

ORIGINAL

**COMMUNITY FACILITIES AND
COST REIMBURSEMENT AGREEMENT FOR
3RD STREET RIGHT OF WAY PROJECT**

STATE OF TEXAS

COUNTY OF TRAVIS

This Community Facilities and Cost Reimbursement Agreement for 3rd Street Right-of-Way Improvements ("Agreement") is made by and between the **City of Austin, Texas** (the "City"), and **3rd & Brazos, LP**, a Delaware limited partnership ("Brazos"). The City and Brazos are each sometimes referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Brazos owns those certain tracts located on and along 3rd Street in downtown Austin as more particularly described in attached **Exhibit "A-1"** (the "Apartment Site"); and

WHEREAS, a third party developer (the "Hotel Site Owner") owns those certain tracts on and along 3rd Street in downtown Austin as more particularly described in attached **Exhibit "A-2"** (the "Hotel Sites"); and

WHEREAS, Brazos intends to develop an apartment project and supporting infrastructure on the Apartment Site, as generally depicted on attached **Exhibit "B-1"** (the "Brazos Development") and the Hotel Site Owner intends to develop hotel projects and supporting infrastructure on the Hotel Sites, as generally depicted on attached **Exhibit "B-2"** (the "Hotel Sites Development"); and

WHEREAS, as a part of its 2010 Bond Program, the City plans to construct certain right-of-way improvements along an eight block section of 3rd Street in downtown Austin, including the portion of 3rd Street abutting the Apartment Site, as described in attached **Exhibit "C"**; and

WHEREAS, in order to accommodate the development of the Apartment Site and Hotel Sites and avoid interference with the development of those sites, the Parties have negotiated the phasing of the 3rd Street right-of-way improvements with the first phase to consist of the one block from Brazos Street to San Jacinto Blvd., which abuts the Apartment Site, ("Phase 1") and it is anticipated that the second phase(s) will consist of the remaining blocks between Congress Avenue and Trinity Street ("Phase 2"), all as more particularly described in attached **Exhibit "C-1"** (the right of way improvements consisting of Phase 1 and Phase 2 reflected on **Exhibit "C"** are referred to herein as the "Project"); and

WHEREAS, the Parties desire to cooperate in the development and construction of the Project; and

WHEREAS, the Parties desire to enter into this Agreement to provide for the expedited development and construction of the Project and the reimbursement of certain associated costs in

accordance with the applicable provisions of Sections 212.071 and 271.908 of the Texas Local Government Code;

NOW, THEREFORE, in consideration of these premises, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

ARTICLE I **PROJECT**

Section 1.01 Project Scope & Costs

a. The Project consists of the design and construction of a portion of the 3rd Street improvements from Congress Avenue to Trinity Street and generally consists of full depth street reconstruction, sidewalk, water utility, electric utility, landscaping and other associated improvements. On-street parking, which exists on some blocks, will be removed and the curb-line will be extended to establish improvements called for in the City's Great Streets Master Plan as set forth in the street cross section reflected on **Exhibit "C-2"** attached hereto (sometimes referred to as "Great Streets"), including but not limited to an 18 foot wide sidewalk on the south side of 3rd Street and a 16 foot wide sidewalk on the north side of 3rd Street, which can accommodate "street trees" and pedestrian-scale lighting. Infrastructure improvements include underground electric service to street lights, irrigation for street trees, storm drainage, and water line upgrade. The Project will also include the design and construction of a portion of the Lance Armstrong Bikeway within the Project limits as described on **Exhibit "D"** attached hereto. The Project is more particularly described on **Exhibit "C."**

b. The City will be responsible for the Project Costs (defined below). The City has approved funding for the Project and the Project will have an initial budget in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00), hereinafter referred to as the "Project Budget." Any changes to the Project Budget must be approved by the City. The Project and the Project Costs do not include Great Streets improvements abutting the Hotel Sites or the Apartment Site. Nothing herein will limit Brazos in seeking reimbursement for construction of Great Streets improvements abutting the Apartment Site under other applicable City policies.

c. "Project Costs" consist of (i) the "Soft Costs," as described in attached **Exhibit "E-1"** attached hereto plus the Construction Management Fee (defined below and not to exceed \$50,000), and (ii) the hard construction costs for the construction of the Project as described on **Exhibit "E"** ("Hard Costs"). The currently estimated Project Costs are as follows:

\$ 520,805.00	Soft Costs (inclusive of the Construction Management Fee)
\$ 978,321.60	Hard Costs

d. The Great Streets improvements to be constructed for those areas abutting the Apartment Site and the Hotel Sites will be designed and constructed by the respective developers of those sites, at such developer's initial cost and expense, in conjunction with the development of the

applicable site and, accordingly, are excluded from the Project hereunder. Nothing herein will limit reimbursement for construction of Great Streets improvements abutting the Apartment Site or Hotel Sites under other applicable City policies.

Section 1.02 Compliance with Certain City Bidding Requirements.

Brazos will comply with the City's "Third Party Resolutions" in the development of the Project, including the City's policies for inclusion of the City's M/WBE Program set forth in Chapters 2-9 of the City Code, Wage Rate Compliance requirements set forth in Council Resolution 20080605-047, , and Worker Safety Training requirements set forth in Council Resolution 20110728-106. Notwithstanding any provision of this Agreement to the contrary, Brazos' obligation to comply with the City's Third Party Resolutions and other contracting requirements, including any provisions requiring award of a construction contract to a low bidder or any other particular bidder, shall apply only in the context of the design and construction of the Project. In all aspects of construction of the Hotel Sites and Apartment Site, the applicable developer may choose its consultants, contractors, and other agents in its sole and absolute discretion, provided that Brazos is aware of and may consider the City's Third Party Resolutions, including the City's Minority and Women Business Ordinance in making its decisions regarding other aspects of the Brazos Development.

ARTICLE II AUTHORITY & RESPONSIBILITY

2.01 Brazos Authority & Responsibility.

Brazos will design the Project and permit and construct Phase 1 of the Project, subject to timely reimbursement by the City. Once commenced, Brazos will diligently prosecute the construction of Phase 1 of the Project to completion. Brazos will designate a single point of contact to act on behalf of Brazos with respect to this Agreement and to communicate with the City (the "Brazos Representative"), who will have complete authority to interpret and define Brazos' policies and decisions with respect to the design and construction of the Project. The Brazos Representative may designate a "Project Manager" and other representatives to transmit information and instructions and act on behalf of Brazos with respect to this Agreement. The City will be responsible for the construction of Phase 2 of the Project.

Section 2.02 City Authority and Responsibility.

The City will (i) expedite review and permitting of Project design documents, (ii) promptly conduct City required inspections of Project construction, (iii) assist with the advertisement for, and awarding of, construction contract bids through the City's Contract Compliance Section, and (iv) reimburse Brazos for Project Costs in accordance with the provisions set forth below. The City's Public Works Director (the "Director") will act on behalf of the City with respect to this Agreement and have complete authority to interpret and define the City's policies and decisions with respect to the design and construction of the Project. The Director will designate a "Project Manager" and may designate other representatives to transmit instructions and act on behalf of the City with respect to this Agreement. The City has

designated a review and permitting team in order to ensure that the Project design documents review and permitting are expedited (the “Review Team”).

ARTICLE III **DESIGN OF THE PROJECT**

Section 3.01 Agreement to Design the Project.

The Project will be designed in accordance with the applicable City Standards, including but not limited to the City’s Transportation and Drainage Design Criteria Manuals. The Lance Armstrong Bikeway portion of the Project will be designed in substantial compliance with the depiction on **Exhibit “D”** and the Great Streets component of the Project will be designed in compliance with the Great Streets cross section reflected on **Exhibit “C-2”** attached hereto and both designs will be subject to a programmatic review and approval process with the City, such approval not to be unreasonably withheld, denied or delayed. The Director of the City’s Planning and Development Review Department will have the authority to interpret and define the City’s policies with respect to the Great Streets standards.

