* General.

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

* + For Collaborative Design-Build projects, the following Contract Documents apply and are included in the TO-CA Contract Documents:
	+ Contract General Conditions for Collaborative Design-Build Projects,
	+ Supplementary General Conditions to the Contract General Conditions for Collaborative Design-Build Projects, and
	+ This Task Order-Construction Agreement for Multiple Projects—Supplementary General Conditions to Contract General Conditions for Collaborative Design-Build Projects.
* For Construction Manager at Risk projects, the following Contract Documents apply and are included in the TO-CA Contract Documents:
	+ Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects,
	+ Supplementary General Conditions to Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects, and
	+ This Task Order-Construction Agreement for Multiple Projects—Supplementary General Conditions to Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects.
* Replace term “Guaranteed Maximum Price” and “GMP” with “Lump Sum” throughout.
* Article 31.00, Definitions; add or delete and replace the following definition:
* Request For Proposals (RFP) - The documents that the Trustees issue to the Proposers describing and specifying the requirements of the Master Enabling Agreement (MEA) and Work/Projects.
* Service Order Request – The initial document that the Trustees issue to the Design-Builder to begin a Project. This form is only used when the TO-CA MEA bid is based on Hourly Rates.
* Task Order Service Agreement – For performance of design services Work through the acceptance of the Lump Sum for the Project in accordance with the Contract Documents.
* Article 35.06, Guaranteed Maximum Price; delete and replace with the following:

The Design-Builder shall guarantee the Contract Amount for the Project not to exceed the Lump Sum, as set forth in the Agreement. The Design-Builder shall support the Lump Sum by a line item cost breakdown for each trade, allowances, bonds, site management fees, overhead and profit, contingency, and any other cost necessary to complete the Project. The Lump Sum shall be subject to additions and deductions by change order as provided in Article 38, Change Orders.

If the cost of the Work, together with the Design-Builder’s fee, exceeds the Lump Sum, adjusted from time to time by change order, the Design-Builder shall pay the overrun without reimbursement by the Trustees. If the actual cost of the Work, plus the Design-Builder’s fee, is less than the Lump Sum, as adjusted from time to time by change order, then the Design-Builder shall retain the difference. Design-Builder agrees to use all reasonable efforts to maximize the cost savings for the mutual benefit of the parties.

* Article 35.08, Award of Design-Build Agreement; delete and replace with the following:

The Trustees and the Design-Builder have agreed to a schedule, design, specifications, and a Lump Sum Price (the Design-Build Contract Documents) and, the Trustees have awarded an Agreement to the Design-Builder to complete the design as required and construct the Project.

* Article 36.06, Insurance Requirements, insert the following before subsection a. All provisions of subsection a are unchanged.
1. Insurance Requirements for a Project that has a Total Cost of $1,103,000.00 or More.
* Article 36.06, Insurance Requirements, add new subsection 2 as follows:
1. Insurance Requirements for a Project that has a Total Cost of $1,103,000.00 or Less.

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

a. Policies and Coverage.

(1) The Design-Builder shall obtain and maintain the following policies and coverage:

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

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

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

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

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

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

(b) Other Insurance by agreement between the Trustees and the Design-Builder.

1. Verification of Coverage.

The Design-Builder shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. Design-Builder shall timely file renewal certifications and endorsements timely filed by Design-Builder for all coverage until the Work is accepted as complete pursuant to Article 40.01, Acceptance. The Trustees reserve the right to require the Design-Builder to furnish the Trustees complete, certified copies of all required insurance policies. Design-Builder shall submit certification of coverage for errors and omissions insurance to the Trustees upon signature of this agreement.

1. Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 36.07. The insurance policies shall contain, or be endorsed to contain, the following provisions.

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

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

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

d. Amount of Insurance.

(1) For All Projects.

The insurance furnished by Contractor under this Article shall provide coverage in amounts not less than the following:

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

$2,000,000 General Aggregate

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

1. Business Automobile Liability Insurance–Limits of Liability (Each Accident– combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage.)

