SECTION 00 73 16 - PROJECT INSURANCE (OCIP)

PART 1 - GENERAL

1.1. DEFINTIONS

1.1.1. The term “OCIP”, as used throughout the Contract documents, shall refer to the Owner Controlled Insurance Program.

1.1.2. The term “OCIP Administrator”, as used throughout the Contract documents, shall refer to those employees of the firm that acts as the Owner’s Insurance broker who confirm Contractor and Subcontractor enrollments, track monthly payroll reports, order final payroll audits, and report program costs to the Owner.

1.1.3. The term “OCIP Loss Control Representative”, as used throughout the Contract documents, shall refer to those employees of the firm that acts as the Owner’s Insurance broker who conduct Project site safety services, track insurance claims, and issue reports concerning Contractor management of safety and insurance claims.

1.2. PURPOSE

1.2.1. The purpose is to have one (1) major insurance program in place to address those risks associated with Workers' Compensation and Employer's Liability, and General Liability which will exist on the Owner's property during construction. The Owner expects the majority of employers performing construction work under this Contract to enroll in the OCIP.

1.2.2. The Owner shall provide, at its own expense, specific insurance policies and coverage for the Contractor and for all enrolled Subcontractors on the Project, as described in Article 2.1 of this Section.

1.2.3. The Contractor and all enrolled Subcontractors shall provide all other insurance coverages, including those described in Articles 2.2 and 2.3 in this Section and as necessary or required to address all other risks for the Project.

1.2.4. **The Contractor and all enrolled Subcontractors shall delete those Articles of the Uniform General and Supplementary Conditions for University of Texas Building Construction Contracts (UGSGC) which are in conflict with this Section and shall recognize and agree to the requirements described in this Section.**

1.2.5. **The Subcontractors and all other parties to the Contract that are not enrolled shall furnish proof of insurance in accord with the UGSGC.**

1.3. RELATED DOCUMENTS

1.3.1. In addition to specific references indicated herein, the Contractor's attention is directed, but not limited, to the following Sections and Documents, which include additional administrative requirements.

1.3.1.1. Current Edition of the Uniform General and Supplementary Conditions for University of Texas Building Construction Contracts (UGSGC).

1.3.1.2. Owner’s Special Conditions.

PART 2 – PRODUCTS

2.1 INSURANCE COVERAGE FURNISHED BY OWNER (OCIP): The following insurance shall be furnished to the Contractor and all enrolled Subcontractors in separately issued coverage.

2.1.1 Workers' Compensation and Employer's Liability

2.1.1.1 Coverage A - Statutory Benefits: Liability imposed by the Workers' Compensation and/ or Occupational Disease statute of the State of Texas and any other State or governmental authority having jurisdiction over or related to the work performed on the Project.

2.1.1.2 Coverage B - Employer's Liability Limits:

2.1.1.2.1 $1,000,000.00 bodily injury per accident/employee;

2.1.1.2.2 $1,000,000.00 bodily injury per disease/employee;

2.1.1.2.3 $1,000,000.00 policy limit by disease.

2.1.1.3 Extensions of Coverage

2.1.1.3.1 Other States Endorsement(s)

2.1.1.3.2 Voluntary Compensation, if exposure exists

2.1.1.3.3 United States Longshoreman's & Harborworker's Act, may be added if needed

2.1.1.3.4 Sixty (60) day Notice of Cancellation from the Insurance Provider, except 10 days for non-payment of premium

2.1.1.3.5 Amendment of Notice of Occurrence

2.1.2 Commercial General Liability (Primary and Excess)

2.1.2.1 Limits:

2.1.2.1.1 $2,000,000.00 Each Occurrence/all insured

2.1.2.1.2 $2,000,000.00 Personal Injury and Advertising Injury limit

2.1.2.1.3 $5,000,000.00 Completed Operations aggregate/all insured

2.1.2.1.4 $5,000,000.00 General Aggregate/all insured (Annual Aggregate Per Project)

2.1.2.1.5 $10,000.00 Medical Payments

2.1.2.1.6 $100,000.00 Fire Legal Liability

2.1.2.2 Policy Form:

2.1.2.2.1 2001 Insurance Service Office "Occurrence" form – CG00 01 (12 04)

2.1.2.3 Extensions of Coverage:

2.1.2.3.1 Incidental Medical Malpractice Liability

2.1.2.3.2 Completed Operations Liability coverage for a period of ten (10) years after final acceptance by the Owner or ten (10) years after each project is placed in operation, whichever occurs first.