Section 3.02 Design Engineer’s Duties.

a. Brazos will contract for the services of a duly qualified and experienced professional engineering consultant in accordance with a qualifications based selection process (the “Engineer”) to prepare plans and specifications (the “Plans and Specifications”) for the construction of the Project in conformance with the City Standards and design criteria, the cross section set forth on **Exhibit “C-2”** attached hereto with regard to Great Streets design and the fixed Project Budget. It is anticipated that Brazos will contract with the engineering firm currently engaged for site work and utility adjustments for the Apartment Site, who will be, by virtue of background and Project knowledge, the most highly qualified potential provider of the necessary professional services.

b. Brazos will provide a copy of the proposed professional services agreement for the Project with the Engineer to the City and will accommodate any reasonable request for changes to the agreement prior to its execution or will otherwise provide for a contract amendment to accommodate such a request. The Engineer will continue to perform bidding and construction phase services for Phase 1 of the Project under this Agreement until the completion of Phase 1 and the professional services agreement will provide for the assignment of the Engineers permitting, bidding, and construction phase services for Phase 2 of the Project directly to the City of Austin. In such an event, the City and the Engineer may execute a separate City professional services agreement for such Phase 2 services.

c. The professional services agreement for the development of the design and construction of the Project will direct the Engineer to:

1. submit the Plans and Specifications for the Project prepared by the Engineer to the City for review and approval at the points in the development of the design set forth on **Exhibit "E-1"**.
2. prepare preliminary schedules and cost estimates for the construction of the Project in conformance with the established Project Budget; provided that the Engineer's opinion of construction costs shall be based on materials and labor costs prevailing at the time of the preparation of the preliminary estimate without consideration of inflationary increases and with the understanding that the Engineer will not be construed to have guaranteed costs of construction, however, if either of the Parties reasonably believe that the estimates are no longer accurate, Brazos will promptly obtain a revised opinion of construction costs with estimates of more accurate construction costs together with a description of the variance between the original and revised construction costs;
3. provide the City with a copy of the draft bidding documents (the "Bidding Documents") and, if requested, attend and conduct pre-bid conferences to provide clarification and interpretation of the Bidding Documents to bidders;
4. if requested, prepare and issue addenda required to clarify the Bidding Documents;
5. if requested, attend the opening of bids at City's Contract Compliance Section, review bids, and furnish a recommendation regarding the award of the contract for the construction of Phase 1 of the Project (the "Construction Contract"), within five working days following the bid opening;
6. if requested, in the event that the received bids exceed the portion of the Project Budget allocated for construction of Phase 1, perform such redesign services as necessary to obtain new bids in conformance with the Project Budget;
7. review and approve (or take other appropriate action regarding) shop drawings and samples, the results of tests and inspections and other data that the Contractor (defined below) is required to submit for conformance with the design criteria and standard specifications of the Project and compliance with the information given in the construction documents;
8. determine the acceptability of substitute materials and equipment proposed by Contractor with the concurrence of the City's Project Manager; and receive and review (for general content as required by the applicable specification) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor in accordance with the construction documents;
9. review change order requests relating to Phase 1 of the Project and submit the change order requests along with recommendations to Brazos and the City for

review by Brazos and the City. Brazos will make its recommendation on the proposed change order to the City within five days of submittal. Change orders will be finally approved or rejected by the City, which approval will not be unreasonably withheld, within five business days of submittal, but not before receipt of the recommendation from Brazos, provided, if more information is required for the City review, the City will notify Brazos within the initial five day period and will have up to an additional five days after receipt of the additional information in which to approve or reject the change order request and in the event of a dispute, the Parties will follow the initial dispute resolution procedure outlined in Section 4.04 below;

10. review any proposed changes to Phase 1 of the Project and, if necessary, design any engineering changes that may be required after construction has begun;
11. attend the final inspections of Phase 1 of the Project in the presence of the City inspector and transmit a list of items to be completed or repaired to the City, Brazos, and the Contractor;
12. review the Plans of Phase 1 of the Project marked to show “as built” conditions to ascertain to the best of the Engineer’s knowledge and belief that the reflected field changes are substantially complete and correct;
13. after final completion of Phase 1 of the Project, submit as-built documents to the City, consisting of an electronic file, one set of Mylar and two sets of one-half size print record Plans and Specifications to the City certified “As Built” record drawings by the Engineer. Copies of the record Plans and Specifications that may be relied upon by the City are limited to the printed copies (“hard copies”) that are signed and sealed by the Engineer; record Plans and Specifications on electronic files that are furnished by the Engineer to the City are only for the convenience of the City; and
14. ensure that the Plans and Specifications: (i) conform, in all material respects, to the City design criteria and construction and material standards, as contained in applicable City ordinances and regulations, including the City’s Transportation and Drainage Criteria Manuals, for Phase 1 of the Project to be constructed by Brazos; and (ii) are accompanied by appropriate engineering reports, as reasonably required by the City.

Section 3.03 City’s Review.

a. The City will perform interim design reviews of the Plans and Specifications in accordance with the schedule set forth on **Exhibit “E-1”** attached hereto and provide any written comments to Engineer within ten (10) working days of submittal, unless additional time will be required due to the requirement of reviews by multiple City departments or additional time will be required in connection with the site plan or permit review and approval process. In the event that such additional time is required, the City will notify Brazos in writing of the additional time requested for the review, which may not exceed an additional five working days for the review

of interim design submittals or the additional time required for the site plan review and approval process. Once approval is obtained, no material changes may be made to the Plans and Specifications without following the same general procedure for review and comment described in Section 3.02(c)(9) hereof.

b. The City will provide the Review Team to meet with the Engineer to review the submitted plans and specifications and to expedite the processing of comments, the resolution of issues, and the issuance of permits.

c. The City will perform site plan and permitting reviews in a timely manner and in accordance with City requirements, including but not limited to Section 25-5-114 of the City Code; provided, however that the Parties agree that the Project will be processed under the City General Permit for right of way improvements.

d. The City agrees that, upon the approval of the Project's site plan permit, the Project will be subject to the City's Capital Improvement Project Right-of-Way Construction Inspection Fee and any other charges or fees to Brazos for the use of the right-of-way or parking spaces located within the Project limits will be superseded.

e. So long as the Engineer meets the design and response to comments bench marks reflected in **Exhibit "E-1"** attached hereto, then, in the event that the Project is not fully permitted for construction on or before September 1, 2012, then Brazos may, at its option, terminate this Agreement by written notice to the City in which event (i) the City will, within 30 days of termination, reimburse Brazos for any Soft Costs incurred by Brazos that have not been reimbursed to the date of termination, (ii) Brazos will assign to the City Brazos' right, title and interest in Plans and Specifications and other work product of Engineer with regard to the Project.

Section 3.04 Brazos Construction Manager.

Brazos will also engage the services of a duly qualified and experienced consultant or a duly qualified and experienced Brazos employee or employee of a Brazos affiliate to act as a professional construction manager ("Construction Manager") for the Project (who may be the same person as the Project Manager), to work with the Engineer in connection with Engineer's tasks, as appropriate, and to act as a liaison with the City, the construction contractor, and subcontractors. The proposed Brazos Project Manager is subject to the approval of the City, such approval not to be unreasonably denied or delayed. The City will recognize the Construction Manager as the single point of contact with Brazos during the construction of the Project for the purposes of daily communication, resolution of routine construction matters, and construction contract administration, including but not limited coordinating the receipt of payments from the City pursuant to this Agreement. Brazos will be responsible for payment to the Construction Manager in connection with construction of the Project as a Project Cost, subject to reimbursement hereunder. In addition, Brazos will charge a reasonable fee for the costs of construction administration, which will be approved by the Director, not to exceed five percent (5%) of construction costs of the Project or \$50,000, whichever is lower, and such fee will also be part of the Project Costs (referred to as "Construction Management Fee"). The Construction Management Fee will be documented in any requests for reimbursement with

supporting information of activities undertaken and expenses incurred and the City will reimburse such fee.

ARTICLE IV CONSTRUCTION OF THE PROJECT

Section 4.01 Agreement to Construct the Project

a. Brazos will commence construction of Phase 1 of the Project within forty five (45) days of the award of the approved "Construction Contract" for construction of Phase 1 of the Project and will exercise reasonable diligence to assure the substantial completion of Phase 1 of the Project in conformance with the approved Plans and Specifications and this Agreement within Two Hundred Ten (210) calendar days from the award of the Construction Contract. The completion date for Phase 1 of the Project may be extended by the Director for good cause.

b. In the event that the bids exceed the amount of the Project Budget for Hard Costs for Phase 1 as set forth in Section 1.01(c) above, the Parties will meet to determine an appropriate course of action which could include a redesign and rebid. Brazos will not be required to commence construction until any necessary additional funding is obtained by the City that increases the Project Budget sufficient to complete Phase I of the Project or a new construction bid that is within the amount of available funding is received.

c. If Brazos has not awarded a Construction Contract within one (1) year of the Effective Date of this Agreement or if Brazos has awarded a Construction Contract, but has not commenced construction of Phase 1 of the Project within six (6) months from the date of the award of the Construction Contract, the City will have the right, at the sole discretion of the Director, to terminate this Agreement by written notice to Brazos before such breach has been cured.

d. Brazos will cause Phase 1 of the Project to be constructed in a good and workmanlike manner and in all material respects substantially in accordance with the Plans and Specifications and all applicable laws, regulations, and ordinances, including the City's Third Party Resolutions and the terms and provisions of this Agreement.

Section 4.02 Schedule of Construction.

Brazos will construct Phase 1 of the Project at one time and in accordance with a critical path schedule to be approved by the Director which approval will not be unreasonably withheld, conditioned or delayed.

Section 4.03 Construction Duties of Brazos.

