*[Note: This document contains supplementary general conditions to the Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects,* ***which will apply to Auxiliary CM at Risk projects****, and should be reviewed for inclusion into your project document. Remember to delete this note and the provisions that do not apply.]*

●Article 1.00, Definitions, add the following new definition:

**Auxiliary** – The California State University auxiliary organization and its authorized representatives, as defined in Education Code section 89901 and in 5 California Code of Regulations section 42400, that enters into this Contract with the Construction Manager. See Construction Administrator.

●Article 1.00, Definitions, replace only the following definitions; the remaining definitions in the Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects will continue to apply.

**Acceptance** – When the Project has been completed in all respects in accordance with the Plans and Specifications, and the Contract has been otherwise fully performed by the CM, to the full satisfaction of the Auxiliary, the Auxiliary will accept the Project as complete.

**Addendum** - A document that modifies or supersedes portions of the Contract Documents, which is produced by the Architect, approved by the Auxiliary, and issued to the Construction Manager at Risk, prior to the agreement on the Guaranteed Maximum Price.

**Agreement** - A form that is executed by both the CM and Auxiliary that provides the Work will be done in accordance with the Contract Documents, which collectively represent the entire agreement between Auxiliary and the CM, including Guaranteed Maximum Price, and which supersede any prior negotiations, representations, or agreements, either written or oral. See Contract Documents.

**Architect** - The person or organization, including the authorized representatives thereof, commissioned by Auxiliary for the design of the Project. For projects on which an engineer or landscape architect is commissioned instead of an architect, the term “Architect” shall mean the design professional so commissioned for the Project.

**Construction Administrator** - The person delegated by Auxiliary to manage the construction phase of the Project, and authorized to approve changes to the Contract.

**Construction Manager (CM)** – The person or entity that has entered into this Agreement with Auxiliary. Same as Contractor.

**Contract** - The Contract Documents which collectively represent the entire agreement between Auxiliary and the Contractor, and which supersede any prior negotiations, representations, or agreements either written or oral.

**Contract Documents** - The Request for Proposals, Technical and Cost Proposals, Plans, Specifications, Addenda, Agreement, Bonds, Contract General Conditions, Supplementary General Conditions, Special Conditions, Change Orders, and any other documents so designated by Auxiliary.

**Contractor** - The person or business entity that has entered into this Agreement with Auxiliary. Same as Construction Manager (CM).

**Field Instruction** - A written order from Auxiliary to the Contractor, signed by the Construction Administrator.

**Guaranteed Maximum Price (GMP)** – The maximum price that Auxiliary and Construction Manager at Risk agree upon as payment for managing and for supplying and installing all the Work. The GMP is a total of the Actual Direct Construction Cost (including allowances) as bid by the CM, and includes the CM site management fee, the CM Contingency, and the CM overhead and profit.

**Plans** - The drawings prepared by the Architect and approved by the Trustees, which include elevations, sections, details, material and equipment schedules, diagrams, information, notes, or reproductions or any of these, and which show the location, character, dimension, or details of the Work.

**Request For Proposals (RFP)** - The documents that Auxiliary issues to the Proposers describing and specifying the requirements of the preconstruction and construction services Work.

**Request for Qualifications (RFQ)** - The documents requesting submittal of Statements of Qualifications to Auxiliary from interested and qualified CMs to provide preconstruction and construction services for the Project.

**Site:** The area on California State University property specified in the Contract for the Project, and the area made available for the CM’s operation.

**Superintendent** - The representative of the CM at the construction site who is authorized to receive instructions from Auxiliary, and who is authorized to direct the performance of the Work on behalf of the CM.

**Trustees** – The Board of Trustees of the California State University and their authorized representatives who act on behalf of the Trustees. See Executive Facilities Officer.

●Article 2.02, Competence of Proposers, sections a, c, and d only, replace “the Trustees” with “Auxiliary”.

●Article 2.02-a, License and Public Works Registration, subsection (2), Public Works Registration with Department of Industrial Relations, first paragraph, delete and replace with the following:

(2) Public Works Registration with Department of Industrial Relations

Auxiliary will only issue public works bids and award public works contracts to currently registered contractors and subcontractors on the Auxiliary’s public works projects. All bidders and subcontractors of all tiers must register to bid public works projects with the Department of Industrial Relations (DIR), and obtain and maintain current registration numbers (Labor Code section 1725.5). Note: DIR will assess a penalty on any public works contractor who allows its registration to lapse. DIR will also assess a penalty on any contractor who subcontracts to any contractor who is not registered with the DIR for each day the subcontractor is not registered. For more information, review the DIR public works registration requirements at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

●Article 2.02-b, delete and replace with the following:

b. Prequalification Rating.

 Auxiliary shall issue an RFP only to Proposers who have prequalified with the Trustees (Public Contract Code section 10764). To prequalify, all Proposers must file their prequalification applications online; and the application includes Proposers’ responses to a standard questionnaire, a statement of financial condition and previous experience in performing public works, all in accordance with the instructions contained in the Proposal Documents.

