TEXAS
Health and Human Services

Attachment K

HHSC Project Special Conditions

Template Updated: September 10, 2020

Attachment K

Project Special Conditions

Article I. INSURANCE

1.1 Subsection 5.2.6.1.6 of the Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Version 2.2, is hereby amended by adding a new Subsection as follows:

5.2.6.1.6.1 **Umbrella Liability Insurance Required Amount**. Construction Manager shall provide Umbrella Liability Insurance coverage in the amount not less than $1,000,000.00.

1.2 Subsection 5.2.6.1 of the Texas Uniform General Conditions for Construction Contracts with HHSC Supplementary General Conditions, Version 2.2, is hereby amended by adding a new Subsection as follows:

5.2.6.1.9 **Pollution Liability Insurance.** Construction Manager shall procure and maintain, or cause to be procured and maintained, Pollution Liability Insurance, with minimum limits of coverage not less than shown below, providing occurrence based coverage for all claims, liabilities, damages, costs, fees, and expenses, including but not limited to claims for bodily injury or death, property damage, environmental or natural resource damage, and any civil fines, fees, civil assessments or civil penalties or punitive, exemplary or multiplied damages assessed by any governmental department, agency, commission or court, arising out of any Pollution Condition(s) (as defined below) that is in any way related to Construction Manager's or Construction Manager personnel's (and any tier of subcontractor or the subcontractor's personnel's) operations, actions or inactions or completed operations associated with any Work performed by Construction Manager or Construction Manager personnel (and any tier of subcontractor or subcontractor personnel). If coverage is written on a Claims Made and Reported Policy form, the policy retroactive date for prior acts coverage shall be no later than the Contract Effective Date. The pollution liability policy shall be continuously maintained for a period of 1 year after completion of the project or termination of the Contract, whichever occurs later; the purchase by Construction Manager or a subcontractor of an extended discovery period or an extended reporting period will not be sufficient to comply with Construction Manager's obligations hereunder. Such insurance shall name the Owner Group as Additional Insureds. The Pollution Liability policy shall provide coverage for "sudden & accidental and gradual occurrences arising from the work performed under this Contract. The Business Automobile Liability policy shall either be endorsed to provide coverage under the ISO CA9948 endorsement (Broadened Pollution Liability Coverage) and Motor Carrier Endorsement (MCS-90), or the Pollution Liability policy shall be endorsed to provide transportation coverage beyond the boundaries of the job site, if Construction Manager or any subcontractor activities involve hauling excavated spoil. The Pollution Liability policy shall also include coverage for: (i) the full scope of the Construction Manager's and subcontractors' operations (on-going and

completed), as described in the Contract; (ii) losses arising from pollutants, including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall; (iii) third party liability for bodily injury, property damage. clean up expenses, and defense costs arising from the Construction Manager's or subcontractors' operations; (iv) diminution of value and natural resources damages; (v) contractual liability; (vi) claims arising from Construction Manager's or any subcontractors' use of any owned or non-owned disposal sites arising out of CMR's or any subcontractors' activities in connection with the Contract; (vii) bodily injury to include physical injury, sickness, disease, death, mental anguish, medical monitoring and emotional distress sustained by any person; and (viii) all costs that are related to or that arise out of or the investigation or adjustment of any claim or in connection with any court, arbitration, mediation, state administrative hearing, or other proceeding of any kind, including attorney's fees, expert witness fees, costs, charges and expenses that arise out of or that are related to a Pollution Condition(s). Coverage under this policy shall include a 7-day minimum occurrence period for emergency response costs. The Pollution Liability insurance policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from:

5.2.6.1.9.1 Insured vs. insured actions (however, an exclusion for claims made between insureds within the same economic family is acceptable).

5.2.6.1.9.2 Impaired property that has not been physically injured.

5.2.6.1.9.3. Materials supplied or handled by the named insured; any exclusionary language pertaining to materials supplied by the insured is subject to the Owner's review and approval.

5.2.6.1.9.4 Property damage to the work performed by a contractor.

5.2.6.1.9.5 Faulty workmanship as it relates to clean up costs.

5.2.6.1.9.6. Punitive, exemplary or multiplied damages.

5.2.6.1.9.7. Work performed by subcontractors.

5.2.6.1.9.8. Contractual liability incurred as a result of an injury to an employee of the insured.

"Pollution Condition(s)" means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, sewage, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, mold, silt, sedimentation, low level radioactive material and waste materials into or upon land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.

Pollution Liability Insurance $1,000,000.00 Each Claim / $1,000,000.00 Aggregate

Article II. LIQUIDATED DAMAGES

2.1 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 Construction Manager 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 Construction Manager agrees that:

(1) establishing the precise measure of damages in the event of default by the Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager, or, if no payments have been made, the Owner will make demand of payment of liquidated damages. The Construction Manager 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 Construction Manager. In the alternative and at Owner's sole discretion, the Owner may deduct liquidated damages from the Contract Sum payable to Construction Manager 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 Construction Manager 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 **$350.00** 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 Construction Manager 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.

(The Remainder of this Page is Intentionally Left Blank)