

## Agreement for Construction Services (Cooperative Contract #CSP-22-049MF)

This Agreement (“Agreement”) between Williamson County, Texas, a political subdivision of the State of Texas (“Owner”) and The Brandt Companies, LLC (“Contractor”) is entered into in accordance with the following terms and conditions:

**ARTICLE 1 SCOPE OF WORK:** The Owner desires to retain Contractor for the construction of JJC Exhaust Fan Replacement – Phase 1, which generally consists of the replacement of exhaust fans in Section 1 only (hereinafter called the “Project”). The Contractor shall have the overall responsibility for and shall provide complete construction services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the Owner’s requirements and the terms of this Agreement (hereinafter collectively referred to as the “Work”).

**ARTICLE 2 CONTRACT PRICE:** Owner agrees to pay to the Contractor, for the satisfactory performance of the Work, the sum of Twenty-Five Thousand Two Hundred Twelve Dollars (\$25,212.00) in accordance with the terms and conditions of this Agreement.

**ARTICLE 3 PLANS AND SPECIFICATIONS:** The Work shall be performed pursuant to and in accordance with the plans and specifications attached hereto as **Exhibit “A”**, as well as any revisions made thereto.

### ARTICLE 4 CONTRACT TIME:

**4.1** Contractor shall commence the Work upon instruction to do so from the Owner and shall achieve Substantial Completion within Eighty (80) calendar days from the date the Work is commenced; provided, however, Owner may extend said time period in the event bad weather affects the progress of the Work. Unless otherwise specified in writing, Contractor shall achieve Final Completion within Thirty (30) calendar days of Substantial Completion. Owner shall determine when the Project has been fully and finally completed to its satisfaction. The time set forth for completion of the work is an essential element of the Agreement.

### 4.2 Liquidated Damages.

Contractor acknowledges and recognizes that Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time and that Owner has entered into, or will enter into, binding agreements upon Contractor's achieving Substantial

Completion of the Work within the Contract Time. Contractor further acknowledges and agrees that if Contractor fails to complete substantially or cause the Substantial Completion of any Phase of the Work within the Contract Time, Owner will sustain extensive damages and serious loss as a result of such failure. In the cases of missed scheduled events, which incur exact losses of revenue and exact expenses for fees and other cancellation costs, Contractor shall be responsible for the exact amount of damages sustained by Owner. In other cases, the exact amount of such damages will be extremely difficult to ascertain. Therefore, Owner and Contractor agree as set forth below:

- 4.2.1 Subject to the other terms and conditions herein, if Substantial Completion is not achieved by the date specified above or by such date to which the Contract Time may be extended, the Contract Price shall be reduced by **Five Hundred Dollars (\$500) per calendar day** as liquidated damages and not as a penalty, until the date of Substantial Completion. Force majeure shall apply relative to both rain/snow delays (acts of nature) and/or supply delays over which Contractor has no control, and such force majeure delays shall not be subject to such reduction of the Contract Price.
- 4.2.2 Owner may deduct liquidated damages described herein from any unpaid amounts then or thereafter due Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due Contractor shall be payable by Contractor to Owner at the demand of Owner, together with the interest from the date of the demand at a rate equal to the prime interest rate as published by the Wall Street Journal on the **first (1<sup>st</sup>) business day** after such amounts are demanded.
- 4.2.3 Notwithstanding anything to the contrary in this Agreement, if Owner is unable to recover any portion of liquidated damages in accordance with the terms and conditions herein because it is found to be unenforceable or invalid as a penalty or otherwise, then, Owner shall be entitled to recover from Contractor all of Owner's actual damages in connection with the failure by Contractor to achieve Substantial Completion of the Work within the Contract Time, including, without limitation, direct, indirect, or consequential damages.

## **ARTICLE 5 PAYMENT:**

- 5.1 Contractor shall receive one lump sum payment of the Contract Price upon completion of the Project.

## **ARTICLE 6 CONTRACTOR'S GENERAL RESPONSIBILITIES AND COVENANTS:**

- 6.1 Contractor shall render, diligently and competently in accordance with the highest standards used in the profession, all Contractor services which shall be necessary or advisable for the expeditious, economical and satisfactory completion of the Project. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.
- 6.2 Contractor's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner nor shall the Contractor be released from any liability by reason of

such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Contractor's skill and knowledge in performing the services required hereunder.

**6.3** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The safety program shall comply with all applicable requirements of the current federal Occupational Safety and Health Act and all other applicable federal, state and local laws and regulations.

**6.4** Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The Contractor shall keep the Owner informed of the progress and quality of the Work.