Subject to all of the terms and conditions of this Agreement, Brazos (or Brazos' Engineer, Construction Manager, or other City approved agent) will:

a. solicit public invitations for bids for the construction of Phase 1 of the Project, following all applicable state laws and regulations and City Codes, regulations and procedures to which the

City must adhere that pertain to competitive bidding procedures for Construction Contracts. This requirement includes compliance with the minority-owned and women-owned business enterprise procurement program found in Chapters 2-9 of the City Code and Chapter 252 of the Texas Local Government Code or at the option of Brazos and with the permission of the Director, substantial compliance with the requirements of Subchapter D of Chapter 2267 of the Texas Government Code and the other applicable provisions related to competitive sealed proposals for Phase 1 of the Project, if it can be constructed for less than \$1,500,000.00, or construction manager at risk contracts under Subchapter F of Chapter 2267 of the Texas Government Code and compliance with the minority-owned and women-owned business enterprise procurement program;

b. prepare the Construction Contract to comply with applicable laws, regulations, ordinances, City procedures, and the terms of this Agreement. The Construction Contract must provide for:

1. warranty, and insurance, payment and performance bonding requirements, as more fully set forth in **Exhibit "F"** hereto;
2. the designation of the City as an approved future assignee to the Construction Contract, together with the applicable Plans and Specifications, with the ability of the City, as assignee, to complete Phase 1 of the Project, if Brazos fails to do so; and
3. certificates of insurance evidencing that the required insurance has been obtained and that, to the extent allowed by law, the City has been designated as an additional insured under Endorsement CG2010 (or equivalent approved by the City Risk Manager) with respect to all liability coverages;

c. award the Construction Contract for Phase 1 of the Project to the lowest responsible bidder (who is duly qualified and can meet the construction schedule) ("Contractor"), following construction contract competitive bidding procedures set forth in Chapter 252 of the Texas Local Government Code (or as applicable the alternative delivery contracting procedures under Chapter 2267 of the Texas Government Code for Competitive Sealed Proposals under \$1,500,000 or construction manager at risk) and Third Party Resolutions, specifically including the minority-owned and women-owned business enterprise procurement program found in Chapters 5-7 of the City Code, as applicable; and prior to entering into any other ancillary contract under \$50,000 for the provision of construction, demolition, material generation or non-professional services for Phase 1 of the Project (e.g., services other than design, surveying, etc.) to satisfy Brazos' obligations hereunder, Brazos will in good faith solicit bids for such items from at least three qualified entities, review all timely submitted bids in good faith and select the entity to provide such item which in Brazos' discretion represents the best overall value for Phase 1 of the Project taking into account all relevant factors and circumstances or will use the process set forth in Chapter 2267 of the Government Code and select the entity providing the "best value," taking into consideration the specifically enumerated evaluation criteria allowed by Chapter 2267 and set forth in the request for proposals;

- d. obtain all required permits, consents, inspections, tests, and authorizations necessary for construction of the Project; provided, however, that the City will cooperate with Brazos in obtaining those items listed herein;
- e. provide the City with a copy of the Construction Contract and any additional documents pertaining to the Construction Contract on or about the time they have been signed, and thereafter provide copies of any documents amending or replacing any of said documents;
- f. submit all changes to the Plans and Specifications and change orders to the Construction Contract to the City for its review and approval prior to the commencement of any work incorporating the change, which approval will not be unreasonably withheld or delayed;
- g. ensure that all change orders submitted for the Construction Contract, either singularly or in the aggregate, do not increase the portion of the Construction Contract cost subject to City reimbursement by more than twenty five percent of the original contract amount;
- h. make timely payment to the Engineer and Contractor for work properly performed for the Project in accordance with the terms and provisions of the applicable contract with the Engineer or the Construction Contract (including any provisions related to statutory retainage and withheld amounts due to improper work or punch list items);
- i. arrange and coordinate materials testing with the City and each Contractor and provide the City with all testing information; if the City reasonably determines that the work needs to be corrected or rejected or requires special testing because of unforeseen circumstances, the City will promptly notify Brazos and Brazos will take appropriate action to remedy the identified problem;
- j. reject all work found not to conform to minimum requirements of the Construction Contract and the applicable Plans and Specifications, and advise the Engineer and the City of work that Brazos determines should be corrected or rejected or which requires special testing, adjustment, or inspection for approval;
- k. arrange and observe with the City and the Contractor all acceptance testing, if applicable, for Phase 1 of the Project and notify the City and the Engineer of the schedule and results of the testing;
- l. maintain master job files of correspondence, reports of conferences, shop drawings, samples, reproductions of the applicable Plans and Specifications, change order, addenda, daily inspection reports, additional or revised drawings, and other related construction documents;
- m. coordinate with the City the preparation of letters indicating Substantial Completion for Phase 1 of the Project with the Engineer, together with the submission to the Contractor of a list of observed items requiring completion or correction;
- n. ensure access and permit the City to inspect the construction of Phase 1 of the Project at all reasonable times during construction until final acceptance of the Project by the City;

- o. conduct and coordinate final inspection of Phase 1 of the Project with the Engineer and the City inspector, transmit a final list of items to be completed or repaired, if any, and observe Contractor correction of the same;
- p. arrange for post construction inspection for compliance with the Texas Accessibility Standards by the Texas Department of Licensing and Regulation or a Registered Accessibility Specialist;
- q. observe the construction Contractor correcting any items requiring correction prior to final acceptance;
- r. prepare and submit to the City monthly, during construction of Phase 1 of the Project, a report regarding minority-owned and women-owned business enterprise participation in the construction of Phase 1 of the Project;
- s. within thirty (30) days after final completion and acceptance of Phase 1 of the Project by the City in writing, provide the City with complete sets of the Plans and Specifications certified “as-built” by the Engineer in accordance with the requirements of this Agreement;
- t. within thirty (30) days after final acceptance, Brazos will execute and deliver to the City such bills of sale, assignments, or other instruments of transfer requested by the City, in a form and content acceptable to the Director and the City Attorney, to evidence the City’s ownership of the constructed Phase 1 of the Project; and
- u. within said thirty (30) day period, Brazos will also deliver to the City all bonds, warranties, guarantees and other assurances of performance, record drawings, easements, project manuals and all other such documentation related to Phase 1 of the Project that are within the custody and control of Brazos.

Section 4.04 Construction Duties of the City.

The City will:

- a. inspect Phase 1 of the Project within two (2) days of a request for an interim inspection and ten (10) days of a request for substantial and final inspection, and, if substantially or finally completed, as the case may be, in accordance with the terms of the Plans and Specifications and this Agreement in all material respects, will certify Phase 1 of the Project as being in compliance with City Standards and specifications, and issue, as appropriate, a substantial or final acceptance letter. The substantial or final acceptance letter will be the respective effective date of “substantial completion” or “final completion” for the purposes of this Agreement. The inspections and certifications will otherwise be conducted in accordance with standard City policies, procedures, and requirements; and
- b. provide timely written notice to Brazos within two working days whenever a completed inspection reveals that an item of the Project is not constructed or completed in accordance with

the Plans and Specifications or is otherwise materially defective. The notice will specifically detail any deficiencies. The foregoing notwithstanding, inspection of construction by the City is not a guaranty that construction of Phase 1 of the Project is free from defects or complies with all applicable laws. In the event of a dispute regarding any notice of failure to complete the construction of Phase 1 of the Project in accordance with the applicable Plans and Specifications, either party may request in writing a dispute resolution meeting with the City's Project Manager. The meeting will be held within three business days of such a request and the Parties agree that the recommendations of the Project Manager will be given due consideration in the resolution of the dispute. If the Parties are not satisfied with the recommendations of the Project Manager, the matter may be appealed to the Director and thereafter to mediation, as allowed by this Agreement.

Section 4.05 City Acceptance.

Upon final acceptance of Phase 1 of the Project by the City, the completed work will be owned, operated, and maintained by the City as part of the City's public works system. The City's acceptance of Phase 1 of the Project shall be governed by this Agreement and the requirements of the City Code. As a condition of final acceptance of Phase 1 of the Project by the City, Brazos will provide the City with:

1. an assignment to the City of all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to Phase 1 of the Project;
2. copies of separate books of accounts, accurately documenting costs and expenses incurred in connection with Phase 1 of the Project;
3. a written, sealed statement from the Engineer certifying that Phase 1 of the Project has been constructed in accordance with the Plans and Specifications (subject to approved change orders) in all material respects; and
4. the other applicable standard City construction contract close-out requirements, included in Article 14 of the City's standard Section 00700 General Conditions.

Section 4.06 City's Right to Construct Project on Default of Brazos.

a. Subject to a reasonable notice and cure period, of no less than 30 days, and public health and safety, if Brazos begins, but does not complete construction of Phase 1 of the Project in accordance with the Plans and Specifications in all material respects, the approved schedule, and the other terms and provisions in this Agreement, the City has the right, but not the obligation, to complete the construction of Phase 1 of the Project.

b. If the City elects to complete Phase 1 of the Project, all plans, designs, real and personal property, and Phase 1 construction produced or installed by Brazos or its Engineers or Contractors prior to the take over of construction of Phase 1 of the Project by the City, will become the property of the City.

c. If this Agreement is terminated, the City will reimburse Brazos for Project Costs performed in accordance with the Plans and Specifications and the terms of this Agreement to the date of such termination, subject to the receipt of reasonably acceptable close-out information, including the Contractor's invoice for services rendered to the date of termination.