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

1. Workers' Compensation limits as required by law with Employer’s Liability limits of $1,000,000.
2. Errors & Omissions Insurance

Errors & Omissions Insurance shall be secured and maintained for no less than $1,000,000 per occurrence and $1,000,000 aggregate for projects up to $5 million. For projects in excess of $5 million, but less than $25 million, the Errors & Omissions Insurance shall be secured and maintained for no less than $2,000,000 per occurrence and $2,000,000 aggregate. Projects in excess of $25 million, but less than $100 million, the Errors & Omissions Insurance shall be secured and maintained for no less than $5,000,000 per occurrence and $5,000,000 aggregate. For projects in excess of $100 million, the limits of the Errors & Omissions Insurance shall be negotiated with the Trustees and agreed upon prior to award in an amount not less than $5,000,000 per occurrence and $5,000,000 aggregate.

It is understood and agreed that Errors and Omissions Insurance may be provided on a “claims-made” rather than on an “occurrence” basis.  If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contracted or the beginning of the Work.
2. Insurance must be maintained, and evidence of insurance must be provided, for at least ten (10) years after completion of the Work.
3. If the coverage is cancelled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the date of the contract or beginning of the Work, Design-Builder must purchase “extended reporting” coverage for a minimum of ten (10) years after completion of the Work.
4. Design-Builder shall provide a copy of the claims reporting requirements for the insurance required under this section to the campus representative.

(2) For Projects Involving Hazardous Materials.

The Design-Builder shall provide additional coverage in amounts not less than the following:

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

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

(b) In addition to the coverage described in 36.06-d (1) (b), Business Automobile Liability Insurance, the Design-Builder shall obtain for hazardous material transporter services:

(i) MCS-90 endorsement

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

$2,000,000 Each Occurrence

$2,000,000 General Aggregate

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

With the Trustees’ approval, the Design-Builder may delegate the responsibility to provide this additional coverage, as described in this Article 36.06-d (2) (b) above, to its hazardous materials subcontractor. When the Design-Builder returns its signed project construction phase agreement to the Trustees, the Design-Builder shall also provide the Trustees with a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. The Design-Builder shall affirm in this letter that the hazardous materials subcontractor’s certificate of insurance shall also adhere to all of the requirements in Articles 36.06-2-b, Verification of Coverage, and 36.06-2-c, Insurance Provisions. Further, this letter will provide that the subcontractor’s certificate of insurance will be provided to the Trustees as soon as the Design-Builder fully executes its subcontract with the hazardous materials subcontractor, or within 30 Days of the Notice to Proceed, whichever is less.

1. Acceptability of Insurers.

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

1. Subcontractor’s Insurance.

Design-Builder shall ensure that its subcontractors are covered by insurance of the types required by this Article, and that the amount of insurance for each subcontractor is appropriate for that subcontractor’s Work. Design-Builder shall not allow any subcontractor to commence Work on its subcontract until the insurance has been obtained. Only the Design-Builder and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials as required in Article 36.06-2-d, Amounts of Insurance, subdivision (2).

1. Miscellaneous.
	1. Any deductible under any policy of insurance required in this Article shall be Design-Builder’s liability.
	2. Acceptance of certificates of insurance by the Trustees shall not limit the Design-Builder’s liability under the Contract.
	3. In the event the Design-Builder does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by the Design-Builder and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Design-Builder.
	4. If the Trustees are damaged by the failure of Design-Builder to provide or maintain the required insurance, the Design-Builder shall pay the Trustees for all such damages.
	5. The Design-Builder’s obligations to obtain and maintain all required insurance are nondelegable duties under this Contract.
	6. The Design-Builder’s liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving Design-Builder negligence shall be limited to five percent of the Contract Amount if the Work damaged is built in accordance with the Contract and applicable building standards.
* Article 36.06-b, Owner Controlled Insurance Program (OCIP); renumber and replace with the following:

 **Article** **36.06-3**, Owner Controlled Insurance Program (OCIP).

 All references to 36.06-b shall read 36.06-3.

 Design-Builder shall disregard the provisions of Article 36.06-3, as the OCIP will not apply to this Contract.

