

Attachment 2

YMCA's Insurance Requirements of Contractor

1. **Insurance Coverage To Be Provided By Contractor.** This Exhibit (the "Insurance Requirements") is attached as an Exhibit as part of the Contract Documents. In the event of conflict between any of the following Insurance Requirements and any provision in the Contract Documents, these Insurance Requirements control, amend and supplement the conflicting provision. Subject to review and revision by the YMCA from time to time, in the YMCA's good faith judgment, the following insurance shall be maintained by Contractor with coverage and limits of not less than those set forth below at all times during the term of the Agreement and thereafter as required.

No.	Specifications	Coverages, Limits and Other Requirements
A. LIABILITY		
1.	Commercial General Liability.	Contractor is to maintain commercial general liability ("CGL") insurance and, if necessary, commercial excess insurance, issued on an Occurrence Basis meeting at least the following specifications.
1.1	Minimum Limits	The limits of coverage shall not be less than the following amounts: \$5,000,000 Per Occurrence \$5,000,000 General Aggregate \$5,000,000 Products and Completed Operations Aggregate \$5,000,000 Personal and Advertising Injury
1.2	General Aggregate	A Designated Construction Project(s) General Aggregate Limit shall be provided on ISO form CG 25 03 05 09.
1.3	Post-Completion Coverage	Contractor agrees to maintain Products-Completed Operations coverage with respect to the Work performed under the Agreement in identical coverage, form and amount, including required endorsements, for the full term of the Statute of Repose following Date of Substantial Completion of the Work. Contractor shall provide written representation to the YMCA stating Work completion date.
1.4	Form	This insurance is to be issued on the most recent reasonably available and unmodified ISO form CG 00 01 or equivalent and shall cover liability arising from premises, ongoing and completed operations.
1.5	Insured Contracts	Coverage shall include but not be limited to liability assumed by Contractor under the Agreement, including the tort liability of another assumed in a business contract, and shall include unmodified Separation of Insureds coverage.
1.6	Additional Insureds	Additional Insured status shall be provided in favor of the YMCA Parties on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01.
1.7	Electronic Data Liability	This insurance is to include an Electronic Data Liability endorsement ISO CG 04 37 with coverage to the full limits of the policy(ies).
1.8	Personal Injury Contractual Liability	The personal injury contractual liability exclusion shall be deleted.
1.9	Primary and Noncontributory	This insurance shall be endorsed to provide primary and noncontributing liability coverage by ISO CG 20 01 04 13. It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from all insurance held by the YMCA Parties, with the YMCA Parties' insurance being excess, secondary and noncontributing.
1.10	Waiver of Right of Recovery and Subrogation	Contractor agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of the YMCA Parties on ISO form CG 24 04 05 09.
1.9	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to the YMCA.
1.10	Prohibitions	Prohibited exclusions/limitations or their equivalents include but are not limited to: a. Amendment of Insured Contract Definition ISO CG 24 26 b. Classification or Business Description c. Construction Defect Completed Operations d. Contractual Liability Limitation ISO CG 21 39 e. Damage to Work Performed by Subcontractors On Your Behalf ISOCG 22 94 or CG 22 95 f. Endorsement modifying the Employer's Liability exclusion or deleting the exception to it g. Explosion, Collapse and Underground Property Damage Hazard, ISO CG 21 42 or CG 21 43 h. Habitational or Residential i. "Insured vs. Insured" except Named Insured vs. Named Insured j. Known, Continuous or Progressive Injury or Damage k. Limitation of Coverage to Designated Premises or Project ISO CG 21 44 l. Punitive, Exemplary or Multiplied Damages m. Subsidence n. Work Height

