*[Note: This document contains supplementary general conditions to the Contract General Conditions for Design-Build Major Projects* ***that will apply to Auxiliary design-build projects****, and should be reviewed for inclusion into your project documents. Remember to delete this note and the provisions that do not apply.]*

●Article 31.00, 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 Design-Builder. See Construction Administrator.

●Article 31.00, Definitions, replace only the following definitions; the remaining definitions in the Contract General Conditions for Design-Build Major 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 Design-Builder to the full satisfaction of Auxiliary, Auxiliary will accept the project as complete.

**Addendum** – A document issued to the Design-Builder by Auxiliary during the bidding period that may modify or supersede portions of the Contract Documents.

**Agreement** – A form that is executed by both the Design-Builder and Auxiliary, that provides the Work will be done in accordance with the Contract Documents, as approved and on file with Auxiliary and as incorporated into the Contract Documents.

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

**Contract** – The Contract Documents which collaboratively represent the entire Agreement between Auxiliary and the Design-Builder, and which supersede any prior negotiations, representations, or agreements, either written or oral.

**Contract Documents** – The Proposal Documents, Plans, Specifications, Addenda, Agreement, Bonds, Contract General Conditions, Supplementary General Conditions, Special Conditions, Change Orders, and any other documents so designated by Auxiliary.

**Design-Builder** – The individual or business entity that has entered into this Agreement with Auxiliary.

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

**Final Contract Amount** - The final amount that Auxiliary and Design-Builder agree upon as payment for completing the Contract Work to the satisfaction of the Trustees.

**Plans** – The drawings prepared by the Design-Builder and approved by the Trustees, which include elevations, sections, details, material and equipment schedules, diagrams, information, notes, or reproductions of 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 design services Work and the Design-Build Work.

**Request for Qualifications (RFQ)** - The documents requesting submittal of Statements of Qualifications to Auxiliary from interested and qualified Design-Builders to provide design 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 Design-Builder’s operation.

**Superintendent** - The representative of the Design-Builder 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 Design-Builder.

**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 32.02, Competence of Proposers, sections-a, c, and d only, replace “the Trustees” or “Trustees” with “Auxiliary”.

●Article 32.02-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 32.02-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 be approved by the Prequalification Coordinator 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 32.09, Failure to be a Responsible Bidder).

●Article 32.02-c, Joint Ventures, Replace “Trustees” with “Trustees or Auxiliary”.

●Article 32.03, 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, ifDesign-Builder encounters a subsurface or latent condition at the site that is substantially different from those indicated in the RFP or made available for examination, a differing site condition may exist. Design-Builder shall immediately notify the Construction Administrator in writing of the differing site condition. The Construction Administrator shall investigate the assertion of a differing site condition by collecting the facts and applying the facts to the appropriate provisions of the Contract Documents. If the Construction Administrator 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 Design-Builder shall be entitled to a change order which shall compensate Design-Builder for the extra Work.

●Article 32.05, Proposal Documents, 1st paragraph, and section a, Cost Proposal, delete and replace “the Trustees” or “Trustees” with “Auxiliary”.

●Article 32.05, Proposal Documents, section b, Listing of Subcontractors, delete and replace with the following:

b. Listing of Subcontractors.

 The Proposer shall solicit a minimum of three qualified subcontractors in a manner most appropriate to obtain competitive bidding. Identify in the subcontractor solicitation the construction budget for that trade, and clearly state the amount of bonds required by the subcontractors, and whether Design-Builder or the subcontractor will be responsible for the cost of the bonds.

 As soon as each subcontractor is selected, Proposer shall submit it to Auxiliary by adding it to adding it to and resubmitting the Form 701.04-DB.CDB, List of Trade Contractors for Design-Build and Collaborative Design-Build Projects form, on which Proposer lists the subcontractor’s name, California Contractors State License Board-issued contractor license number, California Department of Industrial Relations Public Works Registration number, the location of the place of business, and the portion of Work to be done by each subcontractor performing in excess of one-half of one percent of the Work (Public Contract Code section 4100 *et seq.* and section 10708). For each alternative Proposer shall also list any subcontractor not included in the base contract Work subcontractor listing. Once the subcontractor is listed, the subcontractor shall have the rights provided in the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 *et seq*.).

(1) Non-small Business Proposers Claiming the Small Business Preference.

 If a Non-small Business Proposer claims the small business preference, the Proposer shall list all subcontractors certified as California small businesses on the Form 701.04-DB.CDB, and the total of these subcontracts shall be at least 25% of the total bid price, including awarded alternatives.