**6.5 Insurance.** Contractor shall carry insurance in the types and amounts indicated below for the duration of the Agreement, which shall include items owned by Owner in the care, custody and control of Contractor prior to and during construction. Contractor must also complete and file the declaration pages from the insurance policies with Owner whenever a previously identified policy period expires during the term of the Agreement, as proof of continuing coverage. Contractor shall update all expired policies prior to submission of any payment requests hereunder. Failure to update policies shall be reason for payment to be withheld until evidence for renewal is provided to the Owner. If the Contractor fails to obtain, maintain or renew any insurance required by this Agreement, the Owner may, among other remedies available hereunder or at law, obtain insurance coverage directly and recover the cost of that insurance from the Contractor or declare this Agreement void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. All policies of insurance provided by the Contractor must comply with the requirements set forth herein, the Agreement and the laws of the State of Texas.

**6.5.1** The Contractor shall provide and maintain, until the Work covered in the Agreement is completed and accepted by the Owner, the minimum insurance coverages in the minimum amounts as described below.

	Type of Coverage	Limits of Liability
.1	Worker's Compensation	Statutory
.2	Employer's Liability	
	Bodily Injury by Accident	\$500,000 Ea. Accident
	Bodily Injury by Disease	\$500,000 Ea. Employee
	Bodily Injury by Disease	\$500,000 Policy Limit
.3	Commercial general liability including completed operations and contractual liability insurance for bodily injury, death, or property damages in the following amounts:	
	COVERAGE	PER OCCURRENCE
	Commercial	

General Liability \$1,000,000  
 (including premises,  
 completed operations  
 and contractual)

Aggregate policy limits: \$2,000,000

- .4 Comprehensive automobile and auto liability insurance (covering owned, hired, leased and non-owned vehicles):

COVERAGE	PER PERSON	PER OCCURRENCE
Bodily injury (including death)	\$1,000,000	\$1,000,000
Property damage	\$1,000,000	\$1,000,000
Aggregate policy limits	No aggregate limit	

- .5 Damage to Rented Property/Premises (Ea. Occurrence): \$100,000

- .6 Builder's Risk Insurance (all-risks)

An all-risk policy, in the amount equal at all times to 100% of the Contract Price. The policy shall include coverage for loss or damage caused by certified acts of terrorism as defined in the Terrorism Risk Insurance Act. The policy shall be issued in the name of the Contractor and shall name its Subcontractors as additional insureds. The Owner shall be named as a loss payee on the policy. The builders risk policy shall have endorsements as follow:

- a. This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises. If off-site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.
- b. For renovation projects and or portions of work contained within an existing structure, the Owner waives subrogation for damage by fire to existing building structure(s), if the Builder's Risk Policy has been endorsed to include coverage for existing building structure(s) in the amount described in the Special Conditions. However, Contractor shall not be required to obtain such an endorsement unless specifically required by the Special Conditions if any. The aforementioned waiver of subrogation shall not be effective unless such endorsement is obtained.

- .6. Flood insurance when specified in Supplementary General Conditions or Special Conditions.

.7 Umbrella coverage in the amount of not less than \$5,000,000.

## 6.5.2 Workers' Compensation Insurance Coverage:

### 1. Definitions:

(a) Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-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.

(b) 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 Owner.

(c) Coverage – Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

(d) Persons providing services on the Project ("subcontractor") - 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 limitation, 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.

2. 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, §401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.
3. The Contractor must provide a certificate of coverage prior to execution of the Agreement/Contract, and in no event later than ten (10) days from Notice of Award. Failure to provide the insurance in a timely fashion may result in loss of Contractor's bid bond.
4. 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 Owner showing that coverage has been extended.
5. The Contractor shall obtain from each person providing services on a project, and provide to the Owner:

- (a.) a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
  - (b.) no later than seven 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.
- 6. The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- 7. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within 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.
- 8. 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.
- 9. The Contractor shall contractually require each person with who it contracts to provide services on a project, to:
  - (a) 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;
  - (b) 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 services on the Project, for the duration of the Project;
  - (c) 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;
  - (d) obtain from each other person with whom it contracts, and provide to the Contractor:
    - i. a certificate of coverage, prior to the other person beginning work on the Project; and
    - ii. 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;
  - (e) retain all required certificate of coverage on file for the duration of the Project and for one year thereafter;
  - (f) notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially

affects the provision of coverage of any person providing services on the Project;  
and

(g) contractually require each person with whom it contracts, to perform as required by paragraphs (a)-(g), with the certificates of coverage to be provided to the person for whom they are providing services.

10. By signing the Agreement/Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner 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.

11. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the Agreement/Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

**6.5.3** If insurance policies are not written for the amounts specified herein, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of primary coverage.

**6.5.4** Insurance coverage required hereunder shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company, or otherwise acceptable to Owner.

**6.5.5** **The Owner ("Williamson County, Texas"), its officials, employees and volunteers shall be named as an additional insured on all required policies.** These insurance policies shall contain the appropriate additional insured endorsement signed by a person authorized by that insurer to bind coverage on its behalf.

