fill and submit the Bid Schedule Form. The Signature Page included as part of **Exhibit A** must also be submitted with the bid proposal form.
- Questionnaire and Information Form: The Contractor shall completely fill out and submit the Bid Form Questionnaire and Information Form, **Exhibit D**.

3.3 Questions

Questions regarding the procurement process or the scope of the Project **must be submitted in writing via e-mail** no later than **12:00 p.m. (CST) Tuesday, February 6, 2024**. The subject line shall read: ***“Questions for District Accessibility Improvements Project”***. Questions should be e-mailed to the District contact, Nora Dinsmore at n.dinsmore@bcmud.org. Copies of the specifications and bid documents will be on file and may be examined at the following location: www.civcastusa.com. Questions will be compiled and all questions and answers will be sent to all known interested contractors and published on CivCast as an Addendum by Wednesday February 7, 2024.

3.4 Timeline

Procurement Package Distributed to Contractors

Thursday January 25, 2024

Written Questions due from Contractors:

Tuesday, February 6, 2024

Proposal due from Bidders:

Thursday, February 14, 2024

Anticipated Staff recommendation to Board of Directors:

Thursday, February 22, 2024

Anticipated Construction Commencement Date:

Monday, March 4, 2024

3.5 Bid Submissions

All bid submissions must conform to the requirements set forth herein. All bids 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) Thursday, February 14, 2024**. Any Bids received after the above date and time will not be considered.

All costs associated with the preparation and submissions of Bid documents are the sole responsibility of the Bidder. All Bid submissions shall be signed and dated by an official authorized to bind the Bidder in legal matters. All submitted Bids and related information become the property of the District.

3.6 Selection Process

All bids will be evaluated by District staff and a recommendation will be submitted to the Board of Directors for consideration at a regularly scheduled meeting following the Bid deadline.

The criteria that will be used to make the selection shall include, but are not limited to, the following, not necessarily in the order listed:

- (a) Cost
- (b) Qualifications
- (c) References

If the District has experience with any contractor that does not list the District as a reference, the District reserves the right to use past experience for evaluating that contractor's bid.

3.7 Confidential Information

The District is subject to the Texas Public Information Act. Any information submitted to the District by a bidder 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 bidder 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 bidder shall be responsible for substantiating its confidentiality. The Attorney General's office shall rule on the matter. Pricing information is not considered confidential under the PIA and will be disclosed without making a request to the Texas Attorney General.

4.0 CONSTRUCTION CONTRACT

Upon selection of an apparent successful bidder by the Board of Directors, the contractor shall execute the Contract in the form attached as **Exhibit C** and furnish all required insurance and bonds. Failure to do so may constitute cause for the District to enter into a contract with another bidder. The District reserves the right to amend the form of contract but is under no obligation to do so.

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, 202Texas 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 Texas Ethics Commission (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. As a condition of execution of a contract for the Project by the District, the contractor will be required to electronically file a FORM 1295 with the TEC and provide the District with a completed FORM 1295 and certification of filing generated by the TEC's electronic filing application, as required by Section 2252.90

2024 District Board of Directors

President/Assistant Treasurer- Michael Tucker

Vice-President- Kim Filiatrault

Secretary- Ken Reifschlager

Treasurer- Rebecca Tullos

Assistant Secretary - Tracey Calloway

District Staff

Shean Dalton, General Manager

Amy Giannini, District Engineer

Angela Niemiec, Parks & Recreation Manager

Nora Dinsmore, Procurement Specialist

EXHIBIT A:

BID FORM

EXHIBIT A: BID FORM

Brushy Creek Municipal Utility District

DISTRICT ACCESSIBILITY IMPROVEMENTS

The Bidder, hereby offers to complete the Work including providing all labor, equipment, tools, machinery, transportation, storage, supervision and services necessary, required or reasonably inferable, whether or not expressly set forth in any bid documents, to prosecute and complete in a single phase the Project in accordance with the specifications furnished by the District. The Work shall be completed as set forth Specifications and in accordance with the Construction Contract at the prices set forth below:

TOTAL PROPOSED BID: Bidder proposes to provide all labor and materials for the Work in accordance the contract documents for the stipulated sum of (Bidder to provide bid amount in both written and numerical format):

_____ (written bid amount)

(\$ _____) (numerical bid amount)

The cost includes the following subdivisions:

BIDDER will complete the Work in accordance with the Contract Documents for the following prices and will include a one-year warranty period starting at the time of Owner Acceptance:

DEMOLITION

Asphalt Removal \$ _____

Removal of Wheel Stops \$ _____

Removal of Ramps \$ _____

Complete Demolition \$ _____

HARD MATERIALS

Recompact Subgrade \$ _____ (_____ cy @ \$ _____ per cy)
Asphalt Paving \$ _____ (_____ sf @ \$ _____ per sf)
Striping \$ _____
Reinstall Wheel Stops \$ _____
Installation of Curb Ramps \$ _____
Complete Hard Materials \$ _____

TOTAL PROPOSED BID \$ _____

The Bidder shall furnish Unit Price Schedule with this Bid Proposal for all items necessary to complete the Work. These unit prices are to be used to adjust the Base Bid as needed, in case a greater or lesser amount of work is done. The indicated unit prices cover all costs, including but not limited to, the cost of Work including all materials, equipment, labor, overhead, profit, maintenance and guarantee required to render the project complete and in accordance with the Construction Contract.

BID SIGNATURE PAGE

The undersigned Bidder declares: (a) that it has reviewed and agrees to the Scope of Work, Construction Contract and all other documents and terms and conditions incorporated into the District's Invitation for Bids; (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 Invitation for Bids.

ADDENDA (if applicable):

Receipt is hereby acknowledged of the following addenda to the contract documents:

Addenda No. 1: _____ (Date Received)

Addenda No. 2: _____ (Date Received)

BIDDER:

Contractor Name: _____ Contractor Seal and Authorization
(if a corporation)

Signature: _____

By: _____

Title: _____

Telephone Number: _____

Email: _____

END OF BID SCHEDULE

EXHIBIT B:

PROJECT SCOPE AND SPECIFICATIONS

EXHIBIT B: Project Scope and Specifications

Brushy Creek Municipal Utility District

DISTRICT ACCESSIBILITY IMPROVEMENTS

1. Pepper Rock Park Parking Accessibility Improvements

Scope: Accessibility improvements at the Pepper Rock Park parking lot are needed. The scope includes the milling of the indicated area at a depth of 2" approximately 380 sf and repave 2" Type D asphalt at 2% ADA compliance. Replace striping items affected by asphalt work performed. Slopes shall not exceed 2% or 1:48 in any direction as indicated below in the "RAS Violation Comment to be addressed" section. RAS inspection report is included (refer to page 6) that shows the issue with a portion of the parking area that does not meet accessibility requirements. District shall coordinate the RAS inspector to return to verify that the parking space meets the requirements once work is complete and prior to payment. Payment to contractor is contingent on passing inspection with the RAS Inspector and achieving the accessibility standards listed below.

- Mill indicated area at a depth of 1-1/2" approximately 200 sf, compact subgrade and install 1-1/2" Type D asphalt
 - Remove curb stops
 - Remove existing asphalt at the above depth
 - Inspect existing subgrade and compact and recondition existing flexible base as needed to generally conform to TxDOT item 247 type A
 - All asphalt shall comply with TxDOT item 340, type D surface course and all materials removed will be sent to a certified dump location
 - Tack vertical edges of existing pavement
 - Install HMAC Type D to grade (2% ADA compliance)
 - Roll to compaction
- Install pavement markings to match existing markings affected by asphalt work performed
 - 1 ADA space aisle (replace with same as existing)
 - Striping for one access aisle (replace with same as existing)
 - Re-pin existing car stops

General Location:

8609 Pepper Rock Park Drive
Austin, TX 78717



TAS Accessibility Standard to be addressed:

2. Violation: Comment:
Parking - Alterations were performed in areas that contain primary function of the facility. The requirements at 202.4 are applicable to this project; therefore, alterations shall be made to the parking that serves the altered areas. Slopes vary from 0.4% to 2.7% at the surface of the parking area. This is in violation with the requirements below. Ensure compliance.