(2) Disabled Veteran Business Enterprises (DVBE) Participation Requirement.

 Proposer is required to achieve three percent DVBE participation on this Contract and may qualify for the DVBE incentive if Proposer proposes sufficient additional DVBE participation in this Contract. Auxiliary will calculate the DVBE incentive as follows: Proposer’s DVBE Incentive (%) multiplied by the highest technical proposal score. Proposer is required to achieve at least its proposed level of participation at Contract Completion.

 Proposer shall list on the Form 701.04-DB.CDB the DVBEs participating in the Proposal and the dollar amount of participation by each DVBE. The total of the DVBE participation amounts that Proposer provides on the adding it to and resubmitting the Form 701.04-DB.CDB shall equal at least Proposer’s proposed percentage of DVBE participation. For each alternative, Proposer shall list any DVBE participating in work to be performed on the alternative. If Auxiliary grants the DVBE Bid Incentive, then the total amount of DVBE participation shall equal at least the incentive percentage of the total bid price, including awarded alternatives.

 At Contract Completion, Proposer’s actual DVBE participation percentages shall be compared to the percentages proposed at bid. Proposer’s failure to achieve the proposed percentages may subject Proposer to penalties (as described in Article 32.12, DVBE Participation Requirement and Incentive), and/or may cause Auxiliary to question the Proposer’s responsibility in future Trustees’ and/or Auxiliary bids.

(3) Listing of Subcontractors.

 The successful Proposer shall submit the Form 701.04-DB.CDB once each subcontractor is selected, and shall indicate on this form the dollar amount of each small business (if the Proposer claimed the non-small business bid preference) and each DVBE participating in its proposal.

(4) Subcontractor Directory.

 The successful Proposer shall maintain current information requested on the Subcontractor Directory for all tiers of subcontractors working on the Project, and shall submit the Subcontractor Directory with its signed Contract and all payment requests. All tiers of subcontractors working on the project shall register with the DIR in accordance with Article 32.02-a(2), Public Works Registration with Department of Industrial Relations.

c. Proposer’s Security.

 All cost proposals shall be presented under sealed cover and shall have enclosed an amount equal to at least ten percent of the total amount proposed, including alternatives (if additive), as bid security. Proposers may submit the bid security in one of the following forms: a cashier’s check or a certified check made payable to the Auxiliary, or a bidder’s bond. Auxiliary shall not consider any proposal unless Proposer encloses one of these forms of bid security therewith (Public Contract Code section 10765). If the security is a bond, it shall be executed by a corporation authorized as an admitted surety to issue security bonds in the State of California, and it shall be executed on the form prescribed by the Trustees. Auxiliary will not accept riders or modifications of any kind on bidders’ bonds, and, if presented by Proposer, may result in Proposer’s disqualification as non-responsive. Bond document forms approved by the Trustees must be used without alteration.

●Article 32.10, Small Business Five Percent Proposal Advantage, delete first paragraph and replace with the following:

Auxiliary is granting a bid preference of five percent to all certified small businesses and non-small businesses. The calculation of the preference is five percent (5%) of the highest technical proposal score. If a certified small business is the highest responsive proposer, Auxiliary will not calculate the five percent bid advantage. Only the DVBE incentive will be calculated in this situation. Only another small business may displace the small business highest scoring proposer.

●Article 32.10, Small Business Five Percent Proposal Advantage, sections a and b only, replace “the Trustees” or “Trustees” with “Auxiliary”.

●Article 32.10, 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 32.12, Disabled Veteran Business Enterprise Participation Requirement and Incentive, all sections but section e, Trustees’ Reporting of DVBE Participation, replace “the Trustees” or “Trustees” with “Auxiliary”.

●Article 32.12, Disabled Veteran Business Enterprise Participation Requirement and Incentive, section e, Trustees’ Reporting of DVBE Participation, 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 Proposer shall inform Auxiliary of any contractual arrangements with subcontractors, consultants or suppliers that are certified DVBE, for reporting to the Trustees.

●Article 33.03, Contract Bonds, delete and replace with the following:

The successful Proposer 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% of the awarded Contract price and executed by an admitted surety insurer licensed in California and listed in the latest published United States Department of the Treasury 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 at: <http://interactive.web.insurance.ca.gov/companyprofile/companyprofile>, and
* US Treasury listing at: <http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd//c570.html>.)