ARTICLE V COSTS AND REIMBURSEMENT

Section 5.01 Brazos' Initial Responsibility for Project Costs.

a. Brazos will initially pay all Project Costs in a timely manner subject to the reimbursement by the City as provided in this Article V. In connection therewith, Brazos may pledge its right to payment under this Agreement as collateral for purposes of securing financing from one or more lenders. Brazos or the lender will provide documentation of any such pledge to the City Law Department for its review and approval. The City agrees to execute such documents as may be reasonably required by the lender to perfect its security interest in the collateral (as defined in the Texas Business & Commerce Code) provided such instruments do not amend, modify, diminish or prejudice the City's rights and interests under this Agreement or cause additional, material burden, expense or detriment of any kind to the City.

b. The City will reimburse Brazos for the Project Costs of the Project, in accordance with the following schedule:

1. Soft Costs Draws for (i) design phase services will be paid at the 30, 60, and 90 percent completion stage of the development of the plans, at the issuance of the site plan permit, and at bidding award, (ii) bid phase services will be paid at the completion of the bidding phase, and (iii) execution phase services, including Construction Management Fees, will be paid monthly during construction within 30 days of an acceptable invoice. Soft Costs Draws, other than Construction Management Fees, are more particularly described on the schedule set forth on **Exhibit "E-1"** attached hereto;
2. Monthly Construction Draws for construction services will be paid within 30 days of an acceptable invoice with sufficient breakdowns between disciplines and sufficient detail for review and approval based upon the percent of completed construction of the Project; and
3. Final Payment – based upon the provisions in Sections 5.02 and 5.03 of this Agreement.

Section 5.02 Cost Reimbursement.

a. The City will reimburse Brazos the Project Costs, as specified in attached **Exhibits "E" and "E-1"** and in accordance with the terms of this Article V. After Brazos has constructed and the City has accepted Phase 1 of the Project for operation and maintenance the City will make

the "Final Payment" in the amount of all remaining Project Costs incurred by Brazos for the design of the Project and for the permitting and construction of Phase 1 of the Project less prior Project Costs previously reimbursed to Brazos pursuant to Section 5.01 above. However, the City's responsibility for reimbursing Brazos for Project Costs hereunder is limited to the total amount of the approved Project Budget as it may be adjusted by the mutual agreement of the Parties by approved change orders or otherwise. Any additional City funding will require further authorization by the Austin City Manager and, if deemed necessary, the City Council.

b. The eligible costs for reimbursement will include the so-called "hard costs" of construction, as evidenced by the amounts paid to the general contractor for the performance of the Work, and the so-called "soft costs" of the fees to be paid under this Agreement which includes design fees, permitting costs, the construction management fee, and other professional services fees, but will exclude the costs of financing, accounting and legal fees incurred by Brazos.

Section 5.03 Report of the Costs Required.

a. On or before the date of final acceptance of Phase 1 the Project, Brazos will submit a report to the City of the total Project Costs with reasonable supporting information. The report must segregate the costs of various components of Phase 1 of the Project. Brazos agrees to provide all information and documents in its possession or immediate control reasonably required by the City for proper processing and for accurate accounting and documentation of actual Project Costs.

b. The City will verify and determine the final total Project Cost amount and will certify the Final Payment amount due to Brazos for the Project. In connection therewith, the City will have the right, upon three (3) days written notice to Brazos to inspect, audit, and copy Brazos' records and its consultant's and contractor's records related to the development and construction of the Project. If the City determines that the amount due to Brazos is the same as the amount submitted by Brazos, the City will have 30 days after receipt of all supporting information or the date of final acceptance of Phase 1 of the Project, (whichever is later), in which to make the Final Payment to Brazos. If the City determines that the amount owing to Brazos is less than the amount submitted by Brazos, the City will: (i) notify Brazos of the discrepancy within twenty days of Brazos' submittal to the City; (ii) provide Brazos with all supporting documentation upon which the discrepancy is based; and (iii) work diligently and in good faith to resolve the discrepancy within the ensuing ten days. If the Parties are unable to resolve the discrepancy, either Party may refer the matter to mediation as described below.

c. If Brazos allows work to commence on a change order that effects a material change of the Plans and Specifications for Phase 1 before receiving the approval of the applicable City department(s) for the change order, any additional costs incurred on that change order may not be eligible for reimbursement, if the City reasonably determines that the change in Phase 1 of the Project is materially unacceptable.

d. In any event, subject to the not to be exceeded amount of the Project Budget and notwithstanding anything to the contrary contained herein, the City will reimburse Brazos the amounts not in dispute then owing to Brazos.

5.04. Brazos' Responsibility for City Engineering Review and Inspection Fees.

Brazos will also be initially responsible for paying for all engineering review and inspection fees and other inspection costs of the Project, provided, however, that these are all Soft Costs subject to reimbursement hereunder.

ARTICLE VI COMPLETION AND ACCEPTANCE

Section 6.01 Conditions for City Ownership and Maintenance of the Project.

After the City's final acceptance of the Project, the City will own and maintain the constructed Phase 1, subject to the Contractor's one-year warranty and provisions of 6.02 below.

Section 6.02 Warranty.

a. Upon substantial completion of Phase 1 of the Project and as a condition precedent to final acceptance by the City, Brazos will transfer to the City all warranties for the Project, including the Contractor's one year warranty and any additional warranty bond required by the City and any other warranty or rights Brazos has in connection with the Plans and Specifications as they relate to the Project. Except as may otherwise be specifically provided in this Agreement or any other Agreement, Brazos in no way guarantees either the performance or quality of the work undertaken or materials used by any contractor or subcontractor undertaking construction pursuant to this Agreement or any other agreement.

b. Brazos will be responsible for any material damage (ordinary wear and tear excepted) to Phase 1 of the Project accepted by the City for operation and maintenance for one year following acceptance by the City, but only to the extent that the damage was caused directly by Brazos or its contractor or any subcontractor during construction of the Apartment Site.

Section 6.03 No Liens Permitted.

The Project is a public works project and Brazos will make timely payment for all aspects of properly performed engineering, design, construction work (including inspection fees), and for all materials and services relating to Phase 1 of the Project in accordance with the Construction Contract and design services contracts for the Project. Brazos will not suffer or permit the filing, perfection, or execution of any lien or encumbrance on Phase 1 of the Project, and will cause any such lien to be released of record by payment, deposit, bond, or order of a court of competent jurisdiction. Brazos will have the right to contest any claim asserted in connection with the design and construction of the Project described herein, including the right to contest such claim in any court of competent jurisdiction. Brazos shall secure the release within ninety days of the recordation of any lien or encumbrance. The foregoing notwithstanding, any lien disputed by Brazos may be bonded, as applicable, by the payment bond provided by the Contractor for Phase 1 of the Project or otherwise bonded or secured by other fiscal, including a letter of credit, acceptable to the City Law Department within sixty days of its recordation.

ARTICLE VII **LIABILITY**

Section 7.01 City Liability & Responsibility.

The City agrees that to the extent allowed by Texas law it is responsible for its own proportionate share of any liability for its negligent acts and omissions arising out of or associated with this Agreement and the activities to be undertaken pursuant thereto and as determined by a court of competent jurisdiction, provided that the execution of this Agreement shall not be considered a negligent act. The City is a self-insured public entity.

Section 7.02 Indemnification.

Subject to the limitations and exceptions in the last sentence of this Section, Brazos hereby fully indemnifies, saves, and holds harmless the City, its officers, employees, agents, licensees, and invitees (collectively called "Indemnitees") against any and all liability, damage, loss, claims, demands, and actions of any nature whatsoever, on account of personal injury (including, without limitation, Workers' Compensation and death claims), or property loss or damage of any kind whatsoever, which arises or is claimed to arise out of or is or is claimed to be in any manner connected with the construction, installation, existence, operation, use maintenance, repair, restoration, or removal of Phase 1 of the Project pursuant to this Agreement by Brazos or its contractors, subcontractors, agents or representatives. Brazos must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel satisfactory to Indemnitees' City Attorney, and pay all attorneys' fees and all other cost and expenses of any kind arising from any aforesaid liability, damage, loss, claims, demands, or actions. This indemnification provision does not apply to any claims, suits, damage, costs, losses, or expenses (i) for which the City has been compensated by insurance provided under Section 6 hereof, (ii) to the extent arising from the willful or grossly negligent acts of any of the Indemnitees, or (iii) that arise after the City has accepted the Project for operation and maintenance.

ARTICLE VIII **GENERAL PROVISIONS**

Section 8.01 Interpretation of Terms, and Incorporation of Exhibits.

Except where the context otherwise clearly requires in this Agreement: words imparting the singular will include the plural and vice versa; all recitals set forth herein and all exhibits attached to this Agreement are incorporated by reference for all pertinent purposes as though set forth at length; and references to any document means that document as amended or as supplemented from time to time; and references to any party means that party, its successors, and assigns. This Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strictly for or against either Party.

Section 8.02 No Waiver.

No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement, nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. The failure of the Parties to enforce this Agreement or any covenant at any time by the Parties, whether a violation is known or not, shall not constitute a waiver or estoppel of the right to do so.

Section 8.03 Governmental Authority.

Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate (i) the City's governmental authority or ordinances respecting the construction, operation and maintenance of the Project constructed under the terms of this Agreement which are to be operated and maintained by the City, except as specifically waived or modified herein or by separate specific action of the City, or (ii) its duty to provide for the public health, safety, and welfare in the construction, operation and maintenance of the same.

Section 8.04. Assignment.