2.1.2.3.3 Waiver of Subrogation Endorsement, if required by written contract

2.1.2.3.4 Sixty (60) day Notice of Cancellation from the Insurance Provider, except 10 days for non-payment of premium

2.1.2.3.5 Engineers, Architects or Surveyors Professional Liability Exclusions

2.1.2.4 Excess Liability Coverage:

2.1.2.4.1 As following form over Employer's Liability and Commercial General Liability, $50,000,000.00 of excess insurance has been obtained by the Owner for the benefit of the Owner, Contractor and all enrolled Subcontractors of every tier. This limit is written on an occurrence/annual aggregate basis.

2.1.2.5 Issue of Policies and Certificates:

2.1.2.5.1 The OCIP Administrator and/or Insurance Carriers will issue separate Certificates of Insurance for Workers' Compensation, Comprehensive General Liability and Excess Liability to the Contractor and each enrolled Subcontractor. Copies of holder policies will be issued following receipt of written request from the OCIP Certificate holders to the OCIP Administrator and copied to the ODR.

2.2 INSURANCE POLICIES AND AMOUNTS OF COVERAGE FURNISHED BY CONTRACTOR AND ENROLLED SUBCONTRACTORS: All Project insurance not identified in Article 2.1 above shall be provided by the Contractor and all enrolled Subcontractors to meet or exceed terms and amounts of coverage as per requirements of the UGSGC. Liability coverages shall include the following (as applicable to the Work):

2.2.1 “All Risk” Builder’s Risk Insurance (provided by the Contractor only)

2.2.2 Business Automobile Liability Owned/Leased

2.2.3 Equipment (covering total value of owned/rented equipment)

2.2.4 Workers' Compensation/Employers' Liability (**Off Site Only**)

2.2.5 General Liability (**Off Site Only**)

2.2.6 Professional Liability Insurance (Errors and Omissions)

2.2.6.1 In the event any Contract specifications require a contractor to provide professional services, such as, but not limited to, architectural, engineering, construction management, surveying, design, etc., a Certificate of Insurance must be provided prior to commencing work evidencing such coverage with a limit of not less than $1,000,000.00. Any material change in limits, coverage or loss of aggregate limit due to outstanding claims must be reported to the Owner within thirty (30) days of any such event.

2.2.7 Aviation Insurance - $10,000,000.00 (as applicable)

2.2.7.1 In the event any fixed-wing or rotary aircraft are used in connection with this Agreement and/or in the execution of the work, a minimum of $10,000,000 of Aviation Liability Insurance must be maintained with the following requirements: The Owner must be named as an "additional insured" and a waiver of hull damage must be provided in favor of the Owner.

2.2.7.2 If any aircraft is to be used to perform lifts at the Project site, a "slung cargo" endorsement must be included to cover the full replacement value of any equipment or material being lifted. All such lifts must be coordinated with the Owner for approval prior to lift execution.

2.2.8 Environmental and Asbestos Abatement Insurance - $5,000,000.00 per claim (as applicable)

2.2.8.1 If this Agreement involves environmentally sensitive operations (such as the removal of asbestos, the removal/replacement of underground tanks or operations involving toxic chemicals, heavy metals and/or carcinogenic substances), the Contractor and/or involved Subcontractors shall submit proof of full coverage for such exposures subject requirements and obtain approval of the Owner prior to commencement of such operations. Subcontractors that are directly and actively involved in the performance of work associated with environmentally sensitive operations will be excluded from the OCIP. If Environmental Coverage is written on a Claims Made basis, five years Completed Operations shall be included.

