

**CITY OF PFLUGERVILLE**  
**SHORT FORM CONTRACT**  
(Construction and Non-Professional Services)

This contract, dated the \_\_\_\_ of \_\_\_\_\_, 20\_\_, is between the City of Pflugerville ("City") and \_\_\_\_\_  
The Brandt Companies, LLC ("Contractor") (the "Contract").

**I. TERMS**

In consideration of \$100,798.29 (One Hundred thousand, Seven hundred Ninety Eight Dollars and 29/100), the Contractor shall provide the services described in Attachment A, which is incorporated by reference, according to all its provisions.

**II. DURATION**

Contractor shall complete all required work within 270 calendar days after the effective date of this Contract.

**III. PAYMENT**

Payment shall be made under the terms and conditions of Attachment B, which is incorporated by reference, according to all its provisions. Payments under the Contract, including the time of payment and the payment of interest on overdue amounts, shall be subject to Chapter 2251, Texas Government Code. The City reserves the right to modify any amount due to Contractor presented by invoice to the City if necessary, to conform the amount to the terms of the Contract.

**IV. ASSIGNMENT**

Contractor may not assign any interest under this Contract without the City's prior written consent. Such consent to be at the City's sole discretion.

**V. STATUS OF CONTRACTOR**

The Contractor is an Independent Contractor. Contractor and Contractor's employees are not the agents, servants or employees of the City.

**VI. AMENDMENT OR MODIFICATION**

This Contract, including any attachments, constitutes the parties' entire agreement. This Contract may not be modified or replaced except by another signed written Contract.

## VII. INDEMNITY

The Contractor must indemnify, hold harmless and defend the City, its officers, agents and employees, from and against liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of or resulting from the Contractor's work and/or activities conducted in connection with or incidental to this Contract and from any liability arising out of or resulting from the intentional acts or negligence, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part upon the negligent or intentional acts or omissions of Contractor, including but not limited to its officers, agents, employees, subcontractors, licensees, invitees, and other persons.

Contractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, subcontractors, licensees, invitees and other persons, as well as their property, while in the vicinity where the work is being done. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Contractor, including but not limited to its officers, agent, employees, subcontractors, licensees, invitees, and other persons.

Further, the City assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premises defects which may now exist or which may hereafter arise upon the premises, responsibility for any and all such defects being expressly assumed by the Contractor.

**BOTH CITY AND CONTRACTOR EXPRESSLY INTEND THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS INDEMNITY BY CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. FURTHERMORE, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, AND LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF THE CITY, UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY.**

## VIII. INSURANCE AND BONDS

### A. GENERAL REQUIREMENTS

The Contractor must maintain the type and amounts of insurance required in this Contract throughout the term of the Contract. Contractor must provide a Certificate of Insurance evidencing the required coverage types and amounts before the Contract is signed. All policies are subject to examination and approval by the City for their adequacy. The City may terminate this Contract if the Contractor fails to comply with all insurance requirements.

Insurance naming the City as additional insured must be primary insurance and not contributing with any other insurance available to the City, under any third-party liability

policy.

**B. ADDITIONAL REQUIREMENTS**

The required liability insurances and their certificates must:

1. Name the City as an additional insured for operations under this Contract.
2. Provide for 30 days advance written notice of cancellation or material change.

**C. TYPES AND AMOUNTS OF INSURANCE**

The following insurance is required under this contract:

<u>Type</u>	<u>Amount</u>
1. Workers' Compensation Employer's Liability OR Occupational Injury/Accidental Injury Protection	Statutory Limits \$1,000,000 each accident
2. Commercial (Public) Liability including but not limited to: . Premises/Operations . Independent Contractors . Products/Completed Operations . Contractual Liability . Personal Injury (Insuring above indemnity)	\$1,000,000 per occurrence \$2,000,000 general aggregate OR \$2,000,000 combined single coverage limit
3. Business Automobile Liability to include coverage for: . Owned/Leased Autos . Non-Owned Autos . Hired Cars	\$1,000,000 combined single limit

**D. STATUTORY BOND REQUIREMENTS**

When applicable, the Contractor shall procure such bonds as shall be required under Texas Government Code Chapter 2253. All bonds are subject to examination and approval by the City for their adequacy. The City may terminate this contract if the Contractor fails to comply with any bond requirements.

