



JOB ORDER CONTRACTING **REQUEST FOR PROPOSALS**

- ISSUE DATE:** December 1, 2016
- DUE DATE:** **11:00 a.m. on December 29, 2016** (“Submission Deadline”)
- INSTRUCTIONS:** Proposers must submit 5 paper copies of their proposal and 1 electronic copy of their proposal on a flash drive in a sealed package in person, via mail or courier. Proposals submitted by email or fax will be rejected.
- SUBMIT TO:** Houston First Corporation, Attn: General Counsel, 701 Avenida de las Americas, Suite 200, Houston, TX 77010. Please write the Proposer’s name, phone number and email address on the outside of the sealed package.
- CONTACT INFO:** All inquiries and correspondence concerning this RFP must be sent by email to bids@houstonfirst.com no later than **11:00 a.m. on December 19, 2016**. All material questions received will be answered collectively, in the form of a Letter of Clarification, and made available online at www.houstonfirst.com/do-business.

OVERVIEW. Houston First Corporation (“HFC”) is pleased to issue this Request for Proposals (“RFP”) for Job Order Contracting Services. Pursuant to §2269.401 et. seq. of the Texas Government Code, HFC requests responsive proposals from highly-qualified contractors with experience utilizing the job order method. HFC anticipates that its job-order projects will include construction management and construction work for the minor construction, maintenance, repair, renovation, remediation, and alteration of HFC facilities. Contractor shall provide the labor, goods, materials, equipment, transportation, insurance, bonds, management, reports, incidentals, and quality controls necessary to complete each project. Individual projects require a completed Work Order and projects will be requested on an as-needed basis, as determined by HFC in its sole discretion.

BACKGROUND. HFC is a local government corporation created by the City of Houston to facilitate economic growth through the promotion of the greater Houston area and the business of conventions, meetings, tourism, and the arts. HFC is responsible for management and operation of more than ten city-owned buildings and plazas, including the George R. Brown Convention Center (“GRB”), Jones Hall, Wortham Theater, Miller Outdoor Theatre, Talento Bilingue de Houston, and outdoor facilities such as Jones Plaza, Sesquicentennial Park, Ray C. Fish Plaza, Root Memorial Square, and several other landscaped properties and parking facilities.

PRE-PROPOSAL CONFERENCE. A pre-proposal conference will be held for the benefit of all prospective Proposers at **10:00 a.m. on December 13, 2016** in **Conference Room 215** at the George R. Brown Convention Center, located at 1001 Avenida de las Americas, Houston, Texas 77010. Although attendance at the conference is not mandatory, all prospective Proposers are urged to be present.

ELIGIBILITY AND RESPONSE FORMAT. Although HFC prefers substance over form, to be considered responsive, Proposers should review the following criteria/information requests and respond to the best of their ability (there is no page limit):

- a. **Transmittal Letter:** Include a brief cover letter signed by a person authorized to make representations on behalf of the Proposer, including his or her direct phone number and email address. Proposers **must** make a specific, unambiguous statement accepting and agreeing to comply with the terms and conditions of the Job Order Contracting Agreements Proposal or identify any objections in or

immediately following the letter. Be advised that proposals including material exceptions will be disfavored strongly and may be rejected as nonresponsive.

- b. **Pricing Schedule:** Complete the Pricing Schedule form provided at the end of the RFP. Do not alter the official form. Submission or attachment of company quotation forms or other documents containing alternative or conflicting terms is not acceptable. Please submit the completed Pricing Schedule immediately following the Transmittal Letter.
- c. **Experience & Qualifications:** Describe Proposer's history, strengths and experience in meeting the needs of its clients. Provide Proposer's current Worker's Compensation Modifier and list the number of OSHA citations Proposer has received in the last three years. List three references for projects completed under a job order contract; include the name, phone number and email address for the project manager/contract administrator for each such reference.
- d. **Key Personnel:** Identify the proposed Project Manager and any essential personnel who would be assigned to provide services for HFC; include a brief summary of their qualifications.
- e. **Diversity:** Note any diversity subcontractors Proposer reasonably expects would be used to perform subcontracting services and comment on how the Proposer intends to make good faith efforts to ensure robust diversity participation.
- f. **Overall Responsiveness:** The conciseness and clarity of every Proposal will be evaluated.

MANNER OF SELECTION. HFC will receive and evaluate each Proposal received based on the following criteria, and may select one or more Proposals found to be most advantageous to HFC and offering the best overall value:

Transmittal Letter	10 points
Pricing	25 points
Experience and Qualifications	25 points
Key Personnel	20 points
Diversity commitment	10 points
Overall Responsiveness	10 points

Proposals will be opened and the names of each Proposer read aloud at 2:00 p.m. on the date of the Submission Deadline in the second-floor lobby of Partnership Tower, located at 701 Avenida de las Americas, Suite 200, Houston, TX 77010. Disclosure of other proposal content will be restricted prior to evaluation and award.

HFC reserves the right to select or reject all or part of any proposal, waive minor technicalities, and select proposals in the manner and to the extent that they serve the best interests of HFC. This RFP does not commit HFC to award a contract, issue a purchase order, or to pay any costs incurred in the preparation of a proposal in response to this RFP.

HFC reserves the right to schedule oral interviews, request clarifications/additional information, and solicit best-and-final offers from one or more Proposers prior to making a final selection.

FORM OF AGREEMENT. By submitting a proposal, proposer agrees, upon notice of selection by HFC, to enter into the Job Order Construction Agreement set forth below. If the Proposer takes exception to any portion of such agreement, then such Contractor must submit a list of such exceptions as part of its proposal; provided, however, that proposals including substantive objections, as determined by HFC, shall be rejected without further review or consideration. The term of the agreement is two years with three one-year renewal years at the option of HFC. Works orders are limited to \$450,000; the aggregate amount of work orders issued in connection with this RFP will not exceed five million dollars, and is subject to budgetary review and approval by the HFC board of directors on an annual basis. No work orders will be issued prior to February 1, 2017.

DIVERSITY. Proposers should note in their Proposal if they are diversity participants certified by an approved certification agencies defined in the HFC Diversity Program (see www.houstonfirst.com/do-business). The Proposer selected shall be required to use good faith efforts to award **33%** of the value of work-order pre-priced items to diverse suppliers of goods and services in accordance with the HFC Diversity Program. HFC reserves the right to include a specific goal with each work order, as determined by HFC on a case-by-case basis, not to exceed the stated goal of 33%, except as agreed otherwise by the Proposer selected.

LETTERS OF CLARIFICATION. Any revisions to this RFP, and any material questions timely received, will be confirmed in a letter posted online prior to the Submission Deadline at www.houstonfirst.com/do-business ("Letter of Clarification"). When issued by HFC, Letters of Clarification become part of this RFP automatically and supersede any previous specifications or provisions in conflict therewith. By submitting a Proposal, Proposers shall be deemed to have received all Letters of Clarification and to have incorporated them into their Proposal. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein. It is the responsibility of Proposers to monitor the foregoing link and ensure they receive any such Letters of Clarification.

RESTRICTIONS ON COMMUNICATIONS. From the date issued until the Submission Deadline, Proposers are directed not to communicate with HFC officers, directors or employees regarding any matter relating to this Proposal, other than through bids@houstonfirst.com and HFC representatives during the pre-submittal conference. HFC reserves the right to reject any Proposal due to violation of this provision.

CONFLICTS OF INTEREST. Proposers are advised that they have an obligation to disclose any affiliation or business relationship that might cause a conflict of interest with HFC. Those who need the disclosure form may find it online at: <http://www.ethics.state.tx.us/forms/CIQ.pdf>. By submitting a proposal, Proposers represent that they are in compliance with the requirements of Chapter 176 of the Tex. Local Gov. Code.

COLLUSION. Proposers represent that the contents of their proposals have not been communicated, directly or indirectly, to any potential Proposer and that their submissions are made in compliance with federal and state antitrust laws without previous understanding, agreement or connection with any competitor or other potential Proposer; this restriction is not, however, intended to preclude preliminary negotiations with diversity subcontractors.