502 Parking Spaces

502.4 Floor or Ground Surfaces.

Parking spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted.
EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

Advisory 502.4 Floor or Ground Surfaces. Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles. The exception allows sufficient slope for drainage. Built-up curb ramps are not permitted to project into access aisles and parking spaces because they would create slopes greater than 1:48.

Area to be replaced per report (please specify if more area is necessary):



2. Community Center Park Parking Accessibility Improvements

Scope: Accessibility improvements at the Community Center Park parking lot are needed. Mill indicated area at a depth of 2" approximately 200 sf and pave back with 2" Type D asphalt at 2% ADA compliance. Replace striping items affected by asphalt work performed. Slopes shall not exceed 2% or 1:48 in any direction as indicated below in the "RAS Accessibility Standard to be addressed" section. RAS inspection report is included (refer to pdf page 2) that shows the issue with a portion of the parking area that does not meet accessibility standards. The district shall have the RAS inspector to return to verify that the parking space meet the requirements once work is complete and prior to payment. Payment to contractor is contingent on passing inspection with RAS Inspector and achieving the accessibility standard listed below.

- Mill indicated area at a depth of 1-1/2" approximately 200 sf, compact subgrade and install 1-1/2" Type D asphalt
 - Remove curb stops
 - Remove existing asphalt at the above depth
 - Inspect existing subgrade and compact and recondition existing flexible base as needed to generally conform to TxDOT item 247 type A
 - All asphalt shall comply with TxDOT item 340, type D surface course and all materials removed will be sent to a certified dump location
 - Tack vertical edges of existing pavement
 - Install HMAC Type D to grade (2% ADA compliance)
 - Roll to compaction
- Install pavement markings to match existing markings affected by asphalt work performed.
 - 1 ADA space aisle (replace with same as existing)
 - Striping for one access aisle (replace with same as existing)
 - Re-pin existing car stops

General Location:
16318 Great Oaks Drive
Round Rock, TX 78681



TAS Accessibility Standard to be addressed:

TAS INSPECTION FINDINGS

1. Comment: Slopes vary from 2.1% to 6.2% on the right side of a vehicle parking space. This does not comply with the requirements below. Ensure compliance.

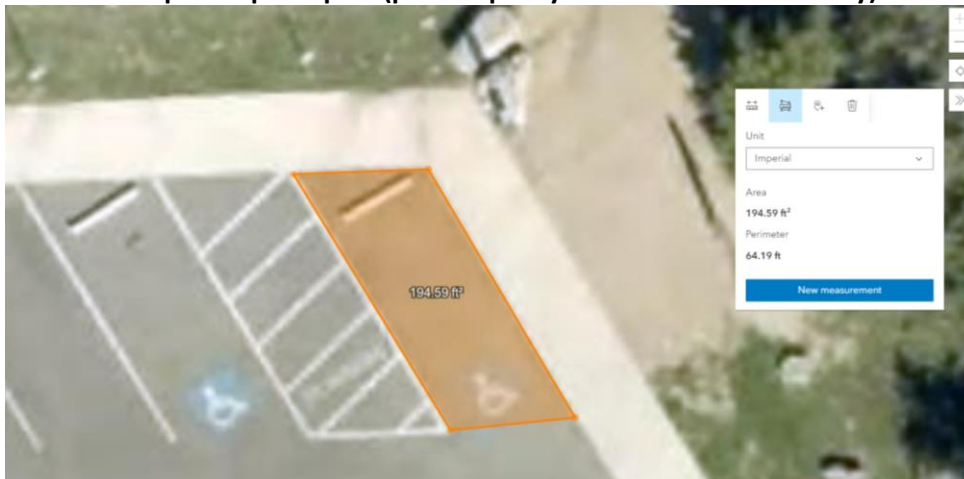


502 Parking Spaces

502.4 Floor or Ground Surfaces. Parking spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

Area to be replaced per report (please specify if more area is necessary):

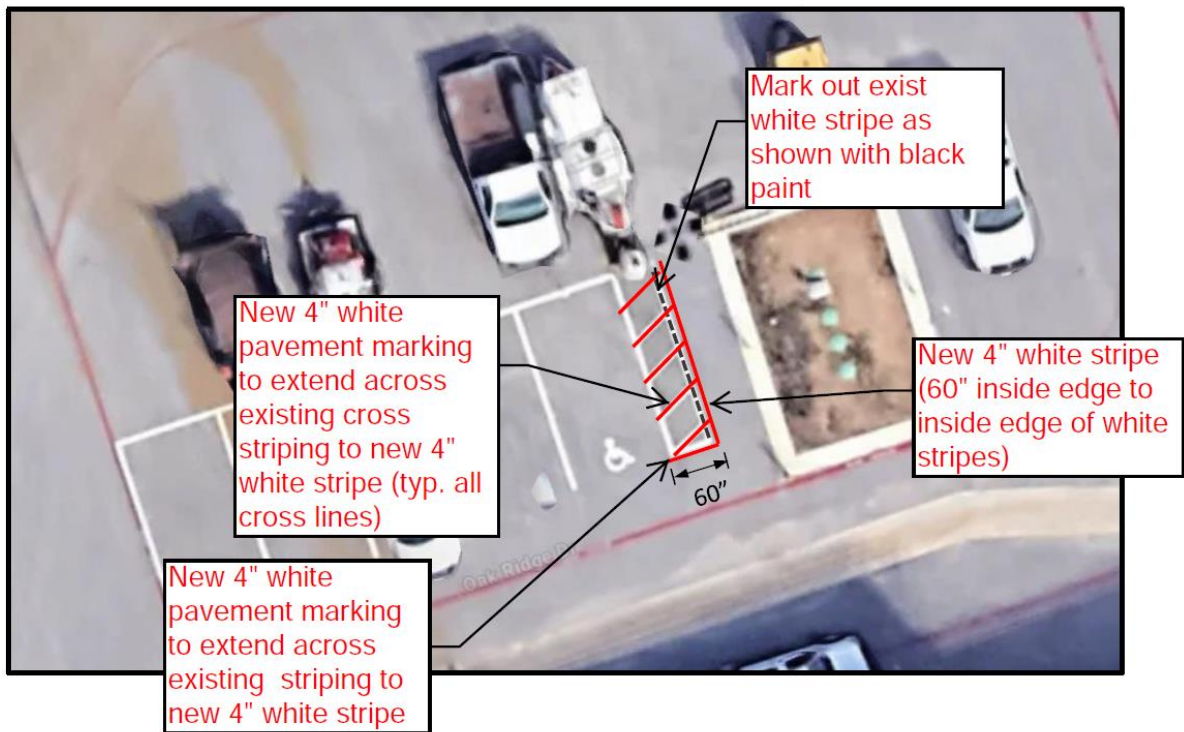


3. Maintenance Facility Pavement Marking Accessibility Standards

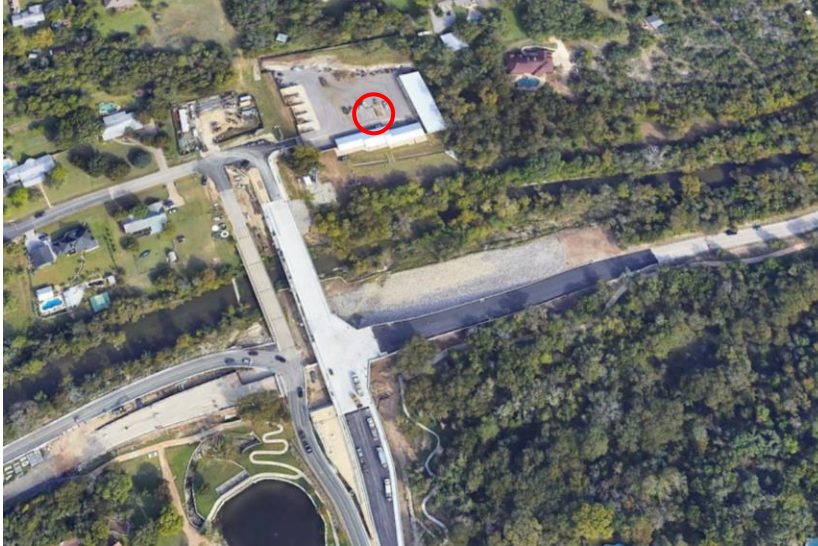
Scope: Accessibility improvements at the Maintenance Facility parking lot are needed as indicated below.