## **IX. TERMINATION**

### **Termination for Convenience**

This Contract may be terminated by either party with thirty (30) days written notice. If the City terminates this Contract under this paragraph, the City will pay the Contractor for all services rendered in accordance with this Contract to the date of termination.

### **Termination for Default.**

Subject to any other provisions for termination herein, either party to this Contract may terminate this contract as provided in this paragraph if the other party fails to comply with its terms. The party alleging the default will give the other party notice of the default in writing citing the terms of the Contract that have been breached and what action the defaulting party must take to cure the default. If the party in default fails to cure the default as specified in the notice the party giving notice of default may terminate this Contract by written notice to the other party, specifying the date of termination. Acting on behalf of the City, the City Manager may terminate this Contract for the breach as provided in this paragraph. Termination of this Contract as allowed by law, including any damages or costs suffered by either party.

## **X. GOVERNING LAW/VENUE**

Texas law governs this Contract and any lawsuit must be filed in a court that has jurisdiction in Travis County, Texas.

## **XI. VERIFICATION OF EMPLOYMENT ELIGIBILITY**

Contractor must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Contractor -- not City -- must verify eligibility for employment as required by IRCA.

## **XII. INDEBTEDNESS TO CITY**

Contractor agrees that no payments owed by him, of any nature whatsoever, to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not award contracts for goods or services to any bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty and interest. Contractor is responsible for ensuring that no indebtedness exists.

The City may offset payments due under this Contract against any debt, claim, demand or account owed to the City by Contractor.

### **XIII. SALES TAX**

The City qualifies as an exempt agency under the Texas Limited Sales, Excise and Use Tax Act (the "Tax Act") and is not subject to any State or City sales taxes on materials incorporated into the project. Labor used in the performance of this contract is also not subject to State or City sales taxes. The City will provide an exemption certificate to the Contractor. The Contractor must have a sales tax permit issued by the Comptroller of Public Accounts and shall issue a resale certificate complying with the Tax Act, as amended, when purchasing said materials. The Contractor is responsible for any sales taxes applicable to equipment purchases, rentals, leases, consumable supplies which are not incorporated into the services to be provided under this Contract, tangible personal property purchased for use in the performance of this Contract and not completely consumed, or other taxable services used to perform this Contract, or other taxes required by law in connection with this Contract.

### **XIV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES**

Contractor, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Pflugerville, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Contractor must obtain all necessary permits, bonds and licenses that are required in completing the work contracted for in this agreement.

### **XV. DISCLOSURES, CONFLICTS AND DISPUTE RESOLUTION**

Contractor represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code, Conflicts of Interest Questionnaire, Chapter 2252, Texas Government Code, and Form 1295, Certificate of Interested Parties, online filing with the Texas Ethics Commission.

This Contract will be governed by the provisions of Subchapter I, Chapter 271, Tex. Local Gov't Code, regarding the obligations of the parties for any disputes arising hereunder.

**XVI. MANDATORY CONDITIONS FOR GOVERNMENT CONTRACTS**

The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it: (i) does not boycott Israel; (ii) will not boycott Israel during the term of the contract; (iii) does not boycott energy companies; (iv) will not boycott energy companies during the term of the contract; (v) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association; and (vi) will not discriminate during the term of the contract against a firearm entity or firearm trade association (Texas Government Code, Chapter 2271.002; 2274.002).

