* General.

When utilizing the Task Order-Construction Agreement for Multiple Projects (TO-CA) delivery method, include the Contract Documents for the Construction Manager at Risk or Collaborative Design-Build delivery method as specified below and found on the Task Order-Construction Agreement for Multiple Projects website: <https://www2.calstate.edu/csu-system/doing-business-with-the-csu/capital-planning-design-construction/project-center/academic-project/Construction/Pages/TOCA-Construction-Manager-at-Risk/forms.aspx>.

* For Construction Manager at Risk projects, the following Contract Documents apply and are included in the TO-CA Contract Documents:
  + Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects,
  + Supplementary General Conditions to Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects, and
  + This Task Order-Construction Agreement for Multiple Projects—Supplementary General Conditions to Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects.
  + For Collaborative Design-Build projects, the following Contract Documents apply and are included in the TO-CA Contract Documents:
  + Contract General Conditions for Collaborative Design-Build Projects,
  + Supplementary General Conditions to the Contract General Conditions for Collaborative Design-Build Projects, and
  + This Task Order-Construction Agreement for Multiple Projects—Supplementary General Conditions to Contract General Conditions for Collaborative Design-Build Projects.
* Replace term “Guaranteed Maximum Price” and “GMP” with “Lump Sum” throughout.
* Article 1.00, Definitions; add or delete and replace the following definition:
* Bid Date for Subcontractors - The date for submission of trade contractor or subcontractor bids for the Direct Construction Cost of the Project.
* CM Contingency **–** CM Contingency funds are budgeted funds to cover the cost of unforeseen factors related to the Work that arise after a construction contract is awarded, such as an ambiguity in the Construction Documents. Eligible uses of the CM Contingency are specified in the Request for Proposals – Rider A, Scope of Work.
* Request For Proposals (RFP) - The documents that the Trustees issue to the Proposers describing and specifying the requirements of the Master Enabling Agreement (MEA) and Work/Projects.
* Service Order Request – The initial document that the Trustees issue to the CM to begin a Project. This form is only used when the TO-CA MEA bid is based on Hourly Rates.
* Task Order Service Agreement – For performance of preconstruction services Work through the acceptance of the Lump Sum for the Project in accordance with the Contract Documents.
* Article 4.07, Insurance Requirements, insert the following before subsection a. All provisions of subsection a are unchanged.

1. Insurance Requirements for a Project that has a Total Cost of $709,000.01 or More.

* Article 4.07 Insurance Requirements, add new subsection 2 as follows:

1. Insurance Requirements for a Project that has a Total Cost of $709,000.00 or Less.

The CM shall not commence Work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees.

a. Policies and Coverage.

(1) The CM shall obtain and maintain the following policies and coverage:

(a) Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering Work done or to be done by or on behalf of the CM and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the Work.

(b) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non owned automobiles used by or on behalf of the CM and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists

(c) Worker's Compensation including Employers Liability Insurance as required by law.

(d) Errors & Omissions Insurance on an occurrence basis, covering Work done or to be done by or on behalf of the CM and providing insurance for errors and omissions shall be secured and maintained.

(2) The CM also may be required to obtain and maintain the following policies and coverage:

* + 1. Environmental Impairment Liability Insurance should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.

(b) Other Insurance by agreement between the Trustees and the CM.

1. Verification of Coverage.

The CM shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. CM shall timely file renewal certifications and endorsements for all coverage until the Work is accepted as complete pursuant to Article 8.01, Acceptance. The Trustees reserve the right to require the CM to furnish the Trustees complete, certified copies of all required insurance policies.

1. Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 4.07. The insurance policies shall contain, or be endorsed to contain, the following provisions.

* 1. For the General and Automobile Liability Policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.

(2) For any claims related to the Work, the CM’s insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the CM’s insurance and shall not contribute with it.

1. The CM shall immediately upon receipt of any notice of cancellation or any notice of non-renewal of any insurance required under this Article 4.07, provide written notice of any such insurance cancellation or non-renewal by certified mail to the University.
2. The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

d. Amount of Insurance.

(1) For All Projects.

The insurance furnished by CM under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:

(a) Comprehensive or Commercial Form General Liability Insurance--Limits of Liability

$2,000,000 General Aggregate

$1,000,000 Each Occurrence--combined single limit for bodily injury and property damage.

