

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

This contract, dated the 8th of October 2024, is between the City of Pflugerville ("City") and The Brandt Companies, Inc. ("Contractor") (the "Contract").

**I. TERMS**

In consideration of \$74,683.35 (seventy-four thousand six hundred eighty-three dollars and thirty-five cents), 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 90 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.

Should this agreement extend beyond the current budgeted fiscal year, the Contractor and City hereby agree that the City's obligation to make payment on this Contract shall terminate should City Council fail to provide such funding after September 30<sup>th</sup> of the required year.

**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**

When applicable, the Contractor may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas Government Code Chapter 2271) By entering this contract, Contractor verifies that it does not Boycott Israel, and agrees that during the term of this contract will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, 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

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

APPROVED AS TO FORM:

By: Meghan R. Santos  
City Attorney

Corporate Seal if applicable:

CONTRACTOR

By: [Signature]

Danny Kelsey (printed name)

Title:

Federal Tax I.D. # 37-1652957

Corporate Secy's Attestation if applicable:

\_\_\_\_\_

**ATTACHMENT A  
SCOPE OF WORK**



The Brandt Companies, LLC

19001 North Heatherwilde Boulevard, Suite 120 Pflugerville, TX 78660, (512) 491-9100. TACLA30430C/TECL20109/M41312

Proposal Date: September 19, 2024  
24 Hour Service Dispatch: (512) 491-9100

Proposal#: P-20240215-0014-R1  
Reference: Pflugerville Library - Unit Installs

BuyBoard 720-23 (HVAC Install/Service, Equip, Supplies)

Customer:  
Ana Marjanovich  
City of Pflugerville  
100 E Main St  
Pflugerville, TX 78660

Service Site:  
Ana Marjanovich  
Pflugerville Library  
1008 Pfluger St  
Pflugerville, TX 78660

X Repair work proposals are for the scope of work as listed below.

Equipment replacement proposals are for the scope of work as listed below.

The Brandt Companies, LLC is pleased to submit the following price and general scope of work to be performed,  
(at the above-referenced service site), in the amount of: \$ 74,683.35 excluding any applicable taxes.

Brandt imposes a 2.25% surcharge on all credit card payments. This surcharge is not greater than our cost of acceptance.

Brandt Reserves the Opportunity to Update Proposal After 5 Business Days

Remit To: The Brandt Companies, LLC, P.O.Box 844081, Dallas, TX 75284-4081 - Tax EIN: 37-1652957

• Austin • Dallas • Fort Worth • Houston • San Antonio • Waco

We appreciate the opportunity to provide you with our services. Upon receipt of a signed proposal, we will begin mobilizing material orders and contact you to coordinate the repairs. Our terms are net ten days from the invoice date, and past due after thirty days. This contract is not valid without attachment and signature of customer on Service Descriptions Page and Terms and conditions.

Best Regards,

Colbie Buchanan  
Service Account Manager  
Cell: 737-308-9422

Email: Colbie.buchanan@brandt.us

Customer Acceptance

Accepted By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Date: \_\_\_\_\_  
Purchase Order Number: \_\_\_\_\_

The Brandt Companies, LLC

Accepted By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
The Brandt Companies, LLC  
Date: \_\_\_\_\_

[www.brandt.us](http://www.brandt.us)

Regulated by The Department of Licensing and Regulation/ P.O. Box 12157, Austin, TX 78711/1-800-803-9202/512-463-6599/ www.license.state.tx.us

Brandt Confidential: This proposal includes data that shall not be disclosed outside of the party or company to which it is intended, and shall not be duplicated, used or disclosed, in whole or in part, for any purpose other than to evaluate this proposal.