One of the surety bonds shall guarantee faithful performance of the Contract by Design-Builder, and the other shall secure payment of laborers, mechanics, and 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 Article38.01, 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 Design-Builder provide such further bonds or additional surety, as in the Auxiliary’s opinion is necessary, considering the extent of the Work remaining to be done. Thereafter no payment shall be made to Design-Builder, or any assignee of Design-Builder, 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 33.04, Execution of Contract, delete and replace with the following:

The successful Proposer 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 certificates evidencing the required insurance coverage (see Article 35.06, Design-Builder’s Insurance), within ten (10) Business Days of receipt from Trustees. Reference the following Article 33.05 for the failure of the successful Proposer to execute the Contract timely. If the successful Proposer 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. No Contract shall be binding on Auxiliary until it has been executed by the Design-Builder and Auxiliary and approved by the Auxiliary’s attorney, appointed according to law and authorized to represent Auxiliary.

After Counsel for Auxiliary has fully executed the Contract, Design-Builder can expect to start Work within 30 days. Auxiliary will issue to the Design-Builder a written Notice to Proceed that authorizes the start of design Work only. After approving the design, Auxiliary will issue to the Design-Builder a second written Notice to Proceed that will authorize the start of construction. The Design-Builder may not begin Work before receiving the Auxiliary’s written Notice to Proceed. Any Work performed by the Design-Builder before receipt of the written Notice to Proceed shall be considered as having been done at the Design-Builder’s own risk.

●Article 34.03, Laws and Codes, in sections a, c, d, e, and f, replace “The Trustees” with “Auxiliary”.

●Article 34.03, Laws and Codes, delete the following sections and replace with the following:

Section b, Plan Review Related Appointments by Trustees;

Section g, State Fire Marshal; and

Section h, Plan approval by Campus Deputy Building Official.

b. Plan Review Related Appointments by Auxiliary.

(1) Plan Check Service Provider.

Auxiliary shall appoint a plan check service provider for the Project from the Trustees’ approved list of such firms*.* The selected service provider will review the Project Plans and Specifications for adherence to applicable codes and standards, providing an assessment of code compliance to the Campus Deputy Building Official. The service provider is solely responsible to Auxiliary in the provision of these services.

(2) Seismic Peer Reviewer.

Per the Trustees’ Seismic Policy, the California State University Seismic Review Board shall appoint a seismic peer reviewer for the Project.

(3) Materials Testing and Inspection Services.

Auxiliary shall appoint a firm(s) to provide materials testing and inspection services during construction. The testing and inspection services firms are solely responsible to Auxiliary for observation of construction, determination of adherence to the Construction Documents (including approved Plans and Specifications) and compliance with the applicable codes and standards.

1. State Fire Marshal.

For projects that are on California State University (CSU) property, publicly funded, or for use by CSU staff, the Design-Builder shall direct its design team to interact with the appointed State Fire Marshal Reviewer at the beginning of the design process, as required by Trustees’ policy, and continue at regular intervals during the design process and during construction as required. Design-Builder shall submit copies of the Construction Documents as required (structural calculations are not required) for review and approval by the State Fire Marshal. The Design-Builder shall incorporate modifications required in the Construction Documents without additional costs to Auxiliary. Complex code issues will increase State Fire Marshal plan review times.

During construction, the State Fire Marshal will conduct periodic field reviews of the construction. Notwithstanding State Fire Marshal stamped and approved plans, the State Fire Marshal has the authority to require revisions/corrections to secure code compliance, based on their field review inspection findings. These corrections, when ordered by the State Fire Marshal to achieve code compliance, shall be provided by the Design-Builder without additional costs to Auxiliary.

h. Plan Approval by Campus Deputy Building Official.

Plans for construction projects that are on CSU property, publicly funded, or for use by CSU staff, require the express written approval of the responsible Campus Deputy Building Official. The Campus Deputy Building Official will require resolution of issues from building code, accessibility, Fire Marshal and Seismic Peer Review and other agency reviews as may apply, as a prerequisite to the approval of documents for construction.

The Design-Builder shall address all review comments and appropriately reserve Project schedule time for their completion. Delays in meeting the schedule are the responsibility of the Design-Builder, not Auxiliary.

Changes, alterations, substitutions, or modifications made to previously stamped and approved Plans during construction that affect code compliance must be approved in writing by the Campus Deputy Building Official.

Design-Builder shall incorporate without additional cost to Auxiliary any changes, alterations, substitutions, or modifications made to the approved Plans that are required during construction to satisfy code requirements, including those not previously identified in the approved Plans, or to properly implement the approved Plans, or where observed workmanship and/or discovered conditions so require.

As a prerequisite to Auxiliary filing the Notice of Completion for the Project, the Campus Deputy Building Official will issue a certificate of completion when satisfied that the approved Plans have been implemented and that all inspection and technical code and standards compliance issues identified during construction have been satisfactorily resolved.