2.2.9 Maritime Insurance -Hull, Protection and Indemnity (including crew) -$10,000,000.00 (as applicable)

2.2.9.1 In the event any watercraft is used in connection with the Project, the Contractor and/or involved Subcontractor shall submit proof of a “Hull and Protection and Indemnity Policy”. The amount of insurance on the Hull shall be sufficient to cover the watercraft, its equipment and all additional equipment aboard during the time it is in use on the Project. Protection and Indemnity shall have limits of liability of no less than $10,000,000.00 including coverage of the construction activity for which the watercraft is used. Master and Crew coverage shall include General Maritime Liability, Jones Act and Wages, Transportation, Maintenance and Care.

2.2.10 Waiver of Subrogation

2.2.10.1 To meet the requirements of Article 2.2, all policies shall contain a Waiver of Subrogation in favor of the Board of Regents of The University of Texas System, their respective agents, consultants, servants and employees of each and all other indemnities.

2.2.11 Names of Additional Insured

2.2.11.1 To meet the requirements of Article 2.2, for each of the preceding coverages, excepting Workers Compensation, all policies shall endorse the Board of Regents of The University of Texas System, its respective agents, consultants, servants and employees of each and all other indemnities as "Additional Insured".

2.2.12 Waiver of Property Damage and Right of Recovery

2.2.12.1 To meet the requirements of the UGSGC, all policies shall contain written agreement to waive the Contractor’s and each enrolled Subcontractor’s right for recovery of physical damage or loss to their respective properties against each other for damages, losses or claims arising out of or in connection with this Project and this

Contract. This written waiver shall also extend to the benefit of the Board of Regents of The University of Texas System, its respective agents, consultants, servants and employees. This waiver of the right of recovery for property damage shall be binding upon any property (real or personal), builders risk, automobile, aircraft, watercraft, tools or equipment insurer as respects any subrogation rights that such insurer may possess by virtue of any payments of damage or loss.

2.3 CONTRACTOR ASSURANCE OF SAVINGS

2.3.1 The Contractor and all enrolled Subcontractors shall agree, warrant, and represent that any proposal(s) for Construction services exclude all costs associated with Owner furnished insurance coverage as specified in Article 2.1 of this Section.

2.3.2 The Contractor and all enrolled Subcontractors shall agree to be subject to audits for payroll, work hours and insurance costs by the respective insurance companies providing coverage under the OCIP. The purpose of such audits is to validate insurance premiums and compare wages and other OCIP costs. The Contractor and all Subcontractors shall agree to furnish payroll and insurance cost information in the forms and formats as requested by the OCIP Administrator. Further, the Contractor and all Subcontractors agree to cooperate fully with any and all audits by supplying the required information in the manner required and as expeditiously as possible. No resources may be denied. If proprietary information is involved, the Contractor and all enrolled Subcontractors will be allowed to guard the material while it is being reviewed by the Owner or any of its agents.

2.3.3 The Contractor and enrolled Subcontractors agree, warrant, and represent that all Changes to the Contract as described in the UGSGC, shall exclude any cost for the insurance provided by the OCIP.

2.4 EXCLUSION FROM OCIP ENROLLMENT: Prior to commencement of any work at the Project site and until completion and final acceptance of Work, Subcontractors that are allowed by the Owner to be excluded from enrollment in the OCIP shall maintain, at their sole expense, insurance coverage as per the UGSGC and Article 2.2 of this Section.