 Proposers shall go to: <http://www.calstate.edu/cpdc/cm/contractor_prequal_bidders.shtml>, under ‘Contractor Prequalification’ and login to the database using the link provided ([PlanetBids](https://www.planetbids.com/portal/portal.cfm?CompanyID=15331)). Proposers shall verify the information contained in the prequalification application under oath and submit the completed prequalification application online at least ten (10) Business Days prior to the deadline identified in the Proposal Documents and approved not less than one (1) Business Day prior to the deadline identified in the Proposal Documents.

 The Trustees’ Prequalification Coordinator will review the Proposer’s statement of experience and financial condition upon receipt of a complete application, check Proposer’s references, and notify the Proposer of the rating that has been established based on the information contained in the application. The Proposer’s assigned prequalification rating will be the maximum amount of a contract or contracts that the Proposer may undertake with the Trustees or Auxiliary. Proposer may request an increase in its rating from the Trustees’ Prequalification Coordinator. The request shall be in writing, and specify the reason(s) for increase. The Trustees’ Prequalification Coordinator will review Proposer’s request, check new references submitted and notify Proposer of the resulting decision. The Prequalification Coordinator’s decision is final.

 Auxiliary shall disregard any proposal received either from a Proposer that is not currently prequalified or from a Proposer that is prequalified but the rating is not high enough to accommodate its proposal. Although this prequalification permits participation in the submitting of a proposal for the Project, it does not mean that the proposer satisfies the requirements of being a “responsible” bidder. This determination occurs later in the process (see Article 8.12, CM Evaluation).

●Article 2.02-c, Joint Ventures, replace with “Trustees” with “Trustees or Auxiliary”.

●Article 2.03, Necessity for Careful Examination of Site, Plans, Specifications.

a. Subsurface Conditions,

 1st paragraph: Replace “Trustees” with “Trustees or Auxiliary”;

 2nd paragraph, Replace “The Trustees” with “Neither the Trustees nor Auxiliary assume any”.

b. Differing Site Condition, delete and replace with the following:

#####  During the progress of the Work, ifCM encounters a subsurface or latent condition at the site that is substantially different from those indicated in the Contract Documents or made available for examination, a differing Site condition may exist. CM shall immediately notify the Architect and the Construction Inspector in writing of the error, conflict, inconsistency, omission, or any variance on the Project as required herein and as required by laws, ordinances, codes, rules or regulations. The CM shall immediately report such condition to the Construction Administrator, the Architect, and the Construction Inspector in writing. The Architect shall investigate the assertion of a differing Site condition by collecting the facts and applying the facts as expressed by the Architect to the appropriate provisions of the Contract Documents. If the Architect in the exercise of reasonable discretion determines that a differing Site condition exists and that the differing Site condition directly results in extra Work, and if Auxiliary concurs, the CM shall be entitled to a change order which shall compensate the CM for the extra Work.

●Article 2.06, Small Business Five Percent Proposal Advantage, sections a and b only, replace “the Trustees” or “Trustees” with “Auxiliary”.

●Article 2.06, Small Business Five Percent Proposal Advantage, section c, Trustees’ Reporting of Small Business Participation, delete and replace with the following:

c. Trustees’ Reporting of Small Business Participation.

Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of certified small businesses in contract awards. To this end, the successful Proposershall inform Auxiliary of any contractual arrangements with subcontractors, consultants or suppliers that are certified small businesses, for reporting to the Trustees.

●Article 2.08, Disabled Veteran Business Enterprise Participation Requirement and Incentive.

All sections but section e, Trustees’ Reporting of DVBE Participation; g, Incentive; and h, Prime Contractor’s DVBE Subcontracting Report (DVBE Subcontracting Report), delete and replace with the following:

e. Trustees’ Reporting of DVBE Participation.

Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of DVBE in contract awards. To this end, the successful CMshall inform Auxiliary of any contractual arrangements with trade contractors, consultants or suppliers that are certified DVBE, for reporting to the Trustees.

g. DVBE Incentive

In accordance with Government Code section 14838(f), and Military and Veterans Code sections 999.5(a) and 999.5(d), Auxiliary is granting a DVBE bid incentive for bid evaluation purposes only to Bidders that exceed the three percent DVBE participation requirement. The level of DVBE incentive will correlate to the level of participation; that is, the more DVBE participation proposed, the higher the incentive. The bid incentives are as follows:

|  |  |
| --- | --- |
| DVBE Participation | Incentive |
| 3.00% to 3.99% | None |
| 4.00% to 4.99% | 1% |
| 5.00% to 5.99% | 2% |
| 6% or more | 3% |

The DVBE incentive is calculated as a percentage of the highest technical proposal score. If the highest scored proposer is a California certified small business, for bid evaluation purposes only, the only proposers eligible for the DVBE incentive will be California certified small businesses.

h. Prime Contractor’s DVBE Subcontracting Report.

(1) CM shall submit the Prime Contractor’s DVBE Subcontracting Report to Auxiliary within 60 days of receipt of the final (retention) payment, for reporting to the Trustees.