RAS inspection report is included (refer to pdf page 3) that shows the issue with a portion of the parking area that does not meet current accessibility standards. The district shall have the RAS inspector to return to verify that the parking space meet the requirements once work is complete and prior to payment. Payment to contractor is contingent on passing inspection with RAS Inspector and achieving the accessibility standard listed below.

- Widen drive aisle as indicated below.
 - Install black striping as indicated below
 - Install white striping for one 20'X5' by access aisle as shown below



General Location:
3800 Oak Ridge
Round Rock, TX 78681



TAS Accessibility Standard to be addressed:

TAS INSPECTION FINDINGS

1. **Comment:** Parking: An access aisle is 51" wide as measured from the centerline of one stripe to the outer edge of another stripe. This does not comply with the requirements below. Ensure compliance.



502 Parking Spaces

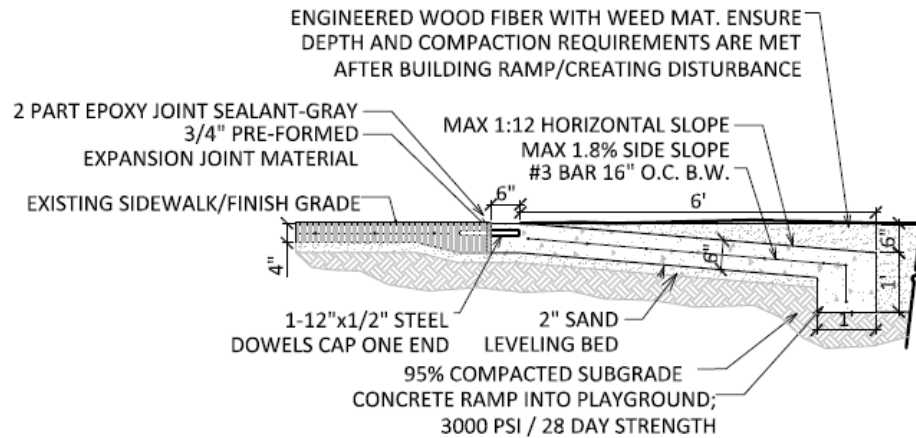
502.3.1 Width. Access aisles serving car and van parking spaces shall be 60 inches (1525 mm) wide minimum.

4. Pepper Rock Park Ramp Accessibility Improvements

Scope: Accessibility improvements needed for two ramps at the Pepper Rock Park playscape areas. Ramps shall comply with detail below. RAS inspection report is included (refer to pdf page 5) that shows two playscape area ramps do not meet current accessibility standards. District shall have the RAS inspector return to verify that the ramps meet the requirements once work is complete and prior to payment. Payment to contractor is contingent on passing inspection with RAS Inspector and achieving the accessibility standards listed below.

- Two Existing ramps to be demolished and replaced with ramps that are ADA compliant, per Construction Detail below.
- Contractor to provide all materials and install ADA compliant ramps per detail.

Construction Detail:



1 **PLAYGROUND RAMP**
SCALE: 1/2" = 1'-0"

Park Location:

8609 Pepper Rock Park Drive
Austin, TX 78717



TAS Accessibility Standard to be addressed:

TAS Inspection Findings:

1. Violation: Comment:
A. Playscape Area – The running slope is 10.2% at a curb ramp that is provided at the netplex playscape area. This is in violation with the requirements below. Ensure compliance.



- B. Playscape Area – The running slope is 9.5% at a curb ramp that is provided at the swing playscape area. This is in violation with the requirements below. Ensure compliance.

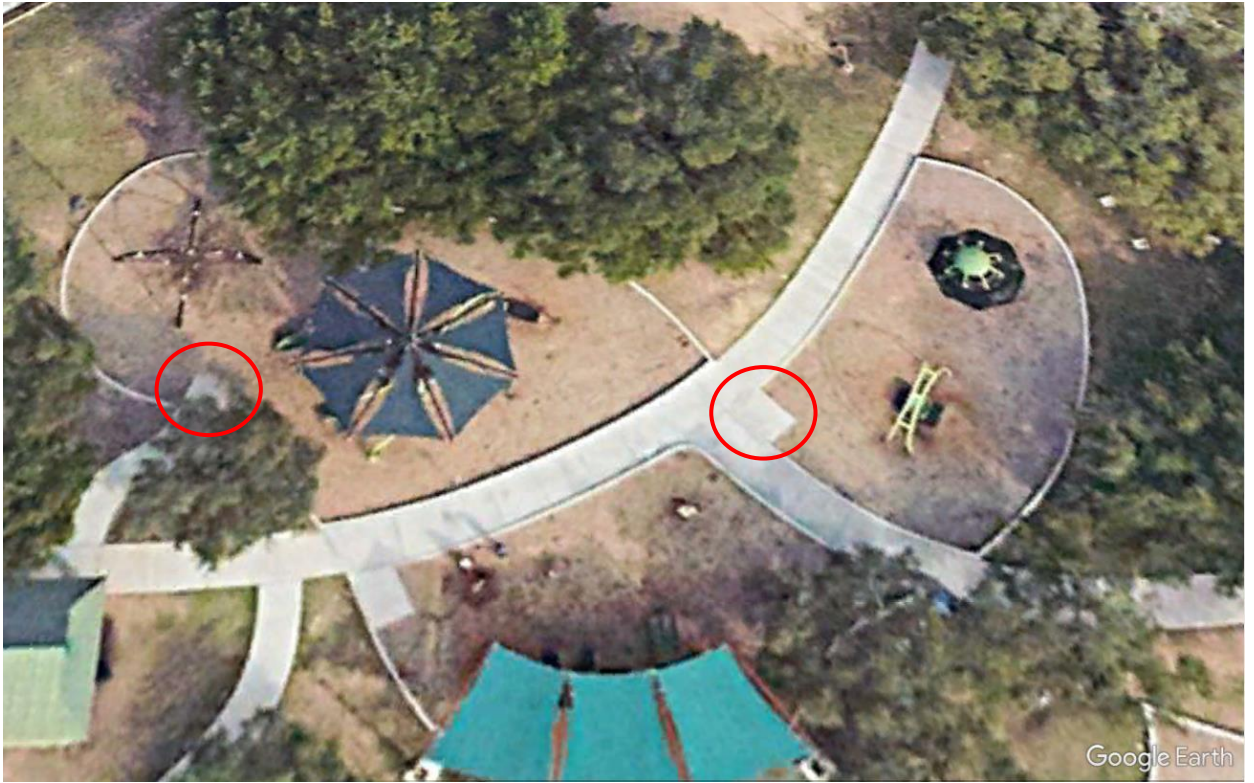


406 Curb Ramps

406.1 General.

Curb ramps on accessible routes shall comply with 406, 405.2 through 405.5, and 405.10.