2.4.1 Automatic Exclusion

2.4.1.1 Temporary workforce agencies, consultants, vendors, suppliers, material dealers, and delivery service companies shall not be considered as a Contractor or Subcontractor and therefore shall be automatically excluded from enrollment in the OCIP. In addition, the erection and dismantling of tower cranes and hoists used for personnel, material or both shall be automatically excluded from enrollment in the OCIP. The erection and dismantling of scaffolds shall be automatically excluded from enrollment in the OCIP unless the erection and dismantling work is performed by an enrolled Contractor and the erection and dismantling work is incidental to that Contractor's normal construction activities on the Project. The Contractor shall confirm that the companies in these categories produce copies of proof of proper insurance for the risk exposures that each one will create or experience while on the Project.

2.4.1.2 Subcontractors performing environmentally sensitive or highly hazardous work will be required to furnish proof of special coverage in adequate amounts for Aviation Insurance, Environmental and Asbestos Abatement Insurance, Maritime Insurance and any other policies of such nature.

2.4.1.2.1 Before performing any work the Subcontractor shall provide to the Contractor and the OCIP Administrator, a Certificate of Insurance that matches the

requirements described in the UGSGC and 2.2 above.

2.4.1.3 Excluded Subcontractor(s) shall install adhere to all project safety requirements and take all necessary precautions to all other persons in the vicinity from the risk exposures that the excluded Subcontractor may create while performing work on the Project.

2.4.2 Discretionary Exclusion

2.4.2.1 The Contractor may issue a written request on behalf of a Subcontractor of any tier for a discretionary exclusion from enrollment in the OCIP. To be considered, the Subcontractor must be bound to a scope of Work that anticipates a total labor value of less than $5,000.00. A Certificate of Insurance with coverage amounts and language as required by the UGSGC and 2.2 above shall be furnished to the OCIP Administrator. The OCIP Administrator, in concurrence with the ODR, will review issues such as prior enrollment, scope of work and associated risk. Based on this evaluation, exclusion may or may not be granted. The final decision to grant an exclusion shall be determined by the Owner.

2.4.3 Excluded Subcontractors

2.4.3.1 Excluded Subcontractors shall submit Certificates of Insurance for Owner acceptance for adequacy of protection and for the satisfactory character of the Insurer prior to performing any work on the Project. Each Certificate must have a thirty (30) day prior written notice of cancellation showing the Board of Regents of The University of Texas System as the Certificate Holder.

2.4.3.2 In the event of failure of the excluded Subcontractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Owner and/or Contractor shall have the right to take out and maintain coverage for all parties on behalf of the excluded Subcontractor who agrees to furnish all necessary information to bind such coverage and to allow deduction for the cost thereof immediately upon presentation of an invoice.

2.5 GOVERNING CONDITIONS

2.5.1 The Owner's payment of premiums for the insurance described in this section shall in no way be interpreted as relieving the Contractor and/or any enrolled Subcontractor of any responsibility of liability under this agreement.

2.5.2 The amount and types of insurance coverage required herein shall not be construed to be a limitation of liability on the part of the Contractor or any of its Subcontractors.

2.6 ELECTIVE INSURANCE FURNISHED BY A CONTRACTOR

2.6.1 The Contractor and any enrolled Subcontractor may elect to maintain a supplementary insurance policy(s) to extend the coverage terms and/ or conditions that are described in this Section. The cost of any policy(s) shall be at the sole expense of the contractor, and shall not be reimbursed by the Owner.

PART 3 – EXECUTION

3.1 OCIP ENROLLMENT PROCESS

3.1.1 The Contractor and all enrolled Subcontractors shall submit completed forms including all

insurance, underwriting, payroll, rating or loss history information as required by the Owner to the OCIP Administrator for enrollment and issuance of OCIP "Certificates of Insurance". Forms shall be provided within five (5) working days of the request. No contractor shall perform any work on the Project until it is recognized as having been enrolled in or excluded from the OCIP by the OCIP Administrator.

3.1.2 The Contractor and enrolling Subcontractors shall provide all information necessary to bind coverage under the OCIP. The OCIP Administrator will notify the Contractor and respective Subcontractor when an application has been approved and coverage afforded.

3.1.3 OCIP enrollment will not be complete and work shall not commence until the OCIP Administrator has issued the OCIP "Certificates of Insurance" to the applicant.

