

## EXHIBIT D

### Insurance and Bond Requirements

#### A. General Requirements

YMCA shall forward certificates of insurance with the endorsements required below to the City as verification of coverage within 5 calendar days after the date this Agreement is executed (unless provided otherwise below), EXCEPT that YMCA shall have in place a policy of commercial general liability insurance meeting the requirements of the Joint Operations Agreement during the entire term set forth in the Joint Operations Agreement.

YMCA's facilities are insured on the City's property insurance policy. YMCA shall contact the City's Risk Management Division for scheduling and other information related to the required use of Factory Mutual Insurance Company's plan review services for the construction of any Improvements to be made pursuant to the Agreement. Contact must be made no later than when the design drawings are 50% complete.

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

YMCA must submit certificates of insurance for all contractors and/or subcontractors to the City prior to the commencement of work on the Improvements to be made pursuant to the Agreement and for all A/E and other professionals prior to the commencement of work under their respective agreements.

YMCA's, and all engineers/architects and Project Management consultants (professionals), 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 or otherwise be approved by the City. 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: City Project Manager Public Works  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767-1088

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 Exhibit, covering both the City and YMCA, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Exhibit, YMCA, the CM-R, or other professionals, contractors, and subcontractors of YMCA 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.

YMCA shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement (Term) without providing a substantially equivalent policy of insurance or coverage in replacement thereof.

The Professionals, and any contractor, or subcontractor responsible for maintaining insurance pursuant to this Agreement 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 in this Exhibit to the Agreement during the period of construction and until Final Completion plus the period for all construction warranty work 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), YMCA, professionals, contractors, or subcontractors.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of YMCA, the professionals, contractors or subcontractors of YMCA.

#### 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 (Section 401). 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) YMCA's, its professionals', contractors', and subcontractors' policy shall apply to the State of Texas and include these endorsements in favor of the City:
  - (i) Waiver of Subrogation, Form WC 420304, or equivalent coverage.
  - (ii) Thirty days Notice of Cancellation, Form WC 420601, or equivalent coverage.

Commercial General Liability Insurance. If not previously provided under the Joint Operations Agreement by YMCA for itself, YMCA, any professionals, including the A/E team, the CM-R and other contractors shall provide 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 Agreement 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, or equivalent coverage.
  - (ii) Thirty days notice of cancellation, endorsement CG 0205, or equivalent coverage.
  - (iii) The City listed as an additional insured, endorsement CG 2010, or equivalent coverage.

Business Automobile Liability Insurance. YMCA, its professionals, contractors, and 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:
  - (i) Waiver of subrogation, endorsement TE 2046A. or equivalent coverage
  - (ii) Thirty days notice of cancellation, endorsement TE 0202A. or equivalent coverage
  - (iii) The City listed as an additional insured, endorsement TE 9901B. or equivalent coverage

If these specific endorsements are not available, evidence of equivalent coverage shall be provided to the City. If neither the endorsement or equivalent coverage is available, a written statement to that effect from the carriers underwriter shall be provided to the City for approval. Acceptance of the statement shall not be reasonably withheld by the City.

Property Insurance. Property insurance shall be maintained by YMCA as required in the Joint Operations Agreement.

Builders Risk Insurance. During the construction of the Improvements to be completed pursuant to the Agreement, or any subsequent construction or repair of the Improvements, YMCA shall require its contractor to maintain an all risk builders risk insurance policy in the amount of the construction contract or CM-R contract, as the case may be. The policy must name the City as loss payee as its interest may appear.

Hazardous Material Insurance. 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 YMCA 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 YMCA and the City.

Professional Liability Insurance. In addition to the workers compensation, business auto liability and commercial general liability coverage requirements above, all contractors providing professional services shall provide Professional Liability Insurance to pay on behalf of the assured all sums which the assured becomes legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The policy must provide for 30 day notice of cancellation in favor of the YMCA and the City. The minimum limit of liability for this coverage shall be \$1,000,000.

Performance and Payment Bonds. YMCA shall require its general contractor or CM-R, within 30 days from and after notification of the award of the contract, and before commencement of construction of the Improvements, to furnish and deliver to the City, legally issued surety bonds in a form approved by the City and in compliance with the Texas Property Code, with the City

and YMCA 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 Improvements and, upon the failure of the CM-R to so furnish and deliver all of the same in form, tenor and execution and with sureties reasonably satisfactory to the City, no rights obtain thereunder to the CM-R, no construction of the Improvements being completed pursuant to the Agreement 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 YMCA will be in material default under the Agreement.

Payment Bond. YMCA shall require the CM-R to provide a payment surety bond legally issued, meeting the approval of the City, in an amount not less than 100% of the total contract price of the construction costs of the Improvements, conditioned upon the prompt, full, and complete payment of all subcontractors and suppliers.

Performance Bond. YMCA shall require the CM-R to provide a performance surety bond legally issued, meeting the approval of the City, in an amount not less than 100% of the total contract price of the construction costs of the Improvements, conditioned upon the prompt, full and complete performance by the CM-R of these covenants and agreements contained in the contract documents

Nothing in this Exhibit is intended to overlap or be duplicative of the insurance currently carried by YMCA.