**The Brandt Companies, LLC**

19001 North Heatherwilde Boulevard, Suite 120 Pflugerville, TX 78660, (512) 491-9100. TACLA30430C/TECL20109/M41312

**Proposal Date: July 17, 2024**

**Proposal#:**

**P-20240603-0048-R1**

**24 Hour Service Dispatch: (512) 491-9100**

**Reference:**

**Book Return Mini Split Install**

**BuyBoard 720-23 (HVAC Install/Service, Equip, Supplies)**

**Scope of Work:**

- This proposal is for the installation of a new 2-ton Carrier mini split on the roof of the library for the Book Return Office.
- The roofing company core a 3" hole, install a new tee top for electrical and refrigerant lines, install two curbs for the mini split to sit on, and seal the roofing back.
- Lockout to make it safe. Work to be performed during regular hours with the exception of de-energizing panel "LC" to install the breaker. Work will be performed to limit the downtime to install the breaker & terminate (typically 1/2 to 1 hour).
- Brandt will install a new mini split condensing unit on the newly installed roof curbs.
- Install a new electrical circuit from the electrical room to the roof to power the new Mini Split. Install (1) 35 amp 208 volt circuit from Panel "LC Sec. 3" to the Book Return Room.
- This is approximately 250' foot conduit run, the wire size has been adjusted for voltage drop due to the length of run. Provide & install conduit, wire, disconnects, fittings, supports/hangers, and breaker. Install a new disconnect and mount it on a new stand.
- Brandt will utilize a crane to hoist the unit onto the roof. The SW entrance to the library will be blocked off during the lift. After the lift has been performed the entrance will be reopened.
- Install the indoor unit on the wall and install refrigerant lines from the CU to the Indoor unit. Charge the unit with the required refrigerant.
- Install a wired thermostat to the wall. Install a condensate pump from the indoor unit to the roof to drain the condensate water.
- Remove the lockout and test for proper operation.
- Perform a startup commissioning.
- Clean up tools and check out with the customer.

Accepted By Customer: \_\_\_\_\_ Brandt: \_\_\_\_\_

**The Brandt Companies, LLC**

19001 North Heatherwilde Boulevard, Suite 120 Pflugerville, TX 78660, (512) 491-9100. TACLA30430C/TECL20109/M41312

**Proposal Date:** June 11, 2024

**Proposal#:**

**P-20240607-0011**

**24 Hour Service Dispatch:** (512) 491-9100

**Reference:**

**Library - Replace Unit #7**

**BuyBoard 720-23 (HVAC Install/Service, Equip, Supplies)**

**Scope of Work:**

- Proposal is for material and labor to replace unit #7 at the City of Pflugerville library. This work will be performed on regular time.
- Brandt will need to block off the rear entry of the library to set up a crane. We do request that the customer assist in blocking off the parking lot at close of business prior to Crane arrival so there are no cars in the way.
- Lock out to make safe
- Recover any Refrigerant from the system, and determine if it is reusable.
- Remove the existing condensing units from the roof via Crane and hoist the new one into place.
- Install the new condensing unit onto the curb.
- Remove the three air handling units from inside the space.
- Install one new wall mounted and two cassette style AHUs.
- Reinstall the electrical and remove the lockout.
- Pull a vacuum and charge the system with Refrigerant. If the recovered refrigerant was deemed usable, we will utilize this for recharging.
- Verify proper operation and perform startup commissioning.

Accepted By Customer: \_\_\_\_\_ Brandt: \_\_\_\_\_



**The Brandt Companies, LLC**

19001 North Heatherwilde Boulevard, Suite 120 Pflugerville, TX 78660, (512) 491-9100. TACLA30430C/TECL20109/M41312

**Proposal Date: June 12, 2024**

**Proposal#:**

**P-20240215-0014**

**24 Hour Service Dispatch: (512) 491-9100**

**Reference:**

**Pflugerville Library - Replace HVAC #6**

**BuyBoard 720-23 (HVAC Install/Service, Equip, Supplies)**

**Scope of Work:**

- This proposal is for the installation of a new LG Minisplit system.
- Brandt will perform this work during regular hours
- Lockout to make safe
- Remove the refrigerant from the old unit
- Remove and replace the condensing unit
- Remove the existing AHU and install the new one
- Remove the lockout and test for proper operation
- Perform startup commissioning

Accepted By Customer: \_\_\_\_\_ Brandt: \_\_\_\_\_



**The Brandt Companies, LLC**

19001 North Heatherwilde Boulevard, Suite 120 Pflugerville, TX 78660, (512) 491-9100. TACLA30430C/TECL20109/M41312

**Proposal Date: July 17, 2024**

**Proposal#:**

**P-20240603-0048-R1**

**24 Hour Service Dispatch: (512) 491-9100**

**Reference:**

**Book Return Mini Split Install**

**BuyBoard 720-23 (HVAC Install/Service, Equip, Supplies)**

**Exclusions:**

- Parts, materials and equipment will have a restocking fee if work order is cancelled. Some items have a 100% restocking fee and are non-returnable.
- Anything not listed in the scope of work. Overtime labor. Any work to the roof.
- Not responsible for unlocated utilities.
- Drywall, Flooring, Paint, and Patch.