3.2 PROJECT ADMINISTRATION AND FORMS

3.2.1 The Contractor shall manage and transmit all administrative and safety documentation, including subcontractor insurance and payroll information, as required and directed by the Owner.

3.2.2 The Contractor and all enrolled Subcontractors shall include those administrative costs in the Construction Contract Limitation (CCL) or Guaranteed Maximum Price (GMP) proposal which are necessary to properly comply with the Contract.

3.3 OCIP DOCUMENTATION COMPLIANCE

3.3.1 Failure by the Contractor and/or any Subcontractor to submit documentation and forms as directed by the Owner, or the OCIP Administrator, as described in the Owner's OCIP guidelines may result in an Owner-issued deductive Change Order to the Contractor for each delinquent document. The Contractor will be held accountable for all costs and schedule impacts associated with this action.

3.3.2 Persistent failures by the Contractor and/or any enrolled Subcontractors may result in a "stop work" order by the Owner. The Contractor will be held accountable for all costs and schedule impacts associated with this action.

3.3.3 Incident Notification and Claims Management:

3.3.3.1 Workers' Compensation claims are to be immediately reported to the ODR by the General Contractor, Project Safety Coordinator (PSC) or his/her designee. The claims will be submitted to the OCIP insurance carrier within twenty-four (24) hours or one work day of the occurrence or immediately upon the acknowledgment of the an injury from a worker. This notification will be completed by the ODR unless otherwise directed by the ODR. The contractor PSC will provide a completed First Report of Injury form (DWC Form 1) to the ODR as soon after the injury occurs as is practicable. The following charges may apply for failure to comply with this requirement:

3.3.3.1.1 $1,500.00 for reports that are 2 – 3 workdays beyond the date of occurrence

3.3.3.1.2 $5,000.00 for reports that are 4 – 30 workdays beyond the date of occurrence

3.3.3.1.3 $7,500.00 for reports that are 31 – 60 workdays beyond the date of occurrence

3.3.3.1.4 $10,000.00 for reports that are more than 60 days beyond the date of occurrence

3.3.3.2 General Liability claims are to be initiated immediately and shall be within twenty-four (24) hours or one (1) workday of the occurrence, whichever is later. The mechanism for initiating such a claim shall be the completion and transmittal of a Notice of Occurrence / Claim form to the ODR. Late reporting has been proven to substantially escalate the cost of claims and may therefore result in action on the part of the Owner to recover these avoidable costs from the Contractor by applying the following charges:

3.3.3.2.1 $1,500.00 for reports that are 2 – 3 workdays beyond the date of occurrence

3.3.3.2.2 $5,000.00 for reports that are more than 3 workdays beyond the date of occurrence

3.3.3.3 General Liability – Property Damage:

3.3.3.3.1 If the Owner determines that the Contractor failed to take proper precautions prior to an incident that results in a property damage claim against the General Liability coverage, the Owner may recover from the Contractor the first $5,000.00 of incurred cost against the claim.

3.4 WORKERS COMPENSATION PROCEEDINGS

3.4.1 The ODR may require the Contractor and/or the enrolled employer of an injured worker to provide knowledgeable representation at legally binding proceedings scheduled by the Texas Department of Insurance. The proceedings that affect the amount of compensation are “Benefit Review Conferences” and “Contested Case Hearings”. Failure to provide such representation may result in Owner issuance of a recovery charge to the Contractor of $5,000.00 per proceeding.

3.5 EMPLOYEE RETURN TO WORK REQUIREMENTS

3.5.1 The Contractor and every Subcontractor shall provide viable “Return to Work” (RTW) for all workers that are injured on an OCIP project. There are no exceptions. Any injury that results in restrictions to the worker will be included in this requirement.

3.5.2 The Contractor and Subcontractor may be required to provide the following to comply with this requirement:

3.5.1.1 Job descriptions that clearly identify and explain essential job functions and tasks required for each position. Minimum physical limits, motor skills, and endurance times shall be included.