PUBLIC INFORMATION. As HFC is subject to the Texas Public Information Act ("TPIA"), all information submitted by Proposers is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such clearly and unambiguously. Proposers will be advised of any request for public information that implicates their materials and will have the opportunity to raise objections to disclosure with the Texas Attorney General at their cost and expense.

RFP PACKETS. A complete copy of this RFP, including all forms, as well as the Agreement and its exhibits, is available on-line at www.houstonfirst.com/do-business

WITHDRAWAL; ERROR. To withdraw a Proposal due to an error or any other reason, a written request from the Proposer must be received at bids@houstonfirst.com prior to the Submission Deadline.

JOB ORDER CONSTRUCTION AGREEMENT

This Job Order Construction Agreement (“Agreement”) is made by and between Houston First Corporation (“HFC”), a Texas local government corporation whose address is 701 Avenida de las Americas, Houston, Texas 77010 and **[TBD]** (“Contractor”), whose address is **[TBD]**. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

1.0 Work Orders

1.1 Contractor agrees to and shall complete each Work Order in strict accordance with the terms, conditions and restrictions of this Agreement. Contractor shall furnish all labor, materials, tools, supplies, equipment, transportation, insurance, bonds, subcontracts, supervision, management, reports, incidentals, and quality control, and shall perform all operations necessary and required for construction management and construction work required to fulfill each Work Order.

1.2 Each Work Order shall constitute an individual project (“Project”). HFC will issue Work Orders on an as-needed basis as may be deemed necessary in its sole discretion. Work will be done in a wide variety of trades including, but not limited to, electrical, plumbing, carpentry, painting, masonry, framing, roofing, drywall finishing, flooring, paving, excavation, demolition, insulating, sheet metal work, steam fitting, welding, HVAC work, door hanging, glazing, hardware installation, and other, similar services. The specific requirements for each Project will be identified in the Work Order.

1.3 Work required to complete a Project will occur at one or more HFC facilities, including but not limited to the George R. Brown Convention Center, Partnership Tower, Jones Hall, Wortham Theater Center, Miller Outdoor Theatre, Talento Bilingue de Houston, Jones Plaza, Sesquicentennial Park, Ray C. Fish Plaza, Root Memorial Square, and assorted parking facilities and small landscaped properties and facilities (each a “Facility” and collectively “Facilities”).

1.5 Each Work Orders will include, at a minimum, the following information: Contractor’s name, address, and telephone number; the date of issuance; the period of performance and schedule of work requirements/restrictions; the place of performance; a description of the Work to be performed, including any specifications and/or drawings; pricing and payment terms; and the identity of Contractor’s key personnel.

1.6 Upon issuance of a Work Order, Contractor shall acknowledge that it has taken all steps necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work, its cost, or performance time, including but not limited to: Conditions bearing upon transportation, disposal, handling, and storage of materials; availability of labor, water, electric power, and roads; uncertainties of weather; conformation and conditions of the ground; the character of equipment and facilities need preliminary to and during work performance; location and/or relocation of existing utility lines, poles, and meters including the necessity for timely coordination with all involved utility owners; and requirements for obtaining City, County, State, or Federal permits and licenses necessitated by project right-of-way alignments and boundaries.

1.7 Projects may require architectural and/or engineering services that constitute the practice of architecture or engineering under Texas law. Such services are not included within the scope of this Agreement and will be provided by HFC or its designee.

2.0 Term and Time for Completion

2.1 The term of this Agreement shall begin on **February 1, 2017** and end on **January 31, 2019** (“Term”). HFC may, in its sole discretion, renew the Term for up to three additional one-year terms. HFC may exercise such option by notifying Contractor in writing prior to the expiration of the initial Term or then-current renewal Term.

2.2 An executed Work Order constitutes a notice to proceed to Contractor to begin the Work under such Work Order and Contractor shall complete the Work no later than the time described in the Work Order, (“Contract Time”) subject to adjustments, if any, in accordance with the Contract Terms & Conditions. Contractor acknowledges that time is of the essence of this Agreement.

3.0 Payment

3.1 HFC agrees to pay Contractor such fees as provided in Exhibit “1” this Agreement. For Work Orders not completed within 45 days, Contractor may request a progress payment from HFC based on the line items completed and the extension of their unit prices multiplied by the estimated quantities utilized. HFC may approve, deny, or adjust such request in its sole discretion. For Work Orders completed within 45 days, Contractor shall be paid within 30 days after receipt of an invoice and issuance of a Certificate of Final Completion. In no event shall HFC pay the total Work Order Contract Sum to Contractor prior to final completion of the Project and approval by HFC. There is no guaranteed minimum

amount of work to be awarded during the term of the Agreement. Work Orders will not exceed \$450,000.00 and will be a minimum of \$1,000.00, unless a lesser amount is accepted by Contractor.

4.0 Work Conditions and Restrictions

4.1 All work performed by Contractor shall be in accordance with the latest City of Houston Building and Electrical Codes.

4.2 Electricians, plumbers, and HVAC personnel employed by Contractor must be licensed by the Texas Department of Licensing and Regulation.

4.3 Contractor shall on a daily basis or as requested by HFC, clean the work site and any adjacent areas affected by the Project. Contractor shall store materials only in storage areas designated by HFC in its reasonable discretion.

5.0 Prevailing Wage Requirement

5.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.

5.2 Prevailing wage rates applicable to the Work may be one or a combination of the following wage rates identified at www.houstonfirst.com/Do-Business, which is incorporated herein for all purposes by this reference.

5.3 Contractor warrants and represents that it has carefully examined the classifications for each craft or type of worker needed to execute the work and determined that such classifications include all necessary categories to perform the work. If Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform work under the Contract, it must submit such request to HFC to use an additional labor classification not listed in the Rates and specify the proposed new classification. If HFC decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered. Such determination will be made by HFC in compliance with applicable law.

5.4 Contractor shall submit directly to the HFC project manager certified copies of payrolls showing classifications and wages paid by Contractor, subcontractors, and suppliers for each employee under the Contract, for any day included in the Contract.

6.0 Diversity Commitment

6.1 Contractor shall make good faith efforts to award subcontracts equal to **33%** of the value of work-order pre-priced items to certified, diverse suppliers of goods and services in accordance with the Diversity Program established by HFC, which is incorporated herein by this reference. HFC reserves the right to include a specific goal in some or all Work Orders, as determined by HFC on a case-by-case basis, not to exceed the stated goal of 33%, except as agreed otherwise by Contractor.

6.2 Contractor shall, on a monthly basis or as directed by HFC, disclose the manner and extent it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC.

7.0 Terms and Conditions

7.1 The Terms & Conditions are attached hereto as Exhibit "2" and made a part hereof for all purposes.

8.0 Authority to Sign

8.1 The signer of this Agreement hereby represents and warrants that he or she has full authority to execute this Agreement and bind Contractor.

[signature page to follow in final agreement]

EXHIBIT "1" FEES

1.0 Unit Price Book (UPB) Pre-priced Items

"Unit Price Book" or "UPB" means the "Total Bare Costs" column in the latest quarterly edition of the R.S. MEANS Facilities Construction Cost Data, with certain exceptions that are outlined below. The Houston, Texas City Cost Index "total weighted average" as of the date of each Work Order will be applied to the R.S. MEANS prices.

1.1 Payment for work performed during standard working hours shall be based on the Coefficient factor of **[TBD]** multiplied times the sum of applicable unit prices in the UPB.

1.2 Payment for work performed during non-standard working hours shall be based on the Coefficient factor of **[TBD]** multiplied times the sum of applicable unit prices in the UPB.

1.3 Standard hours of work will be from 7:00AM to 7:00PM, CST, Monday through Friday, unless alternate standard hours are agreed to for an individual Work Order. Hours worked before 7:00AM and after 7:00PM, Monday through Friday, and all hours worked on Saturdays, Sundays and City holidays will be considered non-standard hours. Contractor will be required to notify HFC in writing, a minimum of 24 hours in advance when planning to work non-standard work hours, which must be approved in advance by HFC. Any work necessary during non-standard hours to maintain project schedules, due to Contractor delay, shall be performed without additional cost to HFC. Other Work to be performed during non-standard hours that is directed by HFC shall be at the Coefficient for non-standard working hours.