Brazos shall not assign its interests in this Agreement without the prior written consent of the City Manager, which consent will not be unreasonably withheld, provided that any such assignment will be expressly subject to the assignee's compliance with all covenants and obligations herein. To secure financing, Brazos may, from time to time without the City's consent or joinder, encumber its rights to reimbursement under this Agreement. Brazos shall provide the City Attorney's Office a copy of any proposed assignment or transfer of rights in this Agreement, which must include the name, address, and contact person of the assignee, along with the proposed date of assignment or transfer.

Section 8.05 Amendment.

This Agreement may be amended, modified or terminated, in whole or in part, only by written agreement of the Parties hereto or their successors or assigns.

Section 8.06 Choice of Laws.

This Agreement will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Venue lies in the district courts of Travis County, Texas, in which the real property subject to this Agreement is located.

Section 8.07 Legal Construction.

If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the

unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Section headings in this Agreement are for reference only and are not intended to restrict or define the text of any Section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

Section 8.09 Mediation.

In the event that the other dispute resolution proceeding set forth herein fail to result in the resolution of any dispute arising hereunder, the Parties will submit the dispute to mediation prior to seeking any other legal relief. Within thirty (30) days of a request for mediation by either party, the Parties will select a mediator to assist in the resolution of the dispute. The Parties agree to act in good faith in the selection of the mediator and in the mediation process. If the Parties are unable to agree on a mediator, they may request the Travis County Dispute Resolution Center to select a qualified individuals and that decision will be binding on the Parties. The Parties agree to participate in mediator for up to thirty 30 days from the date of the mediation session unless otherwise agreed. Should the Parties fail to reach a resolution of the dispute through mediation, then they are released to pursue other available remedies.

Section 8.10 Binding Effect.

This Agreement is binding upon and inuring to the benefit of the Parties and their respective successors and permitted assigns. The City agrees that this Agreement shall constitute a contract for providing goods and services to the City, subject to the provisions of Subchapter I of Chapter 271, Texas Local Government Code, provided that the City will have the option to contest in alternative dispute resolution proceedings and/or litigation any claim brought by Brazos, or its contractor(s) and consultant(s) under Subchapter I and seek indemnification or other recovery against Brazos or its contractor(s) and consultant(s) pursuant to this Agreement.

Section 8.11 Funding Out

In accordance with the requirements of Texas law, the City has appropriated funding for the Project for its current fiscal year. In the event that Phase 1 of the Project is not completed during the current fiscal year, this Agreement will be subject to the further appropriation of funding by the Austin City Council. In the event that such funding is not appropriated, this Agreement will terminate at the end of the fiscal year for which funding has been provided and the City will reimburse Brazos for its costs to the date of such termination.

Section 8.12 Force Majeure.

If, by reasons of Force Majeure, any party will be rendered wholly or partially unable to carry out its obligations under this Agreement after its effective date, then such party will give written notice of the particulars of such Force Majeure to the other party or parties within a reasonable time after the occurrence of it. The obligations of the party giving such notice will be extended, to the extent affected by such Force Majeure, during the continuance of the inability claimed and for no longer period, and any such party will in good faith exercise its best efforts to

remove and overcome such inability, provided, however, in such an event, a conference will be held within three (3) business days to establish a proposed new schedule for the Project, subject to the right of the City to terminate this Agreement and proceed with the Project itself..

The term "Force Majeure" as utilized in this Agreement will mean and refer to acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or other public enemies; orders of any kind of the government of the United States, the State of Texas, or any other civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; storms; floods; washouts; other natural disasters; arrests; restraint of government and people; civil disturbances; explosions; breakage or accidents to machinery, pipelines or canals; or other causes not reasonably within the control of the party claiming such inability.

Section 8.13 Notices.

When notices or other communications are required to be given under this Agreement, the parties will give written notice to the address of the party to be noticed by either:

- (a) delivering it in person;
- (b) depositing it in the United States Mail, first class mail, postage prepaid;
- (c) depositing it with a nationally recognized courier service; or
- (d) by sending it by telefax (subject to electronic confirmation) with confirming copy sent by mail. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

BRAZOS:

3rd & Brazos, LP
100 Congress Avenue
Suite 1540
Austin, Texas 78701
Attn: John Needham
Tel. (512) 322-3247
Fax: (512) 476-7816

CITY OF AUSTIN:

City of Austin Public Works Department
505 Barton Springs Road
13th Floor
Austin, Texas 78704
Attn: Keri Juarez, Assistant Director
Tel. (512) 974-7298
Fax: (512) 974-

WITH A COPY TO:

Armbrust & Brown, PLLC
100 Congress Ave.
Suite 1300
Austin, Texas 78701
Attn: Gregg C. Krumme
Tel. (512) 435-2398
Fax: (512) 435-2360

City of Austin Law Department
301 West 2nd Street
4th Floor
Austin, Texas 78701
Attn: Gordon Bowman
Tel. (512) 974-2346
Fax. (512) 974-6490

The Parties notify each other of any changes to their respective addresses. If any date or notice period described in this Agreement ends on a Saturday, Sunday, or legal holiday, the Parties will extend the applicable period for calculating the notice to the first business day following such Saturday, Sunday, or legal holiday.

Section 8.14 Complete Agreement.

This Agreement contains the complete agreement of the Parties and cannot be varied except by written agreement of the Parties. The Parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.

Section 8.15 Executed Counterparts.

This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

Executed to be effective on March 22, 2012 (the "Effective Date").


APPROVED AS TO FORM:

By: 
Gordon Bowman
Assistant City Attorney

CITY OF AUSTIN:

By: 
Name: Robert Greer
Assistant City Manager

APPROVED AS TO CONTENT:

By: 
Keri Juarez, Assistant Director
Public Works

**3RD & BRAZOS, LP, A DELAWARE
LIMITED PARTNERSHIP**

By: 3rd & Brazos GP, LP, a Texas
limited partnership, its
General Partner

By: 3rd & Brazos Master GP, LLC, a
Texas limited liability company, its
General Partner

By: 
John Needham, Member

Exhibit "A-1": Legal Description Apartment Site
Exhibit "A-2": Legal Description Hotel Sites
Exhibit "B-1": Brazos Development
Exhibit "B-2": Hotel Sites Development
Exhibit "C": Project Scope
Exhibit "C-1": Project Phases
Exhibit "C-2": Great Streets Cross Section
Exhibit "D": Lance Armstrong Bikeway
Exhibit "E" Project Costs
Exhibit "E-1" Design Benchmarks and Soft Costs Reimbursement Schedule
Exhibit "F": Insurance and Bond Requirements

Exhibit A-1

0.811 ACRE
BLOCK 31
ORIGINAL CITY OF AUSTIN

FN.NO. 11-070(ACD)
MARCH 8, 2011
BPI JOB NO. 103075

DESCRIPTION

OF A 0.811 ACRE TRACT, BEING LOTS 1-6, BLOCK 31, ORIGINAL CITY OF AUSTIN, ACCORDING TO THE MAP OR PLAT ON FILE AT THE TEXAS GENERAL LAND OFFICE; SAID LOTS 1-6 HAVING BEEN CONVEYED TO BRAZOS REI POE, LLC, BY DEED OF RECORD IN DOCUMENT NO. 2006424767, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.811 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, for reference, at a PK nail found in asphalt at the intersection of the westerly right-of-way line of San Jacinto Street (80' R.O.W.) and the southerly right-of-way line of East 3rd Street (80' R.O.W.), being the northeasterly corner of Lot 7, Block 17, of said Original City of Austin;

THENCE, N16°33'51"E, over and across said East 3rd Street right-of-way, a distance of 80.00 feet to a calculated point located inside a building at the intersection of said westerly right-of-way line of San Jacinto Street and the northerly right-of-way line of said East 3rd Street, being the southeasterly corner of said Lot 6 and said Block 31, for the **POINT OF BEGINNING** and southeasterly corner hereof;

THENCE, N73°29'04"W, leaving said westerly right-of-way line of San Jacinto Street, along said northerly right-of-way line of East 3rd Street, for the southerly line of said Lots 1-6, said Block 31, and hereof, a distance of 276.00 feet to a calculated point located inside a building at the intersection of said northerly right-of-way line of East 3rd Street and the easterly right-of-way line of Brazos Street (80' R.O.W.), for the southwesterly corner of said Lot 1, said Block 31, and hereof, from which a 1/2-inch iron rod found at the northerly common corner of Lots 9 and 10, of said Block 17, bears S43°21'46"E, a distance of 159.42 feet;

THENCE, N16°33'46"E, leaving said northerly right-of-way line of East 3rd Street, along said easterly right-of-way line of Brazos Street, for the westerly line of said Lot 1, said Block 31, and hereof, a distance of 128.00 feet to a calculated point located inside a building at the intersection of said easterly right-of-way line of Brazos Street and the southerly line of a 20 foot alley traversing said Block 31, for the northwesterly corner of said Lot 1 and hereof;

THENCE, S73°29'04"E, leaving said easterly right-of-way line of Brazos Street, along the southerly line of said 20 foot alley, for the northerly line of said Lots 1-6, Block 31 and hereof, a distance of 276.00 feet to a calculated point located inside a building at the intersection of the southerly line of said 20 foot alley and said westerly right-of-way line of San Jacinto Street, for the northeasterly corner of said Lot 6, Block 31 and hereof;

EXHIBIT "A"

FN 11-070(ACD)
MARCH 8, 2011
PAGE 2 of 2

THENCE, S16°33'51"W, leaving the southerly line of said 20 foot alley, along said westerly right-of-way line of San Jacinto Street, for the easterly line of said Lot 6, Block 31 and hereof, a distance of 128.00 feet to the **POINT OF BEGINNING**, and containing 0.811 acre (35,328 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, NAD 83(93), CENTRAL ZONE, UTILIZING TRINITY STREET CENTERLINE MOUNUMENTATION AND REFERENCING CITY OF AUSTIN PROVIDED GPS CONTROL MONUMENT J-22-4001.