Contractor hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as this term is defined in the Texas Government Code, Section 808.001, as amended. Contractor hereby verifies that it does not boycott energy companies, and agrees that, during the term of this agreement, will not boycott energy companies as this term is defined in Texas Government Code, Section 809.001, as amended. Contractor hereby verifies that it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and agrees that, during the term of this agreement, will not discriminate against a firearm entity or firearm trade association as those terms are defined in Texas Government Code, Section 2274.001, as amended.

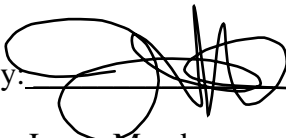
Further, Contractor hereby certifies that it is not a company identified under Texas Government Code, Section 2252.152 as a company engaged in business with Iran, Sudan, or Foreign Terrorist Organizations.

IN WITNESS HEREOF, the parties hereto have executed this contract:

CITY OF PFLUGERVILLE

CONTRACTOR


By: \_\_\_\_\_

By:  \_\_\_\_\_

James Marek (printed name)

APPROVED AS TO FORM:

Title: Senior Vice President

By:  \_\_\_\_\_  
City Attorney

Federal Tax I.D. #

Corporate Secy's Attestation if applicable:

Corporate Seal if applicable:

**ATTACHMENT A  
SCOPE OF WORK**



Estimate: #21-00036937

BuyBoard Contract 631-20

December 14, 2021

City of Pflugerville Animal Shelter  
 1600 Waterbrook Dr.  
 Pflugerville, TX. 78660

Attn: Imad Shamaa

**SUBJECT: 130KW Generator Installation**

Thank you for the opportunity to offer our Proposal for the above subject project. Our bid includes the following items related to the installation of the Electrical for the Generator Project:

**I. BID DOCUMENTS:**

- Drawings: Narratives/Site Visit

**II. SCOPE OF WORK:**

1. Labor, material and equipment to install the Electrical per Bid documents.
2. Rework and modifications to Electrical systems only as required.
3. Provide and install Electrical equipment.
4. Leave the existing electric meter & main 400 amp disconnect.
5. Provide and install (1) 130KW Generac Generator, provide and install (1) ASCO 400-amp automatic transfer switch (ATS).
6. Includes sidewalk section to be removed & replaced for the new underground conduits.
7. Includes trenching, back fill, generator pad, crane to set the generator, conduit, wire and labor.
8. Install circuits from existing panel "A" for the battery charger, block heater and convenience receptacle.
9. Pre-work will be performed to limit the outage required to remove the existing manual transfer switch and install the new automatic switch.
10. Permit and License Fees if required.

**III. EXCLUSIONS:**

1. Gas Line, the natural gas line is not included in this proposal.
2. Sales or Remodel Taxes (exempt).
3. Land scaping, sprinkler repairs.
4. TERP tax.
5. Overtime or afterhours work.
6. Mechanical or Structural Engineering services (see additional cost for electrical engineering below in summary pricing).

AUSTIN	DALLAS	FORT WORTH	HOUSTON	SAN ANTONIO	WACO
1340 Airport Commerce Dr., Ste. 575 Austin, TX 78741 512.491.9100 TACLA 30430C TECL 20109 M 41312	1728 Briercroft Court Carrollton, TX 75006 972.395.6000 TACLA 19981C TECL 20109 M 40211	2502 Gravel Drive Fort Worth, TX 76118 817.626.0033 TACLA 00060298C TECL 20109 M 40211	13810 Hollister Drive, Ste. 100 Houston, TX 77086 832.714.3200 TACLA 15221C TECL 20109 M 40245	6023 Corridor Parkway, Ste. 100 Schertz, TX 78154 210.599.6120 TACLA 18441C TECL 20109 M 41312	205 Schroeder Dr. Waco, TX 76710 254.772.1693 TACLA 26979C TECL 20109 M 40211