(b) Business Automobile Liability Insurance-Limits of Liability

|  |  |  |
| --- | --- | --- |
| Vehicle Type | Autos or Pickup Trucks  (up to one-ton) | Dump Trucks or Semi-trucks  (hauling materials or equipment) |
| Each Accident | $2M | $5M |

(c) Workers’ Compensation limits as required by law with Employers Liability limits of $1,000,000.

(d) Errors & Omissions Insurance shall be secured and maintained for no less than $1,000,000 per occurrence.

(2) For Projects Involving Hazardous Materials.

CM shall provide additional coverage in amounts not less than the following:

(a) Environmental Impairment (pollution) Liability Insurance - Limits of Liability

|  |  |
| --- | --- |
| General Aggregate | $10M |
| Each Occurrence – combined single limit for bodily injury and property damage, including cleanup costs. | $5M |

(b) In addition to the coverage described in 4.07-d (1) (b), Business Automobile Liability Insurance, CM shall obtain for hazardous material transporter services:

(i) MCS-90 endorsement

(ii) Sudden & Accidental Pollution endorsement--Limits of Liability\*

$2,000,000 Each Occurrence

$2,000,000 General Aggregate

\*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

With the Trustees’ approval, CM may delegate the responsibility to provide this additional coverage, as described in this Article 4.07-d (2) (b) above, to its hazardous materials subcontractor. When CM returns its signed project construction phase agreement to the Trustees, CM shall also provide the Trustees with a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. CM shall affirm in this letter that the hazardous materials subcontractor’s certificate of insurance shall also adhere to all of the requirements in Articles 4.07-2-b, Verification of Coverage, and 4.07-2-c, Insurance Provisions. Further, this letter will provide that the subcontractor’s certificate of insurance will be provided to the Trustees as soon as CM fully executes its subcontract with the hazardous materials subcontractor, or within 30 Days of the Notice to Proceed, whichever is less.

1. Acceptability of Insurers.

Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best’s rating of A:VII, or shall be a carrier otherwise acceptable to the University.

1. Subcontractor’s Insurance.

CM shall ensure that its subcontractors are covered by insurance of the types required by this Article, and that the amount of insurance for each subcontractor is appropriate for that subcontractor’s Work. CM shall not allow any subcontractor to commence Work on its subcontract until the insurance has been obtained. Only the CM and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials as required in Article 4.07-2-d, Amounts of Insurance, subdivision (2).

1. Miscellaneous.
   1. Any deductible under any policy of insurance required in this Article shall be CM’s liability.
   2. Acceptance of certificates of insurance by the Trustees shall not limit the CM’s liability under the Contract.
   3. In the event the CM does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by the CM and, if prompt payment is not received, may be deducted from Contract sums otherwise due the CM.
   4. If the Trustees are damaged by the failure of CM to provide or maintain the required insurance, the CM shall pay the Trustees for all such damages.
   5. The CM’s obligations to obtain and maintain all required insurance are nondelegable duties under this Contract.
   6. The CM’s liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving CM negligence shall be limited to five percent of the Contract Amount if the Work damaged is built in accordance with the Contract and applicable building standards.

* Article 4.07-b, Owner Controlled Insurance Program (OCIP); renumber and replace with the following:

**Article 4.07-3**, Owner Controlled Insurance Program (OCIP).

All references to 4.07-b shall read 4.07-3.

CM shall disregard the provisions of Article 4.07-3, as the OCIP will not apply to this Contract.

* Article 4.07-c, Trustees’ Course of Construction (“Builders Risk”) Property Insurance; renumber and replace with the following:

**Article 4.07-4**, Trustees’ Course of Construction (“Builders Risk”) Property Insurance.

All subsequent provisions of this article are unchanged, except that all references to 4.07-c shall read 4.07-4.