Ramps to be replaced per report (please specify if more area is necessary):

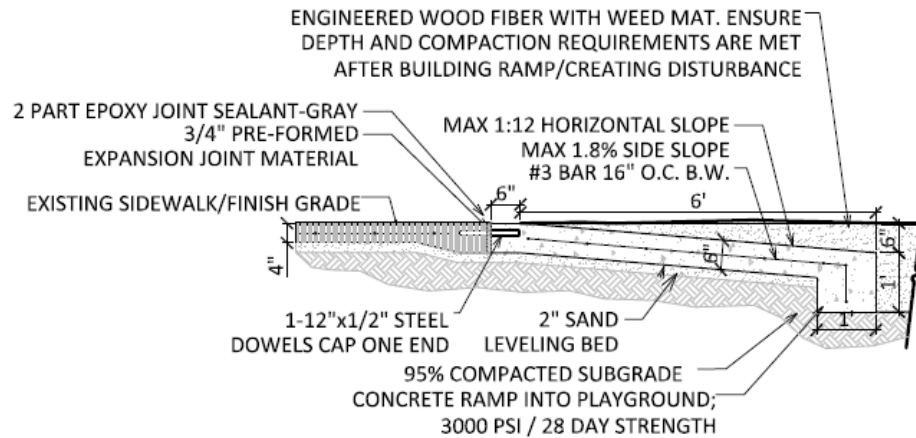


5. Sendero Valley Park Ramp Accessibility Improvements

Scope: Accessibility improvements needed for two ramps at the Sendero Valley Park playscape area. Ramps shall comply with detail below. RAS inspection report is included (refer to pdf page 5) that shows two playscape area ramps that do not meet current accessibility requirements. District shall have the RAS inspector return to verify that the ramps meet the requirements once work is complete and prior to payment. Payment to contractor is contingent on passing inspection with RAS Inspector and achieving the accessibility standards listed below.

- Two Existing ramps to be demolished and replaced with ramps that are ADA-compliant, per Construction Detail below.
- Contractor to provide all materials and install ADA compliant ramps per detail.

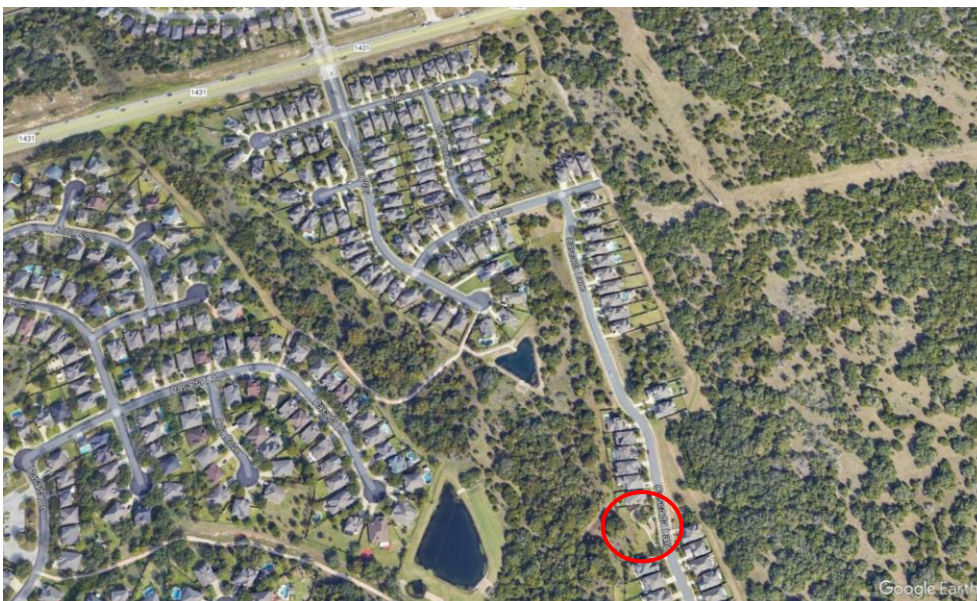
Construction Detail:



1 PLAYGROUND RAMP
SCALE: 1/2" = 1'-0"

Park Location:

426 Cascada Lane
Round Rock, TX 78681



TAS Violation Comment to be addressed:

TAS Inspection Findings:

1. Violation: Comment:

- A. Playscape Area – The running slope is 10.5% at the curb ramp that is provided nearest the public street at the playscape area. This is in violation with the requirements below. Ensure compliance.**



- B. Playscape Area – The running slope is 9.0% at a curb ramp that is provided farthest from the public street at the swing playscape area. This is in violation with the requirements below. Ensure compliance.**



406 Curb Ramps

406.1 General.

Curb ramps on accessible routes shall comply with 406, 405.2 through 405.5, and 405.10.

405 Ramps

405.2 Slope.

Ramp runs shall have a running slope not steeper than 1:12.

EXCEPTION: In existing sites, buildings, and facilities, ramps shall be permitted to have running slopes steeper than 1:12 complying with Table 405.2 where such slopes are necessary due to space limitations.

Ramps to be replaced per report (please specify if more area is necessary):



EXHIBIT C:
PROJECT CONTRACT

CONSTRUCTION CONTRACT
(District Accessibility Improvements)

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

Recitals

WHEREAS, District seeks to engage Contractor to undertake certain improvements to District facilities and property in order for the facilities and property to meet applicable accessibility requirements and standards (the "Project");

WHEREAS, the scope and locations of the improvements and associated specifications and performance standards are more particularly described in **Exhibit "A"** attached hereto (the "Specifications"); and

WHEREAS, Contractor has agreed to undertake and complete the Project on behalf of District in accordance with the terms and conditions set forth in this Agreement, including the Specifications.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, it is agreed as follows:

1. Scope of Work.

- a. **The Work.** Contractor hereby contracts and agrees to provide all labor, equipment, tools, machinery, transportation, storage, supervision and services necessary, required or reasonably inferable, whether or not expressly set forth in any bid documents, to prosecute and complete in a single phase the installation and construction of the Project in accordance with the terms and conditions of this Agreement, including the Specifications (the "Work"). The Work shall be performed by Contractor in accordance with all applicable regulatory requirements and the terms and conditions of this Agreement.
- b. **Changes in the Work.** District, without invalidating this Agreement, may order changes in the Work, consisting of additions, deletions or other revisions. Such changes in the work shall be authorized by written change order signed by District's authorized representative and Contractor ("Change Order"). The cost or credit to District from a change in the Work, together with any revisions to the completion date, shall be determined by mutual agreement between District and Contractor. Additionally, District has the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Completion Date and not inconsistent with the intent of this Agreement ("Construction Change Directive"). Such changes shall be effected by written Construction Change Directive and shall be binding on District and Contractor unless Contractor timely delivers a written objection to District reasonably disclosing the basis for its objection, no later than three (3) business days after its receipt of the Construction Change Directive. Contractor shall carry out such written Change Orders and Construction Change Directives promptly. No change in the Work, the Contract Sum, the Completion Date, or any other obligations of the Contractor under the Agreement shall be authorized and enforceable except pursuant to a duly executed Change Order, a binding Construction Change Directive, or a modification to the Agreement.

