

12.1 INSURANCE REQUIREMENTS: Prior to the commencement of any work under this Project, CM@Risk shall purchase and maintain insurance, as set forth herein and in City's General Conditions and any Supplementary General Conditions or Special Conditions. Such insurance shall be written for not less than the following limits or greater if required by law or the Contract Documents:

12.1.1 WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

In accordance with all applicable State and Federal laws and endorsed specifically to include Employer's liability, including occupational disease, subject to a limit of liability of not less than \$500,000.00 and Waiver of subrogation in favor of City.

12.1.1.1 Definitions.

- a) Certificate of Coverage ("Certificate"). A certificate of insurance, or a certificate of authority to self-insure issued by the commission, and, if applicable a coverage agreement (DWC-81, DWC -82, DWC -83, or DWC-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. Other evidence of such insurance as may be required by City.
- b) Duration of the Project. Includes the time from the beginning of a person's work on the Project until the contractor's/person's work on the Project has been completed and accepted by City.
- c) Persons Providing Services on the Project ("Subcontractor" in §406.096). Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, City-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

12.1.1.2 Coverage and Evidence of Coverage

- 12.1.1.6.1 CM@Risk 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, Title 5 for all employees of CM@Risk providing services on the Project, for the duration of the Project. CM@Risk must provide a Certificate of Coverage and copies of all required endorsements of its Insurance Policy prior to City commencement of any Work on under

this Contract. The Contractor shall make available a copy of the new policy upon request. If the coverage period shown on CM@Risk's current Certificate of Coverage ends during the duration of the Project, CM@Risk must, prior to the end of the coverage period, file a new Certificate of Coverage and all required endorsements evidencing extension of the current Policy, with City showing that coverage has been extended.

12.1.1.6.2 Contractors Providing Services. CM@Risk shall contractually require each person with whom it contracts to provide services on a Project, to:

- a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
- b) provide to CM@Risk, prior to that person beginning work on the Project, a Certificate Of Coverage and copy of the required endorsements 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 CM@Risk, prior to the end of the coverage period, a new Certificate Of Coverage and all required endorsements evidencing extension of, the coverage period shown on the current Certificate Of Coverage ends during the duration of the Project;
- d) provide CM@Risk, upon request, copies of the current insurance policies.

12.1.1.6.3 CM@Risk shall provide to City all evidence of insurance required herein prior to commencement of any Work on the Project.

12.1.1.3 CM@Risk shall retain all required certificates and other evidence of insurance coverage for the duration of the Project and for four (4) years thereafter.

12.1.1.4 CM@Risk shall notify City in writing by certified mail or personal delivery, within ten (10) days before any change that materially affects the provision of coverage of any person or entity providing services on the Project.

- 12.1.1.5 CM@Risk shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Workers' Compensation Division, 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.
- 12.1.1.6 CM@Risk shall contractually require each person with whom it contracts to provide services on a Project, to:
 - 12.1.1.6.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project;
 - 12.1.1.6.2 Provide to CM@Risk, 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;
 - 12.1.1.6.3 Provide CM@Risk, 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;
 - 12.1.1.6.4 Obtain from each other person with whom it contracts, and provide to CM@Risk, a certificate of coverage, prior to the other person beginning work on the Project; and 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;
 - 12.1.1.6.5 Retain all required certificates of coverage on file for the duration of the Project and for four (4) year thereafter;
 - 12.1.1.6.6 Notify the governmental entity in writing by certified mail or personal delivery, within ten 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
 - 12.1.1.6.7 Contractually require each person with whom it contracts to perform as required by items 8.1.1.6.1 through 8.1.1.6.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- 12.1.1.7 By signing this contract or providing or causing to be provided a Certificate Of Coverage, the CM@Risk is representing to City that all

employees of CM@Risk 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 CM@Risk to administrative penalties, criminal penalties, civil penalties, or other civil actions.

12.1.1.8 CM@Risk's failure to comply with any of these provisions is a breach of contract by CM@Risk which entitles City to terminate the Agreement if CM@Risk does not remedy the breach within ten days after receipt of notice of breach from City.