**6.5.6** The furnishing of the above listed insurance coverage, as may be modified by the Agreement, must be tendered prior to execution of the Agreement/Contract, and in no event later than ten (10) days from Notice of Award. Failure to provide the insurance in a timely fashion may result in loss of Contractor's bid bond.

**6.5.7** Owner reserves the right to review the insurance requirements set forth herein during the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

**6.5.8** Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or

revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Contractor and not covered by insurance shall be paid by the Contractor.

**6.5.9** Contractor shall be responsible for payment of premiums for all of the insurance coverages required hereunder. Contractor further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which the Contractor is responsible hereunder, Contractor shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$75,000 in the Contractor's insurance must be declared and approved in writing by Owner in advance.

**6.5.10** Contractor shall contractually require each person or entity with whom it contracts to provide services in relation to the Work, to comply with every insurance requirement that Contractor must comply with hereunder. More specifically, each person or entity with whom Contractor contracts to provide services on the in relation to the Work must comply with each insurance requirement hereunder just as if such person or entity was the Contractor. Thus, every reference to Contractor under each insurance requirement hereunder shall mean and include each person or entity with whom Contractor contracts to provide services in relation to the Work. If any such person or entity with whom Contractor contracts to provide services in relation to the Work fails to obtain, maintain or renew any insurance required by this Agreement, Owner may, among other remedies available hereunder or at law, obtain insurance coverage directly and recover the cost of that insurance from the Contractor or declare this Agreement void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

## **ARTICLE 7 INDEMNITY:**

**7.1 INDEMNIFICATION - EMPLOYEE PERSONAL INJURY CLAIMS.** TO THE FULLEST EXTENT PERMITTED BY LAW, Contractor SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF OWNER'S CHOOSING), AND HOLD HARMLESS OWNER, AND OWNER'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") AND SHALL ASSUME ENTIRE RESPONSIBILITY AND LIABILITY (OTHER THAN AS A RESULT OF INDEMNITEES' GROSS NEGLIGENCE) FOR ANY CLAIM OR ACTION BASED ON OR ARISING OUT OF THE PERSONAL INJURY, OR DEATH, OF ANY EMPLOYEE OF CONTRACTOR, OR OF ANY SUBCONTRACTOR, OR OF ANY OTHER ENTITY FOR WHOSE ACTS THEY MAY BE LIABLE, WHICH OCCURRED OR WAS ALLEGED TO HAVE OCCURRED ON THE PROJECT SITE OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK. CONTRACTOR HEREBY INDEMNIFIES THE INDEMNITEES EVEN TO THE EXTENT THAT SUCH PERSONAL INJURY WAS CAUSED OR ALLEGED TO HAVE BEEN CAUSED BY THE SOLE, COMPARATIVE OR CONCURRENT NEGLIGENCE OR THE STRICT LIABILITY OF ANY INDEMNIFIED PARTY. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEES BENEFIT ACTS.

**INDEMNIFICATION - OTHER THAN EMPLOYEE PERSONAL INJURY CLAIMS.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND (WITH COUNSEL OF OWNER'S CHOOSING), AND HOLD HARMLESS OWNER, AND OWNER'S EMPLOYEES, AGENTS, REPRESENTATIVES,



PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE “INDEMNITEES”) FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS’ FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT OR THE WORK DESCRIBED HEREIN, TO THE EXTENT CAUSED BY THE NEGLIGENCE, ACTS, ERRORS, OR OMISSIONS OF CONTRACTOR OR ITS SUBCONTRACTORS, ANYONE EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY A PARTY INDEMNIFIED HEREUNDER.

**7.2** Except for the obligation of Owner to pay Contractor the Contract Price pursuant to the terms of this Agreement, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth herein, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, or employee of Owner, Williamson County, or of the various departments comprising Williamson County, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

## **ARTICLE 8 WARRANTY:**

**8.1** Contractor hereby warrants that the materials and equipment provided for the Work will be of good quality and new unless otherwise required or permitted by the Owner; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the plans, specifications, drawings and the terms of this Agreement.

**8.2** Contractor shall provide warranty services for the Work for a **full twelve (12) months** following Final Completion and final payment. Just before the warranty period expires, Contractor shall attend an on-site meeting with the Owner to ensure that all warranty issues have been identified and properly remedied.

## **ARTICLE 9 PREVAILING WAGE RATE:**

**9.1 Duty to Pay Prevailing Wage Rates.** The Contractor shall pay not less than the wage scale of the various classes of labor as shown on the “Prevailing Wage Schedule”, as defined below. The specified wage rates are minimum rates only, and are not representations that qualified labor adequate to perform the Work is available locally at the prevailing wage rates. The Owner is not bound to pay—and will not consider—any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Agreement. The “Prevailing Wage Schedule” is not a representation that quantities of qualified labor adequate to perform the Work may be found locally at the specified wage rates.