(2) In submitting the Prime Contractor’s DVBE Subcontracting Report, the CM certifies the following:

(a) The total amount CM received from Auxiliary under the Contract,

(b) The name, address, and DVBE number for the DVBE(s) that participated in the performance of the Contract,

(c) The total contracted amount for each DVBE,

(d) The total payment amounts made to the DVBEs, and

(e) The actual percentage of DVBE participation that was achieved for this Contract.

A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in accordance with Military and Veterans Code section 999.5(d).

●Article 3.02, Contract Bonds, delete and replace with the following:

The CM shall furnish, for each counterpart signed, two surety bonds in the form prescribed by the Trustees. Each bond shall be in an amount equal to 100 percent of the awarded Contract price and executed by an admitted surety insurer licensed in the State of California and listed in the latest published United States Treasury Department list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.” Reference the following websites:

* State of California Dept. of Insurance: <http://interactive.web.insurance.ca.gov/companyprofile/companyprofile> and
* US Treasury listing: <http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>.

One of the surety bonds shall guarantee faithful performance of the Contract by the CM and the other shall secure payment of laborers, mechanics, or materialmen employed on the Project. Such bonds are subject to the approval of Auxiliary. Contract bonds shall remain in full force and effect during the term of the Contract including the one-year guarantee period, and through the ten-year limit on latent defects (Public Contract Code sections 10821-10824, Code of Civil Procedure section 337.15).

Auxiliary will not accept Riders or modifications of any kind on original performance bonds and payment bonds provided at award. Bond document forms approved by the Trustees must be used without alteration.

Auxiliary shall make all alterations, extensions of time, extra and additional Work, and other changes authorized by Auxiliary for any part of the Contract, including determinations made under Article 7.01, Claims, without securing the consent of the surety or sureties on the Contract bonds.

Whenever Auxiliary has cause to believe that the surety has become insufficient, Auxiliary may demand in writing that the CM provide such further bonds or additional surety, as in the Auxiliary’s opinion is necessary, considering the extent of the Work added or remaining to be done. Thereafter no payment shall be made to the CM or any assignee of the CM until the further bonds or additional surety has been furnished (Public Contract Code section 10825). To address the insufficiency of the surety, Auxiliary will accept a Rider to both bonds that will increase the Contract Amount, but such Rider shall not change any other Contract terms and conditions.

●Article 3.03, Execution of Contract, delete and replace with the following:

The CM shall sign each Contract counterpart and return the Contract counterparts to Auxiliary, together with the Contract bonds and certification, along with other requisite documentation such as the Subcontractor Directory and certificates evidencing the required insurance coverage (see Article 4.07, CM’s Insurance) within ten (10) Business Days of receipt from Auxiliary. Reference the following Article 3.04 for failure of CM to execute the Contract timely. If the CM is a joint venture, then the joint venture shall submit with the Contract certification form a formal resolution designating the person authorized to sign on behalf of the joint venture. The CM and Auxiliary shall each sign two sets of plans, specifications, and addenda (usually at the preconstruction conference) one set for each party to be filed with the Contract. No Contract shall be binding upon Auxiliary until it has been executed by the CM and Auxiliary and approved by Counsel for Auxiliary, appointed according to law and authorized to represent Auxiliary.

After Counsel for Auxiliary has fully executed the Contract, CM can expect to start Work within 30 Days. Auxiliary will issue to the CM a written Notice to Proceed. CM may not begin Work before receiving Auxiliary’s written Notice to Proceed. Any Work performed by the CM before the Project start date as specified on the written Notice to Proceed shall be considered as having been done at the CM’s own risk.

●Article 4.01, Laws to be Observed—Generally, delete and replace “the Trustees” or “Trustees” with “Auxiliary” in all sections but section d, Audit Provisions.

●Article 4.01-d, Audit Provisions, delete “Trustees and the Auditor General” and “Trustees/Auditor General” and replace with “Trustees/Auxiliary/Auditor General” throughout section d.

●Article 4.01-d (6), delete first sentence only, and replace with the following: “If an audit inspection or examination in accordance with this Article discloses overcharges (of any nature) in excess of one-half of one percent (.5%) of the total Contract billings by CM to Auxiliary, CM shall reimburse Auxiliary the reasonable actual cost of the Trustees/ Auxiliary/Auditor General audit.”

●Article 4.01-d (7), delete “the Trustees” and replace with “Auxiliary”.

●Article 4.03, Environmental Requirements, sections a and b only, delete and replace “the Trustees” or “Trustees” with “Auxiliary”.

●Article 4.03, Environmental Requirements, sections c through g, delete and replace with the following:

c. Sound Control Requirements

The CM shall comply with all sound control and noise level rules, regulations and ordinances which apply to the Work. In the absence of any such rules, regulations and ordinances, the CM shall conduct its Work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to Auxiliary’s requests to reduce noise levels.

The CM shall not cause or allow sounds to be produced in excess of 65 decibels measured at the job site between the hours of 7:00 p.m. and 7:00 a.m. The CM shall not cause or allow sounds to be produced in excess of 85 decibels measured at the job site between the hours of 7:00 a.m. and 7:00 p.m. without the consent of the University.