7. Bid or Performance Bonds.
8. Coordination, arch-fault, short circuit study or third-party testing.
9. Controls, interlocks, fire system or BAS.
10. Lightning Protection modifications.
11. Furnish / install of any new electrical services, metering or energy management systems. We are assuming that the capability within the existing gear package to provide the required power
12. Utility company charges or power conditioning.
13. BIM, BIM Coordination, Engineering fees unless specifically noted in "Scope of Work".
14. Energy or Green construction codes, LEED, alt. energy codes or seismic certifications and compliance.
15. Business interruptions or losses resultant there from consequential damages.
16. Telephone Computer, Data, Fire Alarm, MNS, Fire Suppression, Security, CCTV/MATV, Public Address, Sound, POS, BAS, Energy Management, Carbon Monoxide systems, raceways and/or cabling unless specifically noted in "Scope of Work".
17. Medical Testing or Training, Badging, Security, Background Checks or Parking Fees
18. BIM or 3D Modeling Coordination.
19. Maintenance, Warranty or repairs to existing equipment.
20. Repairs due to existing Code violations.
21. Removal and replacement of gypsum or lay-in ceilings for access to work areas.
22. Relocation of furniture, equipment or personnel for access to work areas.
23. Installation of barricades or plastic sheeting for safety, noise or dust control.
24. Concrete patching, pour-back or grouting of cored holes or saw-cut trenches.
25. Patching, painting or touch-up of any floors, walls or ceilings.
26. Architectural caulking of floor, wall or ceiling penetrations.
27. Roof penetrations and/or any roof patching, sealing, flashings or repairs.
28. Smoke detectors, sensors, strobes, wiring or interface with Fire Alarm system.
29. Architectural louvers or access panels.
30. Fire Protection piping, smoke or heat detectors, and alarms.
31. Haul-off of demolition, debris or trash offsite.
32. Asbestos and mold testing, removal or remediation.
33. Hazardous waste removal if encountered.
34. Rock-sawing and/or removal if encountered.
35. Density tests or x-ray of structure.

#### **IV. CLARIFICATIONS:**

1. Lead time on generator 26 to 28 weeks.
2. This proposal is based on preliminary engineering design. If final design results in changes to equipment selections or electrical plans additional cost may be incurred.
3. Due to the current volatility in commodity material costs that underlies our pricing, Brandt's proposal will expire 30 days from the date above. After that period, Brandt's pricing is subject to adjustment to reflect any increase in commodity material costs at the time of acceptance.
4. Brandt's proposal is conditioned upon prompt award of the project contract, in sufficient time to allow approval of submittals and procurement of materials and equipment in order to meet the project schedule.



## BRANDT

5. Brandt reserves the right to review and approve all contract conditions as a condition of this proposal offer. Brandt's proposal is an offer expressly conditioned upon the parties reaching mutually-agreeable contract terms, including but not limited to a waiver of or reasonable cap on liability for any consequential damages from any source. Any language in the contract documents that purports to exclude or supersede the conditions of this proposal is expressly rejected.
6. Brandt will promptly submit pricing for any changes, modifications, or additions to the scope of work set out in this proposal. Brandt will not be required to proceed with any changed/additional/modified work until it receives a signed change order at a mutually-agreed upon price. If Brandt is directed to proceed and time is of the essence, Brandt will only be required to perform the changed/additional/modified work upon receiving a signed "time and materials" work order. The cost and Brandt's fee for this T&M work may be billed during the billing period in which the work is performed and will be due and paid within 30 days. Brandt's proposal is expressly conditioned up on the acceptance of this provision and this provision is incorporated by reference into any applicable contract documents and supersedes any provision to the contrary in those contract documents.

### V. SUMMARY PRICING:

- **Base Bid-Electrical:** \$ 99,825.00
- **Payment Bond:** \$ 973.29
- **Total** \$ 100,798.29

Please do not hesitate to call if you need clarification or have any questions. This Estimate is valid for 30 days.