**9.1.2** For classifications not shown, workers shall not be paid less than the wage indicated for Laborers. The Contractor shall notify each worker commencing work on the Project of the worker’s job classification and the established minimum wage rate required to be paid, as well as the actual amount being paid. The notice must be delivered to and signed in acknowledgement of receipt by the employee and must list both the monetary wages and fringe benefits to be paid or furnished for each classification in which the

worker is assigned duties. When requested by Owner, competent evidence of compliance with the Texas Prevailing Wage Law shall be furnished by Contractor.

**9.1.3** A copy of each worker wage rate notification shall be submitted to the Owner with the Application for Payment for the period during which the worker began on-site activities.

**9.2 Prevailing Wage Schedule.** Pursuant to Texas Government Code Section 2258.022(2), the general prevailing rate of per diem wages for each craft or type of worker needed to execute the Contract and the prevailing rate for legal holiday and overtime work shall be the most recent prevailing wage rate for Williamson County, Texas for building construction as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.), and its subsequent amendments, which are published and can be obtained online at <https://sam.gov/search/?index=dbra> (the "Prevailing Wage Schedule"). Should the Contractor at any time become aware that a particular skill or trade not reflected on the Prevailing Wage Schedule will be or is being employed in the Work, whether by the Contractor or by a subcontractor, the Contractor shall promptly inform the Owner and shall specify a wage rate for that skill or trade, which shall bind the Contractor.

**9.3 Penalty for Violation.** The Contractor and any Subcontractor shall pay to the Owner a penalty of sixty dollars (\$60.00) for each worker employed for each calendar day, or portion thereof, that the worker is paid less than the wage rates stipulated in the Prevailing Wage Schedule or any supplement or update thereto pursuant to provisions above. The Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all workers employed in connection with the Work, and showing the actual per diem wages paid to each worker, which records shall be open at all reasonable hours for the inspection by the Owner.

**9.4 Complaints of Violations of Prevailing Wage Rates.** Within thirty-one (31) days of receipt of information concerning a violation of Texas Government Code, Chapter 2258, the Owner shall make an initial determination as to whether good cause exists to believe a violation occurred. The Owner's decision on the initial determination shall be reduced to writing and sent to the Contractor or Subcontractor against whom the violation was alleged, and to the affected worker. When a good cause finding is made, the Owner shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the Prevailing Wage Schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

**9.5 Arbitration Required if Violation not Resolved.** After the Owner makes its initial determination, the affected Contractor or Subcontractor and worker have fourteen (14) days in which to resolve the issue of whether a violation occurred, including the amount that should be retained by Owner or paid to the affected worker. If the Contractor or Subcontractor and affected worker reach an agreement concerning the worker's claim, the Contractor shall promptly notify the Owner in a written document signed by the worker. If the Contractor or Subcontractor and affected worker do not agree before the fifteenth (15<sup>th</sup>) day after the Owner's determination, the Contractor or Subcontractor and affected worker must participate in binding arbitration in

accordance with the Texas General Arbitration Act, Chapter 171, Tex. Civ. Prac. & Rem. Code. The parties to the arbitration have ten (10) days after the expiration of the fifteen (15) days referred to above, to agree on an arbitrator; if by the eleventh (11<sup>th</sup>) day there is no agreement to an arbitrator, a district court shall appoint an arbitrator on the petition of any of the parties to the arbitration.

**9.6 Arbitration Award.** If an arbitrator determines that a violation has occurred, the arbitrator shall assess and award against the Contractor or Subcontractor the amount of penalty as provided herein and the amount owed the worker. The Owner may use any amounts retained hereunder to pay the worker the amount as designated in the arbitration award. If the Owner has not retained enough from the Contractor or Subcontractor to pay the worker in accordance with the arbitration award, the worker has a right of action against the Contractor and Subcontractor as appropriate, and the surety of either to receive the amount owed, attorneys' fees and court costs. The Contractor shall promptly furnish a copy of the arbitration award to the Owner.

**9.7 Prevailing Wage Retainage.** Money retained pursuant to this section shall be used to pay the claimant or claimants the difference between the amount the worker received in wages for labor on the Project at the rate paid by the Contractor or Subcontractor and the amount the worker would have received at the general prevailing wage rate as provided by the agreement of the claimant and the Contractor or Subcontractor affected, or in the arbitrator's award. The full statutory penalty of sixty dollars (\$60.00) per day of violation per worker shall be retained by the Owner to offset its administrative costs, pursuant to Texas Government Code, §2258.023. Any retained funds in excess of these amounts shall be paid to the Contractor on the earlier of the next progress payment or final payment. Provided, however, that the Owner shall have no duty to release any funds to either the claimant or the Contractor until it has received the notices of agreement or the arbitration award as provided in this section.

**9.8 No Extension of Time.** If the Owner determines that good cause exists to believe a violation has occurred, the Contractor shall not be entitled to an extension of time for any delay arising directly or indirectly from of the procedures set forth in this section.