3.5.1.2 Procedures and responsibilities shall help physicians understand the RTW requirements, the employee’s typical work assignments and activities, and available alternate assignments.

3.5.1.3 A commitment to the continuous employee education about the RTW requirements shall include monitoring of assignments, record keeping, and communications with physician(s) and injured worker(s), and tracking of compensation reports.

3.5.1.4 Full compliance with the Americans with Disabilities Act, Family Medical Leave Act, the Texas Worker’s Compensation Act, and any other State or federal law.

3.5.3 Employment for Workers with Medical Restrictions (“Return to Work” or “Light Duty” policy):

3.5.3.1.1 Failure to comply with the RTW requirements and restoring medically restricted workers to full duty may result in an assessment of a recovery charge by the Owner to the Contractor of $5,000 per finding.

3.5.3.1.2 If the Owner determines that the Contractor or any enrolled Subcontractor deliberately obstructs a reasonable request that is intended to restore an injured worker to gainful employment, the Owner will assess a recovery charge against the Contractor of $5,000.00 per claim per month until the worker is returned to employment. If the Contractor or enrolled Subcontractor believes that the medical restrictions prohibit any possible employment, the Contractor will be required to prove this to the Owner's satisfaction.

3.5.3.1.3 Failure to pass or refusal to take any substance impairment screening will result in Owner requirement that the involved worker be removed from the Project and all MD Anderson projects.

3.5.3.1.4 The cost of all post-accident screening is the responsibility of the injured worker's employer.

3.6 EXPIRATION AND AVAILABILITY OF COVERAGE

3.6.1 Termination of OCIP Coverage

3.6.1.1 Except for Extended Completed Operations coverage or Extended Ongoing Operations coverage for Repair Work, the General Liability and Excess Liability insurance furnished by the Owner under this agreement will cease for the Contractor and each enrolled Subcontractor at the earlier of OCIP program expiration or when all work called for in the Contract has been completed. Workers Compensation coverage will continue until the earlier of OCIP program expiration or when all work called for in the Contract has been completed.

3.6.2 Availability and Cancellation

3.6.2.1 Subject to market availability, all insurance specified herein shall be maintained continuously until the scheduled completion/termination date. All insurance shall provide for Owner to take occupancy of the Work or any part thereof during the term of said insurance. If coverage is diminished or cannot be renewed due to market constraints and limitations, all insured Contractors will be notified within the sixty (60) day cancellation or non-renewal period as provided in the policies. Upon termination of the Owner-provided insurance, the Contractor and all enrolled Subcontractors shall be responsible for furnishing all insurance as described in the UGSGC and Article 2.2 above.

3.6.2.2 Owner-furnished insurance may also be discontinued in the event the Project is substantially delayed for an extended period of time, or the Project is permanently terminated for any cause.

END OF SECTION 00 73 16

REVISION LOG

The following is provided for convenience to the Owner, Architect/Engineer and Contractor to track changes between document issuances and is not to be considered by any party to be contractual or 100% complete.

Date	**Paragraph Revised**
02/01/08	3.4 - Revised Texas Worker's Compensation Commission to Texas Department of Insurance.
5/1/08	3.5.2 – Relocate Employment for Workers with Medical Restrictions ("Return to Work" or "Light Duty" policy)
10/1/08	Title changed to "ROCIP", 2.1.2.3.2 – Change "3 years" to "10 years", 2.1.2.4.1 change "$25 M" extended coverage to "$50 M"
9/01/09	Title changed to "OCIP"; corrected spelling of "SUBCONTRACTOR" in Article 2.2 and revised all Article 3.6 subsections.
12/13/12	Clarifications of UGS abbreviation, exemption and drug testing clarifications and miscellaneous clarifications.
01/08/13	Clarified Article 2.4.1.1 on erection and dismantling work.
Note:	*Latest revision listed above was issued by U.T. System on 9/01/12.*