Sincerely,

**DANNY KELSEY** | BUSINESS DEVELOPMENT MANAGER

THE BRANDT COMPANIES, LLC

o 512.491.9100 | m 512.364.5184

[danny.kelsey@brandt.us](mailto:danny.kelsey@brandt.us) | [www.brandt.us](http://www.brandt.us)





**Brandt's Proposal is conditioned upon the following terms and conditions, which are incorporated by reference and, together with the Proposal, form the Contract between the parties:**

1. **Warranty.** Brandt shall furnish to Customer all manufacturers' parts and equipment warranties received by Brandt. For a period of one (1) year from the date of the respective work, repair or installation performed by Brandt, Brandt agrees to repair, replace or otherwise make good to the satisfaction of Customer, any defects in parts or materials supplied by Brandt that are not covered under a manufacturer's warranty and that are adversely affecting the performance of the equipment installed by Brandt, if any. Brandt warrants to Customer that all labor performed or provided shall be performed by licensed personnel, if required by applicable law, and will be performed in a good workman like manner. For a period of one (1) year from the date of the respective work, repair or installation performed by Brandt, Brandt agrees to repair, replace or otherwise make good to the satisfaction of Customer, any defects in workmanship that is adversely affecting the performance of the equipment installed by Brandt, if any.
  
2. **Insurance.** So long as any of the Work remains to be completed, Brandt shall, at Brandt's sole cost and expense, carry and maintain in full force and effect, the following insurance coverages:
  - (A) Workers' compensation insurance coverage on all individuals employed upon or about the Property according to the requirements of the laws of the State of Texas;
  
  - (B) General liability insurance coverage with the limits maintained by Brandt at the time of this Proposal (which are: \$1M each occurrence; \$1M personal/advertising injury; \$10M general aggregate; \$2M products/completed operations aggregate; \$10,000 medical expense (any one person)).

The policies will be issued by companies reasonably acceptable to Customer. In the event of any covered loss, or upon Customer's reasonable request, Brandt shall deliver to Customer copies of the insurance policies. Brandt and Customer mutually agree to a waiver by their respective insurer(s) of any and all rights to subrogation.
  
3. **Hoisting/Rigging Operations.** Prior to the use of heavy commercial hoisting or rigging equipment that could potentially cause damage to the Property or injury, Brandt will notify Customer in writing and shall not proceed without Customer's prior written consent. While all precautions will be exercised to protect Customer's Property, Brandt will not accept any responsibility for damage to parking lots, driveways, or landscaping that may occur as a result of normal hoisting and rigging operations, except to the extent that the damage is caused by Brandt's gross negligence or willful misconduct.
  
4. **Work Hours.** Unless indicated otherwise, all pricing is based upon work being performed during regular working hours of 7:00 am to 3.30 pm, Monday through Friday, except holidays. If work is required at times other than normal working hours, Customer agrees to pay the Brandt's standard overtime charge rates.
  
5. **Payments.** Customer agrees to pay Brandt all sums due with respect to this Proposal in accordance with the terms specified. Payments are due upon receipt of invoice. In the event payment is not received by Brandt within thirty (30) days following billing, such payment shall be considered past due. Beginning with the thirty-first (31st) day following billing, such payment shall bear interest at the maximum rate allowable



## BRANDT

by law until payment is received. If default is made in the payment of any sums due hereunder and it becomes necessary that this Contract be placed in the hands of an attorney for collection, Customer agrees to pay to Brandt all costs of collection, including reasonable attorney's fee. Brandt shall have the right to cancel this Contract at any time, upon five (5) business days' written notice, if payments as called for herein are not made.