 Each internal combustion engine, used for any purpose on the Project or related to the Project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Project without a muffler.

 Loading and unloading of construction materials will be scheduled so as to minimize disruptions to the University and Auxiliary’s activities. Construction activities will be scheduled to minimize disruption to the University, Auxiliary, and to their users.

d. Environmental Clearances.

The CM shall provide to state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this Project. The CM shall comply with the provisions, including giving notices during construction when so required. The CM shall not be compensated for the delays in obtaining environmental clearances and authorizations; however, an appropriate extension of time will be granted in accordance with the provisions in Article 4.16-g, Adjustment of Contract Time Due to Reasons Beyond Auxiliary’s Control,if the CM demonstrates to the satisfaction of the Auxiliary that it has made every reasonable effort to obtain the requisite clearance or authorizations, and cannot obtain it in a timely manner.

e. Source of Aggregates.

 The Public Contract Code section 10295.5 requires that no State agency shall purchase or utilize sand, gravel, aggregates, or other minerals unless the source is on an eligible list identifying operations that have met certain requirements of the Surface Mining and Reclamation Act of 1975 (Public Resources Code section 2710 *et seq*.). Accordingly, the CM shall submit to Auxiliary documentation that it is complying with the requirements of this law in purchasing these materials.

f. Archaeological Finds.

 If the CM discovers any artifacts during excavation and/or construction, the CM shall stop all affected Work and notify Auxiliary, who will call in a qualified archaeologist designated by the California Archaeological Inventory to assess the discovery and suggest further mitigation, as necessary.

 If the CM discovers human remains, the CM shall notify Auxiliary who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, Auxiliary shall contact the appropriate tribal representatives to oversee removal of the remains.

g. Integrated Waste Management.

Pursuant to the California Code of Regulations, Title 24, Part 11 (California Green Building Standards Code), the California State University shall divert 65% of all solid waste generated in construction activities from landfill disposal or transformation facilities through source reduction, recycling and composting. The CM shall report all source reduction, recycling and composting relative to this Project to Auxiliary, for reporting to the Trustees. Refer to specifications for further requirements.

●Article 4.07, Insurance Requirements

*Campus must instruct the CM whether the OCIP provisions apply to the Project.* ***Use one of the following three statements and delete the others:***

This Project shall be enrolled in the Trustees’ Owner Controlled Insurance program, for which the provisions found in Article 4.07-b shall apply. ***OR***

This Project shall be enrolled in the Trustees’ Owner Controlled Insurance program (OCIP), for which the provisions found in Article 4.07-b shall apply. The following portions of Work in the Project are not included in OCIP: ***[Campus shall contact Alliant for guidance on this listing of excluded Work and for direction on cost tracking and enrollment]. OR***

This Project shall not be enrolled in the Trustees’ Owner Controlled Insurance program. CM shall disregard the provisions of Article 4.07-b.

●Article 4.07, Insurance Requirements:  *Do not* replace Trustees with Auxiliary, in this article, as it has been carefully drafted to include Auxiliary and keep Trustees where appropriate.

●Article 4.07-a (3), Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 4.08. The insurance policies shall contain, or be endorsed to contain, the following provisions.

1. General and Automobile Liability Policies.
2. General Liability: the State of California, the Trustees of the California State University, the University, Auxiliary, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.
3. Automobile Liability: CM shall use Insurance Service Office (ISO) Form Number CA 0001 covering any auto.

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

(c) CM shall immediately upon receipt of any notice of cancellation or any notice of non-renewal of any insurance required by this Article4.07, provide written notice of any such insurance cancellation or non-renewal by certified mail to Auxiliary.

(d) The State of California, the Trustees of the California State University, the University, Auxiliary, 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.

●Article 4.07-b, Owner Controlled Insurance Program (OCIP), delete and replace with the following:

b. Owner Controlled Insurance Program (OCIP).

The Trustees shall enroll any Project awarded with a Contract Amount of ten million dollars or more in this program. The CM shall refer to the Supplementary General Conditions to determine if this Project is enrolled in this program, and shall disregard these provisions of Article 4.07-b if not. Auxiliary projects shall also be enrolled.

The Trustees have established an Owner Controlled Insurance Program, or OCIP, which will provide to Enrolled Parties (as defined below) Workers’ Compensation and Employer’s Liability insurance, Commercial General Liability insurance, and Excess Liability insurance, as summarily described below, in connection with the performance of the Work (OCIP Coverage). The OCIP is more fully described in the insurance manual (Insurance Manual) for the Project, which can be downloaded from <http://www.calstate.edu/cpdc/CM/OCIP.shtml>. Parties performing labor or services at the Project Site shall enroll in the OCIP, unless they are Excluded Parties (as defined below). The Trustees have designated Alliant Insurance Services, Inc. as the OCIP Administrator (OCIP Administrator).