2.0	Business Auto Liability. Contractor is to maintain business auto insurance and, if necessary, commercial excess insurance, meeting at least the following specifications.	
2.1	Minimum Limits	The limits of liability shall be no less than \$5,000,000 per accident.
2.2	Form	This insurance is to be issued on the current edition of the ISO CA 00 01
2.3	Scope	This insurance is to cover damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use (1) of any auto, including owned, hired and non-owned autos, and (2) of any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.
2.4	Additional Insured	Additional Insured status shall be provided to the YMCA Parties on ISO form CA 20 48 10 13.
2.5	Waiver of Right of Recovery and Subrogation	Contractor agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of the YMCA Parties on ISO form CA 04 44 10 13.
2.6	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to the YMCA.
3.0	Workers' Compensation and Employer's Liability. Contractor is to maintain workers' compensation and employer's liability and, if necessary, commercial excess insurance, insurance meeting at least the following specifications.	
3.1	Workers' Compensation Limits	The minimum limits of this insurance shall be no less than the statutory limits.
3.2	Employer's Liability Limits	The minimum limits of this insurance shall be no less than \$5,000,000 each accident and disease.
3.3	Territory	The state in which the Work is to be performed must be listed under Item 3.A. on the Information Page of the policy.
3.4	Scope	This insurance is to cover liability arising out the Contractor's employment of workers and anyone for whom the Contractor may be liable for workers' compensation claims. Worker's compensation insurance is required and no "alternative" form of insurance is permitted.
3.5	Prohibitions	Employees leased through a Professional Employment Organization ("PEO") are not permitted.
3.6	Stop Gap	Stop Gap coverage must be provided if Work is to be performed in a monopolistic state, listing the state(s) in which Work is to be performed.
3.7	United States Longshoremen and Harbor Workers ("USL&H")	USL&H coverage must be provided where such exposure exists listing the state(s) in which Work is to be performed.
3.8	Waiver of Right of Recovery and Subrogation	Contractor agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of the YMCA Parties on form WC 42 03 04 B.
3.9	Notice of Cancellation	This insurance shall be endorsed to provide a 30 day notice of cancellation to the YMCA.
4.0	Excess Liability. If any of the required coverages are to be maintained by and through excess liability insurance, Contractor is to maintain excess liability insurance meeting at least the following specifications.	
4.1	Scope	This insurance shall be excess over and be no less broad than all coverages and conditions described above. The policy limits required herein may be provided by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
4.2	Concurrency	Such coverage shall have the same inception date as the commercial general liability and employer's liability coverages.
4.3	Drop Down Coverage	Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits.
4.4	Defense Costs	This insurance is to include a duty to defend any insured.
5.0 <input checked="" type="checkbox"/>	Professional Liability. If indicated in the box to the left, Contractor is to maintain Professional Liability insurance meeting at least the following specifications.	
5.1	Minimum Limits	Limits of coverage shall be no less than: \$2,000,000 each loss \$4,000,000 annual aggregate If a combined Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.
5.2	Scope	Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement, including but not limited to design or design/build services.
5.3	Retroactive Date	Any retroactive date must be effective prior to beginning of services for the YMCA.