6. **Cancellation.** This Contract may be cancelled by either party upon thirty (30) day written notice. In the event of cancellation by the Customer, Brandt reserves the right to invoice and be paid for work performed through cancellation date.
7. **No Liability from System Design or Existing Equipment Installation.** Unless Brandt was the engineer of record for the existing system design under a prior and separate construction/design-build contract or system design is expressly included within the scope of the Proposal (and, in either case, to the extent of that design), Customer acknowledges and stipulates that Brandt did not select, advise Customer regarding, engineer, design or install the system, equipment or any component part thereof to be maintained under this Contract. Accordingly, Brandt shall not be liable in any capacity, under any theory of recovery for any claims or damages related to or originating from prior or existing defects, deficiencies, injuries, or damage (whether to the system, equipment or Property) associated therewith or as a result of prior ineffective maintenance. Brandt agrees, however, to advise the Customer about the existence of such conditions upon discovery in accordance with the terms of the Contract.
8. **No Liability for Incidental Microbiological Growth/Mold.** Customer acknowledges that the Heating, Ventilation, and Air-Conditioning equipment and systems repaired or serviced as a part of this Contract may, under certain conditions, become conducive to or incidentally support microbiological growth. Brandt assumes no liability for nor warrants its work to protect against, eliminate or inhibit any type of incidental microbiological growth including, but not limited to, molds, fungi and other related matter, in or around duct systems, HVAC and related equipment or areas. Brandt agrees, however, to advise the Customer about the existence of such conditions upon discovery and to take measures to discourage such growth as required and in accordance with the terms of the Contract.
9. **Mutual Waiver of Consequential and Punitive Damages.** Notwithstanding any provision to the contrary herein, Customer and Brandt mutually and expressly waive all claims (including, but not limited to, pass-through claims by Owner or Brandt) against one another for consequential damages regardless of the basis of the claim or the theory of recovery upon which such claim may be based. These damages include, but are not limited to lost revenue and profit, loss of goodwill, loss of use or opportunity, cost of substitute goods, services or facilities and cost of capital, regardless of the foreseeability of such damages. If Customer is a property manager or other legal agent or representative of the property owner, Customer represents and warrants that it has the express requisite authority to waive claims for and recovery of such damages on behalf of the property owner as well as for itself.
10. **Indemnity.** To the fullest extent permitted by law, to the PROPORTIONATE extent OF CUSTOMER'S AND Brandt's RESPECTIVE negligence and except as otherwise limited herein, CUSTOMER AND BRANDT agree to indemnify, defend, and hold ONE ANOTHER AND THEIR RESPECTIVE officers,



## BRANDT

directors, agents, assigns, successors and employees HARMLESS against all claims and damages, losses and expenses (including, but not limited to, REASONABLE attorney's fees) arising out of OR RELATED TO the performance of this contract. NOTWITHSTANDING THE FOREGOING PROVISION, THIS INDEMNITY IS SUBJECT TO THE LIMITATIONS OF LIABILITY IN SECTIONS 7-10 ABOVE.

- 11. Hazardous Materials.** Brandt shall bear no responsibility or liability for the identification or removal of hazardous waste, chemical or substances existing on or at the job site (including, but not limited to, asbestos) which were not created or brought onto the site by Brandt. Should Brandt discover such hazardous waste, chemicals or substances on or at the site, Brandt shall (without any penalty for associated delay) immediately stop work and notify Customer, who shall have sole and exclusive responsibility for rectifying or remediating the hazardous waste, chemical or substance. Brandt shall not return to work until Customer has provided written confirmation that the hazardous waste, chemical or substance has been removed or remediated and it is safe for Brandt to resume the Work. **NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, CUSTOMER EXPRESSLY AGREES TO INDEMNIFY AND HOLD BRANDT HARMLESS FROM ANY AND ALL CLAIMS INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH THAT MAY BE BROUGHT AGAINST BRANDT IN CONNECTION WITH THE EXISTENCE OF OR EXPOSURE TO HAZARDOUS WASTE, CHEMICALS OR SUBSTANCES EXISTING AT OR ON THE SITE. THIS INDEMNITY APPLIES REGARDLESS OF THE BASIS FOR THE CLAIM, REGARDLESS OF WHO EMPLOYS THE CLAIMANT AND REGARDLESS OF THE TYPE OF DAMAGES SOUGHT OR BY WHOM SUCH DAMAGES ARE SOUGHT.**
- 12. Dispute Resolution and Governing Law.** This Contract shall be interpreted and construed according to the laws of the State of Texas. Any disputes arising out of or related to this Contract will be resolved by agreement through a meeting of executive representatives of each party. If no resolution can be reached, the dispute will be resolved through binding arbitration before an arbitrator experienced in construction law and according to the rules promulgated by the American Arbitration Association. The parties agree that the arbitration will be commenced within sixty (60) days of occurrence of the meeting of executive representatives. This Contract shall be governed by the laws of the State of Texas without regard to conflicts of laws principles.
- 13. Property Manager.** If Customer is a property manager or other legal agent or representative of the property owner, Customer represents and warrants that it has the express requisite authority to enter into all of the terms of this Contract including, without limitation, the authority to waive claims for and recovery of consequential (special/indirect/incidental) and punitive damages on behalf of the property owner as well as for itself.
- 14. Entire Agreement.** This Contract constitutes the entire agreement and is not assignable by either party without the express written consent of the other party. This Contract may be modified or amended only by written agreement of both parties.