## **ARTICLE 10 BONDS:**

**10.1 Performance Bond.** Upon execution of this Agreement, Contractor shall provide a Performance Bond in the amount of 100% of the Contract Price. The surety for a Performance Bond shall meet the requirements of Texas law and the requirements set forth in the Agreement.

**10.2 Payment Bond.** Upon execution of this Agreement, Contractor shall provide a Payment Bond in the amount of 100% of the Contract Price, as security for the true and faithful payment in full of all subcontractors and persons performing labor, services, materials, machinery, and fixtures in connection with the Work. The surety for a Payment Bond shall meet the requirements of Texas law and the requirements set forth in the Agreement.

**10.3 Warranty Bond.** Upon Final Completion, Contractor shall provide a Warranty Bond in the amount of 20% of the Contract Price, as security for the true and faithful performance of all warranties set forth in the Agreement.

## ARTICLE 11 TERMINATION OR SUSPENSION OF THE AGREEMENT

### 11.1 Termination by Contractor

If one of the reasons described below exists, the Contractor may, upon thirty (30) business days written notice to the Owner, terminate the Agreement and recover from the Owner payment for Work executed, including reasonable overhead, profit, and costs incurred by reason of such termination:

- 11.1.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- 11.1.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- 11.1.3 If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Agreement.

### 11.2 Termination by the Owner for Cause

11.2.1 The Owner may terminate the Agreement if the Contractor:

- 11.2.1.1 Fails to commence the Work in accordance with the provisions of the Agreement;
- 11.2.1.2 Fails to prosecute the Work to completion thereof in a diligent, efficient, timely, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Agreement;
- 11.2.1.3 Fails to use an adequate amount or quality of personnel or equipment to complete the Work without undue delay;
- 11.2.1.4 Fails to perform any of its obligations under the Agreement;
- 11.2.1.5 Fails to make prompt payments when due to its Subcontractors and Suppliers, or as required by **Texas Government Code, Chapter 2251**;
- 11.2.1.6 Files any petition or other pleading seeking any relief under any provisions of the Federal Bankruptcy Act, as amended, or any other federal or state statute or law providing for reorganization of debts or other relief from creditors, permits a receiver or other person to be appointed on account of its insolvency or financial condition, or becomes insolvent;
- 11.2.1.7 Creates any situation or state of facts which would authorize or permit an involuntary petition in bankruptcy to be filed against Contractor; or
- 11.2.1.8 Has not met or in Owner's opinion will not meet the dates of Substantial Completion set forth in the Agreement.

11.2.2 When any of the reasons under **Paragraph 11.2.1** exist, the Owner, in its sole and absolute discretion, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, **thirty (30) calendar days** written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety, exclude

the Contractor from the Project site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; accept assignment of subcontracts of Contractors subcontractors; and finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**11.2.3** When the Owner terminates the Agreement for one of the reasons stated in **Paragraph 11.2.1**, the Contractor shall not be entitled to receive payment until the Work is finished. In the event that it is determined that sufficient cause did not exist for termination under this **Section 11.2**, then the termination shall be considered a termination for convenience, under **Section 11.4**, below.

**11.2.4** If the unpaid balance of the Contract Price exceeds costs of finishing the Work, including compensation for expenses made necessary thereby, and other damages and costs incurred by the Owner in finishing the Work and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

### **11.3 Suspension by the Owner for Convenience**

**11.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**11.3.2** The Contract Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in **Paragraph 11.3.1**. Adjustment of the Contract Price shall include profit. No adjustment shall be made to the extent:

- 11.3.2.1** that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- 11.3.2.2** that an equitable adjustment is made or denied under another provision of the Agreement.

### **11.4 Termination by the Owner for Convenience**

**11.4.1** The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause.

**11.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- 11.4.2.1** Cease operations as directed by the Owner in the notice;
- 11.4.2.2** Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- 11.4.2.3** Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**11.4.3** Upon Owner's termination for convenience, costs of the Work executed, including reasonable overhead and profit, incurred to and including the date of termination, will be due and payable to Contractor in accordance with the Agreement.

## **ARTICLE 12 MISCELLANEOUS PROVISIONS:**

**12.1 Interest and Late Payments.** Owner's payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. Interest charges for any overdue payments shall be paid by Owner in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Owner's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

In the event that an error appears in an invoice/application for payment submitted by Contractor, Owner shall notify Contractor of the error not later than the twenty first (21st) day after the date Owner receives the invoice/application for payment. If the error is resolved in favor of Contractor, Contractor shall be entitled to receive interest on the unpaid balance of the invoice/application for payment submitted by Contractor beginning on the date that the payment for the invoice/application for payment became overdue. If the error is resolved in favor of the Owner, Contractor shall submit a corrected invoice/application for payment that must be paid in accordance within the time set forth above. The unpaid balance accrues interest as provided by Chapter 2251 of the Texas Government Code if the corrected invoice/application for payment is not paid by the appropriate date.