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND, AND IS TRUE AND CORRECT TO THE BEST OF MY ABILITIES.

BURY & PARTNERS, INC.
ENGINEERS-SURVEYORS
221 WEST SIXTH STREET SUITE 600
AUSTIN, TEXAS 78701



B-25-4

ABRAM C. DASHNER
R.P.L.S. NO. 5901
STATE OF TEXAS



EXHIBIT "A"

Exhibit A-2

Legal Description

Lots 7,8,and 9, Block 17 of the Original City of Austin, According to the Map or Plat on file at the Texas General Land Office

Exhibit B-1

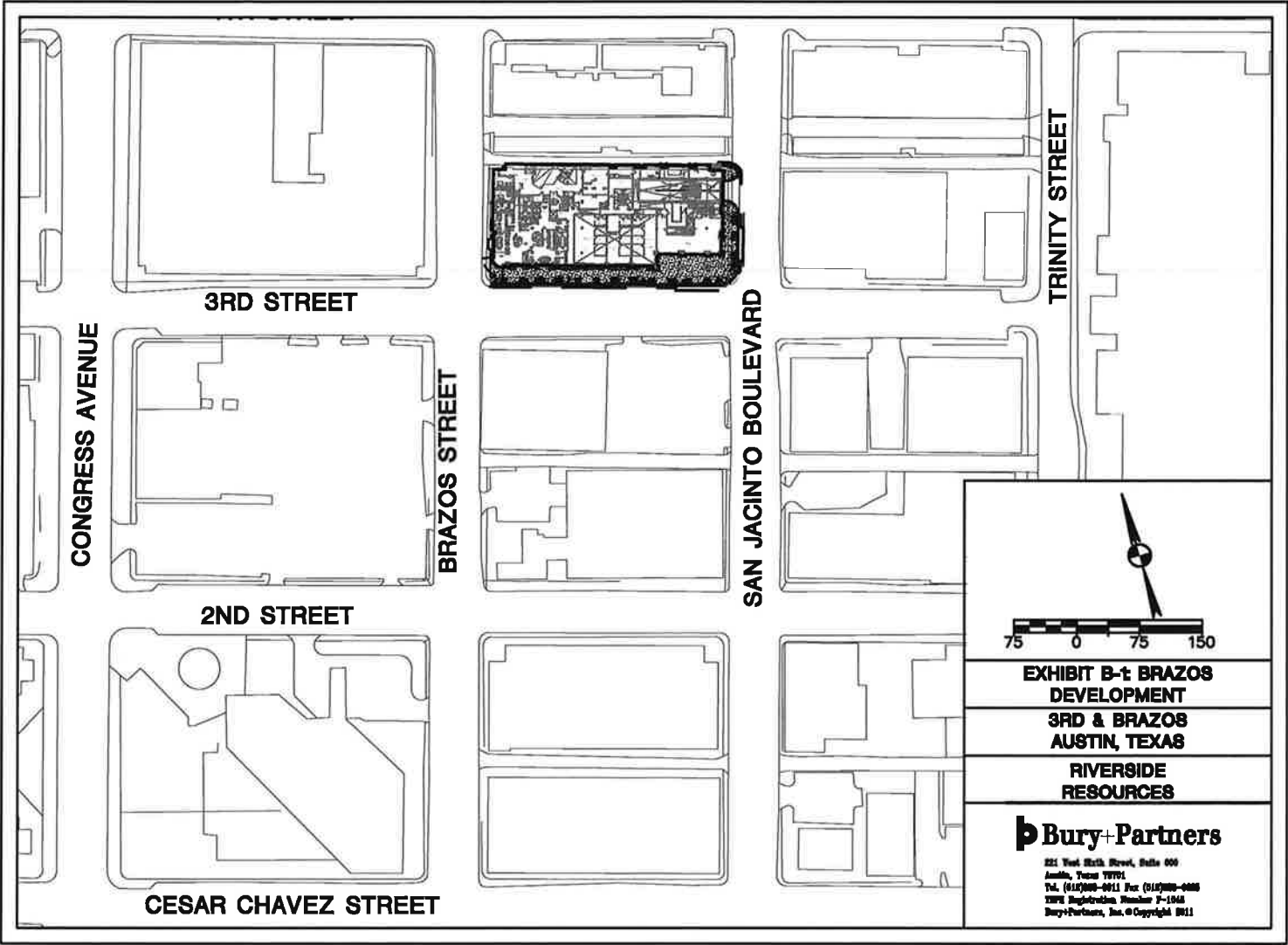


EXHIBIT C

Project Scope

The phases of construction referred to below are depicted on **Exhibit C-1**, which is attached hereto and made a part hereof.

Phasing

1. Phase 1, the first phase of the Project will generally consist of the right-of-way work from Brazos into the San Jacinto Boulevard intersection, including but not limited to (i) water line system with required fire hydrant spacing (ii) paving and storm water drainage system, (iii) sidewalks, (iv) related streetscape Project and landscaping and (v) standard City street lights.
2. Phase 2, the second phase will consist of all remaining Project work.

The Project design limits will consist of the 3rd Street Right-of-Way from Congress Avenue to Trinity Street and from right-of-way line to right-of-way line, except for the area behind the curb and gutter on the southside of 3rd Street adjacent to the White Lodging development projects and the area behind the curb and gutter on the northside of 3rd Street adjacent to the Brazos development project, excluding the Congress and Trinity Intersections. The Phase 1 construction limits will include the area of the Project from Brazos Street to San Jacinto Boulevard, including curb and gutter realignment within the Brazos intersection, the reconstruction of the San Jacinto intersection, and the installation of a storm water line in 3rd Street from Brazos to Trinity and bracketed by the north and south curb returns of the respective streets.

The area behind the curb and gutter on the southside of 3rd Street adjacent to the White Lodging development projects and the area behind the curb and gutter on the northside of 3rd Street adjacent to the Brazos development project will be designed and constructed to City of Austin Great Street Standards.

EXHIBIT C-1 PROJECT PHASES

3RD & BRAZOS
AUSTIN, TEXAS

RIVERSIDE
RESOURCES

Bury+Partners

221 West Sixth Street, Suite 600
Austin, Texas 78701
Tel: (512) 260-0911 Fax: (512) 260-0880
Toll Free: 1-800-368-1048
Bury+Partners, Inc. © Copyright 2011

[illegible]

Figure 1: Typical Section of a Street with a 60' Right of Way (ROW). The diagram illustrates a cross-section of a street with a total width of 60 feet. The components, from left to right, are:

- 17.5' CONCRETE SIDEWALK PEDESTRIAN ZONE
- 5' CONCRETE SIDEWALK
- 5' CONCRETE CURB
- 6" CONCRETE PAVEMENT (JOP) STABILIZED FLYASH
- 24" BICYCLE BARRIER CURB (TYP)
- 6' PARALLEL PARKING
- 12' TRAVEL LANE
- 12' TRAVEL LANE
- 6' TRAVEL LANE
- 5' CONCRETE CURB
- 5' CONCRETE SIDEWALK
- 17.5' CONCRETE SIDEWALK PEDESTRIAN ZONE

The diagram also shows trees, a utility pole, and a property line.

221 West Sixth Street, Suite 800
Austin, Texas 78701
Tel. (512)328-0011 Fax (512)328-0325
TBPE Registration Number F-1048
Bury+Partners, Inc © Copyright 2011

EXHIBIT E



Engineer's Opinion of Probable Costs for:
3rd Street Reconstruction - Brazos St. to San Jacinto Blvd.
BPI Project No. 103075-10011
TBPE Registration No. F1048

Preliminary Construction Cost Estimate
2/1/2012

SERIES 100-EARTHWORK

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 101S-B	Preparing Right of Way	5.0	Sta	\$ 9,000.00	\$ 45,000.00
Subtotal					\$ 45,000.00

SERIES 200-SUBGRADE AND BASE CONSTRUCTION

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 204S-A	Portland Cement Treatment of Materials in Place 8 inch Thickness	2,449	SY	\$ 6.00	\$ 14,694.00
Subtotal					\$ 14,694.00

*Item 204S Includes the work and materials associated with Items 220S, 230S, 232S, 234S and 236S.