**BRANDT**

- 15. **Force Majeure.** Brandt and Customer agree that an extension of time is appropriate if Brandt's work is impacted or delayed under a Force Majeure Event. A Force Majeure Event means an unforeseen event or circumstances beyond the control of an affected Party, and which is not cause by an act or omission of a Party, which results in a delay in, or total or partial failure of, performance of the affected Party (other than in the obligation to make payments) after that Party has taken every reasonable step, including reasonable expenditures of money, to remedy, avoid or limit the impact of the event.
  
- 16. **Force Majeure-Definition.** Force Majeure Events include Acts of God, severe and unforeseeable weather conditions, earthquakes that cause material damages to the structure requiring an engineering assessment of the damages prior to continued use of the facility or continuation of the Work, war and fire or explosions other than from construction equipment or supplies under control of Brandt. Public health emergencies (including, but not limited to, epidemics and pandemics), declared by a governmental agency shall be treated as Force Majeure Events. Force Majeure Events do not include (i) shortage of, inability to obtain, or increased cost of labor, equipment, materials or transportation, (ii) local strikes, lock-outs, or other industrial disputes or actions between either party and its or their employees, (iii) insolvency or change in economic circumstances, (iv) change in market conditions, (v) changes in laws or regulations affecting the performance of the work that should have been foreseeable or anticipated or that are part of the ordinary cost of doing business, or (vi) events involving a previous or existing condition at or before the Effective Date.

**CUSTOMER ACCEPTANCE:**

\_\_\_\_\_

**Accepted By:** \_\_\_\_\_


**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CONTRACTOR:**

**The Brandt Companies, LLC**

**Accepted By:** \_\_\_\_\_ 

**Name:** James Marek

**Title:** Senior Vice President

**Date:** 1/5/2022

**ATTACHMENT B  
PAYMENT**

Payment will be in monthly installments after all work is completed, inspected and as invoiced monthly. Final payment will occur after acceptance of the work by the City.

## ATTACHMENT C:

### STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

#### THIS ATTACHMENT IS ONLY APPLICABLE IF WORKERS' COMPENSATION COVERAGE IS PROVIDED

a. Definitions

**Certificate of coverage ("certificate")** - a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

**Duration of the project** - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City.

**Persons providing services on the project ("subcontractors" in 406.096)** - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitations, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

c. The Contractor must provide a certificate of coverage to the City prior to being awarded the contract.

d. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

e. Contractor shall obtain from each person providing services on a project and provide to City:

(1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

f. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

g. The Contractor shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

h. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are



required to be covered, and stating how a person may verify coverage and report lack of coverage.

- i. The Contractor shall contractually require each person with whom it contracts to provide services on a project to:
  - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing service on the project, for the duration of the project;
  - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
  - (6) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the project;
  - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- j. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- k. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City.