* Article 4.17, Schedule; delete and replace with the following:

The following scheduling provisions apply to each Lump Sum construction proposal.

a. Time is of the essence of this Contract, including the time of beginning, the rate of progress, and the time of completion of the Work. The Work shall be prosecuted at such time, in such manner, and on such part or parts of the Project as may be required to complete the Project as contemplated in the Contract Documents and the approved CM Construction Schedule.

b. The CM shall submit a bar chart or critical path method schedule setting forth the manner and sequence of the Work. The CM shall schedule the Work in accordance with the time duration set forth in the Service Order Request. The CM shall have broad discretion in scheduling the Work. The University’s basis for disapproval of any schedule shall generally be limited to a determination that the Work sequence lacks logic, is unreasonable, is incomplete or is inconsistent with any other contractual requirement, such as a phasing plan or work shift requirements, noise, class schedules, campus holidays or non-construction activity days.

c. The CM initial Construction Schedule shall show the sequence, duration in Days, and interdependence of activities required for the complete performance of all Work. The CM initial Construction Schedule shall begin with the date of issuance of the Notice to Proceed and conclude with the date of final completion.

d. The CM may submit an initial Construction Schedule that shows the Work completed in less time than the specified Contract Time. However, the acceptance of such a Construction Schedule will not change the Contract Time. The Contract Time shall control in any determination of liquidated damages or extension of the Contract Time.

e. The Construction Schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service or other approved source.

f. The CM’s submittal of a fully revised and acceptable Construction Schedule shall be a condition precedent to the processing of the each monthly payment application.

g. The Trustees will not grant any time extensions or pay any indirect costs unless the CM can clearly demonstrate the delay on the basis of the Progress Schedule current as of the month the change is issued or the delay occurred, and which delay cannot be mitigated, offset, or eliminated through revising the intended sequence of Work or other means. The CM shall include field instructions and change orders in the revised Construction Schedule. Failure to include field instructions or change orders shall waive rights to a Contract time extension or delay damages.

h. Once each week, or as approved in writing by the Trustees, the CM shall submit a Progress Schedule listing the activities begun, completed, and in progress in the past week, and the activities scheduled to begin, be completed or be in progress for the succeeding three (3) weeks. This schedule shall cover all Work activities listed on the Progress Schedule for the reporting period.

i. With respect to any CM submission under this Article, no review, acceptance or approval by the Trustees shall release or relieve the CM from its obligation to fully and properly complete the Work, or any other duty, responsibility or liability imposed on it under this Contract, including, but not limited to the obligation to complete the Work within the Contract Time.

* Article 4.24, Project Sign, Advertising; delete in its entirety.
* Article 8.09, Guaranteed Maximum Price and Cost Savings Split; delete and replace with the following:

**Article 8.09,** Lump Sum Price

CM shall guarantee the Contract Amount for the Project not to exceed the Lump Sum, as set forth in the Agreement. CM shall support the Lump Sum by a line item cost breakdown for each trade contractor, including contingency on overall cost of the Work, and based on multiple trade contractor bids for each trade contract obtained as provided in the Contract General Conditions and these Supplementary General Conditions. The Lump Sum shall be subject to additions and deductions by change order as provided in Article 6, Change Orders.

If the cost of the Work, together with CM’s fee, exceeds the Lump Sum, adjusted from time to time by change order, CM shall pay the overrun without reimbursement by the Trustees. If the actual cost of the Work, plus CM’s fee, is less than the Lump Sum, as adjusted from time to time by change order, then CM shall retain the difference.

* Article 8.10, Payment; delete and replace with the following:

After the Trustees accept the Project as complete, the CM shall submit to the Construction Administrator a payment request inidicating the total due under the Contract less retention. The Trustees will process this payment request in the same manner as the partial payment requests. Refer to Article 8.02, Partial Payments.

The Trustees shall notify the CM of the date of recordation of the Notice of Completion. The CM shall then submit a request for payment of the retention to the Construction Administrator, who will process the retention payment 30 Days after the date of recordation by the County Recorder.

The Trustees shall continue to retain funds to cover liquidated damages, stop payment notices, state labor commissioner claims, back charges from the University, unexecuted credit change orders, and other such claims that may be received up to the end of the 30 days period following recordation. If any stop payment notice has been filed, payment shall be withheld in an amount of at least 125 percent of the total claims filed until either the rights under the stop payment notice have been settled or the CM has posted sufficient bond in an amount of 125 percent of the total claims filed to secure payment of such claims.

The amount of such final payment shall be calculated as follows:

1. Take the sum of the cost of the Work for the entire Project and the CM’s fees calculated previously, subject to a Trustees audit if so requested.
2. Remove any remaining allowance balances by deductive change order.
3. Subtract amounts, if any, which the Trustees are entitled to withhold to cover liquidated damages, stop payment notices, construction defects or non-conforming Work or other withholds authorized by the Contract Documents.
4. Subtract the aggregate of previous payments made by the Trustees to the CM hereunder.

End of Supplementary General Conditions