1.4 The Coefficient factor shall be "net" (e.g. 1.0) or a percentage decrease from (e.g. 9.5) or increase to (e.g. 1.2) the unit prices in the UPB.

1.5 The actual pricing will be based on the unit rates contained in the UPB, including applicable Coefficient factor set forth above and the quantities agreed to by Contractor and HFC.

2.0 Non-Prepriced Items

2.1 Payment for work performed during standard working hours shall be based on the Coefficient factor of 1. multiplied times the sum of the cost of non-pre-priced items not contained in the UPB.

2.2 Payment for work performed during non-standard working hours shall be based on the Coefficient factor of 1, multiplied times the sum of the cost of non-pre-priced items not contained in the UPB.

2.3 For work requiring an expenditure of \$50,000 or less where pricing cannot be determined by the UPB, Contractor shall furnish, unless otherwise directed, a breakdown in sufficient detail to permit an analysis of all material, labor, equipment, and subcontract costs. Any amount claimed for Subcontractors shall require price quotations from at least three sources and be supported by a similar cost breakdown, which shall show Subcontractors by prime, and others. All costs claimed are subject to negotiation.

3.0 Coefficient Factor

3.1 Contractor's price Coefficient factor must include all costs including, but not limited to, the following: (1) Overhead; (2) Profit (prime and subcontractors); (3) Insurance; (4) Compliance with all laws including but not limited to environmental laws, protection and safety; (5) Tax laws; (6) Protection or moving of City or HFC property; (7) Administrative Work; (8) Submittals; (9) Price quotations; (10) Clean-Up; (11) All waste and excess materials (not demolition waste) (12) Permits, licenses, badges and fees (not building permits); (13) Mobilization and close-out for total contract and each Work Order; (14) Signs and barriers; (15) Project management and supervision; (16) Quality Control; (17) Office supplies, equipment, hardware, software and staffing; (18) Costs of Performance, Payment and Maintenance Bonds; (19) Interest associated with funding of equipment and payroll; (20) Depreciation of mobile offices, if applicable; (21) Employee wages, payroll taxes, insurance and fringe benefits; (22) Risk of lower than expected contract dollar volume; (23) Risk of high inflation costs; (24) Risk of poor subcontractor performance and re-performance; (25) Other risks of doing business; (26) Business taxes, contributions, memberships, corporate headquarters support (legal, financial, etc.); (27) The cost of final clean-up and removal and hauling of trash, debris and rubbish; (28) Any other Subcontractor costs; (29) All other incidental costs. HFC will not pay nor accept line items for final clean-up.

3.2 Where prices are listed as minimum, average, and maximum for the same work the average prices shall be used. Where prices are listed for minimum and maximum for the same work, items whose daily output indicates one crew day or more of work shall use minimum prices. Items whose daily output indicates less than one crew day shall use maximum prices.

3.3 All prices in the UPB are for completed-in-place construction.

3.4 Costs for temporary construction controls such as form work, shoring, scaffolding, bracing, etc are incidental costs which are included in the Coefficient factor and will not be paid separately unless explicitly excluded in the UPB line item.

3.5 Costs for expendable supplies, lubricants, wear and tear on tools are incidental to the UPB cost of construction and will not be paid separately.

3.6 Costs for survey and layout, other than legal property boundaries, are included in the Coefficient and will not be paid separately.

3.7 Costs for preparation of reports, correspondence and documentation required by law or this Agreement shall be included in the Coefficient factor. The Coefficient shall also include costs described as costs to provide submittals, interface with HFC, and coordination with occupants.

3.8 Except for cabling related Work, line item descriptions which list material or equipment to be brand name or manufacturer "Type" will be considered as "Or Equal," but will contain all the essential salient characteristics of the brand name or manufacturer's material or equipment.

3.9 UPB Exclusions- The following R.S. MEANS divisions are excluded from the UPB:

a. Division 01100, 01200, 01300 and 01400: Does not apply because these costs are to be included in Contractor's Coefficient with one exception: Overtime of a maximum of 10% of the applicable project labor costs will be allowed for projects with a HFC Requested Overtime Requirement.

b. Division 01400, "Administrative Requirements": Does not apply because these costs are to be included in Contractor's Coefficient with one exception. Building permit costs will be treated as a Non-Prepriced Item per Section 2 above and added to each individual Work Order when appropriate. Building permit costs will be paid at actual cost plus profit.

c. Division 01590, —Equipment Rentall: General purpose vehicles and tools of the trade are to be included in Contractor's Coefficient. Other equipment costs are already included in the line-item prices. Exceptions will be treated as Non-Prepriced Items per Section 2 above of this document. For purposes of this Agreement, all costs of equipment, which routinely are regularly used as part of carrying out any aspect of a trade or business is considered to be included in Contractor's Coefficient and is not treated as an excluded item.

d. Division 01740, "Cleaning": Does not apply because these costs are to be included in Contractor's Coefficient. Special cleaning requirements will either be priced or treated as Non-Prepriced Items.

No contingency is to be included because R.S. MEANS Cost Data and Contractor's Coefficient factors represent the actual cost for all work performed.

EXHIBIT "2"
TERMS & CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

§1.1.1 The Contract Documents form the contract. The term "Contract Documents" consists of the Agreement, each Work Order (including any Specifications and Drawings), Terms & Conditions, United Price Book, RS. Means Facilities Construction Costs Data, latest quarterly edition in effect at the time a Work Order is issued, which uses the CSI numbering structure and pricing customized and localized for the Houston area, and any Modifications issued after execution of the Agreement or a specific Work Order. The term "Modification" is (1) a written amendment to the Contract Documents signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work.

§1.1.2 The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between HFC and a Subcontractor or a Sub-subcontractor, or between any persons or entities other than HFC and Contractor. In the event of a conflict between the Agreement, Work Order, and these Terms & Conditions, the following order shall control: (1) The Agreement; (2) Work Order; (3) the Terms & Conditions.

§1.1.3 The term "Work" means the construction and services required by a Work Order, whether completed or partially completed, and includes all other labor, materials, equipment, transportation, mobilization, insurance, bonds, subcontracts, supervision, management, reports, incidentals, quality control, and all items listed in Section 3.1 of Exhibit "1" provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of a Project.

§1.1.4 The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by HFC and by separate contractors.

§1.1.5 The Drawings are the graphic and pictorial portions of a specific Work Order showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Figure dimensions on Drawings shall govern over scale dimensions and detailed Drawings shall govern over general Drawings.

§1.1.6 The Specifications are that portion of a specific Work Order consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Specifications are written in an imperative mood and streamlined form and are directed to Contractor, unless noted otherwise. When written in this form, words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

§1.1.7 Instruments of Service are representations, in any medium, of the tangible and intangible creative work performed by HFC and/or its designated professional services provider. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§1.1.8 A Work Order means a written document which defines the work to be accomplished in accordance with the Contract Documents, including any Specifications and Drawings related to a specific Project. Upon written approval by HFC, the Work Order serves as a notice to proceed.

§1.1.9 Product means the materials, equipment or systems incorporated into the Work.

§1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§1.3 [Intentionally omitted.]

§1.4 INTERPRETATION. In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an”, but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§1.5 OWNERSHIP AND USE OF DRAWINGS AND SPECIFICATIONS

§1.5.1 Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim any copyright or other proprietary interest in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the reserved rights of the respective owner(s).

§1.5.2 Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of HFC.

ARTICLE 2 HFC

§2.1 GENERAL

No employee of HFC has the authority to authorize Contractor to perform an act or work contrary to the Contract Documents, except as may otherwise be provided in the Agreement.

§2.2 INFORMATION AND SERVICES REQUIRED OF HFC

§2.2.1 Except for permits and fees that are the responsibility of Contractor under the Contract Documents, including those required under Section 3.7.1, HFC shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§2.2.2 When necessary for the performance of the Work, HFC will endeavor to furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§2.2.3 HFC shall furnish information or services required of HFC by the Contract Documents with reasonable promptness. HFC shall also furnish any other information or services under HFC’s control and relevant to Contractor’s performance of the Work with reasonable promptness after receiving Contractor’s written request for such information or services.

