

OPAC
INSURANCE BROKERAGE & ADMINISTRATIVE SERVICES REQUEST FOR
PROPOSAL
ATTACHMENT “B”
MARCH 3, 2010

OPAC CM AGREEMENT - EXHIBIT O

Insurance Requirements

1.1 Evidence of Insurance. The Construction Manager shall, prior to the commencement of performance of the Work at the Project Site, deliver evidence in the following manner to the Owner, Development Manager, and City that the Construction Manager has procured the insurance required under this Exhibit O:

1.1.1 As evidence of compliance with the insurance required by (i) paragraph 1.4.1 below (Workers’ Compensation/Employer’s Liability), (ii) paragraph 1.4.2 below (Commercial General Liability), and (iii) paragraph 1.4.3 below (Contractors’ Pollution Liability), the Construction Manager shall furnish the Owner, Development Manager, CRA and City with a fully completed certificate of insurance, such as a standard ACORD Certificate of Liability Insurance (ACORD Form 25-S) or other evidence reasonably satisfactory to the Owner, Development Manager, and City (the “Certificate of Insurance”), signed by an authorized representative of the insurer(s) providing the coverages. The Certificate of Insurance shall identify this Project, shall verify that the Workers’ Compensation/Employer’s Liability coverage contains a waiver of subrogation in favor of the Owner, Development Manager, CRA and City, and shall provide that the Owner, Development Manager, CRA and City shall be given no less than thirty (30) days’ prior written notice of cancellation. In addition, the Certificate of Insurance shall reference the Owner, Development Manager, City and CRA as additional insureds and, upon its receipt thereof the Construction Manager shall deliver to the Owner, Development Manager, CRA and City copies of the actual additional insured endorsement as issued on the policy providing the Commercial General Liability coverage as required in paragraph 1.4.2.D below, signed by an authorized representative of the insurer(s) verifying inclusion of the Owner, Development Manager, City and CRA and their officials, officers and employees as additional insureds in the Commercial General Liability coverage.

1.1.2 As evidence of compliance with the insurance required by paragraph 1.4.6 below (Property/Builder’s Risk Insurance), the Construction Manager shall furnish the Owner, Development Manager, CRA and City with either:

- A. The original of the Property Insurance policy(ies), or
- B. A fully completed Evidence of Property Insurance form (ACORD Form 27), a copy of the original of the policy, or other evidence reasonably satisfactory to the City signed by an authorized representative of the insurer(s) providing the coverage.

1.1.3 Not used.

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1.1.4 Until such time as the insurance required hereunder is no longer required to be maintained by the Construction Manager, the Construction Manager shall provide the Owner, Development Manager, CRA and City with renewal or replacement evidence of the insurance in the manner described in paragraphs 1.1.1 and 1.1.2 above prior to the expiration or termination of the insurance for which previous evidence of insurance has been provided.

1.1.5 Notwithstanding the prior submission of a Certificate of Insurance, the Construction Manager shall provide the Owner, Development Manager, CRA and City with a complete copy of each of the required policies of insurance within thirty (30) days of receipt of each of such policies from the insurers.

1.2 Qualification of Insurers. Each such insurer must be either (i) authorized by a subsisting certificate of authority issued to the insurer by the Florida Department of Financial Services, or (ii) an eligible surplus lines insurer under Chapter 626.918, Florida Statutes. In addition, each such insurer shall have and maintain throughout the period for which coverage is required a Best's Rating of "A-" or better and a Financial Size Category of "VII" or better, according to A. M. Best Company (or other evidence of financial integrity reasonably acceptable to the Owner and City).

1.3 Change in Insurer Qualifications. If an insurer shall fail to comply with the foregoing minimum requirements, once the Construction Manager has knowledge of any such failure, the Construction Manager shall immediately notify the Owner, Development Manager, and City and, within thirty (30) days after Construction Manager becomes aware of such failure, replace the insurance provided by the non-complying insurer with insurance issued by an insurer meeting the requirements set forth herein.

1.4 Description of Construction Manager Required Insurance. Unless and to the extent the City and Owner have agreed otherwise, without limiting any of the other obligations or liabilities of the Construction Manager, the Construction Manager shall, as a Cost of the Work, procure, maintain and keep in force the amounts and types of insurance conforming to the minimum requirements set forth in this Exhibit O. Except as otherwise specified in the Agreement or this Exhibit O, the insurance shall commence on or before the delivery to the Owner, Development Manager, CRA and City of the evidence of such insurance as required by Sections 1.1.1 and 1.1.2 above and shall be maintained in force until Substantial Completion and for such longer periods and/or with such extended tails as Construction Manager is able to procure on a commercially reasonable basis, in accordance with Section 1.4.6 below (except with respect to Products/Completed Operations coverage, which shall extend beyond Final Completion as required below).