●Article 35.01, Laws to be Observed-Generally, delete and replace “the Trustees” or “Trustees” with “Auxiliary” in all sections but section d, Audit Provisions.

●Article 35.01-d, Audit Provisions, delete “Trustees and the Auditor General” and “Trustees/Auditor General” and replace with “Trustees/Auxiliary/Auditor General” throughout section d.

●Article 35.01-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 Design-Builder to Auxiliary, Design-Builder shall reimburse Auxiliary the reasonable actual cost of the Trustees/ Auxiliary/Auditor General audit.”

●Article 35.01-d (7), delete “Trustees” and replace with “Auxiliary”.

●Article 35.03, Environmental Requirements, in sections a and b only, delete and replace “the Trustees” or “Trustees” with “Auxiliary”.

●Article 35.03, Environmental Requirements, sections c through g, delete and replace with the following:

c. Sound Control Requirements

“Design-Builder 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, Design-Builder 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.

Design-Builder 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. Design-Builder 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.

Design-Builder shall provide to state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this Project. Design-Builder shall comply with the provisions, including giving notices during construction when so required. Design-Builder 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 35.15-g, Adjustment of Contract Time Due to Reasons Beyond Auxiliary’s Control,if Design-Builder 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*.). Though not a State agency, Auxiliary requires compliance with this law for this Project on Trustees’ property only. Accordingly, Design-Builder shall submit to Auxiliary documentation that it is complying with the requirements of this law in purchasing these materials.

f. Archaeological Finds.

 If Design-Builder discovers any artifacts during excavation and/or construction, Design-Builder 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 Design-Builder discovers human remains, Design-Builder 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. Design-Builder 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 35.06, Insurance Requirements

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

This Project shall be enrolled in the Trustees’ Owner Controlled Insurance program, for which the provisions found in Article 35.06-b shall apply. ***OR***

This Project shall be enrolled in the Trustees’ Owner Controlled Insurance program (OCIP), for which the provisions found in Article 35.06-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. Design-Builder shall disregard the provisions of Article 35.06-b.

●Article 35.06, 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 35.06-a (3), Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 35.08. 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: Design-Builder shall use Insurance Service Office (ISO) Form Number CA 0001 covering any auto.

(b) For any claims related to the Work, Design-Builder’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 Design-Builder’s insurance and shall not contribute with it.

(c) Design-Builder shall immediately upon receipt of any notice of cancellation or any notice of non-renewal of any insurance required by this Article 4.07, 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.

insurance carriers for payment of premiums for such insurance.

●Article 35.06-b, Owner Controlled Insurance Program (OCIP), delete and replace with the following:

b. Owner Controlled Insurance Program (OCIP).

The Trustees must enroll any Project awarded with a Contract Amount of ten million dollars or more in this program. Design-Builder must refer to the Supplementary General Conditions to determine if this Project is enrolled in this program, and must disregard these provisions of Article 35.06-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).

*Design-Builder and every subcontractor must bid the Project ‘net’ of their insurance costs for incusrance coverages provided under the OCIP. Design-Builder must exclude from its bid, and ensure that each subcontractor of every tier excludes from his or her respective bids, the amount of Design-Builder and its subcontractors’ reduction in insurance costs due 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, Design-Builder 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 on site 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 35.06-a(1)(a), has been satisfied.

 All Enrolled Parties must still comply with all other provisions of Article 35.06-a, including providing Business Automobile Liability insurance for all activities, and providing Comprehensive or Commercial Form Liability insurance for offsite activities, providing Workers’ Compensation/Employer’s Liability Insurance for offsite activities, and providing any other insurance required under Article 35.06-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) Design-Builder and each of its respective subcontractors of all tiers that do not perform any actual labor on the Project site; and

(f) Trustees may, in its sole discretion, exclude any other party or entity not specifically identified herein, 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 35.06-a.

(3) OCIP Insurance Policies Establish the OCIP Coverage.

 The OCIP Coverage and exclusions summarized in this Article 35.06-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 35.06‑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 35.06-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 off-site operations are identified and are dedicated solely to the Project. OCIP Coverage must not cover off-site operations until receipt by Contractor 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. Design-Builder 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, Design-Builder 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 Design-Builder or any of its subcontractors has to Trustees thereunder. 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) Design-Builder’s OCIP Obligations.