§2.3 HFC’S RIGHT TO STOP THE WORK. If Contractor fails to carry out the Work in accordance with the requirements of the Contract Documents or fails to correct the Work as required by Section 12.2 in accordance with the Contract Documents, HFC may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of HFC to stop the Work shall not give rise to a duty on the part of HFC to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.1 .3.

§2.4 HFC’S RIGHT TO CARRY OUT THE WORK. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from HFC to correct such default or neglect, as determined by HFC, HFC may, without prejudice to other remedies HFC may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the reasonable cost of correcting such deficiencies, including HFC’s expenses and compensation for any additional services made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to HFC.

ARTICLE 3 CONTRACTOR

§3.1 GENERAL

§3.1.1 Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. Contractor shall be lawfully licensed, as required in the jurisdiction where each Project is located. Contractor shall designate a representative who shall have express authority to bind Contractor with respect to all matters under the Contract Documents. The term “Contractor” means Contractor or Contractor’s authorized representative.

§3.1.2 Contractor shall perform all Work in accordance with the Contract Documents.

§3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§3.2.1 Execution of a Work Order by Contractor is a representation that Contractor has visited the Project site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§3.2.2 Because the Contract Documents are complementary, Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as any information furnished by HFC pursuant to Section 2.2.2, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Contractor shall promptly report to HFC any errors, inconsistencies or omissions discovered by or made known to Contractor in such form as HFC may require.

§3.2.3 Contractor shall promptly report to HFC any nonconformity discovered in the Contract Documents with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities as a request for information in such form as HFC may require.

§3.2.4 If Contractor believes that additional cost or time is involved because of clarifications or instructions issues in response to Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, Contractor shall make Claims as provided in Article 15. If Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, then Contractor shall pay such costs and damages to HFC as would have been avoided if Contractor had performed such obligations.

§3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§3.3.1 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

§3.3.2 Contractor shall be liable to HFC for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, Contractor or any of its Subcontractors. Contractor shall be solely responsible for conforming to the standards declared by OSHA, including but not limited to compliance with federal and state safety standards/directives for setting-up and utilizing platforms, lifts, ladders, scaffolding, safety lines/belts, and other personal protective equipment.

§3.3.3 Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§3.4 LABOR AND MATERIALS

§3.4.1 Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§3.4.2 Except in the case of minor changes in the Work authorized in accordance with Sections 3.12.8 or 7.4, Contractor may make substitutions only with the consent of HFC, after evaluation by HFC and in accordance with a Change Order or Construction Change Directive.

§3.4.3 Contractor shall enforce strict discipline and good order among Contractor's employees, Subcontractors, and other persons carrying out the Work. Contractor shall not permit employment or use of unfit persons or persons not properly skilled in tasks assigned to them.

§3.5 WARRANTY

§3.5.1 Contractor warrants that it shall perform the Work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all work using trained and skilled persons having substantial experience performing the work required under the Contract Documents, as more fully described herein.

§3.5.2 With respect to any materials and equipment furnished under the Contract Documents, Contractor warrants: (a) that all items are free of defects in title, design, material, and workmanship, (b) that each item meets or exceeds the requirements of the Contract Documents, (c) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and will not cause any manufacturer's warranties to lapse or become invalid, and (d) that no item or its use infringes any patent, copyright, or proprietary right.

§3.5.3 Work, materials, or equipment not conforming to the requirements of this Section shall be considered defective. If required by HFC, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In the event of a defect in a specified product, either during construction or warranty period, Contractor shall take appropriate measures with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay.

§3.5.4 Warranty periods shall commence the date on which HFC approves final completion of the Project. Contractor shall transfer to HFC any manufacturer's warranties which it has for materials used in connection with this Project.

§3.5.5 Contractor warrants that title to all work covered by Contractor's invoices will pass to HFC upon incorporation in the Work or upon Contractor's receipt of payment, whichever occurs first. Such title shall be free of all liens, claims, security interests or other interests ("Encumbrances") and if not, upon written demand from HFC, Contractor shall immediately take legal action necessary to remove Encumbrances.

§3.6 TAXES

§3.6.1 Contractor shall pay before delinquent all sales, consumer, use and other taxes for the Work provided by Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§3.6.2 HFC is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to HFC must not contain assessments of any of these taxes. HFC will furnish HFC's exemption certificate and federal tax identification number to Contractor if requested.

§3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§3.7.1 Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all construction permits, licenses and inspections necessary for proper execution and completion of the Work that are customarily secured after execution of the Agreement and legally required at the time bids are received or negotiations concluded. Such costs must be included in the Coefficient set out in Exhibit "2" of the Agreement.

§3.7.2 Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§3.7.3 If Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, then Contractor shall assume be liable for such Work and shall bear the costs attributable to correction.

§3.7.4 Concealed or Unknown Conditions. If Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, Contractor shall immediately provide written notice to HFC before conditions are disturbed and in no event later than 24 hours after first observance of the conditions. HFC will engage an Architect/Engineer to promptly investigate such conditions and, if Architect/Engineer determines that they differ materially and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If Architect/Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms are justified, Architect/Engineer shall promptly notify HFC and Contractor in writing, stating the reasons.

§3.7.5 If, in the course of the Work, Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites, cultural artifacts, relics, or objects of antiquity not indicated in the Contract Documents, Contractor shall immediately suspend any operations that would affect them and shall notify HFC. Upon receipt of such notice, HFC shall promptly take any action necessary to obtain governmental authorization required to resume the operations.

Contractor shall continue to suspend such operations until otherwise instructed by HFC but shall continue with all other operations that do not affect those remains or features.

§3.8 [Intentionally Deleted.]

§3.9 PERSONNEL OF CONTRACTOR

§3.9.1 Contractor shall provide sufficient, fully qualified personnel to meet the performance requirements set forth in the Agreement. Contractor shall replace any of its personnel or Subcontractors whose work product is deemed unsatisfactory by HFC.

§3.9.2 Contractor acknowledges that HFC is materially relying upon Contractor's promises to use qualified persons in the performance of the Work.

§3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§3.10.1 Contractor, promptly after execution of a Work Order, shall prepare and submit for HFC's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits under the Work Order, shall be revised at appropriate intervals as required by the conditions of the Work and Project, and shall provide for expeditious and practicable execution of the Work.

§3.10.2 For each Work Order, Contractor shall prepare a submittal schedule and thereafter as necessary to maintain a current submittal schedule. The submittal schedule shall allow HFC reasonable time to review submittals.

§3.10.3 Contractor shall perform the Work for a Work Order in general accordance with the most recent schedules submitted to HFC for such Work Order.

§3.11 DOCUMENTS AND SAMPLES AT THE SITE. Contractor shall maintain at the Project site one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to HFC and shall be delivered to HFC upon completion of the Work as a record of the Work as constructed.

§3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

§3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by Architect/Engineer is subject to the limitations of Section 4.2.7. Informational submittals upon which Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by Architect/Engineer without action.

§3.12.5 Contractor shall review for compliance with the Contract Documents, approve and submit to Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by Architect/Engineer or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of HFC or of separate contractors.

§3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents to HFC and Architect/Engineer that Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§3.12.7 Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by Architect/Engineer.

§3.12.8 The Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Architect's/Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed Architect/Engineer in writing of such deviation at the time of submittal and (1) Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Architect's/Engineer's approval thereof.

§3.12.9 Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Architect/Engineer on previous submittals. In the absence of such written notice, Architect's/Engineer's approval of a resubmission shall not apply to such revisions.

§3.12.10 Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, HFC and Architect/Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Architect/Engineer. HFC and Architect/Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided HFC and Architect/Engineer have specified to Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, Architect/Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§3.13 USE OF SITE. Contractor shall confine operations at the site to areas designated by HFC and as permitted under applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§3.14 CUTTING AND PATCHING

§3.14.1 Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§3.14.2 Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of HFC or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by HFC or a separate contractor except with written consent of HFC and of such separate contractor; such consent shall not be unreasonably withheld. Contractor shall not unreasonably withhold from HFC or a separate contractor Contractor's consent to cutting or otherwise altering the Work.