2. Time of Completion.

- a. **Completion Time.** The Contractor shall achieve Substantial Completion and Final Completion of the Work, as such terms are defined below, in accordance with the timeframes set forth in **Exhibit “B”**. The Commencement Date referenced in said exhibit shall be defined as the date for commencement of work set forth in a “*Notice to Proceed*” to be issued by District to Contractor after execution of this Agreement.
- b. **Substantial Completion.** Substantial Completion of the Work is the stage in the progress of the Work when the Work is sufficiently complete so that District can utilize the Work for its intended use. At the time of Substantial Completion, any outstanding Work must be minor in nature, so that District could utilize the Project on that date without inconvenience or interference, and so that the completion of the Work by Contractor would not materially interfere with or hamper District in the use or enjoyment of the Project. Further, as a condition to substantial completion, Contractor must certify that all remaining Work is of a “punchlist” nature, and will be completed by the deadline for Final Completion set forth above.
- c. **Final Completion.** Final Completion of the Work (sometimes referred to as “*Completion of the Work*”) means the actual completion of the Work, which shall be deemed to occur after a Registered Accessibility Specialist conducts inspections and issues written confirmation that the Project meets accessibility requirements, including any extras or change orders reasonably required or contemplated under this Agreement, other than warranty work or replacement or repair of the Work performed under this Agreement. **THE WORK WILL NOT BE DEEMED FINALLY COMPLETE UNTIL FINAL INSPECTION BY AND APPROVAL OF DISTRICT AND RECEIPT BY THE DISTRICT OF WRITTEN CONFIRMATION BY A REGISTERED ACCESSIBILITY SPECIALIST THAT THE PROJECT MEETS THE APPLICABLE ACCESSIBILITY STANDARDS.**
- d. **Time of Performance.** Time is of the essence of this Agreement and with regard to Contractor’s performance of the Work. Contractor shall commence and proceed with its performance of the Work with reasonable diligence. District shall not dictate or determine the schedule of the working hours of Contractor; provided, however, that District may restrict the times during which Contractor accesses and performs Work on the Property and any portions thereof to normal working hours and days, consistent with written holiday schedules and policies of District which will be furnished to Contractor upon request.
- e. **Liquidated Damages.** Contractor and District recognize that time is of the essence of this Agreement and that the District will suffer financial loss if the Work is not completed within the times specified in this Agreement, plus any extensions thereof allowed in accordance with this Agreement. The Parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by District if the Work is not completed on time. Accordingly, instead of requiring any such proof, District and Contractor agree that as liquidated damages for delay (but not as penalty), Contractor shall pay District Five Hundred Dollars (\$500.00) for each day that expires after the deadline for Substantial Completion specified in the Notice to Proceed with Construction until the Work is Substantially Complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the deadline for Final Completion, plus any extensions thereof allowed in accordance with this Agreement, Contractor shall pay the District Five Hundred Dollars (\$500.00) for each day that expires after the deadline for Final Completion until the Work is completed and ready for final payment.

3. **Performance by Contractor.**

- a. **Contractor's General Obligations.** Contractor agrees to perform the Work diligently, using the Contractor's best skill and attention, and in compliance with the highest applicable industry standards. The Work will be performed by Contractor in a good and workmanlike manner. Contractor will also be responsible for proper storage and security for all equipment and materials required for the Work. Contractor will supervise and direct the performance of the Work using its best skill and attention, in a manner commensurate with the usual standards of its profession. Contractor will be solely responsible for all construction, means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.
- b. **Review of Field Conditions by Contractor.** Contractor agrees and acknowledges that it has carefully examined the Property, has adequately investigated the nature and conditions of the Property, has familiarized itself with conditions affecting the difficulty of the Work, and has agreed to the Work based on its own examination, investigation, and evaluation, and not in reliance upon any opinions or representations of District or any other party. Contractor will be responsible for locating all utility lines and facilities, including buried pipelines and cables, in the vicinity of the Work site, and will perform the Work in such a manner as to avoid damaging such lines, cables, and facilities (including the District's water treatment plant facilities) and, if required, Contractor will contact all utility companies applicable to the Work site(s) and obtain a written designation of the location of all utility lines and facilities on the site(s) prior to commencing any of the Work.
- c. **Labor and Materials.** Unless otherwise agreed to in writing by District, Contractor shall furnish at its own cost and expense all services, labor, equipment, tools, transportation, facilities, and all other things necessary for the proper execution and completion of the Work.
- d. **Supervision and Construction Procedures; Safety.**
 - i. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Contractor shall be responsible to District for acts and omissions of Contractor's employees, subcontractors and their agents and employees, and any other persons or entities performing portions of the Work for or on behalf of Contractor or any of its subcontractors. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees and other persons present on the Property or performing the Work, (b) the materials and equipment used in the performance of the Work, and (c) other real and personal property at the site or adjacent thereto.
 - ii. Without limiting the generality of the foregoing, Contractor shall be responsible for, and shall undertake, all traffic control measures, and shall secure the perimeter of each Work site, as necessary for safety and protection of property, and shall be solely responsible for any and all injuries, death and property damage that arises out of or is related to Contractor's failure to do so.
- e. **Compliance with Laws.** Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to the performance of the Work, including those bearing on safety of persons and property and their protection from damage, injury or loss. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, a subcontractor, a sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable for and for which Contractor is responsible hereunder, except for damage or loss attributable to acts or omissions of District and not attributable to the fault or negligence of Contractor.

- f. **Payment to Subcontractors.** Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from District, out of the amount paid to Contractor on account of such subcontractor's or supplier's portion of the Work, the amount to which such subcontractor or supplier is entitled, reflecting percentages actually retained from payments to Contractor on account of such subcontractor's or supplier's portion of the Work. Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in similar manner. District shall have no obligation to pay or see to the payment of money to a subcontractor or supplier except as may otherwise be required by law.
 - g. **Warranties of the Work; Correction of Defective Work.** Contractor warrants to District that the performance of the Work will be free from defects not inherent in the quality required or permitted and that the performance of the Work will comply with applicable laws and regulations. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranties shall commence on the Final Completion Date. Contractor shall promptly correct any Work determined by District to be defective or to fail to conform to the requirements of this Agreement, whether discovered before or after the Completion Date. Costs of correcting such defective or nonconforming Work shall be at Contractor's expense. **IN ADDITION TO THE FOREGOING, IF, WITHIN ONE YEAR AFTER THE DATE FOR COMMENCEMENT OF WARRANTIES ESTABLISHED HEREIN, ANY OF THE WORK IS DEEMED BY DISTRICT NOT TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THIS AGREEMENT, CONTRACTOR SHALL CORRECT IT AT NO COST OR EXPENSE TO THE DISTRICT PROMPTLY AFTER RECEIPT OF WRITTEN NOTICE FROM DISTRICT TO DO SO.** If Contractor fails to correct defective or non-conforming Work within a reasonable time, District may correct such defective or non-conforming Work and may deduct the reasonable cost thereof from any payment then or thereafter due Contractor, or may recover the costs of correction if Contractor has already been paid for the Work. Additionally, Contractor agrees to perform the Work in such manner so as to preserve any and all manufacturer's warranties associated with the materials. The provisions of this Section shall survive Final Completion of the Work or any earlier termination of this Agreement.
 - h. **Cleaning Up.** Contractor will confine its activities to areas designated by District and must maintain these areas in a neat and clean condition. All excess material and trash generated from the prosecution of the Work will be neatly stockpiled in the area designated by District and removed from the site as frequently as necessary to maintain the site in a neat and safe condition. Upon the completion of any portion of the Work, Contractor will remove all equipment, materials, supplies, and temporary structures from the area of the completed portion and leave the area in a neat and clean condition. Contractor will also keep all adjacent properties, public or private, including streets, free of dirt, trash, debris, or other materials relating to or resulting from the prosecution of the Work. At completion of the Work, Contractor shall remove from and about the job site and surrounding area waste materials, rubbish, Contractor's tools, construction equipment, machinery, and surplus material. Failure to comply with the clean up requirements set forth in this Agreement shall constitute a breach of this Agreement.
 - i. **Contractor's Representations and Additional Warranties.** Contractor represents and warrants to District that, with respect to Contractor and each of the Agents:
 - i. Contractor is authorized and licensed, if applicable, to perform the Work, in Texas;
 - ii. Contractor has the full right, power, legal capacity and authority to enter into, execute and deliver this Agreement and to perform the obligations to be performed by Contractor; and
 - iii. Contractor is not a party to or bound by any agreement or contract or subject to any restrictions that would prevent the Contractor from entering into and performing the obligations under this Agreement.
4. **Prevailing Wages.** District is subject to the provisions of Chapter 2258, Subchapter B, Texas Government Code, pertaining to prevailing wage rates. In accordance with Section 49.279, Texas Water

Code, District specifies the prevailing wage rate for public workers of Williamson County as District's prevailing wage rate. Contractor agrees to pay not less than the specified prevailing wage rate to workers employed by it in the execution of the Work, and to comply with all applicable provisions of Chapter 2258, Subchapter B, Texas Government Code, including the recordkeeping required thereunder.