1.4.1 Workers' Compensation/ Employer's Liability. The Construction Manager shall procure and maintain Workers' Compensation/Employer's Liability insurance conforming to the following requirements:

A. The Workers' Compensation/Employer's Liability insurance shall cover the Construction Manager and the Subcontractors, and other

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Persons performing Work at the Project Site, other Work locations identified in the Agreement or at other materials staging/laydown locations under this Agreement for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements except those required by NCCI or the State of Florida, if any. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage shall be included for the Federal Employer's Liability Act and any other applicable federal or state law.

B. The policy must be endorsed to waive the insurer's right to subrogate against the Owner, Development Manager, CRA and City and their officials, officers and employees, in the manner which would result from the attachment of the NCCI Waiver Of Our Right To Recover From Others Endorsement (Advisory Form WC 00 03 13), with the Owner, Development Manager, CRA and City and its officials, officers and employees scheduled thereon.

C. Subject to the restrictions of coverage found in the standard Workers' Compensation policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act or any other coverage customarily insured under Part One of the standard Workers' Compensation policy. The minimum amount of coverage for those coverages customarily insured under Part Two of the standard Workers' Compensation policy (inclusive of any amounts provided by an umbrella or excess policy) shall be:

\$100,000,000 (Each Accident)
\$100,000,000 (Disease-Policy Limit)
\$100,000,000 (Disease-Each Employee)

1.4.2 Commercial General Liability. The Construction Manager shall procure and maintain (or shall cause others to procure and maintain) Commercial General Liability insurance conforming to the following requirements:

A. The Commercial General Liability insurance shall cover the Construction Manager, Subcontractors, and other Persons performing Work at the Project Site, other Work locations identified in the Agreement or at other materials staging/laydown locations under this Agreement for those sources of liability which would be covered by commercially reasonable Commercial General Liability Coverage forms and endorsements (which forms and endorsements shall be subject to the reasonable approval of the Owner, Development Manager, and City). Such insurance shall be no more restrictive than the coverages provided by the most recent version of standard Commercial General Liability Form (ISO Form CG0001) as filed for use in the State of Florida. Construction Manager will provide proof of its Professional Liability Coverage.

B. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

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- Terrorism
- Silica, asbestos or lead
- Sexual molestation
- Architects & engineers professional liability
- Exterior Insulation And Finish Systems (EIFS)
(unless EIFS is included in the Work)

C. The minimum limits to be maintained by the Construction Manager (inclusive of any amounts provided by an umbrella or excess policy) shall be:

- \$100,000,000 (Each Occurrence)
- \$100,000,000 (General Aggregate)
- \$100,000,000 (Product/Completed Operations Aggregate)
- \$25,000,000 (Personal & Advertising Injury)

D. The Construction Manager shall include the Owner, Development Manager, CRA and City and their respective officials, officers and employees as additional insureds on the Commercial General Liability coverage. The foregoing coverage shall be subject to the reasonable approval of the Owner, Development Manager and City. Such additional insured coverage shall be provided on a form no more restrictive than the most recent version of ISO Form CG 2010. The Certificate of Insurance shall be clearly marked to reflect such additional insured status, and a copy of the additional insured endorsement(s) shall be included with the Certificate of Insurance provided to the Owner, Development Manager, CRA and City.

E. The Construction Manager shall, as long as such coverage is commercially available, continue to maintain Products/Completed Operations coverage for a period of ten (10) years after Substantial Completion. The Products/Completed Operations coverage and forms shall be subject to the reasonable approval of the Owner, Development Manager, and City. The minimum limits to be maintained shall be the amounts shown in Section 1.4.2.C above as the minimum each occurrence and Products/Completed Operations Liability aggregate limits respectively required for the commercial general liability coverage.

1.4.3 Contractors' Pollution Liability. The Construction Manager shall procure and maintain Environmental Impairment/Contractors' Pollution Liability insurance conforming to the following requirements:

A. Construction Manager will provide Pollution Liability insurance to cover exposures from unexpected releases of Hazardous Materials by Construction Manager or those for which it is responsible. The maximum permissible deductible or self-insured retention for the Pollution Liability policy shall be \$250,000 for each pollution incident. The GMP will include a Pollution Deductible Allowance of \$1, for deductibles under the Pollution policy. To the extent that a release of pre-existing hazardous materials on the Project site is (a) of materials not identified in Contract Documents and (b) not caused by the culpability or fault of Construction Manager or those for which it is responsible, then Construction Manager has no liability to Owner in

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connection with the release and Owner agrees that the costs associated with the deductible under the Pollution Liability policy will be treated as a Cost of the Work, so that the Pollution Deductible Allowance, and the GMP, will be equitably adjusted as necessary to reimburse Construction Manager for the deductible expense. The \$1 Pollution Deductible Allowance, and the GMP, will not be adjusted in cases where (a) and (b) above do not apply, and \$1 shall be the maximum allowable reimbursement for pollution incidents.