§3.15 CLEANING UP

§3.15.1 Contractor shall keep each Project site and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract Documents. At completion of the Work, Contractor shall remove waste materials, rubbish, Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§3.15.2 If Contractor fails to clean up as provided in the Contract Documents, HFC may do so and HFC shall be entitled to reimbursement from Contractor.

§3.16 ACCESS TO WORK. Contractor shall provide HFC and Architect/Engineer access to the Work in preparation and progress wherever located.

§3.17 ROYALTIES, PATENTS AND COPYRIGHTS. Contractor shall pay all royalties and license fees arising out of the Construction Documents. Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold HFC harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by HFC or Architect/Engineer. However, if Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to Architect/Engineer.

§3.18 INDEMNIFICATION

§3.18.1 **CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HFC AND THE CITY OF HOUSTON, THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY "INDEMNITEES") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, BY REASON OF COPYRIGHT INFRINGEMENT) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE CONTRACT DOCUMENTS INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY: (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED SUBSECTIONS 1 THROUGH 3, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; (2) 2. INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND (3) INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD INDEMNITEES HARMLESS FOR THE DURATION OF THE PROJECT AND FOR FOUR YEARS THEREAFTER. CONTRACTOR SHALL NOT INDEMNIFY THE INDEMNITEES FOR THEIR SOLE NEGLIGENCE.**

§3.18.2 **CONTRACTOR AND HFC ACKNOWLEDGE AND AGREE THAT THE WORK AND PROJECT CONSTITUTE AND SHALL BE CONSIDERED TO BE A PUBLIC WORKS PROJECT OF A MUNICIPALITY FOR ALL PURPOSES, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE.**

§3.19 NOTICE OF INDEMNIFICATION CLAIMS

§3.19.1 If HFC or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other Party within 10 days. The notice must include the following: (1) a description of the indemnification event in reasonable detail, (2) the basis on which indemnification may be due, and (3) the anticipated amount of the indemnified loss.

§3.19.2 This notice does not prevent HFC from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If HFC does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

§3.19.3 Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably qualified. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise HFC as to whether or not it will defend the claim. If Contractor does not assume the defense, HFC shall assume and control the defense, and all defense expenses constitute an indemnified loss.

§3.19.4 If Contractor elects to defend the claim, HFC may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Contractor may settle the claim without the consent or agreement of HFC, unless it: (1) would result in injunctive relief or other equitable remedies or otherwise require HFC to comply with restrictions or limitations that adversely affect HFC; (2) would require HFC to pay amounts that Contractor does not fund in full; or (3) would not result in HFC's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

ARTICLE 4 ARCHITECT/ENGINEER

§4.1 GENERAL

§4.1.1 Architect/Engineer is the person or entity identified as either Architect or Engineer in a particular Work Order and is referred to throughout the Contract Documents as if singular in number. If HFC has not engaged an Architect/Engineer for

Work related to a specific Work Order, then references to Architect/Engineer will be read to mean HFC, except to the extent such interpretation would constitute the unauthorized practice of a professional service.

§4.1.2 Duties, responsibilities and limitations of authority of Architect/Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of HFC, Contractor and Architect/Engineer.

§4.1.3 If the employment of Architect/Engineer is terminated, HFC shall employ a successor Architect/Engineer whose status under the Contract Documents shall be that of Architect/Engineer.

§4.2 ADMINISTRATION OF THE CONTRACT

§4.2.1 Architect/Engineer, is identified, will provide administration of the Contract Documents and will be HFC's representative during construction until the date HFC issues the final Certificate for Payment. Architect/Engineer will have authority to act on behalf of HFC only to the extent provided in the Contract Documents.

§4.2.2 Architect/Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with HFC, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

§4.2.3 On the basis of the site visits, Architect/Engineer will keep HFC reasonably informed about the progress and quality of the portion of the Work completed, and report to HFC (1) deviations from the Contract Documents and from the most recent construction schedule submitted by Contractor, and (2) defects and deficiencies observed in the Work.

§4.2.4 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, HFC and Contractor shall endeavor to communicate with each other through Architect/Engineer about matters arising out of or relating to the Contract Documents. Communications by and with Architect's/Engineer's consultants shall be through Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through Contractor. Communications by and with separate contractors shall be through HFC.

§4.2.5 Based on HFC's evaluations of Contractor's Applications for Payment, Architect/Engineer may review and certify the amounts due Contractor and will issue Certificates for Payment in such amounts.

§4.2.6 Architect/Engineer has authority to reject Work that does not conform to the Contract Documents. Whenever Architect/Engineer considers it necessary or advisable, Architect/Engineer will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Architect/Engineer to Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§4.2.7 Architect/Engineer will review and approve, or take other appropriate action upon, Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Architect's/Engineer's action will be taken in accordance with the submittal schedule approved by Architect/Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in Architect's/Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. Architect's/Engineer's review of Contractor's submittals shall not relieve Contractor of the obligations under Sections 3.3, 3.5 and 3.12. Architect's/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect/Engineer, of any construction means, methods, techniques, sequences or procedures. Architect's/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§4.2.8 HFC will prepare Change Orders and Construction Change Directives, and the Architect/Engineer may authorize minor changes in the Work as provided in Section 7.4. HFC or its Architect/Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§4.2.9 HFC or its Architect/Engineer will conduct inspections to determine the date or dates of completion; issue Certificates of Completion pursuant to Section 9.8; and issue a final Certificate for Payment pursuant to Section 9.10.

§4.2.10 If HFC and Architect/Engineer agree, Architect/Engineer will provide one or more project representatives to assist in carrying out Architect's/Engineer's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§4.2.11 Architect/Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either HFC or Contractor. Architect's/Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§4.2.12 Interpretations and decisions of Architect/Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, Architect/Engineer will endeavor to secure faithful performance by both HFC and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§4.2.13 HFC or its Architect/Engineer will review and respond to requests for information about the Contract Documents. Responses to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, Architect/Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§5.1 DEFINITIONS

§5.1.1 A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§5.2.1 Contractor shall, as soon as practicable after execution of each Work Order, furnish in writing to HFC the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work for such Work Order. HFC may reply within 7 days to Contractor in writing stating (1) whether HFC has reasonable objection to any such proposed person or entity or (2) that HFC requires additional time for review. Failure of HFC to reply within the 7-day period shall constitute notice of no reasonable objection.

§5.2.2 Contractor shall not contract with a proposed person or entity to whom HFC has made reasonable and timely objection. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable objection.

§5.2.3 If HFC has reasonable objection to a person or entity proposed by Contractor, then Contractor shall propose another to whom HFC has no reasonable objection.

§5.2.4 Contractor shall not substitute a Subcontractor, person or entity previously selected without prior approval by HFC.

§5.3 SUBCONTRACTUAL RELATIONS. Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which Contractor, by these Contract Documents, assumes toward HFC and Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of HFC and Architect/Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against HFC. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract

Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

ARTICLE 6 CONSTRUCTION BY HFC OR BY SEPARATE CONTRACTORS

§6.1 HFC'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§6.1.1 HFC reserves the right to perform construction or operations related to the Work described in a Work Order with HFC's own forces. If Contractor claims that delay or additional cost is involved because of such action by HFC, then Contractor shall make such Claim as provided in Article 15.

§6.1.2 HFC shall provide for coordination of the activities of HFC's own forces and of each separate contractor with the Work of Contractor, who shall cooperate with them. Contractor shall participate with other separate contractors and HFC in reviewing their construction schedules. Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by Contractor, separate contractors and HFC until subsequently revised.

§6.2 MUTUAL RESPONSIBILITY

§6.2.1 Contractor shall afford HFC and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate Contractor's construction and operations with theirs as required by the Contract Documents.