5. **Payment.** Payment for the Work shall be made to Contractor by District as provided herein below.
 - a. **Total Compensation.** Contractor is entitled to receive compensation for the full and complete performance of the Work in the amount of \$_____ (the "Contract Sum"). The Contract Sum includes the items of Work set forth in Contractor's bid and this Agreement (including all Work necessary to achieve Final Completion).
 - b. **Invoice for Payment.** After Final Completion (to include written verification from an Accessibility Specialist that the Project meets all applicable accessibility standards), Contractor shall submit its application for payment of the Contract Sum. The District shall pay Contractor for said work within thirty (30) calendar days after receipt of the properly submitted application for payment. As a condition to payment, Contractor will be required to furnish to District (a) a sworn representation and warranty by Contractor that it has properly performed and completed all Work, (b) a release and waiver of Contractor's statutory and constitutional lien rights (conditioned only upon Contractor's actual receipt of the final payment) in connection with the Work performed by Contractor, (c) a sworn representation and warranty by Contractor (a "bills paid affidavit") that it has fully paid all known bills or obligations for Work, and (d) upon District's timely request, a bills paid affidavit and release of lien from each subcontractor and supplier who furnished labor and/or materials to the construction of improvements hereunder.
 - c. **District's Right to Withhold Payment.** District shall be entitled to withhold payment from Contractor to the extent reasonably necessary to protect District as a result of (a) defective Work not remedied, (b) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to District is provided by the Contractor, (c) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (d) damage to District or another contractor, (e) failure of Contractor to complete the Work as necessary for a Registered Accessibility Specialist to confirm the Project meets all applicable accessibility requirements, or (f) the persistent failure to carry out the Work in accordance with the requirements set forth in the Agreement.
 - d. **Sales Tax.** District is a tax-exempt, political subdivision of the State of Texas. Accordingly, no sales tax will be charged to District or included in the Contract Sum.
 - e. **Final Payment.** The making of final payment by District will not constitute a waiver of claims by District. The acceptance of final payment by Contractor will constitute a waiver of claims by Contractor, except those previously made in writing and identified by Contractor as unresolved at the time of final application for payment.
6. **Termination.** This Agreement will continue in effect unless terminated by either Party as provided herein below.
 - a. **Termination of the Agreement by District.** District may terminate the Agreement at any time for convenience (without cause) or for cause (due to Contractor's material breach). District may terminate the Agreement immediately following written notice of termination to Contractor. If termination is for cause, at District's sole option, Contractor may be given time to cure such breach as specified in the notice, after which the Agreement will terminate immediately if the breach is not cured. Upon receipt of District's notice of termination, Contractor shall stop all Work immediately but, unless expressly directed in writing by District to the contrary, shall take such actions reasonably necessary for the protection and preservation of the Work. In the event of termination for cause, District may take possession of the Work site and of all materials, equipment, tools and construction equipment and machinery thereon owned by Contractor, require Contractor to assign

its subcontracts to District, and may finish the Work by whatever reasonable method District may deem expedient. Contractor shall not be entitled to any further payment except to the extent of any amount by which the Work completed or installed by Contractor prior to termination and not previously paid for by District exceeds the amount due by Contractor to District, including all damages which District is entitled to recover against Contractor for breach of the Agreement. In the event that termination is for convenience, Contractor shall be paid for (a) the Work properly executed in accordance with the Agreement prior to the effective date of termination (to the extent not previously paid to or for the benefit of Contractor) and (b) the actual, reasonable costs necessarily incurred by Contractor to protect the Work following the termination as required herein. District shall not be responsible for damages or recoveries arising from the termination of the Agreement except as expressly provided herein.

- b. **Termination of the Agreement by Contractor.** Contractor may terminate the Agreement only for cause (due to District's material breach). Contractor may deliver a written notice of termination of the Agreement to District setting forth in reasonable detail the basis for such termination and providing District with a period of not less than ten (10) calendar days to cure such default. If District fails to cure the default within the time period stated in the initial notice of termination letter, Contractor may terminate the Agreement no less than five (5) calendar days following delivery of a final notice of termination letter to District. Contractor access to the Property shall cease upon the effective termination of the Agreement; however, prior to leaving the Property, Contractor shall take such actions reasonably necessary for the protection and preservation of the Work. In the event of Contractor's termination for cause, Contractor shall be entitled to recover (a) payment for the Work properly executed in accordance with the Agreement prior to the effective date of termination (to the extent not previously paid to or for the benefit of Contractor) and (b) the actual, reasonable costs necessarily incurred by Contractor to protect the Work following the termination as required herein, demobilize Contractor's workforce, and cancel Contractor's subcontracts. District shall not be responsible for damages or recoveries arising from the termination of the Agreement except as expressly provided herein.
 - c. **Survival of Obligations following Termination.** Except as may be expressly agreed in writing by the Parties, all warranty obligations or other obligations of the Contractor to complete or repair defective Work arising under the Agreement shall survive any termination of such Agreement (other than Contractor's termination of the Agreement for cause). Further, in the event of termination for any reason and by any Party, Contractor agrees to comply with District directives regarding the return of all materials purchased by District. Contractor shall provide reasonable cooperation to District in effecting a smooth and orderly transition of all matters that were being handled by Contractor prior to termination. All records, including all documents, articles or items that may be supplied by District to Contractor, shall be and remain the sole and exclusive property of District and shall be surrendered to it upon demand (and, in any event, within five (5) days of termination). Upon the termination of the Agreement (or this Agreement) or upon the demand of District prior to termination, Contractor shall immediately deliver to District at such place or places as may be designated by it, any and all other property of District in its possession or under its control.
7. **Relationship of Parties.** The Parties understand and agree that Contractor shall provide the Work to District as a non-exclusive independent contractor, with all of its attendant rights and liabilities, and not as an agent or employee of District. Nothing in the Agreement or otherwise is intended or will be construed to create a joint venture, partnership, employment or similar relationship. Neither Contractor nor any of Contractor's employees, representatives or agents will be deemed to be employed by District or be eligible for any employee benefits from District and, except as may be required by lawful authority, District will make no deductions or payment for taxes, insurance, bonds or other sums. The name "District" may not be used by Contractor in any manner tending to give the impression that any authority has been delegated to Contractor or Agents other than that as an independent contractor. Neither Party shall have the authority to bind the other to any contract or agreement whatsoever. Nothing in the Agreement shall be interpreted as authorizing Contractor or Agents to act for District in the collection of money, extension of credit, acceptance of service of process, or to make any commitment that would bind District to any contract or agreement. Contractor has sole authority and responsibility to hire, fire

and otherwise controls its employees and neither Contractor nor its employees are employees of District. Contractor acknowledges and agrees that nothing herein shall entitle or render Contractor eligible to participate in any benefits or privileges provided by District for its employees.

8. **Taxes.** Contractor agrees to timely withhold and pay all taxes and fees assessed on Contractor or required of Contractor to pay or withhold to, for, or with respect to any person in connection with or incident to the performance of the Agreement, by the United States, any state and any governmental agency, as well as unemployment compensation insurance, social security, or any other taxes upon Contractor. Contractor acknowledges that Contractor is responsible for payment of all income taxes, including estimated quarterly payments. Contractor shall pay all sales tax for taxable materials and labor or services (to the extent such labor or services are taxable) purchased by or furnished to Contractor by its subcontractors and suppliers. All subcontracts shall be separated so that no sales tax is incurred, charged or paid on non-taxable labor or services.