*The CM and every subcontractor shall bid the Project ‘net’ of their insurance costs for insurance coverages provided under the OCIP. The CM shall exclude from its bid, and ensure that each subcontractor of every tier excludes from their respective bids, the amount of CM and its subcontractors’ reduction in insurance copsts dur to eligibility for OCIP coverages.*

(1) Enrolled Parties and their Insurance Obligations.

 OCIP Coverage must cover Enrolled Parties. Enrolled Parties are: the Trustees/Auxiliary as the Owner, the OCIP Administrator, CM and eligible subcontractors of all tiers that enroll in the OCIP, and such other persons or entities as Trustees may designate, in its sole discretion (each party insured under the OCIP is an “Enrolled Party”).

 For all Enrolled Parties, the OCIP Administrator must deem that, upon each party’s enrollment in the OCIP for all onsite activities, each party’s obligation to obtain Comprehensive or Commercial Form Liability Insurance and Workers’ Compensation including Employer’s Liability Insurance, set out under Article 4.07‑a(1)(a), has been satisfied.

 All Enrolled Parties must still comply with all other provisions of Article 4.07-a, including providing Business Automobile Liability insurance for all activities, and providing Comprehensive or Commercial Form Liability insurance for off-site activities, providing Workers’ Compensation/Employer’s Liability Insurance for offsite activities, and providing any other insurance required under Article 4.07-a, or under any Supplementary General Conditions.

(2) Excluded Parties and Their Insurance Obligations.

 The OCIP Coverage does not cover the following “Excluded Parties”:

(a) Hazardous materials remediation, removal and/or transport companies and their consultants;

(b) Heavy demolition. Selective demolition as an incidental part of a larger contract is included.

(c) Architects, surveyors, engineers, and soil testing engineers, and their consultants;

(d) Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pick up, deliver, or carry materials, personnel, parts or equipment, or any other items or persons to or from the Project site;

(e) CM and each of its respective subcontractors of all tiers that do not perform any actual labor on the Project site; and

(f) The Trustees may exclude any other party or entity not specifically identified herein in its sole discretion even if they are otherwise eligible.

(g) Subcontractors, of any tier, with an EMR rating of over 1.25 unless specifically approved by the Underwriter.

 Excluded Parties must fully comply at all times with the requirements of Article 4.07-a.

(3) OCIP Insurance Policies Establish the OCIP Coverage.

 The OCIP Coverage and exclusions summarized in this Article 4.07-b and in the other Contract Documents are set forth in full in their respective insurance policies. The summary descriptions of the OCIP Coverage in this Article 4.07-b or the Insurance Manual are not intended to be complete or to alter or amend any provision of the OCIP Coverage. In the event any provision of this Article 4.07-b, the summary below, the Insurance Manual, or the Contract Documents conflicts with the OCIP insurance policies, the provisions of the OCIP insurance policies must govern.

(4) Summary of OCIP Coverage.

 OCIP Coverage must apply only to those operations of each Enrolled Party performed at the Project site in connection with the Work, and only to Enrolled Parties that are eligible for the OCIP. OCIP coverage must not apply to ineligible parties, even if they are erroneously enrolled in the OCIP. An Enrolled Party’s operations away from the Project Site, including product manufacturing, assembling, or otherwise, must only be covered if such offsite operations are identified and are dedicated solely to the Project. OCIP Coverage must not cover offsite operations until receipt by CM or its Subcontractor of any tier of written acknowledgment of such coverage from the OCIP Administrator.

 Following is a summary of the coverage provided under the OCIP:
Coverage Limits

(a) Workers’ Compensation Insurance Statutory Limit

 This insurance is primary for all occurrences at the Project site

(b) Employer’s Liability Insurance

 Bodily Injury by Accident, each accident $1,000,000

 Bodily Injury by Disease, each employee $1,000,000

 Bodily Injury by Disease, policy limit $1,000,000

 This insurance is primary for all occurrences at the Project site.

(c) Commercial General Liability Insurance

 (Written on most current ISO Occurrence Form, or its equivalent)

 Each Occurrence Limit $2,000,000

 General Aggregate Limit for all Enrolled Parties $4,000,000

 Products & Completed Operations Aggregate for all Enrolled Parties $4,000,000

 Ten (10) Years Products & Completed Operations Extension

 This insurance is primary for all occurrences at the Project site.

(d) Excess Liability Insurance (over Employer’s Liability & General Liability) $100,000,000

(5) Trustees’ Insurance Obligations.

 Trustees must pay the costs of premiums for the OCIP Coverage. Trustees will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. The CM hereby assigns to Trustees the right to receive all such adjustments, and must use its best efforts to ensure that each of its subcontractors of every tier assigns to Trustees the right to receive all such adjustments. Trustees assume no obligation to provide insurance other than that specified in this Article, and in the OCIP insurance policies. Trustees’ furnishing of OCIP Coverage must in no way relieve or limit, or be construed to relieve or limit, the CM or any of its subcontractors of any tier of any responsibility, liability, or obligation imposed by the Contract Documents, the OCIP insurance policies, or by law, including, without limitation, any indemnification obligations which CM or any of its Subcontractors has to Trustees thereunder. The Trustees reserve the right at their option, without obligation to do so, to furnish other insurance coverage of various types and limits provided that such coverage is not less than that specified in the Contract Documents.