§6.2.2 If part of Contractor's Work depends for proper execution or results upon construction or operations by HFC or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, promptly report to HFC apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor so to report shall constitute an acknowledgment that HFC's or separate contractors' completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

§6.2.3 Contractor shall be liable to HFC for costs HFC incurs that are payable to a separate contractor because of Contractor's delays, improperly timed activities or defective construction.

§6.2.4 Contractor shall promptly remedy damage Contractor causes to completed or partially completed construction or to property of HFC or separate contractors as provided in Section 10.2.5.

§6.2.5 Each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in Section 3.14.

§6.3 HFC'S RIGHT TO CLEAN UP

If a dispute arises among Contractor, separate contractors and HFC as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, HFC may clean up and allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§7.1 GENERAL

§7.1.1 Changes to Work as defined by a Work Order may be accomplished without invalidating the Contract Documents, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§7.1.2 A Change Order shall be based upon agreement among HFC, Contractor and Architect/Engineer, if required; a Construction Change Directive requires agreement by HFC and Architect/Engineer and may or may not be agreed to by Contractor; an order for a minor change in the Work may be issued by Architect/Engineer.

§7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§7.2 CHANGE ORDERS

§7.2.1 A Change Order is a written instrument signed by HFC, Contractor and Architect/Engineer stating their agreement upon all of the following: (1) the change in the Work; (2) the amount of the adjustment, if any, in the Contract Sum; and (3) the extent of the adjustment, if any, in the Contract Time.

§7.3 CONSTRUCTION CHANGE DIRECTIVES

§7.3.1 A Construction Change Directive cannot change Contract Price or Contract Time, but is evidence that HFC and Contractor agree that a change, ordered by a directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on Contract Price or Contract Time. Failure by Contractor to commence Work identified in a Construction Change Directive within the time specified, or to complete the Work in a reasonable period of time, may be determined to be a material breach of the Agreement.

§7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. If Contractor signs a Construction Change Directive, then Contractor agrees to its terms including adjustment in Contract Price and Contract Time or method for determining them. Agreement to adjustments in Contract Price or Contract Time shall be immediately recorded as a Change Order. HFC may direct Contractor to take measures as necessary to expedite construction to achieve Final Completion before expiration of Contract Time. When the Work is expedited solely for convenience of HFC and not due to Contractor's failure to prosecute timely completion of the Work, then Contractor is entitled to an adjustment in Contract Price.

§7.3.3 Whenever Contractor receives a Construction Change Directive or Change order, Contractor shall furnish all material, equipment, and personnel necessary to perform the Work described. Contractor shall complete the Work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the Work within a reasonable time. If the Work causes an unavoidable delay in any other Work Contractor is required to perform under the Contract Documents, Contractor may request a time extension for the completion of the Work. HFC's decision regarding a time extension is final.

§7.3.4 A product or service provided under a Construction Change Directive or Change Order is subject to inspection, acceptance or rejection in the same manner as the Work described in the Contract Documents, and is subject to the terms and conditions of the Contract Documents as if its had originally been a part of such documents.

§7.3.5 Adjustments in Contract Price by Change Order shall be based on one of the following methods: (1) unit prices stated in the Unit Price Book; or (2) for non-pre-priced items, cost to be determined in accordance with Section 2.0 of Exhibit "2" to the Agreement. When Contractor agrees with the determination concerning adjustments in Contract Price and Contract Time, such agreements shall be promptly recorded by preparation and execution of a Change Order.

§7.4 MINOR CHANGES IN THE WORK. Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by Architect and shall be binding on Contractor.

ARTICLE 8 TIME

§8.1 DEFINITIONS

§8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in an individual Work Order for Completion of the Work.

§8.1.2 The date of commencement of the Work is the date established in an individual Work Order.

§8.1.3 The date of Completion is the date that the Work has been inspected and certified by HFC.

§8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§8.2 PROGRESS AND COMPLETION

§8.2.1 Time limits stated in individual Work Orders are of the essence. By executing a Work Order, Contractor acknowledges and agrees that the Contract Time is a reasonable period for performing the Work.

§8.2.2 Contractor shall not commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by Contractor.

§8.2.3 Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

§8.3 DELAYS AND EXTENSIONS OF TIME

§8.3.1 If Contractor is delayed at any time in the commencement or progress of the Work by acts of God or of the public enemy, acts of government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, unusually severe weather, or other causes of like nature beyond control and without fault or negligence of Contractor, then the Contract Time may be extended by Change Order for such reasonable time as the parties may agree.

§8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§9.1 CONTRACT SUM. The Contract Sum is stated in each individual Work Order and, including authorized adjustments, is the total amount payable by HFC to Contractor for performance of such Work Order under the Contract Documents.

§9.2 APPLICATIONS FOR PAYMENT

§9.2.1 For Work Orders not completed within 45 days, HFC (or its Architect or Engineer) will prepare a Certificate for Payment for the preceding monthly period based on the line items completed and the extension of their unit prices multiplied by the estimated quantities utilized. For Work Orders completed within 45 days, Contractor shall be paid within 30 days after receipt of an invoice and issuance of a Certificate of Final Completion.

§9.2.2 Contractor warrants that title to all Work covered by an Application for Payment will pass to HFC no later than the time of payment. Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from HFC shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§9.4 [Intentionally omitted.]

§9.4 CERTIFICATES FOR PAYMENT

Within 10 days after the end of the month, HFC (or its Architect or Engineer) will prepare a Certificate for Payment for Work on an amount which HFC determines is properly due, with a copy to Contractor. Unless otherwise provided in the Contract Documents, payments for completed Work, if approved in advance by HFC for properly stored Products, is conditioned upon compliance with procedures satisfactory to HFC to protect HFC's interests. Procedures will include applicable insurance, storage, and transportation to the site for materials and equipment stored off site. Contractor is responsible for maintaining materials and equipment until Substantial Completion of the Work. Subject to provisions of the Contract Documents, the amount of each Certificate of Payment shall be calculated as follows: That portion of the Work Order price allocable to completed Work based on the line items completed and the extension of their unit prices (as calculated in Exhibit 2 to the Agreement) multiplied by the quantities incorporated into the Work, less retainage of 10 percent; plus progress payments for completed Work that has been properly authorized by Change Order or Construction Change Directive, less retainage of 10 percent; plus actual costs, properly substantiated by certified copies of invoices and freight bills, of non-perishable materials and equipment delivered and properly stored, if approved in advance by HFC, less retainage of 10 percent; less any previous payments made by HFC.

§9.5 DECISIONS TO WITHHOLD CERTIFICATION

§9.5.1 HFC may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect HFC, if in HFC's opinion there is reason to believe that: (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to HFC is provided by Contractor; (3) failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; (5) damage to HFC or a separate contractor; (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or (7) failure to carry out the Work in accordance with the Contract Documents.

§9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. However, HFC may decline to certify payment and may withhold a request for payment in whole or in part upon

failure of Contractor to submit the initial construction schedule or monthly schedule updates as required by the Work Order and the Contract Documents.

§9.5.3 If HFC withholds certification for payment under Section 9.5.1.3, HFC may, at its sole option, issue joint checks to Contractor and to any Subcontractor or material or equipment suppliers to whom Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If HFC makes payments by joint check, HFC will reflect such payment on the next Certificate for Payment.

§9.6 PAYMENTS

§9.6.1 After HFC has issued a Certificate for Payment, HFC shall make payment in the manner and within the time provided in the Contract Documents.

§9.6.2 Contractor shall pay each Subcontractor no later than seven days after receipt of payment from HFC the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of the Subcontractor's portion of the Work. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§9.6.3 HFC will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by HFC on account of portions of the Work done by such Subcontractor.

§9.6.4 HFC shall have the right to request written evidence from Contractor that Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by HFC to Contractor for subcontracted Work. If Contractor fails to furnish such evidence within 7 days, HFC shall have the right to contact Subcontractors to ascertain whether they have been properly paid. HFC shall not have any obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by HFC shall not constitute acceptance of Work not in accordance with the Contract Documents.

§9.6.7 Unless Contractor provides HFC with a payment bond that exceeds the full penal sum of each Work Order, payments received by Contractor for Work properly performed by Subcontractors and suppliers shall be held by Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with Contractor for which payment was made by HFC. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of Contractor, shall create any fiduciary liability or tort liability on the part of Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against Contractor for breach of the requirements of this provision.