**12.2 Audits.** Contractor agrees that Owner or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Contractor which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees that Owner shall have access during normal working hours to all necessary Contractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Owner shall give Contractor reasonable advance notice of intended audits.

**12.3 Assignment.** This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

**12.4 Governing Law and Venue.** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. Williamson County where the Project is located shall be the sole place

of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

**12.5 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

**12.6 Notices.** All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

**12.7 Severability.** Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

**12.8 Relationship of the Parties.** Contractor shall be an independent contractor under this agreement and shall assume all of the rights, obligations, liabilities, applicable to it as such independent contractor hereunder and any provisions in this agreement which may appear to give Owner the right to direct Contractor as to details of doing the Work herein covered or to exercise a measure of control over the Work shall be deemed to mean that Contractor shall follow the desires of Owner in the results of the Work only. Owner shall not retain or have the right to control the Contractor's means, methods or details pertaining to the Contractor's performance of the Work described herein, nor shall Owner have the power to direct the order in which Contractor's Work is performed under this agreement. Owner and Contractor hereby agree and declare that Contractor is an Independent Contractor and as such meets the qualifications of an Independent Contractor under Texas Worker's Compensation Act, Texas Labor Code, Section 406.141, that the Contractor is not an employee of Owner for purposes of this Agreement, and that the Contractor and its employees, agents and sub-subcontractors shall not be entitled to worker's compensation coverage or any other type of insurance coverage held by Owner.

**12.9 Force Majeure.** If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

**12.10 No Waiver of Sovereign Immunity.** Nothing herein shall be construed as a waiver of sovereign immunity by Williamson County.

**12.11 Current Revenues.** Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, each party paying for the performance of

governmental functions or services must make those payments from current revenues available to the paying party.

**12.12 Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker’s Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Contractor shall furnish the County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**12.13 Entire Agreement & Incorporated Documents; Conflicting Terms.** This Agreement constitutes the entire agreement between the parties and may not be modified or amended other than by a written instrument executed by both parties.

The following documents shall comprise the Contract Documents:

1. This Agreement between County and Contractor;
2. Exhibit “A” – Plans and Specifications;
3. Addenda issued prior to the Effective Date of this Agreement;
4. Cooperative Contract #CSP-22-049MF; and
5. All Change Orders and any other Modifications issued after the Effective Date of this Agreement.

In the event of a dispute or conflict relating to the terms and conditions of the Contract Documents, applicable documents will be referred to for the purpose of clarification, conflict resolution or for additional detail in the following order of precedence:

1. This Agreement between County and Contractor;
2. Exhibit “A” – Plans and Specifications;
3. Addenda issued prior to the Effective Date of this Agreement;
4. Cooperative Contract #CSP-22-049MF; and
5. All Change Orders and any other Modifications issued after the Effective Date of this Agreement.



BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement to be effective as of the date of the last party's execution hereof.