(6) CM’s OCIP Obligations.

CM shall:

(a) Incorporate the terms of these Contract General Conditions into in all subcontract agreements.

(b) Enroll in the OCIP within five (5) days of execution of the Contract and maintain enrollment in the OCIP for the duration of the Contract, and assure that each of CM’s eligible subcontractors of every tier enroll in the OCIP, and maintain enrollment in the OCIP for the duration of their respective subcontract within five (5) days of subcontracting and prior to the commencement of Work at the Project site.

(c) Comply with all of the administrative, safety, insurance, and other requirements outlined in this Article 4.07-b, the Insurance Manual, the OCIP Safety Manual, the OCIP insurance policies, or elsewhere in the Contract Documents.

(d) Provide to each of its Subcontractors of every tier a copy of the Insurance Manual, and ensure subcontractor compliance with the provisions of the OCIP insurance policies, the Insurance Manual, this Article, and the Contract Documents. The failure of either (1) the Trustees to include the Insurance Manual in the bid documents or (2) CM to provide to each of its eligible subcontractors of every tier a copy of the same, shall not relieve CM or any of its subcontractors from any of the obligations contained therein.

(e) Acknowledge, and require all of its subcontractors of every tier to acknowledge, that:

* Trustees, Auxiliary, and the OCIP Administrator are not agents, partners or guarantors of the insurance companies providing coverage under the OCIP (each such insurer, an “OCIP Insurer”),
* neither Trustees, Auxiliary, nor the OCIP Administrator are responsible for any claims or disputes between or among CM, its subcontractors of any tier, and any OCIP Insurer(s), and
* neither Trustees, Auxiliary, nor OCIP Administrator guarantees the solvency or the availability of limits of any OCIP Insurer(s).

Any type of insurance coverage or limits of liability in addition to the OCIP Coverage that CM or its subcontractors of any tier require for its or their own protection, or that is required by applicable laws or regulations, shall be CM or its subcontractors’ sole responsibility and expense, and must not be billed to Trustees or Auxiliary.

(f) Cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP.

(g) Provide, within five (5) days of Trustees, Auxiliary, or OCIP Administrator’s request, all documents or information as requested of CM or its subcontractors. Such information may include, but may not be limited to, payroll records, certified copies of insurance coverages, declaration pages of coverages, policy rate pages, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, construction cost estimates for this Project, or such other data or information as Trustees, Auxiliary, the OCIP Administrator, or OCIP Insurers may request in the administration of the OCIP, to verify that the Costs of OCIP Coverages were not included in the Contract Price/Contract Sum, or any subcontract amount, or as required by the Insurance Manual. All such records shall be maintained through the term of the Contract and for a period of one (1) year thereafter.

(h) Comply, and require all of its subcontractors to comply with OCIP Administrator’s instructions for electronically enrolling in the OCIP using “Alliant WrapX” and for electronically reporting payroll using “Alliant WrapX.”

(i) Pay to Trustees a sum in accordance with the Contract Amounts in the table below for each occurrence, including court costs, attorneys’ fees and costs of defense for bodily injury or property damage to the extent losses payable under the OCIP Commercial General Liability Policy are attributable to CM’s Work, acts, or omissions, the Work, acts, or omissions of any of CM’s Subcontractors of any tier, or the Work, acts or omissions of any other entity or party for whom CM or its Subcontractor may be responsible (“General Liability Obligation”).

|  |  |
| --- | --- |
| **Contract Amounts** | **Pay to the Trustees for Each Occurrence** |
| $1,000,000 or less | $1,000 |
| $1,000,000.01 through $10,000,000 | $5,000 |
| $10,000,000.01 and over | $25,000 |

The General Liability Obligation shall remain uninsured by CM, and will not be covered by the OCIP Coverage.

(7) All Bids Net of OCIP Insurance Costs.

 CM and every subcontractor shall bid the Project ‘net’ of their insurance costs for insurance coverages provided under the OCIP. CM must exclude from its bid, and ensure that each subcontractor of every tier excludes from his or her respective bids, the “Costs of OCIP Coverages”. The Costs of OCIP Coverages is defined as the amount of Contractor’s and it subcontractors’ reduction in insurance costs due to eligibility for OCIP Coverages as determined by using the following Alliant Forms: Enrollment Form, Insurance Cost Worksheet Form, and Payroll Reporting Form; instructions for these forms are located in the Insurance Manual. The Costs of OCIP Coverages includes reduction in insurance premiums, related taxes and assessments, mark-up on the insurance premiums and losses retained through the use of the self-funded program, self-insured retention, or deductible program. The Cost of OCIP Coverages must include expected losses within any retained risk. Contractor must deduct the Cost of OCIP Coverages for all subcontractors in addition to their own Cost of OCIP Coverages. Change orders must also be priced to exclude the Cost of OCIP Coverages.