§9.7 FAILURE OF PAYMENT. If HFC does not issue a Certificate for Payment, through no fault of Contractor, within 30 days after receipt of Contractor's Application for Payment, or if HFC does not pay Contractor within 30 days after the date established in the Contract Documents the amount certified by HFC, then Contractor may, upon 10 additional days' written notice to HFC, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§9.8 [Intentionally omitted.]

§9.9 PARTIAL OCCUPANCY OR USE

§9.9.1 HFC may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is complete, provided HFC and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion complete, Contractor shall prepare and submit a list to Architect as provided under Section 9.8.2. Consent of Contractor to partial

occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between HFC and Contractor or, if no agreement is reached, by decision of Architect.

§9.9.2 Immediately prior to such partial occupancy or use, HFC, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§9.10 COMPLETION AND FINAL PAYMENT

§9.10.1 Upon receipt of Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, HFC will promptly make such inspection and, when HFC finds the Work acceptable under the Contract Documents fully performed, HFC will promptly issue a final Certificate for Payment stating that the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due Contractor and noted in the final Certificate is due and payable. The final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to Contractor's being entitled to final payment have been fulfilled.

§9.10.2 Neither final payment nor any remaining retained percentage shall become due until Contractor submits (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which HFC or HFC's property might be responsible or encumbered (less amounts withheld by HFC) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to HFC, (3) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by HFC, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by HFC. If a Subcontractor refuses to furnish a release or waiver required by HFC, Contractor may furnish a bond satisfactory to HFC to indemnify HFC against such lien. If such lien remains unsatisfied after payments are made, Contractor shall refund to HFC all money that HFC may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§9.10.3 Acceptance of final payment by Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§10.1 SAFETY PRECAUTIONS AND PROGRAMS. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract Documents.

§10.2 SAFETY OF PERSONS AND PROPERTY

§10.2.1 Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) Employees on the Work and other persons who may be affected thereby; (2) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Contractor or Contractor's Subcontractors or Sub-subcontractors; and (3) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§10.2.2 Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§10.2.3 Contractor shall erect and maintain, as required by existing conditions and performance of the Contract Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§10.2.5 Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The foregoing obligations of Contractor are in addition to Contractor's obligations under Section 3.18.

§10.2.6 Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to HFC and Architect.

§10.2.7 Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§10.3 HAZARDOUS MATERIALS

§10.3.1 Contractor shall comply with any all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment. If Contractor encounters a hazardous material or substance and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to HFC in writing.

§10.3.2 Upon receipt of Contractor's written notice, HFC shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor. Upon request from Contractor, HFC will furnish in writing to Contractor the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of HFC and Contractor. By Change Order, the Contract Time shall be extended appropriately.

§10.3.3 HFC shall not be responsible under this Section 10.3 for materials or substances Contractor brings to the site.

§10.3.4 Contractor shall indemnify HFC for the cost and expense HFC incurs (1) for remediation of a material or substance Contractor brings to the site and negligently handles, or (2) where Contractor fails to perform its obligations under Section 10.3.1.

§10.4 EMERGENCIES. In an emergency affecting safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§11.1 GENERAL INSURANCE REQUIREMENTS

§11.1.1 With no intent to limit Contractor's liability under indemnification provisions set forth in Section 3.18, Contractor shall provide and maintain in full force and effect from the date of execution of the Contract Document through the term of the Agreement, at least the following insurance and available limits of liability:

Commercial General Liability, including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products and Completed Operations	Combined single limit of \$1,000,000 per occurrence, subject to a general aggregate of \$2,000,000; Products and Complete Operations \$1,000,000 aggregate
Automobile Liability Insurance	\$1,000,000 combined single limit including Owner, Hired, and Non-Owned and Auto Coverage
Workers' Compensation	Statutory for Workers' Compensation, Contractor is not allowed to self-insure Workers' Compensation

Employer's Liability	Bodily Injury by accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
Owner's and Contractor's Protective Liability	\$1,000,000 combined single limit
Excess Coverage	\$1,000,000 each Occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability

§11.1.2 If Limit of Liability for Excess Coverage is \$2,000,000 or more, Limit of Liability for Employer's Liability may be reduced to \$500,000.

§11.1.3 Insurance may be in one or more policies of insurance, form of which is subject to approval by HFC. It is agreed, however, that nothing HFC does or fails to do with regard to insurance policies relieves Contractor from its duties to provide required coverage and HFC's actions or inactions will never be construed as waiving the rights of HFC.

§11.1.4 The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have an A.M. Best rating of at least A- with a financial size category of Class VI or better.

§11.1.5 Each policy, except those for Workers' Compensation and Owner's and Contractor's Protective Liability, must include an endorsement naming HFC and the City of Houston as additional insureds.

§11.1.6 Each policy except Owner's and Contractor's Protective Liability must contain endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against HFC and the City of Houston.

§11.1.7 Each policy, except Workers' Compensation policies, must contain an endorsement that the policy is primary insurance to any other insurance available to the additional insureds with respect to claims arising hereunder. However, HFC's insurance is non-contributory.

§11.1.8 Endorsement forms must accompany the insurance certificates provided by Contractor's insurance agent, showing additional insured coverage and waivers of subrogation in favor of both HFC and the City of Houston, when such coverage is required. HFC will accept the following endorsement forms and such other endorsement forms as may be approved by HFC:

CG2404 – Waiver of Transfer of Rights of Recovery against Others CA0403 – Additional Insured Endorsement

CAT353 – Business Auto Extension Endorsement

WC 42304A – Workers Compensation Waiver of Transfer of Rights of Recovery against Others.

§11.1.9 Contractor is solely responsible for payment of all insurance premium requirements hereunder and HFC is not obligated to pay any premiums.

§11.1.10 Contractor shall require Subcontractors with whom it contracts directly, whose subcontracts exceed \$50,000, to provide proof of Commercial General Liability, Workers' Compensation, and Employer's Liability coverage that meets all the requirements of Article 11; provided, however, that the amount must be commensurate with the amount of the subcontract, but not less than \$1,000,000 per occurrence.

§11.2 PERFORMANCE AND PAYMENT BONDS.

§11.2.1 Contractor shall provide Bonds on a form approved by HFC covering faithful performance of the Work and payment of obligations arising thereunder pursuant to Chapter 2253 of the Government Code. Before Work Orders may be issued that are in excess of the penal sum of the performance and payment bonds being issued, Contractor shall provide additional performance and payment bonds equal to or greater than the additional amounts.

§11.2.2 The amount of the Performance and Payment bonds shall be \$500,000.00, renewable each year of the Term including extension terms.

§11.2.3 A Bond that is given or tendered to HFC pursuant to the Contract Documents must be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.

§11.2.4 If a Bond is given or tendered to HFC pursuant to the Contract Documents in an amount greater than 10 percent of Surety's capital and surplus, Surety shall provide certification that Surety has reinsured that portion of the risk that exceeds 10 percent of Surety's capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State of Texas. The amount reinsured by reinsurer may not exceed 10 percent of reinsurer's capital and surplus. The amount of allowed capital and surplus must be based on information received from State Board of Insurance.

§11.2.5 Surety shall: (1) also hold certificate of authority from the United States Secretary of Treasury to qualify as surety on obligations permitted or required under federal law; or, (2) Surety may obtain reinsurance for any liability in excess of \$100,000 from reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as surety or reinsurer on obligations permitted or required under federal law.

§11.2.6 Determination of whether Surety on the Bond or the reinsurer holds a certificate of authority from the United States Secretary of the Treasury is based on information published in Federal Register covering the date on which Bond was executed.

§11.2.7 Each Bond given or tendered to HFC pursuant to the Contract Documents must be on forms approved by HFC with no changes made by Contractor or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.