SERIES 300-STREET SURFACE COURSES

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 360S-C	9" Concrete Pavement Including Monolithic Curb	620	CY	\$ 240.00	\$ 148,800.00
Subtotal					\$ 148,800.00

SERIES 400-CONCRETE STRUCTURE AND MISCELLANEOUS CONCRETE

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 430S-A	P. C. Concrete Curb and Gutter	943	LF	\$ 23.00	\$ 21,689.00
Item 432S-RP-1	Type 1 Sidewalk Curb Ramp	10	EA	\$ 1,300.00	\$ 13,000.00
Item 432S-7C	Tree Well for New Trees Planting w/in Concrete	4	EA	\$ 2,000.00	\$ 8,000.00
Item 437S1	Tree Grate and Frame - 5'x8'	4	EA	\$ 3,500.00	\$ 14,000.00
Item 480SNS	Concrete Paver Units for Sidewalks, 60MM	2,980	SF	\$ 11.50	\$ 34,270.00
Subtotal					\$ 90,959.00

*Items 405S, 406S, 408S, 411S, and 413S shall be considered incidental to various bid items.

SERIES 500-PIPE AND APPURTENANCES

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 504S-1WM	Adjusting Water Meters	3	EA	\$ 700.00	\$ 2,100.00
Item 504S-3G	Adjusting Gas Valve Boxes to Grade	10	EA	\$ 700.00	\$ 7,000.00
Item 504S-3W	Adjusting Water Valve Boxes to Grade	5	EA	\$ 650.00	\$ 3,250.00
Item 504S-4PB	Adjusting Pull Boxes to Grade	9	EA	\$ 650.00	\$ 5,850.00
Item 506S-MSW-5	Standard Pre-cast Manhole w/ Pre-cast Base, 5' Dia	4	EA	\$ 5,500.00	\$ 22,000.00
Item 506S 5	Minor Manhole Height Adjustment, 5' Dia	18	EA	\$ 1,100.00	\$ 19,800.00
Item 508S-110S	Inlet, Standard 10' Curb Inlet	3	EA	\$ 5,250.00	\$ 15,750.00
Item 509S	Excavation Safety Systems (Trench Protection) - All Depths	730	LF	\$ 3.50	\$ 2,555.00
Item 510ASD-24"DIA	12-inch DIP Water, Including Excavation and Backfill	365	LF	\$ 75.00	\$ 27,375.00
Item 510ASD-30"DIA	30-inch RCP - CL III, Including Excavation and Backfill	365	LF	\$ 165.00	\$ 60,225.00
	Drainage for Planters - per CoA 432A-7B incl. 6" sch 40 perf pipe, aggregate, ro	127	LF	\$ 35.00	\$ 4,445.00
Subtotal					\$ 170,350.00

*Items 503S, 507S, Series 100 items for RCP and PVC construction shall be considered incidental to various bid items.

SERIES 600-ENVIRONMENTAL ENHANCEMENT

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 628S-C	Filter Curb Inlet Protection (New Inlet)	3	EA	\$ 80.00	\$ 240.00
Item 628S-D	Filter Curb Inlet Protection (Existing Inlet)	6	EA	\$ 80.00	\$ 480.00
Subtotal					\$ 720.00

SERIES 700-INCIDENTAL CONSTRUCTION

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 700S-TM	Total Mobilization Payment	1	LS	\$ 80,000.00	\$ 80,000.00
Item 710S-1	Class III Bicycle Style Parking	4	EA	\$ 700.00	\$ 2,800.00
Subtotal					\$ 82,800.00

SERIES 800-URBAN TRANSPORTATION

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 802S-BC.I.P.	Project Signs	2	EA	\$ 350.00	\$ 700.00
Item 803-CD	Barricades, Signs and Traffic Handling	180	CD	\$ 430.00	\$ 77,400.00
Item 803S-SF	Safety Fence	800	LF	\$ 1.80	\$ 1,440.00
Item 824S	Traffic Signs	80	EA	\$ 225.00	\$ 18,000.00
Item SP834S-E1	Traffic Signal Pull Box, 17"x30"	8	EA	\$ 900.00	\$ 7,200.00
Item 835S-LT4	Installing Traffic Signal Conduit, 4 in diameter	1,200	LF	\$ 30.00	\$ 36,000.00
Item 931S-3	42" Diameter Traffic Signal Drilled Shaft Foundation - 12'	4	EA	\$ 3,500.00	\$ 14,000.00
	REFLECTORIZED TYPE I THERMOPLASTIC PAVEMENT MARKINGS 12 INCHES IN				
871S-A12W	WIDTH, SOLID, 100MILS IN THICKNESS WHITE IN COLOR	80	LF	\$ 3.50	\$ 280.00
	REFLECTORIZED TYPE I THERMOPLASTIC PAVEMENT MARKINGS 24 INCHES IN				
871S-A24W	WIDTH, SOLID, 100MILS IN THICKNESS WHITE IN COLOR	20	LF	\$ 7.00	\$ 140.00
	REFLECTORIZED TYPE I THERMOPLASTIC PAVEMENT MARKINGS SYMBOLS				
871S-S-D	(ARROWS & SHARROW) 100MILS IN THICKNESS WHITE IN COLOR	16	EA	\$ 260.00	\$ 4,160.00
	REFLECTORIZED TYPE I THERMOPLASTIC PAVEMENT MARKINGS 4 INCHES IN				
871SA4-WS	WIDTH, SOLID, 100MILS IN THICKNESS WHITE IN COLOR	800	LF	\$ 3.00	\$ 2,400.00
	REFLECTORIZED TYPE I THERMOPLASTIC PAVEMENT MARKINGS 24 INCHES IN				
871S-E24W	WIDTH, SOLID, 100MILS IN THICKNESS WHITE IN COLOR	20	LF	\$ 4.50	\$ 90.00

SERIES 1200-GREAT STREETS

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 12001	Bench - Landscape Forms - "Plainwell" 5' Long	4	EA	\$ 2,600.00	\$ 10,400.00
Item 12002	Trash Receptacle - TR 12 "Fairweather" w/ liner	2	EA	\$ 2,500.00	\$ 5,000.00
Item 12003	5" Caliper Drake Elm - Complete in Place	4	EA	\$ 1,200.00	\$ 4,800.00
	Irrigation System - controller, ¾" d.c.a., one zone valve, sleeving, lateral pipe,				
Item 12004	4 bubblers	1	LS	\$ 8,000.00	\$ 8,000.00
Item 12005	Water Meter - 5/8"	1	LS	\$ 1,000.00	\$ 1,000.00
	Irrigation System - controller, ¾" d.c.a., one zone valve, sleeving, lateral pipe,				
Item 12006	4 bubblers	1	LS	\$ 8,000.00	\$ 8,000.00
Item 12007	2 year Maintenance Agreement for irrigation and planting (per quarter)	8	EA	\$ 500.00	\$ 4,000.00
Subtotal					\$ 41,200.00

SERIES 16000-ELECTRICAL

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 16120S	Wiring	1	LS	\$ 3,750.00	\$ 3,750.00
Item 16550S	Street Light Standard Foundation	4	EA	\$ 2,000.00	\$ 8,000.00
Item 16xxx	Austin Energy Improvements - to be coordinated with AE	1	LS	\$ 30,000.00	\$ 30,000.00
Subtotal					\$ 41,750.00

SERIES 17000-NON STANDARD

ITEM		QTY	UNITS	UNIT PRICE	TOTAL COST
Item 17001	Demolition and reconstruction of planter area along 3rd Street	127	LF	\$ 5.00	\$ 635.00
Item 17002	Demolition and Relocation of Planters at NE corner San Jac/3rd	1	LS	\$ 750.00	\$ 750.00
	Demolition and Reconstruction of Stairwell & Handrail at SE corner San				
Item 17003	Jac/3rd	1	LS	\$ 5,000.00	\$ 5,000.00
	Demolition Curb Ramp, Removal and Reconstruction of Paver Area NE Corner				
Item 17004	Brazos/3rd	1	LS	\$ 350.00	\$ 350.00
Subtotal					\$ 6,385.00

BASE BID SUBTOTAL \$ 815,268.00**CONTINGENCY (20%) \$ 163,053.60****TOTAL \$ 978,321.60****Notes:**

The above Engineer's Opinion of Probable Construction Cost is based on Bury+Partners, Inc.
Reasonable Professional Judgment and Experience and Does Not Constitute
a Warranty, Expressed or Implied, that the actual cost will not vary.