Accepted By Customer: \_\_\_\_\_ Brandt: \_\_\_\_\_



The Brandt Companies, LLC

19001 North Heatherwilde Boulevard, Suite 120 Pflugerville, TX 78660, (512) 491-9100. TACLA30430C/TECL20109/M41312

**Proposal Date:** September 19, 2024

**Proposal#:**

**P-20240215-0014-R1**

**24 Hour Service Dispatch:** (512) 491-9100

**Reference:**

**Pflugerville Library - Unit Installs**

**BuyBoard 720-23 (HVAC Install/Service, Equip, Supplies)**

**Brandt's Service Proposal # P-20240215-0014-R1 ("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 ninety (90) days 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: \$2M each occurrence; \$2M personal/advertising injury; \$4M General and Products/Completed Operations Aggregate; \$10,000 Medical Payments (any one person) with a \$10M Umbrella excess primary policies).**  

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 **General Limitations on Scope of Work.** Notwithstanding any other provision to the contrary in this Contract, including the incorporated Proposal, the Mechanical Service scope excludes:
  - (a.) Maintenance or repair of Equipment cabinets;
  - (b.) Ductwork and air distribution devices;
  - (c.) Water supply or drain beyond the Equipment;
  - (d.) Repair or replacement of heat exchangers in gas fired furnaces and duct heaters;
  - (e.) Repair or replacement of metal tubes in condensers, chiller, boilers or any other heat exchanger;
  - (f.) Moving or relocation of the subject equipment;
  - (g.) Repairs due to freezing;
  - (h.) Work made necessary by the enforcement of government codes, building and union regulations or as recommended by insurance companies;
  - (i.) Damage of any kind due to corrosion, erosion, electrolytic actions, acts of God, power failure, vandalism, or any other cause whatsoever beyond the control of Brandt;
  - (j.) Electrical components associated with the Equipment including: disconnect switches, fuses, circuit breakers, and electrical wiring not specifically identified within the scope of work;
  - (k.) Water treatment; and
  - (l.) Piping systems of any nature.
- 4 **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.
- 5 **Work Hours.** Unless indicated otherwise, all pricing is based upon work being performed during regular working hours of 8:00 am to 5:00 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.
- 6 **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 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.
- 7 **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 thru cancellation date.

Accepted By Customer: \_\_\_\_\_ Brandt: \_\_\_\_\_

The Brandt Companies, LLC

19001 North Heatherwilde Boulevard, Suite 120 Pflugerville, TX 78660, (512) 491-9100. TACLA30430C/TECL20109/M41312

**Proposal Date:** September 19, 2024

**Proposal#:**

**P-20240215-0014-R1**

**24 Hour Service Dispatch:** (512) 491-9100

**Reference:**

**Pflugerville Library - Unit Installs**

**BuyBoard 720-23 (HVAC Install/Service, Equip, Supplies)**

- 8 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.
- 9 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.
- 10 Limitation of Damages for Breach of Contract. The full extent of Brandt's liability and Customer's exclusive remedy for damages from any breach of this Contract, including, but not limited to, nonperformance or misrepresentation, and regardless of the form of action, shall be limited to the annual Contract fee of the current year.
- 11 Mutual Waiver of Consequential and Punitive Damages. Notwithstanding any other provision to the contrary, Brandt and Customer mutually waive all claims against each other for any and all consequential/special/indirect/incidental and, to the extent allowable by law, all punitive/exemplary damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to, damages incurred for rental expenses, loss of use, lost revenue or profit, lost opportunity, loss of goodwill, loss of management or employee productivity, cost of capital, and cost of substitute facilities, services or goods 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.
- 12 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, 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 8-11 ABOVE.
- 13 Hazardous Materials. If Brandt encounters asbestos, polychlorinated biphenyl (PCB) or other hazardous materials on the Property, Brandt will immediately stop work and report in writing the evidence of such to Customer. Brandt will not resume work in the affected area until the hazardous material has been removed or determined harmless by a qualified laboratory at Customer's expense.
- 14 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.
- 15 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.
- 16 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.

Accepted By Customer: \_\_\_\_\_ Brandt: \_\_\_\_\_

**ATTACHMENT B  
PAYMENT**

Payment will be in a lump sum after all work is completed, inspected and accepted by the City.

Before payment is made the Contractor must execute and provide to the City an affidavit that all bills for labor, materials and incidentals incurred by subcontractors, materialmen, mechanics, and suppliers under the contract have been paid in full, and there are no claims pending of which Contractor has been notified.

## 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 contractors'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.