B. Such insurance shall include coverage for the acts of the Construction Manager, Subcontractors, Suppliers and other Persons performing Work under this Agreement for environmental clean up costs resulting from pollution incidents resulting from the acts of the Construction Manager, Subcontractors, Suppliers and other Persons performing Work at the Project Site and at any ancillary locations that are identified in the Contract Documents as locations where activities related to this Agreement will take place. Such insurance also shall provide coverage for third party liability for bodily injury and property damage resulting from pollution incidents resulting from the acts of the Construction Manager, Subcontractors, Suppliers and other Persons performing Work at the Project Site, other Work locations identified in the Agreement or at other materials staging/laydown locations. Such insurance shall be on a form reasonably acceptable to the Owner, Development Manager, and City. Coverage must be either on an occurrence basis, or, if on a claims-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

C. The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$20,000,000 Each Claim/Occurrence
\$20,000,000 Annual Aggregate

D. However, if insurance market conditions are such that purchase of the minimum \$20,000,000 limits of liability is commercially impracticable, a lower limit agreeable to the Owner, City and Construction Manager will be acceptable.

1.4.4 Construction Manager Provided Insurance Program. Owner grants permission to the Construction Manager to provide any of the insurance coverages required in this Exhibit O via a Contractor Controlled Insurance Program (“CCIP”). If implemented, the CCIP will include coverage for the Construction Manager, enrolled Subcontractors, and other Persons performing Work under this Agreement. However, to the extent any of the required insurance coverages are provided through the use of an CCIP, such insurance must provide coverage in a scope and amount equivalent to what would be provided on separate insurance policies complying with the requirements of this Exhibit O, including any and all requirements to extend coverage to the Owner, Development Manager, City and CRA and their respective officials, officers and employees as additional insureds. Further, for any CCIP program used under this Agreement, the Construction Manager will provide to the Owner, Development Manager,

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and City, at least on a quarterly basis, in a type and format reasonably agreeable to the Owner, Development Manager, and City, reports detailing the performance of and activity under such CCIP program, including reports of all claims and losses of all insured entities under the CCIP.

1.4.5 Other Insurance. To the extent not covered under the CCIP as described in Section 1.4.4 above, Construction Manager shall require the subcontractors and other Persons performing Work under this Agreement (including any Work performed after Substantial Completion), to maintain any and all insurance required by applicable laws, and to maintain reasonable and appropriate insurance coverage (including Business Auto Liability) in types and amounts to be determined by the Construction Manager, subject to reasonable approval by the Owner, Development Manager, and City. Except to the extent required by applicable laws, or as otherwise specifically provided by this Agreement, this Agreement does not establish specific minimum insurance requirements for the subcontractors and other Persons performing Work under this Agreement. Prior to commencement of construction activities, Construction Manager shall procure Business Auto Liability insurance covering Construction Manager with minimum coverage limits of \$4,000,000 combined single limit with no aggregate limitation. Owner, Development Manager, City and CRA, and their respective officials, officers, and employees, shall be named as additional insureds on the Business Auto Liability policy procured by Construction Manager.

1.4.6 Property/Builder's Risk Insurance. The Construction Manager shall procure and maintain Property/Builder's Risk insurance conforming to the following requirements:

A. The Construction Manager shall provide, in a policy reasonably acceptable to the Owner, Development Manager, and City, "all risk" (i.e., Special Form) property insurance on all buildings, structures, additions, machinery, and equipment. Coverage shall include City-Furnished Materials during transit, storage and incorporation into the Work, subject to reasonable sublimits to be established by Owner and City. Coverage also shall include coverage for soft costs, interest expense and delayed opening loss of income or rents arising from the delay in completion resulting from a covered physical loss to property, subject to reasonable sublimits to be established by Owner and City. All sublimits must be commercially reasonable. With respect to sublimits for soft costs, liquidated damages, interest expense or loss of income or rents, the identified sublimits are the limits of liability for Construction Manager and its Subcontractors for delays arising from a covered physical loss to property, including if applicable damage from named storms under Article 1.4.6.C below.