 Design-Builder 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 Design-Builder’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 35.06-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) Design-Builder to provide to each of its eligible subcontractors of every tier a copy of the same, must not relieve Design-Builder 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 nor the OCIP Administrator are responsible for any claims or disputes between or among Design-Builder, 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 Design-Builder or its subcontractors of any tier require for its or their own protection, or that is required by applicable laws or regulations, shall be Design-Builder’s 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 Design-Builder 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 Design-Builder’s Work, acts, or omissions, the Work, acts, or omissions of any of Design-Builder’s Subcontractors of any tier, or the Work, acts or omissions of any other entity or party for whom Design-Builder 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 Design-Builder, and will not be covered by the OCIP Coverage.

(7) All Bids Net of OCIP Insurance Costs.

 Design-Builder and every subcontractor must bid the Project ‘net’ of their insurance costs for insurance coverages provided under the OCIP. Design-Builder 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 Design-Builder 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. Design-Builder 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) Design-Builder’s Representations and Warranties to Trustees/Auxiliary.

 Design-Builder 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 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 35.06-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. Design-Builder 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 Design-Builder’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) Design-Builder acknowledges that Trustees/Auxiliary must not pay or compensate Design-Builder or any subcontractor of any tier, in any manner, for the Costs of OCIP Coverage.

(9) OCIP Audits.

 Design-Builder agrees that Trustees, Auxiliary, the OCIP Administrator, and/or any OCIP Insurer may audit Design-Builder’s 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 Design-Builder 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 Design-Builder or any of its subcontractors of any tier withdraw from the OCIP upon thirty (30) days written notice. Upon such notice Design-Builder 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 Design-Builder 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 Design-Builder’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 Design-Builder 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 Design-Builder or its subcontractors fail to timely comply with the provisions of Contract General Conditions Article 35.06-b, and Supplementary General Conditions Article 35.06-b, Auxiliary may withhold any payments due to Design-Builder 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, Design-Builder 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 in connection with the planning, development and construction of the Project. Auxiliary must also require that all Design‑Builder-maintained insurance coverage related to the Work, include clauses providing that each insurer must waive all of its rights of recovery by subrogation against Design-Builder together with the same parties referenced immediately above in this Article 35.06‑b (12). Where permitted by law, Design-Builder 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 must 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 35.06-c, Trustees’ Course of Construction (“Builders Risk”) Property Insurance, delete and replace with the following:

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

The Trustees and CSU Auxiliaries shall enroll any Project that is bid and awarded with a Contract Amount that is greater than the value of a minor capital outlay project in this program.

The Trustees/Auxiliary 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. The Trustees/Auxiliary must issue to the Design-Builder a “Summary of Coverage” provided under this Article, upon request of the Design-Builder.

(1) Design-Builder must be responsible for paying a deductible of $25,000 per occurrence in the event of loss, with the following exceptions. The Design-Builder 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) Design-Builder 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 Design-Builder 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 off site; however, the Design-Builder is responsible for reviewing the summary of coverage and reporting large values requiring special treatment. Design-Builder 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 off site exceeds $1,000,000 at any time.

(5) Nothing in this Article shall be construed to relieve the Design-Builder of Design-Builder’s responsibilities as referenced under Article 35.06-a.

(6) Insurance policies referred to in this Article 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 Design-Builder.

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

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

●Article 35.07, Indemnification, 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 35.08, Design-Builder’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 35.12, Patented or Copyrighted Materials, insert “, Auxiliary,” after “the University,”.

●Article 35.13, Property Rights in Materials and Equipment, lines 4 and 6, insert “/Auxiliary,” after “Trustees”.

●Article 35.19, Coordination with other Work, 1st paragraph-1st, 2nd, and 3rd lines, insert “and Auxiliary” after “Trustees”.

●Article 38.03, Termination for Cause, delete and replace with the following:

If Auxiliary deems that the Contractor has failed to supply an adequate working force or material of proper quality, or Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder and the Design-Builder’s sureties, that if the defaults are not remedied, the Design-Builder’s control over the Work will be terminated.

Design-Builder’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 Design-Builder shall pay the difference to Auxiliary.

If it is subsequently determined that grounds for termination under this Article do not exist, then the Design-Builder shall be deemed to have been properly terminated for convenience under Article 38.04, Termination for Convenience.

●Article 39.03 Escrow in Lieu of Retention, delete and replace with the following:

Auxiliary shall not allow escrow in lieu of retention.

●Article 39.07, Contractor Evaluation.

A contractor evaluation will be performed by Auxiliary, and a report filed with the **Trustees** after completion of the Project. If the Design-Builder 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 Design-Builder’s prequalification and may cause the Design-Builder to be deemed ineligible to bid on Auxiliary or **Trustees**’ Work. Refer also to Article 32.09, Failure to be a Responsible Bidder.

End of Supplementary General Conditions