(8) CM’s Representations and Warranties to Trustees/Auxiliary.

 CM represents and warrants to Trustees/Auxiliary, and must use its best efforts to ensure that each of its subcontractors of every tier represent and warrant to Trustees/Auxiliary that:

(a) All information they submit to Trustees, Auxiliary, or to the OCIP Administrator shall must be accurate and complete.

(b) They have had the opportunity to read and analyze copies of the OCIP insurance policies that are on file in Trustees’ or Auxiliary’s office, and that they understand the OCIP Coverage. Any reference or summary in the Agreement, this Article 4.07-b, the Insurance Manual, or elsewhere in any other Contract Document as to amount, nature, type or extent of OCIP Coverage and/or potential applicability to any potential claim or loss is for reference only. CM and its subcontractors of all tiers have not relied upon said reference, but solely upon their own independent review and analysis of the OCIP Coverage in formulating any understanding and/or belief as to amount, nature, type or extent of any OCIP Coverage and/or its potential applicability to any potential claim or loss.

(c) The Costs of OCIP Coverages were not included in CM’s bid or proposal for the Work, the Contract Price/Contract Sum, and will not be included in any change order or any request for payment for the Work or extra work.

(d) CM acknowledges that Trustees/Auxiliary must not pay or compensate CM or any subcontractor of any tier, in any manner, for the Costs of OCIP Coverage.

(9) OCIP Audits.

 CM agrees that Trustees, Auxiliary, the OCIP Administrator, and/or any OCIP Insurer may audit CM or any of its subcontractors’ payroll records, books and records, insurance coverage, insurance cost information, bid estimates, pricing for any cost in the Contract Price/Contract Sum, or any subcontracted Work, or any information that CM provides to Trustees, Auxiliary, the OCIP Administrator, or the OCIP Insurers to confirm their accuracy, and to ensure that the Costs of OCIP Coverages are not included in any payment for the Work.

(10) Trustees’ Election to Modify or Discontinue the OCIP.

For any reason, Trustees may modify the OCIP Coverage, discontinue the OCIP, or request that CM or any of its Subcontractors of any tier withdraw from the OCIP upon thirty (30) days written notice. Upon such notice CM and/or one or more of its subcontractors, as specified by Trustees in such notice, must obtain and thereafter maintain during the performance of the Work, all (or a portion thereof as specified by Trustees) of the OCIP Coverage. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance must be subject to Trustees or Auxiliary’s approval. The cost of the replacement coverage must be at Trustees’ expense, but only to the extent of the applicable Insurance Credit.

(11) Withholding Payments.

 Auxiliary may withhold from any payment owed or owing to CM or its subcontractors of any tier any portion of the Insurance Credit improperly included in a request for payment. In the event a Trustees or Auxiliary audit of CM’s records and information as permitted under the Contract Documents reveals a discrepancy in the insurance, payroll, safety, or any other information required by the Contract Documents to be provided by CM to Trustees, Auxiliary, or to the OCIP Administrator, or reveals the inclusion of the Cost of OCIP Coverages in any payment for the Work. Auxiliary shall have the right to a full deduction of any improperly billed costs from the Contract Amount and recovery of all audit costs. Audit costs shall include, but shall not be limited to, the fees of the OCIP Administrator, and the fees of attorneys and accountants conducting the audit and review. If the CM or its subcontractors fail to timely comply with the provisions of Contract General Conditions Article 4.07-b, and Supplementary General Conditions Article 4.07-b, Auxiliary may withhold any payments due to CM and/or its subcontractors of any tier until such time as they do comply. Such withholding by Auxiliary shall not be deemed to be a default under the Contract Documents.

(12) Waiver of Subrogation.

 Where permitted by law, CM hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against Trustees, Auxiliary, the OCIP Administrator, their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of Trustees or Auxiliary in connection with the planning, development and construction of the Project. Trustees and Auxiliary must also require that all CM-maintained insurance coverage related to the Work, include clauses providing that each insurer shall must waive all of its rights of recovery by subrogation against CM together with the same parties referenced immediately above in this Article 4.07-b (12). Where permitted by law, CM shall must require similar written express waivers and insurance clauses from each of its subcontractors. A waiver of subrogation must be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

(13) Conflicts.

In the event of a conflict between the provisions of this Contract and the OCIP Insurance Manual, this Contract shall govern. In the event of any conflict or difference between the OCIP insurance policies and this Contract or the OCIP Insurance Manual, the actual OCIP policies must govern.

●Article 4.07-c, Trustees’ Course of Construction (“Builder’s Risk”) Property Insurance, delete and replace with the following:

c. Trustees’ Course of Construction (“Builder’s Risk”) Property Insurance.

 Trustees/Auxiliary shall must insure or self-insure all Work while in the course of construction, reconstruction, remodeling or alteration, including materials incorporated in the Work, against physical loss or damage resulting from the perils normally insured under a “Standard All Risk Course of Construction” policy, including, but not limited to theft, fire, flood, vandalism, or Acts of God, as defined in Public Contract Code section 7105. The term, Acts of God, as defined in Public Contract Code section 7105, means earthquakes in excess of a magnitude of 3.5 on the Richter magnitude scale and tidal waves. Trustees must issue to the Contractor a “Summary of Coverage” provided under this Article 4.07-c, upon request of the CM.