9. **Insurance.**

- a. As an independent contractor, Contractor acknowledges that it is solely responsible for providing its own insurance coverage, including, but not limited to, unemployment compensation and workers' compensation to its employees, and that such coverage shall be maintained by Contractor in the statutory limits which are presently in effect or which may be in effect in each of the applicable jurisdictions where Contractor will perform the Work. Without limiting the foregoing, Contractor shall, at Contractor's sole cost and expense, maintain the following insurance with insurers satisfactory to District and with limits no less than those states as follows:
 - i. Statutory Workers Compensation Insurance (statutory coverage) and Employer's Liability insurance with limits of not less than \$500,000 per occurrence. Such policy shall be endorsed to name District as "alternate employer" to prevent Contractor's workers' compensation carrier from denying coverage based on a claim of employment status. Such alternate employer endorsement shall not imply an employer/employee relationship the Parties. Contractor hereby waives all claims and causes of action against District for any and all injuries suffered by Agents;
 - ii. Commercial General Liability insurance providing coverage against liability arising out of or based on any act, error or omission of Contractor or any of the Agents under this Agreement, with limits of not less than \$1,000,000 for each occurrence of bodily injury and property damage liability, \$1,000,000 general aggregate and products/completed operations coverage; and
 - iii. Business Automobile Liability insurance with a limit of not less than \$1,000,000 per occurrence for bodily injury and property damage liability written to cover all owned, hired and non-owned automobiles arising out of the use thereof by or on behalf of the Contractor and Agents.
- b. All of the above-listed insurance must be maintained in force throughout the term of this Contract and must be written by insurance companies authorized to sell insurance where work is being performed and have an A.M. Best's rating of B++ VII or better. All insurance policies must provide that they may not be cancelled or modified without 30 days' prior written notice to District and that they are primary and noncontributory over any insurance that may be carried by District.
- c. All such insurance shall be primary. All policies shall include a waiver of subrogation in favor of District, and all policies shall require at least thirty (30) days prior written notice to District of any intention to cancel, terminate or reduce coverage provided thereby. District shall be named as additional insureds on the commercial general liability and business automobile liability policies. Prior to the commencement of the Work, Contractor shall furnish to District a Certificate of Insurance, endorsements, or evidence of coverage signed by authorized representatives of the companies providing the coverage required under the terms of the Agreement. Upon request and

without expense to District, Contractor shall furnish District with certified copies of said insurance policies signed by authorized representatives of the insurance companies. Failure to secure the insurance coverages, or the failure to comply fully with any of the insurance provisions of the Agreement as may be necessary to carry out the terms and provisions of the Agreement shall be deemed to be a material breach of the Agreement. The lack of insurance coverage does not reduce or limit Contractor's responsibility to indemnify District as set forth in the Agreement. Any and all deductibles and premiums associated with the above-described insurance policies shall be assumed by, for the account of, and at the sole risk of the Contractor. District reserves the right to review the insurance coverage requirements of the Agreement. Contractor shall require similar insurance levels from its sub-contractors and other Agents.

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

10. **Performance and Payment Bonds.** In accordance with Chapter 2253, Texas Government Code and Section 49.275 of the Texas Water Code, Contractor must provide District with the following: (i) a performance bond in the amount of the Contract Sum and in a form and substance, and with a surety, satisfactory to District prior to commencement of the Work if the Contract Sum is in excess of \$100,000; and (ii) a payment bond in the amount of the Contract Sum and in a form and substance, and with a surety, satisfactory to District prior to commencement of the Work if the Contract Sum is in excess of \$25,000.

11. **Indemnity.**

- a. **General Indemnification.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL INDEMNIFY AND HOLD DISTRICT AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES (COLLECTIVELY, THE "INDEMNITEES") HARMLESS FROM ALL CLAIMS, LIABILITIES, DAMAGES, LOSS, AND EXPENSE, INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES AND EXPENSES, ARISING OUT OF OR RESULTING FROM: (1) THE PERFORMANCE OF THE WORK, ATTRIBUTABLE TO PERSONAL INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT OR OTHER ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, OR ANY SUPPLIER, OR ANYONE, DIRECTLY OR INDIRECTLY, EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, OR (2) THE FAILURE OF THE WORK TO BE FIT FOR ITS INTENDED PURPOSE. THIS OBLIGATION WILL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR OTHERWISE REDUCE ANY OTHER RIGHT OR OBLIGATION OF INDEMNITY THAT WOULD OTHERWISE EXIST UNDER THIS AGREEMENT OR AT LAW OR IN EQUITY AS TO ANY OTHER PARTY OR PERSON. THIS INDEMNIFICATION WILL EXTEND TO CLAIMS, DEMANDS, OR LIABILITIES FOR INJURIES OCCASIONED AFTER COMPLETION OF THE WORK, AS WELL AS DURING THE WORK'S PROGRESS. **THE OBLIGATIONS IN THIS PARAGRAPH (A) APPLY WHETHER ALLEGED OR ACTUAL, NEGLIGENT, OR GROSS NEGLIGENT ACTS OR OMISSIONS OR OTHER FAULT OF ANY INDEMNITEE CAUSED THE LOSS IN WHOLE OR IN PART; PROVIDED HOWEVER, IN THE EVENT OF ANY JOINT OR CONCURRENT LIABILITY BETWEEN AN INDEMNITEE AND CONTRACTOR, CONTRACTOR'S OBLIGATIONS HEREIN WILL BE REDUCED BY THE PERCENTAGE OF NEGLIGENCE OR FAULT APPORTIONED TO THE INDEMNITEE; AND (B) INCLUDE WITHOUT LIMITATION, CLAIMS BY THE CONTRACTOR'S CREW OR EMPLOYEES AGAINST THE INDEMNITEES.** This

provision relating to indemnification shall survive the termination of this Agreement and may be enforced by District, or its successors or assigns.

- b. **TO THE EXTENT THAT CONTRACTOR FAILS TO COMPLETE PHYSICAL CONSTRUCTION OF THE WORK WITHIN 10 CALENDAR DAYS AFTER COMMENCEMENT, CONTRACTOR SHALL BE LIABLE FOR, AND SHALL INDEMNIFY THE DISTRICT FOR, ALL COSTS AND EXPENSES ASSOCIATED THEREWITH, INCLUDING COSTS OF SECURING ALTERNATIVE OR SUPPLEMENTAL WATER SUPPLIES FOR DISTRICT CUSTOMERS.**
 - c. **Indemnification for Lien Claims.** CONTRACTOR SHALL INDEMNIFY DISTRICT AND INDEMNITEES AGAINST ALL LIEN CLAIMS AND BOND CLAIMS, INCLUDING EXPENSES, COSTS OF BONDS TO REMOVE LIENS, AND ATTORNEYS' FEES RELATED TO SUCH CLAIMS, WHICH MAY BE ASSERTED BY MECHANICS, MATERIALMEN, SUPPLIERS, SUBCONTRACTORS OR EQUIPMENT LESSORS OF CONTRACTOR OR ITS AGENTS OR ANYONE CLAIMING UNDER ANY OF THEM. IN THE EVENT LIENS ARE PLACED ON THE WORK OR THE PROPERTY, CONTRACTOR SHALL IMMEDIATELY OBTAIN A BOND TO REMOVE SUCH LIEN OR PROVIDE SUCH OTHER ALTERNATIVE SECURITY AS DISTRICT DEEMS APPROPRIATE. IF BOND CLAIMS OR LIEN CLAIMS ARE FILED BY ANY SUBCONTRACTORS, MATERIALMEN, SUPPLIERS, MECHANICS OR EQUIPMENT LESSORS OF CONTRACTOR OF ITS AGENTS, DISTRICT SHALL HAVE THE RIGHT TO SUSPEND PAYMENTS TO CONTRACTOR AND EITHER HOLD MONEY DUE CONTRACTOR OR, IF SATISFACTORY SECURITY IS NOT TIMELY FURNISHED, MAKE PAYMENTS TO SAID CLAIMANTS AND CHARGE THE PAYMENTS AGAINST CONTRACTOR.
 - d. **Indemnification for Defense Costs.** CONTRACTOR'S OBLIGATION TO INDEMNIFY DISTRICT AND INDEMNITEES AGAINST ANY ATTORNEYS' FEES OR OTHER COSTS OR EXPENSES INCURRED BY DISTRICT AND INDEMNITEES IN CONNECTION WITH THE DEFENSE OF ANY CLAIMS OR CAUSES OF ACTION WITHIN THE SCOPE OF THIS SECTION 14 SHALL BE CONSTRUED AS A SEPARATE ITEM OF INDEMNIFICATION WHICH SHALL BE AN ABSOLUTE OBLIGATION OF CONTRACTOR EVEN IF SUCH CLAIMS OR CAUSES OF ACTION ARE INVALID OR GROUNDLESS.
12. **Dispute Resolution/Mediation.** The Parties agree to meet and confer in good faith on all matters of common interest or all controversies, claims, or disputes which may arise under the Agreement. The Parties agree that all disputes arising out of or relating to the Agreement that cannot be resolved through informal conference will be submitted to mediation prior to exercising any judicial remedies.
13. **Notices.** All notices and correspondence shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 13):