**OWNER:**

WILLIAMSON COUNTY, TEXAS,  
a political subdivision of the state of Texas

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

Printed Name: \_\_\_\_\_

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

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

**CONTRACTOR:**

The Brandt Companies, LLC

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

Printed Name: Jordan Green

Title: VP of Operations

Date: 2/14/2024

# Exhibit "A"

## Plans and Specifications

### A. Section One Exhaust Fan Replacement (EF-1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1J)

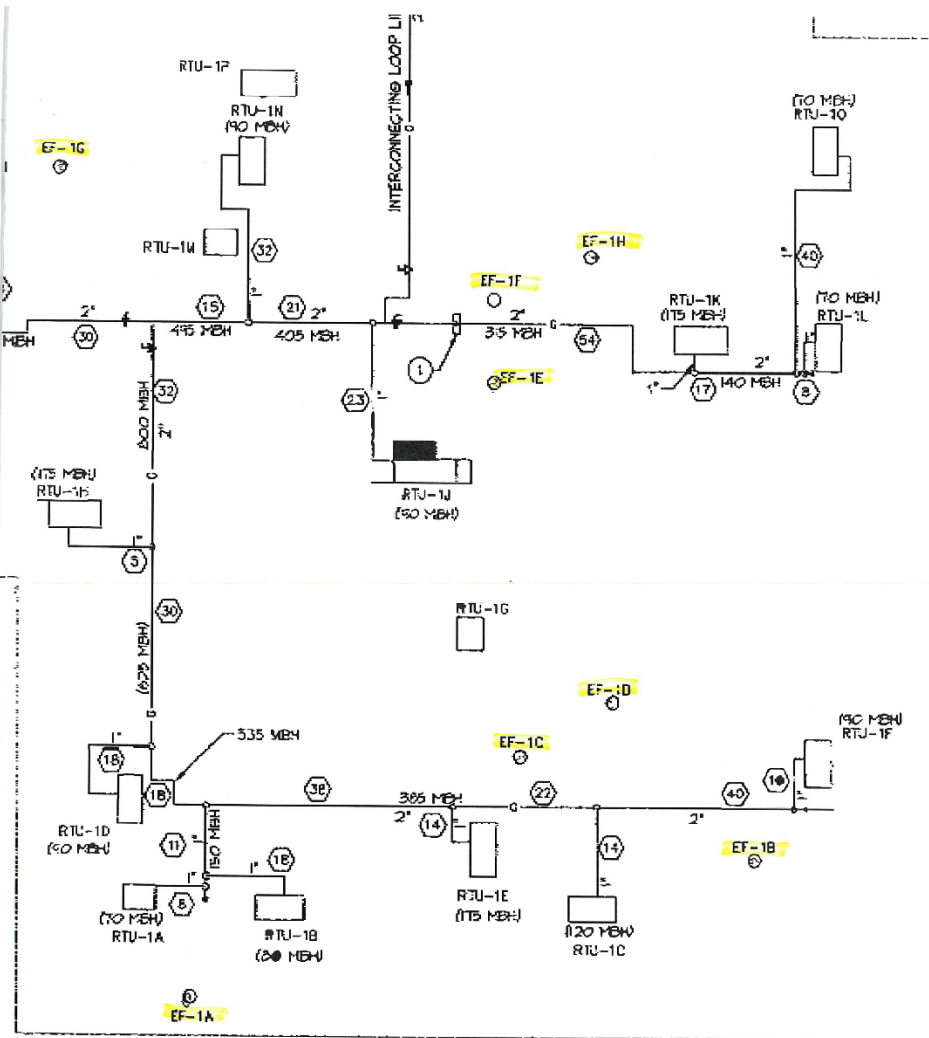
1. (9) Greenheck Exhaust fans (7-8 week lead time)

o Roof mounted fans with 120V/1

o 1 direct drive motors

o Unit mounted NEMA 1 disconnect

o Manual speed controller



JJC Exhaust Fan  
Project: SECTION 1

NOTE: EF 1I  
HAS TO BE FIELD LOCATED



Estimate: #23-00039838

Choice Partners# CSP-22-049MF

January 23, 2024

Williamson County  
200 Wilco Way  
Georgetown, TX 78626

Attn: Christy Matoska

**SUBJECT: JJC Exhaust Fan Replacement for Section-1**

Thank you for the opportunity to offer our proposal for the above subject project. Our bid includes the following items related to the replacement of Exhaust Fans:

**I. BID DOCUMENTS:**

- RFP/Bid Instructions: JJC Exhaust Fan Replacement REV-1 – SOW, Bid Tab Form
- Drawings: JJC Exhaust Fan Replacement DWG
- Specifications: JJC Exhaust Fan Replacement - SOW

**II. SCOPE OF WORK:**

1. Labor, material, and equipment to replace Exhaust Fans for section-1 per Bid documents.
2. The following work to be performed on regular time.
3. Demo and scrap of existing Exhaust Fans being replaced.
4. Brandt will inspect condition of roof curb and backdraft dampers during replacement.
5. Remove and disconnect electrical to exhaust fans being replaced.
6. Reconnect of Electrical Systems as follows:
  - A. Scope of work for sections-1 as follows:
    - Disconnect and make safe existing exhaust fans.
    - Reusing existing cable, make up electrical cable to rotary fan speed control switch.
    - Energize, check for proper voltage and rotation if required.
7. HVAC equipment start-up, Commissioning, Warranty and Owner-training.
8. Brandt will provide new labeling for newly installed exhaust fans.
9. Permit and License Fees if required.
10. Brandt provided Test & Balance to profile and report on the existing per the RFP-SOW.
11. Haul-off of demolition, debris, or trash offsite.