5.4	Prohibitions	<p>This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:</p> <ul style="list-style-type: none"> a. bodily injury or property damage where coverage is provided in behalf of design professionals or design/build contractors; b. habitational or residential operations; c. mold and/or microbial matter and/or fungus and/or biological substance; or d. punitive, exemplary or multiplied damages. <p>A professional liability endorsement to a general liability policy is not acceptable.</p>
5.5	Term	<p>Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement. The purchase of an extended discovery period or an extended reporting period on a Claims-Made policy will not be sufficient to meet the terms of this provision.</p>
5.6	Waiver of Right of Recovery and Subrogation	<p>Contractor agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of the YMCA Parties.</p>
5.7	Notice of Cancellation	<p>This insurance shall be endorsed to provide a 30 day notice of cancellation to the YMCA.</p>
6.0	<p><input checked="" type="checkbox"/> Pollution Liability. If indicated in the box to the left, Contractor is to maintain Pollution Liability insurance meeting at least the following specifications.</p>	
6.1	Minimum Limits	<p>Limits of coverage shall be no less than:</p> <p>\$2,000,000 each loss \$4,000,000 annual aggregate</p> <p>If a combined Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.</p>
6.2	Scope	<p>The policy must provide coverage for:</p> <ul style="list-style-type: none"> a. the full scope of the named insured's operations (on-going and completed) as described within the scope of work for this Agreement b. loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall c. third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations; d. diminution of value and Natural Resources damages e. contractual liability f. claims arising from owned and non-owned disposal sites utilized in the performance of this Agreement. <p>Coverage extensions to the General Liability insurance policy without a separate insurance agreement for Contractors Pollution Liability insurance will not fulfill this requirement</p>
6.3	Additional Insured	<p>This insurance must name the YMCA Parties as an Additional Insureds, and be primary and noncontributory to all coverage available to the Additional Insured.</p>
6.4	Insured Contracts	<p>Coverage shall include but not be limited to liability assumed by Contractor under the Agreement, including the tort liability of another assumed in a business contract.</p>
6.5	Primary and Noncontributory Coverage	<p>This insurance shall be endorsed to provide primary and noncontributing liability coverage. It is the specific intent of the parties to the Agreement that all insurance required herein shall be primary to and shall seek no contribution from all insurance held by the YMCA Parties, with the YMCA Parties' insurance being excess, secondary and noncontributing.</p>
6.6	Waiver of Right of Recovery and Subrogation	<p>Contractor agrees to waive its rights of recovery and shall cause this insurance to be endorsed to waive all rights of subrogation in favor of the YMCA Parties.</p>
6.7	Notice of Cancellation	<p>This insurance shall be endorsed to provide a 30 day notice of cancellation to the YMCA.</p>
6.8	Retroactive Date	<p>If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement of Contractor services relation to the Work.</p>
6.9	Prohibitions	<p>This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from:</p> <ul style="list-style-type: none"> a. Insured vs. insured actions. However exclusion for claims made between insured within the same economic family are acceptable. b. impaired property that has not been physically injured c. materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval. d. property damage to the work performed by the Contractor e. faulty workmanship as it relates to clean up costs f. punitive, exemplary or multiplied damages g. work performed by subcontractors

		h. contractual liability incurred as a result of an injury to an employee of the insured.
6.10	Term	Completed operations coverage shall be maintained for a minimum of seven (7) years after the completion of work. The extended reporting period on a claims made based policy does not fulfill this requirement. Pollution Liability insurance policies insuring a specific job shall have completed operations coverage for at least the duration of the work plus seven (7) years.

2. General Insurance Requirements.

.1 Definitions. For purposes of this Agreement:

- a. "Agreement" means the Agreement to which this Exhibit is attached.
- b. "ISO" means Insurance Services Office.
- c. "Contractor" shall include subcontractors of any tier.
- d. "YMCA Parties" means (a) "YMCA Parties" means (a) YMCA of Greater Houston (the "YMCA"), (b) the Project, (c) any lender whose loan is secured by a lien against the Work, (d) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, (e) any directors, officers, employees, or agents of such persons or entities, and (f) others as required by the Construction Documents.

.2 Limits. "Limits" set out in these specifications are the minimum dollar amount of insured coverage for the risk, cause of loss or peril specified. If Contractor maintains greater limits, then these specifications shall not limit the amount of recovery available to the YMCA Parties and the limits specified above as the minimum limits are increased to the greater limits.

.3 Policies. All policies held by Contractor and required herein must be written through insurance companies authorized to do business in the State in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide at all times Work is to be performed.

.4 Deductibles and Retentions. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of the YMCA, except as otherwise specified herein. If Contractor elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$25,000.00, the YMCA Parties and Contractor shall maintain all rights and obligations between themselves as if Contractor maintained the insurance with a commercial insurer including but not limited to Additional Insured status, Primary and Non-Contributory Liability, Waivers of Rights of Recovery, Other Insurance Clauses, and any other extensions of coverage required herein. Contractor shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Contractor had maintained the insurance pursuant to this Exhibit. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same.

