Attachment C

Project Special Conditions

Project Special Conditions

Article I. LIQUIDATED DAMAGES

1.1 Subsection 9.11 of the Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Version 2.2, is hereby amended by adding new Subsections as follows:

9.11.1 Owner is entitled to full and beneficial occupancy and use of the completed Work. If Contractor fails to meet Substantial Completion of any portion of the Work in accordance with the approved Work schedule, Owner will sustain actual damages as a result of such failure.

9.11.2 Contractor agrees that:

(1) establishing the precise measure of damages in the event of default by the Contractor may be (i) costly, (ii) time consuming, or (iii) difficult or impossible to calculate;
(2) the liquidated damage assessments in this section represent a good faith effort to quantify the damages that could reasonably be anticipated at the time of execution of the Contract;
(3) the liquidated damages in this section are just and reasonable and are not a penalty;
(4) nothing contained in this section shall be construed as relieving the Contractor from performing all Contract requirements whether or not said requirements are set forth herein; and
(5) All assessments of damages shall be within the sole discretion of the Owner.

9.11.3 **Liquidated Damages Assessment.** Once the Owner has determined that liquidated damages are to be assessed, the Owner shall notify the Contractor of the assessment(s). Failure to notify does not impact the Owner's assessment of damage and is not a condition precedent thereto. The Owner will withhold liquidated damages from payments to the Contractor, or, if no payments have been made, the Owner will make demand of payment of liquidated damages. The Contractor must make payment within 30 days of the Owner's demand. In the event the Contractor fails to pay within the 30 day period, the Owner may make a claim for payment against the performance bond, with or without notice to the Contractor. In the alternative and at Owner's sole discretion, the Owner may deduct liquidated damages from the Contract Sum payable to Contractor as stated in the UGCs, Standard Construction Terms and Conditions, or Project Special Conditions.

9.11.4 **Failure to Assess Liquidated Damages.** The failure of the Owner to assess liquidated damages in any instance where the Owner is entitled to liquidated damages pursuant to the terms of this Contract shall not constitute waiver in any fashion of the Owner's rights to assessment of liquidated damages.

9.11.5 **Severability of Individual Liquidated Damages Clauses.** If any portion of **Section 9.11** is determined to be unenforceable, the other portions of **Section 9.11** will remain in full force and effect.

9.11.6 **Failure to Meet Substantial Completion Date.** The failure of the Contractor to meet the Substantial Completion date for any portion of the Work in accordance with the approved Work schedule under Article 9, Construction Schedules, Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Versions, 2.2, may result in the assessment of liquidated damages in the sum of **$200.00** for each calendar day, or part of a day, after the Substantial Completion Date that the Work remains incomplete. This sum is not construed in any sense as a penalty

9.11.7 **Time of Completion**

9.11.7.1 The date for achieving Substantial Completion of the Project shall be set forth within the Owner's Notice to Proceed.

9.11.7.2 The Construction Phase will be deemed to commence on the date specified in a Notice to Proceed issued by Owner.

9.11.7.3 Contractor will achieve Substantial Completion of the Work and Final Completion of the Work on or before the dates set forth within the Notice to Proceed and the Contract, subject to time extensions granted by Change Order.

9.11.7.4 The times set forth for completion of the Work in the Notice to Proceed with Construction are an essential element of the Contract. Owner may elect, at its option, to stage or "fast-track" portions of the Work. Owner will issue a separate Notice to Proceed or Change Order for each such stage and each such stage will have a separate substantial completion date.

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