B. With respect to all perils typically covered in an "all risk" Property/Builder's Risk coverage form other than Named Storm, Flood and Earthquake, the limit of the policy(ies) shall be equal to the estimated completed replacement value of all buildings, structures, additions, machinery, and equipment.

C. With respect to any casualty due to Named Storms, the sublimit of coverage including soft costs, interest expense and delayed opening loss of

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income or rents (if any) shall be in an amount of not less than the sum of \$150,000,000. However, if insurance market conditions are such that purchase of the minimum \$150,000,000 is commercially impracticable, lower limits mutually agreeable to the Owner and City will be acceptable.

D. The limit of coverage for the perils of Flood and Earthquake shall be at least \$50,000,000 per occurrence. However, if insurance market conditions are such that purchase of the minimum \$50,000,000 is commercially impracticable, lower limits mutually agreeable to the Owner and City will be acceptable.

E. The Property/Builder's Risk Policy (ies) shall include the Owner, Development Manager, CRA and City as named insureds and shall contain a waiver(s) of subrogation in favor of the foregoing entities.

F. The maximum deductible for other than Named Storm, Flood, or Earthquake shall be \$100,000 per occurrence. The maximum deductible per occurrence for Named Storm, Flood or Earthquake shall be five percent (5%) of the estimated replacement value at the time of the loss of all buildings, structures, additions, machinery and equipment. The Construction Manager shall pay on behalf of the Owner, Development Manager, CRA and City, as a Cost of the Work, any such deductible.

G. The Property/Builder's Risk Policy will include Partial Occupancy/Permission to Occupy Coverage.

H. Construction Manager may use Builder's Risk insurance proceeds which are properly payable to the Construction Manager for covered property damage caused by an occurrence. Provided, however, Owner shall be entitled to receive proceeds from the Builder's Risk insurance policy that are payable for Owner's soft costs, liquidated damages, interest and expenses or loss of income arising from an occurrence.

I. With the exception of City-Furnished Materials, the Construction Manager shall be responsible for paying any losses, including losses and defense costs with respect to claims against the Owner, Development Manager, CRA or City, and their respective officials, officers, or employees, within the amount of any deductible or self-insured retention of any of the policies issued pursuant to this Exhibit O, which payment shall be a Cost of the Work. The foregoing notwithstanding, the Construction Manager shall not be responsible for paying any loss sustained by the Owner or City due to a delay in opening caused by a Force Majeure Event that would otherwise be covered by the delay in completion endorsement to the Builder's Risk insurance but for the fact that such loss is sustained during the "waiting" or "deductible" period upon which such endorsement is conditioned (provided such "waiting" or "deductible" period does not exceed thirty (30) days unless approved otherwise by the Owner and City).

1.4.7 Risk of Loss.

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A. Notwithstanding any provision in this Agreement to the contrary, except with respect to tangible personal property purchased by the City for the purpose of receiving a tax exemption under Section 212.08(6), Florida Statutes, if any, the risk of loss shall remain with the Construction Manager until Substantial Completion.

B. The City shall retain the risk of loss of and damage to City-Furnished Materials including the responsibility of paying deductibles thereon for the purpose of receiving a tax exemption under Section 212.08(6), Florida Statutes, which meets the criteria in Rule 12A-1.094(4) (b) 1-4, F.A.C. to determine if the City is the purchaser for the purpose of the tax exemption under Section 212.08(6), Florida Statutes.

C. The City shall be solely entitled to the proceeds paid and attributable to damage or loss to City-Furnished Materials under the Property/Builder's Risk Policy (ies), and such proceeds shall be used by the City to fulfill its obligations to replace the damaged or destroyed City-Furnished Materials.

1.4.8 Construction Manager's Insurance Primary. The insurance provided by the Construction Manager pursuant to this Agreement shall be primary to any other insurance or self-insurance maintained by the Owner, Development Manager, CRA or City or any of their officials, officers or employees which shall be in excess of and not contributing with the insurance provided by or on behalf of the Construction Manager.

1.4.9 Construction Manager's Insurance As Additional Remedy. Except as set forth in this Exhibit O, compliance with the insurance requirements of the Agreement shall not limit the liability of the Construction Manager or its Subcontractors, employees or agents, to the Owner or City; and any remedy provided to the Owner or City or its elected or appointed officials or employees by the insurance required hereunder shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise.

1.4.10 No Waiver by Approval/Disapproval. Neither approval by the Owner, Development Manager, and City nor failure to disapprove the insurance furnished by the Construction Manager shall relieve the Construction Manager of the Construction Manager's full responsibility to provide the insurance as required by this Agreement.