EXHIBIT E-1

FEE ESTIMATE
BPI

Exhibit "A" - Professional Fees

PROJECT:
3rd Street Reconstruction

PROJECT NO.: P010307510011

		BPI										Sub-Consultant		REMARKS	COMPLETION DATE
		PRINCIPAL	PROJECT MANAGER	SENIOR CONSULTANT	ENGINEER ASSOC. II	ASSOCIATE CONSULTANT	ADMIN ASSISTANT I	PROJECT DIRECTOR	STAFF LANDSCAPE ARCHITECT	LANDSCAPE DESIGNER I		Name	Budget		
ITEM	DESCRIPTION	\$225	\$175	\$160	\$130	\$130	\$80	\$175	\$130	\$100	Budget				
A	Work Product #1														
	30% PS&E Set										\$9,560				
1	Data Collection, Prelim Engineering, Due Diligence	8		16	16	24					\$6,160			Assuming 2 hr. meetings	
2	Project Meetings (Estimated 8)	16		16							\$8,800				
3	Survey of Full Length of Project											Macias & Associates (MBE)	\$46,375		
4	SLUR Investigation (Potholing)										\$7,890				
5	Water Line Design	6	0	10	22	16	0	0	0	0	\$14,720				
6	Utility and Regulatory Agency Coordination	16	0	24	32	24	0	0	0	0	\$5,890				
7	Preliminary Drainage and Grading Analysis and Design	2		8	16	16					\$19,165				
8	Preliminary Plan, Profile, and Cross-Sections	5	0	12	52	72	0	0	0	0	\$9,960				
9	Landscape Architecture	0	0	0	0	0	0	10	37	34		Scienc Bury Engineering - SBE (WBE)	\$34,960		
10	Traffic Engineering											Chan & Partners Engineering, LLC (MBE)	\$15,000		
11	Preliminary Drainage Design (CPE)	2	2	8	16	0	0	0	0	0	\$4,160				
12	Preliminary Cost Estimate	2	1	4	0	0	0	0	0	0	\$1,265				
13	Schedule Update											HVJ Associates (MBE)	\$16,100		
14	QA/QC											Work Product #1 Subconsultant Subtotal:	\$112,435		
	Work Product #1 Subtotal:	57	3	98	154	152	0	10	37	34	\$87,570	Work Product #1 Subconsultant Subtotal:	\$112,435		
												Work Product #1 Total:	\$200,005		
B	Work Product #2														
	Submitted Set - 60% PS&E										\$45,300				
1	Roadway and Drainage Improvement Construction Documents	24	0	56	112	126	0	0	0	0	\$11,440				
2	Landscape Architecture	0	0	0	0	0	0	12	38	44		Scienc Bury Engineering - SBE (WBE)	\$26,580		
3	Traffic Engineering											Chan & Partners Engineering, LLC (MBE)	\$10,000		
4	Drainage Design (CPE)										\$7,890				
5	Water Line Design	6	0	10	22	16	0	0	0	0	\$17,530				
6	Regulatory Agency Coordination	18		24	28						\$5,940				
7	Draft Specification / Bid Form	4		8	24		8				\$3,810				
8	Cost Estimate	2		4	16		8				\$85,910	Work Product #2 Subconsultant Subtotal:	\$36,580		
	Work Product #2 Subtotal:	48	0	92	180	126	16	12	38	44	\$85,910	Work Product #2 Subconsultant Subtotal:	\$36,580		
												Work Product #2 Total:	\$122,490		
C	Work Product #3														
	Approval Set - 100% PS&E										\$16,855				
1	Address 60% Comments and Prepare General Permit for Approval	15		29	32	36	0	0	0	0	\$10,050				
2	Address General Permit Comments	2		8	24	40						Chan & Partners Engineering, LLC (MBE)	\$5,000		
3	Drainage Design (CPE)										\$7,340				
4	Landscape Architecture	0		0	0	0	0	10	23	26		Scienc Bury Engineering - SBE (WBE)	\$10,800		
5	Traffic Engineering										\$8,220				
6	Specifications / Bid Forms / Cost Est.	2		8	24	0	4	10	10	0	\$5,560				
7	Texas Architectural Barriers Project Registration	4		8	16	10					\$48,025	Work Product #3 Subconsultant Subtotal:	\$15,800		
	Work Product #3 Subtotal:	17	0	37	56	36	4	20	33	26	\$48,025	Work Product #3 Subconsultant Subtotal:	\$15,800		
												Work Product #3 Total:	\$63,825		
D	Bid Phase Services (Phase I Only)														
1	Bidding Administration	2	0	12	16	8	4	2	8	0	\$7,200	Chan & Partners Engineering, LLC (MBE)	\$3,389		
2	Pre-Bid Meeting	4	4	4	4	0	0	4	0	0	\$3,460				
3	Addenda Preparation	1	1	4	8	4	0	0	0	0	\$2,600				
4	Bid Evaluation / Recommendation	2	0	4	8	0	0	4	0	0	\$2,830				
	Bid Phase Services (Phase I Only) Subtotal:	9	5	24	36	12	4	10	8	0	\$16,090		\$3,389		
												Bid Phase Services (Phase I Only) Total:	\$19,479		
E	Construction Phase Services (Phase I Only)														
1	Construction Administration	6	2	24	64	0	4	2	4	0	\$15,050	Chan & Partners Engineering, LLC (MBE)	\$15,210		
2	Pre-construction Meeting	2	0	2	2	0	2	0	0	0	\$1,380				
3	Construction Status Meetings (Estimated 6)	12	2	12	12	0	6	8	0	0	\$8,410				
4	As-Built Plans	0	2	8	24	40	0	0	0	0	\$9,950				
	Construction Phase Services (Phase I Only) Subtotal:	20	6	46	102	40	10	12	4	0	\$34,790	Subconsultant Subtotal:	\$15,210		
												Construction Phase Services (Phase I Only) Total:	\$50,006		
												Sub-Consultant Total:	\$183,420		
													40%		

EXHIBIT F

Insurance and Bond Requirements

A. General Requirements

Brazos shall forward certificates of insurance with the endorsements required below to the City as verification of coverage prior to commencement of any professional or construction services hereunder, EXCEPT that Brazos shall have in place a policy of commercial general liability insurance meeting the requirements of this Agreement commencing on the Effective Date. To the extent that the specific endorsements referenced herein are unavailable or that equivalent endorsements are available, the substitution of equivalent endorsements will be permitted subject to the reasonable approval of the City.

Brazos shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of Brazos hereunder and is not a limitation of liability on the part of Brazos.

Brazos must submit certificates of insurance for all contractors and/or subcontractors to the City prior to the commencement of design or construction work on the Project and the City will review and approve the certificates, which comply with the requirements of this Agreement, within five days of receipt.

Brazos' and all contractor's and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

Attn: Director, Public Works
City of Austin
P. O. Box 1088
Austin, Texas 78767

The "other" insurance clause must not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Agreement, covering both the City and Brazos, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Agreement, Brazos, contractors and subcontractors must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto 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 regulations binding upon either of the parties hereto or the underwriter on any such policies.

Brazos shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement.

Brazos and any contractor or subcontractor responsible for maintaining insurance shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

The City may review the insurance requirements set forth herein during the Term and may make reasonable adjustments to insurance coverages, limits, and exclusions when reasonably deemed necessary and prudent by the City based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies) and Brazos.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of Brazos.

B. Specific Requirements

Worker's Compensation and Employers' Liability Insurance. Coverage must be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat.). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

- (a) Brazos' contractor and its subcontractors policies shall apply to the State of Texas and include these endorsements in favor of the City:
 - (i) Waiver of Subrogation, Form WC 420304
 - (ii) Thirty days Notice of Cancellation, Form WC 420601

Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.

- (a) The policy must contain the following provisions:
 - (i) Blanket contractual liability coverage for liability assumed under this contract and all contracts related to this project.
 - (ii) Independent contractor's coverage.
 - (iii) Products/completed operations liability for the duration of the warranty period.
- (b) The policy must also include these endorsements in favor of the City:

- (i) Waiver of Subrogation, endorsement CG 2404
- (ii) Thirty days notice of cancellation, endorsement CG 0205
- (iii) The City listed as an additional insured, endorsement CG 2010

Business Automobile Liability Insurance. Brazos' contractor and its subcontractors shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage,

- (a) The policy must include these endorsements in favor of the City of Austin:
 - (i) Waiver of subrogation, endorsement TE 2046A
 - (ii) Thirty days notice of cancellation, endorsement TE 0202A
 - (iii) The City listed as an additional insured, endorsement TE 9901B

Property Insurance. If any of the City's property is in the care, custody or control of Brazos, then Brazos shall provide property coverage on an "all risk of physical loss" form. The coverage must be provided on a replacement cost basis for the 100% value of the City's property. If property is being transported or stored off site by Brazos, then transit and storage coverage must also be provided. The City shall be endorsed onto the policy as a loss payee.

Hazardous Material Insurance. If applicable, for work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

- (a) Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of Brazos and the City.
- (b) Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their

Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

- (c) The contractor shall submit complete copies of the policy providing pollution liability coverage to Brazos and the City.

Performance and Payment Bonds. In substantial compliance with the provisions of Chapter 2253 of the Texas Government Code, Brazos shall require its general contractor, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Project, to furnish and deliver to the City, legally issued surety bonds in a form approved by the City, with the City and Brazos named as co-obligees. The furnishing and delivery of such bonds within the periods mentioned is a condition precedent to the commencement of the construction of the Project and, upon the failure of the general contractor to so furnish and deliver all of the same in form, tenor and execution and with sureties satisfactory to the City, no rights obtain thereunder to Contractor, no construction of the Project may commence or continue and, if construction has commenced without compliance with the requirements of this paragraph, all construction activities must immediately be suspended and Brazos will be in material default under this Agreement.

Payment Bond. Brazos shall require the general contractor to provide a payment bond legally issued by a surety meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

Performance Bond. Brazos shall require contractor to provide a performance bond legally issued by a surety meeting the approval of the City Law Department, in an amount not less than 100% of the total contract price of the Construction Costs, conditioned upon the prompt, full and complete performance by the general contractor of these covenants and agreements contained in the contract documents.