If to District:

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

If to the Contractor:

[Contractor Name]
[Address]
[Address]
Attn: [Name]
Telephone:
Fax:

Notice shall be effective only upon receipt by the party being served, except notice shall be deemed delivered and received seventy-two (72) hours after posting by the United States Post Office, if the notice is sent by certified mail. Confirmation of receipt of any facsimile sent must be received in order to presume that the transmission was received.

14. General Provisions.

- a. **Assignment.** This Agreement and Contractor's obligation and duties to District hereunder are not transferable or assignable by Contractor.
- b. **Waiver.** Failure of District at any time to enforce any provisions of this Agreement shall not be construed to be a waiver or relinquishment of Districts rights granted hereunder or of the future performance of such provision, and the obligations of Contractor with respect thereto shall continue in full force and effect. No provision of this Agreement will be deemed waived and no breach excused unless such waiver or consent will be in writing and signed by the Party giving the waiver or consent.
- c. **Choice of Law.** This Agreement is made under and will be enforced and construed in accordance with the laws of the State of Texas. All claims, disputes or causes of action arising hereunder will be resolved pursuant to Section 12 of this Agreement. Should, for any reason whatsoever, any claim, dispute, or cause of action fail to be resolved pursuant to Section 12 of this Agreement, such claim, dispute, or cause of action shall be filed in the court of competent jurisdiction in Williamson County, Texas, which venue shall be exclusive.
- d. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute one of the same Agreements. Faxed and electronic scanned signatures and countersignatures shall be deemed originals for all purposes and proper evidence of assent of this Agreement.
- e. **Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected thereby, and it is also the intention of the parties that, in lieu of each provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible, and is legal, valid, and enforceable.
- f. **Attorneys' Fees.** Any party to this Agreement who is the prevailing party in any legal proceeding against any other party brought under or in connection with this Agreement or the subject matter hereof will be additionally entitled to recover court costs and reasonable attorney's fees, and all other litigation expenses, including deposition costs, travel, and expert witness fees, from the non-prevailing party.
- g. **Authority.** Each party represents and warrants that it has the full right, power, and authority to execute this Agreement and all related documents. Each person executing this instrument on behalf of a party represents that he or she is an authorized representative of and has the authority to sign this document on behalf the respective party.

h. No Boycott Provisions.

- i. Pursuant to Section 2270.002, Texas Government Code, Contractor hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Contractor and exists to make a profit.
- ii. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates 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, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes Contractor and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, 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. Contractor understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Assignor and exists to make a profit.

- i. **Verification Regarding Energy Company Boycotts.** To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002, Texas Government Code, (as added by Senate Bill 13, 87th Texas Legislature, Regular Session) as amended, Contractor hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any, do not boycott energy companies and, will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall have the meaning assigned to the term “boycott energy company” in Section 809.001, Texas Government Code. Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Assignors and exists to make a profit.
- j. **Verification Regarding Discrimination Against Firearm Entity or Trade Association.** To the extent this Agreement constitutes a contract for the purchase of goods or services for which a written verification is required under Section 2274.002, Texas Government Code, (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, “SB 19”), as amended, Contractor hereby verifies that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates, if any: (i) do not have a practice, policy, guidance or directive that discriminates against a firearm entity or

firearm trade association; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, “discriminate against a firearm entity or firearm trade association” shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19). Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Assignors and exists to make a profit.

- k. **HB 1295 Compliance.** Section 2252.908 of the Texas Government Code requires that a party to certain types of contracts with governmental entities must fill out a conflict of interest form (“Disclosure of Interested Parties”) at the time the party submits a signed contract to the governmental entity. Further information is set forth on the Texas Ethics Commission website via the following link: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. The District has no obligation under this Agreement until such form is accurately completed and properly submitted, and any District obligation is conditioned on such proper completion and submission.
- l. **Disclosure of Interested Parties.** Contractor acknowledges that Texas 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.
- m. **Conflict of Interest Certification.** Contractor acknowledges that Texas Local Government Code Chapter 176 requires a vendor that seeks to or enters into a contract with a local governmental entity to file a conflicts of interest questionnaire if the vendor: (i) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer; (ii) has given a local government officer, or a family member of the officer, one or more gifts that exceed certain values; (iii) has a family relationship with a local government officer. Similarly, the Texas Penal Code prohibits the acceptance any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion by a public servant. By execution of this Agreement, Contractor certifies as follows: (i) Contractor has fully complied with the applicable requirements of Chapter 176 of the Texas Local Government Code; (ii) Contractor has not provided any gift, payment or other benefit to any director or employee of the District; and (iii) Contractor has no other conflict of interest with the District, or any director or employee of the District.

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

DISTRICT:

Brushy Creek Municipal Utility District

Signature: _____

Printed Name: _____

Title: _____

Date: _____

CONTRACTOR:

[Construction Company Name]

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit "A"

**Description of Project
(Exhibits A and B from Bid Package)**

Exhibit “B”

Work Schedule

1. Substantial Completion shall be achieved within 30 calendar days after the Commencement Date.
2. Final Completion shall be achieved within 30 calendar days after the date of Substantial Completion (provided that this period shall be tolled for the time period during which the parties seek an inspection and report by the registered Accessibility Specialist confirming that the Project meets all applicable accessibility standards).

EXHIBIT D:

CONTRACTOR INFORMATION & REFERENCE FORM

Exhibit D: CONTRACTOR INFORMATION & REFERENCE FORM

Brushy Creek Municipal Utility District

DISTRICT ACCESSIBILITY IMPROVEMENTS

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 & Type: _____

Federal Tax ID #: _____

Address: _____

City/State/Zip: _____

Contact Name: _____

Phone #: _____

Fax #: _____

E-Mail: _____

Web Site: _____

Number of Years been in Business: _____

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

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

REFERENCES

Provide reference information for project completed over the past 5 years similar in nature to the work included in the project being bid.

Reference Entity No. 1:

Entity Name: _____

Project Name: _____

Contact Person: _____

Email: _____

Phone Number: _____

Reference Entity No. 2:

Entity Name: _____

Project Name: _____

Contact Person: _____

Email: _____

Phone Number: _____

SIGNATURE

Form completed by:

SIGNATURE: _____

TITLE: _____

PRINTED NAME: _____

DATE: _____