.5 Forms. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, the YMCA will have the right to require other equivalent forms. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by the YMCA.

.6 Evidence of Insurance. Contractor is to provide the YMCA with evidence of insurance prior to entry by Contractor on the property and thereafter is to provide the YMCA refreshed evidence of continued insurance after the expiration of the current policies prior to the expiration of the current policies. Insurance must be evidenced as follows:

- a. ACORD Form 25 Certificate of Liability Insurance for liability coverages which shall specify:
 - 1) YMCA as certificate holder at the YMCA's mailing address;
 - 2) Insured's name, which must match that on the Agreement;
 - 3) Insurance companies producing each coverage and the policy number and policy date of each coverage;
 - 4) Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
 - 5) Additional Insured status in favor of the YMCA Parties on forms required herein on General Liability, Auto Liability, Excess Liability and, when required herein, Pollution Liability;
 - 6) Designated Construction Project(s) General Aggregate Limit on General Liability and Excess Liability;
 - 7) Electronic Data Liability on General Liability and Excess Liability;
 - 8) Personal Injury Contractual Liability on General Liability and Excess Liability;
 - 9) Primary and non-contributory status on General Liability and Excess Liability;
 - 10) Pollution Liability when required herein;
 - 11) Professional Liability when required herein;
 - 12) Waivers of subrogation on all coverages;
 - 13) Amount of any deductible or self-insured retention in excess of \$25,000;
 - 14) 30 Day Notice of Cancellation on all coverages;
 - 15) All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- b. Copies of the following shall also be provided:
 - 1) General Liability Additional Insured endorsement(s);
 - 2) General Liability Schedule of Forms and Endorsements page(s); and
 - 3) 30 Day Notice of Cancellation endorsement applicable to all required policies.

If requested in writing by the YMCA, Contractor will provide to the YMCA a certified copy of any or all insurance policies required herein including endorsements within ten (10) days of any such request.

Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any the YMCA Party of any rights. The YMCA shall

have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the YMCA.

.7 Insurance Requirements of Contractor's Subcontractors

- a. Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the YMCA upon request.
- b. The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor and its subcontractors shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the YMCA Parties.

3. Miscellaneous

- .1 **Release and Waiver.** The Contractor hereby waives all rights of recovery and releases, and shall cause its subcontractors to release, the YMCA Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF THE OWNER PARTIES.**
- .2 **No Waiver.** Failure of any YMCA Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any YMCA Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
- .3 **Suspension.** The YMCA shall have the right, but not the obligation, of suspending Contractor's services, without an increase in the sum payable by the YMCA to Contractor due to such suspension, until such certificates or other evidence that the required insurance has been placed in compliance with these requirements is received and approved by the YMCA.
- .4 **Post Completion Coverage.** With respect to the insurance to be maintained after final payment to Contractor, an additional certificate(s) evidencing such coverage shall be provided to the YMCA with final application for payment if prior certificate has expired, and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.
- .5 **Compliance With Laws.** If any insurance requirements are deemed to violate any law, statute or ordinance, the insurance requirements shall be reformed to provide the maximum amount of protection to the YMCA as allowed under the law.
- .6 **Use of the Owners Equipment.** The Contractor, its agents, employees, subcontractors or suppliers shall use the Owners equipment only with express written permission of the Owners designated representative and in accordance with the Owners terms and condition for such use. If the Contractor or any of its agents, employees, subcontractors or suppliers utilize any of the Owners equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the YMCA, the Contractor shall defend, indemnify and be liable to the YMCA Parties for any and all loss or damage which may arise from such use.
- .7 **Contractor Insurance Representations to the YMCA Parties**
 - a. It is expressly understood and agreed that the insurance coverages required herein (a) represent the YMCA Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
 - b. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the YMCA, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the YMCA Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the YMCA. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the YMCA may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the YMCA shall have no obligation to do so and if the YMCA shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- .8 **Survival.** This Exhibit is an independent contract provision and shall survive the completion of the Work or termination or expiration of the Construction Agreement.