(1) CM must be responsible for paying a deductible of $25,000 per occurrence in the event of loss, with the following exceptions. The CM shall be responsible for paying a deductible of:

(a) $50,000 per occurrence in the case of water damage, or

(b) $100,000 per occurrence in the case of flood, or

(c) $100,000 per occurrence in the case of damages caused by Acts of God.

(2) CM must not be liable for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) in excess of the $100,000 deductible, if the Work damaged is built in accordance with the Contract and applicable building standards.

(3) The proceeds under the Course of Construction Property Insurance taken out by the Trustees/Auxiliary will be payable to the Trustees/Auxiliary and CM as their respective interests, from time to time, may appear.

(4) Trustees’ Course of Construction Property Insurance must provide limited coverage for materials in transit, and full coverage for materials at the Project Site and full coverage for materials stored offsite; however, the CM is responsible for reviewing the summary of coverage and reporting large values requiring special treatment. CM must advise the Trustees/Auxiliary whenever the total value of materials in transit exceeds $1,000,000 at any time, and whenever the total value of materials stored offsite exceeds $1,000,000 at any time.

(5) Nothing in this Article 4.07-c shall be construed to relieve the CM of CM’s responsibilities referenced under Article 4.07-a.

(6) Insurance policies referenced in this Article 4.07-c must include the following:

(a) Provide that the policies are primary and do not participate with nor are excess over any other valid collectible insurance carried by the CM.

(b) Insurer must waive right of subrogation against the CM and subcontractors of every tier.

(c) Insurer must name the CM and subcontractors of every tier as additional insured.

●Article 4.08, Indemnification.

In sections a, b, e, and f (2nd line in each section), insert “, Auxiliary,” after “the University,”.

In sections e (4th line), and f (2nd paragraph), delete and replace “Trustees” with “Auxiliary”.

●Article 4.09, CM’s Responsibility for the Work.

Section b, Burden for Damage,

 (3rd paragraph-1st line), after “…property belonging to the Trustees” insert “or Auxiliary”.

 (4th paragraph-1st line), insert “, Auxiliary,” after “the University,”.

 Section d, Safety, (4th paragraph-1st line and 5th paragraph-1st line), insert “and Auxiliary” after “Trustees”.

 Section e, Utilities,

 Section (2), (2nd line), after “shall not apply to, and” insert “neither the Trustees nor Auxiliary”.

 Section (4) (1st line), after “constructed”, insert “to the Trustees and Auxiliary”.

Section f, Hazardous Materials, (2) Lead, (2nd line), insert “Auxiliary,” before “Executive Facilities Officer”.

●Article 4.13, Patented or Copyrighted Materials, insert “, Auxiliary,” after “the University,”.

●Article 4.14, Property Rights in Materials and Equipment, lines 4 and 6, insert “/Auxiliary,” after “Trustees”.

●Article 4.20, Coordination with other Work, 1st paragraph-1st, 2nd, and 3rd lines, insert “and Auxiliary” after “Trustees”.

●Article 7.03, Termination for Cause, delete and replace with the following:

If Auxiliary deems that the CM has failed to supply an adequate working force or material of proper quality, or has failed in any other respect to prosecute the Work with diligence and force as required by the Contract, then Auxiliary shall take either of the following actions:

1. Auxiliary shall provide written notice of at least five Days to the CM specifying the defaults to be remedied. After the five Days have lapsed, Auxiliary may provide any such labor or materials and deduct the cost from any money due or to become due to the CM under the Contract.
2. If Auxiliary considers that the failure is sufficient grounds for such action, it may give written notice of at least five Days to the CM and the CM’s sureties, that if the defaults are not remedied, the CM’s control over the Work will be terminated.

CM’s failure to complete a punch list with diligence is an example of a failure to prosecute the Work with the diligence and force required by the Contract.

If the costs of finishing the Work exceed the unpaid balance of the Contract sum, the CM shall pay the difference to Auxiliary.

If it is subsequently determined that grounds for termination under this Article do not exist, then the CM shall be deemed to have been properly terminated for convenience under Article 7.04, Termination for Convenience.

●Article 8.07, Escrow in Lieu of Retention, delete and replace with the following:

Auxiliary shall not allow escrow in lieu of retention.

●Article 8.12, Contractor Evaluation.

A contractor evaluation will be performed by Auxiliary, and a report filed with the Trustees after completion of the Project. If the CM fails to perform the construction Contract responsibly by failing to complete all Work and requirements, including honoring the warranty, the construction administrator shall so state the facts on the Contractor Evaluation Form. If an evaluation results in a non-responsible contractor finding, it could affect the CM’s prequalification and may cause the CM to be deemed ineligible to bid on Auxiliary or Trustees’ Work.

End of Supplementary General Conditions