* Article 36.06-c, Trustees’ Course of Construction (“Builders Risk”) Property Insurance; renumber and replace with the following:

 **Article** **36.06-4**, Trustees’ Course of Construction (“Builders Risk”) Property Insurance.

All subsequent provisions of this article are unchanged, except that all references to 36.06-c shall read 36.06-4.

* Article 36.16, Schedule; delete and replace with the following:

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

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

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

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

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

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

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

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

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

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

* Article 36.23, Project Sign, Advertising; delete this article in its entirety.
* Article 36.24, Assignment of Trade Contracts; renumber and replace article number and title with the following:

**Article 36.23**, Assignment of Trade Contracts. All subsequent provisions of this article are unchanged.

* Article 37.01, Interpretation of Contract Requirements; delete and replace with the following:

a. Correlation.

 Design-Builder shall interpret Contract Documents as complementary, requiring a complete Project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the Specifications address quality, types of materials and Contract conditions while the Plans show placement, sizes, and fabrication details of materials.

b. Conflicts.

 In the event of conflict in the Contract Documents, the following priorities shall govern:

(1) Addenda shall govern over all other Contract Documents, and subsequent Addenda shall govern over prior Addenda only to the extent modified.

(2) Supplementary General Conditions shall govern over Contract General Conditions.

(3) Contract General Conditions shall govern over all sections of the Specifications and any notation on the Design-Build Contract Documents Plans. No other section of the Specifications shall modify the Contract General Conditions.

(4) In case of conflict between the Design-Build Contract Documents and the Contract General Conditions, the Contract General Conditions shall govern.

(5) In case of conflict within the Design-Build Contract Documents and Plans:

(a) Material and equipment schedules, when identified as such, shall govern over all other portions of the Design-Build Contract Documents Plans.

(b) Specific notes shall govern over all other notes and all other portions of the Design-Build Contract Document Plans, except the material and equipment schedules described in Article 37.01-b(5)(a) above.

(c) Larger scale drawings shall govern over smaller scale drawings.

(d) Figured or numerical dimensions shall govern over dimensions obtained by scaling.

(6) In the event that provisions of codes, safety orders, Contract Documents, referenced manufacturers’ specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

c. Omissions.

 In the event of omissions in the Construction Documents, the following shall apply:

(1) If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Construction Documents in accordance with such standard. “Minor Detail” shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.

(2) The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Construction Documents.

d. Quality.

 The quality of the Design-Builder’s Work shall be equal to or better than that required in the Design-Build Contract Documents, and if it is found that the Work in the Design-Builder’s proposal is of lesser quality, the Design-Build Contract Documents shall prevail.

* Article 38.01-b, Allowable Costs upon Change Orders, subsection (9) Architect/Engineer’s Extra Services for Change Order Work; delete and replace with the following:

(9) Architect/Engineer’s Extra Services for Change Order Work.

(a) Negotiated Fee.

 The Trustees may elect to negotiate a fixed fee for design extra services on change order Work.

(b) Work Performed by Principals and Employees of the Architect/Engineer.

 Unless as identified in (a) above, for any Work performed by the Architect/Engineer on a change order, the Architect/Engineer shall receive an amount not to exceed the direct payroll costs as proposed in the RFP for services of principals and/or employees for actual time expended to provide the authorized extra services. Reimbursement for principals when providing drafting or other related services normally provided by an employee shall be reimbursed at the maximum rate for services of employees. The Architect/Engineer shall provide an Hourly Labor Rate Worksheet at the onset of the Project, listing rates applicable to this Project within the limits listed above.

(c) Work Performed by Firms or Individuals Not Employees of the Architect/Engineer.

 Unless as identified in (a) above, for Work performed by firms or individuals not employees of the Architect/Engineer but engaged by the Architect/Engineer to assist in providing the authorized extra service, the Architect/Engineer shall receive one and one tenth (1.1) times the amount to be paid by the Architect/Engineer to the consultants for said services. Payment to consultants for services rendered is limited to direct Project costs, as proposed in the RFP, for the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra service.

End of Supplementary General Conditions