12.1.1.9 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i)

12.1.2 **COMMERCIAL GENERAL LIABILITY INSURANCE:** Including coverage for Premises-Operations; Independent CM@Risk's Protective Liability covering liability for work sublet; Products-Completed Operations Coverage, Contractual Liability insuring the indemnity agreements contained in this Contract; Personal Injury, Broad form Property Damage, including coverage for damage due to collapse of or structural injury to any building or structure due to excavation, tunneling, pile driving, cofferdam or caisson work or dredging; to moving, shoring, underpinning, raising, or demolition of any building or structure, or removal or rebuilding of any structural support thereof; to blasting or explosions; or to wires, conduits, pipes, mains, sewers, tanks, tunnels or any other property below the surface of the ground. (i.e. Explosion, Collapse, and Underground Hazards), and Pollution Legal Liability with combined limits of liability for bodily injury and property damage of not less than \$5,000,000 any one occurrence, and \$10,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

12.1.2.1 All such insurance shall remain in effect until final payment and at all times thereafter when CM@Risk may be correcting, removing, or replacing defective Work in compliance with the terms of this Contract.

12.1.2.2 CM@Risk shall maintain its Products and Completed Operations Insurance for at least two years after final payment and furnish City with evidence of continuation of such insurance at final payment and for five (5) years thereafter.

12.1.2.3 Such insurance shall be endorsed to have the General Aggregate apply to the specific Project on which the covered Work is being performed.

12.1.3 COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE (owned, non-owned and hired vehicles): With limits of liability for bodily injury of not less than \$1,000,000.00 any one person, and \$1,000,000.00 any one occurrence, and for property damage of not less than \$1,000,000.00 any one occurrence. Such coverage shall include owned, hired and non-owned vehicles. Policy shall be endorsed to include a waiver of subrogation in favor of City and shall include City as an additional insured.

12.1.4 NOT USED

12.1.5 MISCELLANEOUS INSURANCE REQUIREMENTS

12.1.5.1 Information in Trade Packages. CM@Risk shall include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base proposals. Notice shall also be given that copies of all insurance policies may be required by City for purposes of verification of required insurance coverage.

12.1.5.2 Notice of Cancellation to City. Prior to commencing any work, CM@Risk shall furnish to City at the address shown below all required endorsements and original Certificates of Insurance and if requested by City a copy of the actual policies (or other evidence deemed sufficient by City's Risk Manager) for all insurance coverage required by this Article and additional insurance called for elsewhere in the Contract Documents, certifying compliance with the minimum required coverage. CM@Risk shall notify City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices prior to the change, or ten days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. In addition, all policies shall also be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, the insurer shall provide City advance written notice of such cancellation or reduction. Both notices shall be delivered to the following address(s):

City of San Antonio
Capital Improvements Mgmt.
Services Dept.
P. O. Box 839966
San Antonio, Texas 78283-
3966

**With
copy
to**

City of San Antonio

P. O. Box 839966
San Antonio, Texas 78283-
3966

12.1.5.3 Notice of Reinstatement of Insurance Coverage Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage CM@Risk shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend CM@Risk's performance should there be any lapse in coverage at any

time during this contract. Failure to provide and maintain the required insurance shall constitute a material breach of this Agreement.

12.1.5.4 Company Rating. Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A- (VII) or better, if City has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CM@Risk in accordance with this Contract on the basis of its not complying with the Contract Documents, City will notify CM@Risk in writing thereof. CM@Risk will provide to City such additional information in respect of insurance provided by him as City may reasonably request.

12.1.5.5 In addition to any other remedies City may have upon CM@Risk's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order CM@Risk to stop work hereunder, and/or withhold any payment(s) which become due, to CM@Risk hereunder until CM@Risk demonstrates compliance with the requirements hereof. Nothing herein contained shall be construed as limiting in any way the extent to which CM@Risk may be held responsible for payments of damages to persons or property resulting from CM@Risk's performance of the Work covered under this Agreement.

12.1.5.6 City reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry as well as CM@Risk.

12.1.5.7 City shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by CM@Risk and not covered by insurance shall be paid by CM@Risk.

12.1.5.8 CM@Risk agrees that with respect to the above required insurance all insurance policies are to contain or endorsed to contain the following provisions:

12.1.5.1 Name City, its officers, officials, employees, volunteers and elected representatives as additional insureds by endorsement, as respects to operations and activities of, or on behalf of the named insured performed under contract with City, with the exception of workers' compensation.

- 12.1.5.2 Provide for an endorsement that the “other insurance” clause shall not apply to City where City is an additional insured shown on the policy
- 12.1.5.9 Nothing herein contained shall be construed as limiting in any way the extent to which CM@Risk may be held responsible for payments of damages to person or property resulting from CM@Risk’s or it subcontractor’s performance of the work covered under this agreement.
- 12.1.5.10 It is agreed that CM@Risk’s insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by City for liability arising out of operations under this agreement.
- 12.1.5.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement