

INSURANCE AND BOND REQUIREMENTS

BDA will require that the Insurance requirements contained in this Article be included in all its contracts or agreements for Public Improvements where Consultant is seeking payment under this Agreement, unless specifically exempted in writing by the BDA.

1. Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and the original completed Certificate(s) of Insurance to the BDA. The original certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The BDA will not accept a Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the BDA at the address listed in paragraph five (5).

2. The BDA shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the BDA. No officer or employee, other than the BDA's Purchasing and Contracts Manager, shall have authority to waive this requirement.

3. The BDA reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the BDA's Purchasing and Contracts Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the BDA allow modification whereupon the BDA may incur increased risk.

4. Consultant's financial integrity is of interest to the BDA, therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the Consultant or Consultant's Subcontractors, shall obtain and maintain in full force and effect during the construction of all Public Improvements required by the Final Project Plan and Final Financing Plan, and any extension hereof, at Consultant's or Consultant's Subcontractor's sole expense, insurance coverage written on an occurrence basis, **by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed:**

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence;
a. Premises operations	\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
b. Independent Contractors*	
c. Products/completed operations	
d. Personal Injury	
e. Contractual Liability	

4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums, which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error or omission in the performance of professional services.
6. Contract's Pollution Liability*	\$1,000,000 per occurrence
7. Builders Risk*	100% value of each phase of project
*if applicable	

To ensure that consultants insurance meets the AM Best rating of no less than A- please go to the AM Best website (www.ambest.com) or contact them at 908-439-2200. For Workers' Compensation only, Brooks City-Base will accept insurance written through a State Fund (documentation must be provided).

5. The BDA shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the BDA and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Consultant and/or Consultant's Subcontractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the BDA at the addresses provided below within 10 days of the requested change. Consultant and/or Consultant's Subcontractor shall pay any costs incurred resulting from said changes.

Brooks Development Authority
Attn: Accounting, Procurement & Contracts Coordinator
3201 Sidney Brooks
San Antonio, Texas 78235

6. Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- a. Name the BDA and their respective officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under this Agreement, with the exception of the workers' compensation and professional liability policies;
- b. Provide for an endorsement that the "other insurance" clause shall not apply to the Brooks Development Authority where the BDA is an additional insured shown on the policy;
- c. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the BDA; and

d. Provide thirty (30) calendar days advance written notice directly to the BDA at the same address listed in paragraph 5 of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

7. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant and/or Consultant's Subcontractor shall provide a replacement Certificate of Insurance and applicable endorsements to the BDA at the address listed in paragraph 5. BDA shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

8. In addition to any other remedies the BDA may have upon Consultant's and/or Consultant's Subcontractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the BDA shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant and/or Consultant's Subcontractor demonstrates compliance with the requirements hereof.

9. Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its Subcontractors' performance of the work covered under this Agreement.

10. It is agreed that Consultant's and/or Consultant's Subcontractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the Brooks Development Authority for liability arising out of operations under this Agreement.

11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

12. Consultant agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in paragraph 4 from each subcontractor to Consultant and provide a Certificate of Insurance and Endorsement that names BDA as an additional insured.

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 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 the Project for the duration of the project.

- b. Duration of the project - includes the time from the beginning of the work on the Phase of the Project until the Consultant's/person's work on the project has been completed and accepted by the BDA.
 - c. Persons providing services on the Project ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services Consultant has undertaken to perform on the Project, regardless of whether that person contracted directly with Consultant and regardless of whether that person has employees. This includes, without limitation, independent Consultant, 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 the Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
2. Consultant shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all its employees providing services on the Project, for the duration of the project.
 3. Consultant must provide a certificate of coverage to the BDA prior to being beginning construction under this Agreement and prior to awarding any contract for construction of Public Improvements.
 4. If the coverage period shown on Consultant's current certificate of coverage ends during the duration of the project, Consultant must, prior to the end of the coverage period, file a new certificate of coverage with the BDA showing that coverage has been extended.
 5. Consultant shall obtain from each person providing services on the Project, and shall provide to the BDA:
 - a. a certificate of coverage, prior to that person beginning work on the Project, so the BDA 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 Consultant or Consultant's Subcontractor, 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 project.
 6. Consultant shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
 7. Consultant shall notify the BDA in writing by certified mail or personal delivery, within 10 days after Consultant knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

8. Consultant shall post on the Zone Property 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 (if applicable).

9. Consultant shall contractually require each person with whom it contracts to provide services on the Project, to:

- a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that 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 Consultant, 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 Consultant, 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 Consultant:
 - (1) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (2) 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 certificates of coverage on file for the duration of the project and for one year thereafter;
- f. notify the BDA 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 with, to perform as required by subparagraphs a-g, the certificates of coverage to be provided to the person for whom they are providing services.

10. By signing this Agreement or providing or causing to be provided a certificate of coverage, Consultant is representing to the BDA that all employees of Consultant 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 Consultant to administrative penalties, criminal penalties, civil penalties, or other civil actions.

11. Consultant's failure to comply with any of these provisions is a breach of contract by Consultant which entitles the BDA to declare the Agreement void if Consultant does not remedy the breach within ten (10) days after receipt of notice of breach from the BDA without necessity of the ninety (90) day cure period as set forth in Article X.

Consultant acknowledges receipt of the insurance and bonds requirements, and understands it will be incorporated into any contract awarded.

Consultant Signature & Title

Date