**AUSTIN**

19001 N. Heatherwilde Blvd, Ste. 120  
Pflugerville, TX 78660  
512.491.9100  
TACLA 30430C  
TECL 20109  
M 41312

**DALLAS**

1728 Briercroft Court  
Carrollton, TX 75006  
972.395.6000  
TACLA 19981C  
TECL 20109  
M 40211

**FORT WORTH**

2502 Gravel Drive  
Fort Worth, TX 76118  
817.626.0033  
TACLA 00060298C  
TECL 20109  
M 40211

**HOUSTON**

13810 Hollister Drive, Ste. 100  
Houston, TX 77086  
832.714.3200  
TACLA 15221C  
TECL 20109  
M 40245

**SAN ANTONIO**

6023 Corridor Parkway, Ste. 100  
Schertz, TX 78154  
210.599.6120  
TACLA 18441C  
TECL 20109  
M 41312

**WACO**

205 Schroeder Dr.  
Waco, TX 76710  
254.772.1693  
TACLA 26979C  
TECL 20109  
M 40211



### III. EXCLUSIONS:

1. Sales or Remodel Taxes.
2. **Overtime or afterhours work.**
3. Replacement of breakers, electrical wire, and external disconnects.
4. Replacement of back draft dampers.
5. Roof curbs or equipment curb adapters.
6. Roof penetrations and/or any roof patching, sealing, flashings, or repairs.
7. Any lightning protection scope.
8. HVAC-DDC Building Automation Controls.
9. Smoke detectors, sensors, strobes, wiring or interface with Fire Alarm system.
10. Bid, Payment or Performance Bonds.
11. Fees if customer will pay via credit card, please contact Brandt if this is desired for a non-marked up ADD.
12. Payment application fees, if required for electronic submission.
13. Medical Testing or Training, Badging, Security, Background Checks or Parking Fees.
14. Cleaning existing air devices.
15. Protecting existing air devices during construction.
16. Mechanical, Electrical or Structural Engineering services.
17. BIM or 3D Modeling Coordination.
18. Maintenance, Warranty, or repairs to existing equipment.
19. Repairs due to existing Code violations.
20. Removal and replacement of gypsum or lay-in ceilings for access to work areas.
21. Relocation of furniture, equipment, or personnel for access to work areas.
22. Installation of barricades or plastic sheeting for safety, noise, or dust control.
23. Saw-cutting, core drilling or block-outs for piping and duct penetrations.
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. Any added Structural support required for new HVAC equipment.
28. Concrete housekeeping pads for equipment.
29. Fire or Fire/Smoke Dampers.
30. Temporary utilities or spot cooling/heating during construction.
31. Cleaning of existing ductwork.
32. Indoor Air Quality Management or Testing.
33. Fire Protection piping, smoke or heat detectors, and alarms.
34. Roof drains, storm drain piping, scuppers, gutters, and downspouts.
35. Asbestos and mold testing, removal, or remediation.



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

1. If existing cable is not of sufficient length to make up to new exhaust fan, additional costs will be proposed to customer.
2. During replacement Brandt will report to customer any deficiencies to non-covered items in the above scope. Customer has been given an add below for new backdraft dampers. Replacement of back draft damper will be at an additional cost to customer.
3. During replacement, Brandt has included an electrician to supervise disconnect/reconnect and assess for any electrical related issues.
4. This proposal does not include VG & VGD fans to be provided with EC Motors and therefore does not meet Department of Energy efficiency requirements for fractional HP motors.
5. Brandt will verify functional operation of all exhaust equipment in addition to functional operation of kitchen supply/exhaust fans on the roof.
6. Any lead times shown start from time of approved submittals and are subject to change.
7. This proposal is based on preliminary engineering design. If final engineering and design results in changes to equipment selections, mechanical plans, plumbing plans and or electrical plans additional cost may be incurred.
8. 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.
9. 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.
10. 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.
11. 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.



# BRANDT

## V. SUMMARY PRICING:

### A. Section One Exhaust Fan Replacement (EF-1A, 1B, 1C,1D, 1E, 1F, 1G, 1H, 1J)

#### 1. (9) Greenheck Exhaust fans (7-8 week lead time)

- Roof mounted fans with 120V/1
- 1 direct drive motors
- Unit mounted NEMA 1 disconnect
- Manual speed controller

• Mechanical and Electrical Materials:	\$	13,412
• Mechanical and Electrical Labor:	\$	<u>11,160</u>
• Payment Bond:	\$	<u>240</u>
• <b>Total Price:</b>	<b>\$</b>	<b>24,812</b>

- **Add to provide and install Back Draft Damper per fan: \$ 725**  
**(Not included in base bid above)**

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

Sincerely,

**JAMES KING | SERVICE ACCOUNT MANAGER**

**THE BRANDT COMPANIES, LLC**

D 512.491.9100 | M 512.470.1391

[james.king@brandt.us](mailto:james.king@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. **Contract Conditions.** 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.
2. **Change Orders.** 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 upon the acceptance of this provision and this provision is incorporated by reference into any applicable contract document & supersedes any provision to the contrary in those contract documents.
3. **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.
4. **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.



## BRANDT

5. **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.
6. **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.
7. **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.
8. **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.
9. **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.
10. **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.





11. **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.
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 7-10 ABOVE.
13. **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.**
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. **Working Conditions.** Brandt assumes they will be given clean access to the work; given in a sequential and methodical order that does not restrict the flow of work. Should the flow of the project reflect otherwise, Brandt reserves the right to a pricing adjustment that reflects the costs associated with such a change in project work conditions.
16. **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.
17. **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.
18. **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.
19. **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.



**BRANDT**

**CUSTOMER ACCEPTANCE:**

\_\_\_\_\_

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

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

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

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

**CONTRACTOR:**

**The Brandt Companies, LLC**

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

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

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

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