§11.2.8 Surety shall designate in its Bond, power of attorney, or written notice to HFC, an agent resident in Harris County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

§11.2.9 Contractor shall deliver required bonds to HFC before the inception of the Agreement or as soon as notified by HFC for additional bonds and annually thereafter.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§12.1 UNCOVERING OF WORK

§12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Contract Documents, it must, if requested in writing by Architect/Engineer, be uncovered for examination and be replaced at Contractor's expense without change in the Contract Time.

§12.1.2 If a portion of the Work has been covered that Architect/Engineer has not specifically requested to examine prior to its being covered, Architect/Engineer may request to see such Work and it shall be uncovered by Contractor. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at Contractor's expense unless the condition was caused by a separate contractor in which event HFC shall be responsible for payment of such costs.

§12.2 CORRECTION OF WORK

§12.2.1 BEFORE OR AFTER COMPLETION

Contractor shall promptly correct Work rejected by Architect/Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for Architect/Engineer's services and expenses made necessary thereby, shall be at Contractor's expense.

§12.2.2 AFTER COMPLETION

§12.2.2.1 In addition to Contractor's obligations under Section 3.5, if, within one year after the date of Completion of the Work, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it within 30 days after receipt of written notice from HFC to do so at no cost to HFC; provided, however, that the warranty period for goods, materials and equipment shall be equal to one year after the date of Completion of the Work or the manufacturer's warranty, whichever is greater.

§12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Completion by the period of time between Completion and the actual completion of that portion of the Work.

§12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by Contractor pursuant to this Section 12.2.

§12.2.3 Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by HFC.

§12.2.4 Contractor shall be liable for the cost of correcting destroyed or damaged construction, whether completed or partially completed, of HFC or separate contractors caused by Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

§12.3 ACCEPTANCE OF NONCONFORMING WORK. If HFC prefers to accept Work that is not in accordance with the requirements of the Contract Documents, HFC may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable, as determined by HFC in its discretion. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§13.1 GOVERNING LAW. The Contract Documents shall be governed by the laws of the State of Texas, without regard to any conflict of law provisions. Litigation in connection with the Contract Documents shall be in a court of competent jurisdiction in Harris County, Texas.

§13.2 SUCCESSORS AND ASSIGNS. HFC and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party hereto shall assign the Contract Documents in whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract Documents.

§13.3 WRITTEN NOTICE. Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§13.4 RIGHTS AND REMEDIES

§13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§13.4.2 No action or failure to act by HFC or Contractor shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§13.5 TESTS AND INSPECTIONS

§13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to HFC, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Contractor shall give HFC timely notice of when and where tests and inspections are to be made so that HFC or its designated professional service provider may be present for such procedures.

§13.5.2 If HFC or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, then HFC or its designated professional services provider will instruct Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to HFC, and Contractor shall give timely notice to HFC of when and where tests and inspections are to be made so that HFC or its designated professional service provider may be present for such procedures.

§13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and expenses incurred shall be at Contractor's expense.

§13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to HFC.

§13.5.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§13.6 INDEPENDENT CONTRACTOR. Contractor shall perform its obligations under the Contract Documents as an independent contractor and not as an employee of HFC. Contractor's personnel are solely employees of Contractor, are not employees or agents of HFC, and are not entitled to any compensation, employment benefits, or other employee rights from HFC. Contractor has the authority to select the means, methods and manner of providing services subject to the terms, conditions, and specifications in the Contract Documents. No principal/agent, partnership, joint venture, joint employer, or other relationship, other than an independent contractor relationship, is created or intended by the Contract Documents.

§13.7 WAIVER OF ATTORNEY FEES AND INTEREST.

Neither HFC nor Contractor may recover attorney fees for any claim brought in connection with this Agreement. Neither HFC nor Contractor may recover interest for any damages claim brought in connection with this Agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT DOCUMENTS

§14.1 TERMINATION BY CONTRACTOR

§14.1.1 Contractor may terminate the Contract Documents if the Work required under a Work Order is stopped for a period of 60 consecutive days through no act or fault of Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, for any of the following reasons: (1) Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; (2) An act of government, such as a declaration of national emergency that requires all Work to be stopped; or (3) Because HFC has not issued a Certificate for Payment and has not notified Contractor of the reason for withholding certification as provided in Section 9.4.1, or because HFC has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

§14.1.2 If one of the reasons described in Section 14.1.1 exists, Contractor may, upon 15 days' written notice to HFC, terminate the Contract Documents.

§14.2 TERMINATION BY HFC FOR CAUSE

§14.2.1 HFC may terminate the Contract Documents if Contractor (1) refuses or fails to supply enough properly skilled workers or proper materials; (2) fails to make payment to Subcontractors for materials or labor; (3) disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or (4) otherwise is guilty of a breach of a material provision of the Contract Documents.

§14.2.2 When any of the above reasons exist, HFC may, without prejudice to any other rights or remedies of HFC and after giving Contractor and Contractor's surety, if any, seven days' written notice, terminate employment of Contractor and may, subject to any prior rights of the surety: (1) Exclude Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor; and (2) Finish the Work by whatever reasonable method HFC may deem expedient. Upon written request of Contractor, HFC shall furnish to Contractor a detailed accounting of the costs incurred by HFC in finishing the Work.

§14.2.3 When HFC terminates the Contract Documents for one of the reasons stated in Section 14.2.1, Contractor shall not be entitled to receive further payment until the Work is finished.

§14.2.4 If the unpaid balance of a particular Work Order exceeds costs of finishing the Work, including compensation for Architect's services and expenses made necessary thereby, and other damages incurred by HFC and not expressly waived, such excess shall be paid to Contractor. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to HFC. The amount to be paid to Contractor or HFC, as the case may be, shall survive termination of the Contract Documents.

§14.3 SUSPENSION BY HFC FOR CONVENIENCE

§14.3.1 HFC may, without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as HFC may determine.

§14.3.2 The Contract Time shall be adjusted for increases in time caused by suspension, delay or interruption as described in Section 14.3.1. The Contract Sum of a particular Work Order may be adjusted for such reasons by HFC in its sole discretion.

§14.4 TERMINATION BY HFC FOR CONVENIENCE

§14.4.1 HFC may, at any time, terminate a Work Order for HFC's convenience and without cause.

§14.4.2 Upon receipt of written notice from HFC of such termination for HFC's convenience, Contractor shall (1) cease operations as directed by HFC in the notice; (2) take actions necessary, or that HFC may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§14.4.3 In case of such termination for HFC's convenience, Contractor shall be entitled to receive reasonable payment for the portion of the Work completed by Contractor and approved by HFC.

ARTICLE 15 CLAIMS AND DISPUTES

§15.1 CLAIMS

§15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract Documents. The term —Claimll also includes other disputes and matters in question between HFC and Contractor arising out of or relating to the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim.

§15.1.2 Notice of Claims. Claims by either HFC or Contractor must be initiated by written notice to the other party. Except as provided under Section 3.18, claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§15.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, Contractor shall proceed diligently with performance of the Contract Documents and HFC shall continue to make payments in accordance with the Contract Documents.

§15.1.4 Claims for Additional Cost. If Contractor wishes to make a Claim for an increase in the Contract Sum for a particular Work Order, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§15.1.5 CLAIMS FOR ADDITIONAL TIME

§15.1.5.1 If Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

Contractor and HFC waive Claims against each other for consequential damages arising out of or relating to the Contract Documents. This mutual waiver includes (1) damages incurred by the HFC for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The parties shall select a neutral third party to serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to litigation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between Contractor and persons or entities other than the HFC.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the HFC to authorize retention of such persons at the HFC's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against Contractor, the HFC may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the HFC may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

JOB ORDER CONTRACTING
PRICING SCHEDULE

ISSUE DATE: December 1, 2016

DUE DATE: **11:00 a.m. on December 29, 2016** (“Submission Deadline”)

INSTRUCTIONS: Proposers must submit 5 paper copies of their proposal and 1 electronic copy of their proposal on a flash drive in a sealed package in person, via mail or courier. Proposals submitted by email or fax will be rejected.

SUBMIT TO: Houston First Corporation, Attn: General Counsel, 701 Avenida de las Americas, Suite 200, Houston, TX 77010. Please write the Proposer’s name, phone number and email address on the outside of the sealed package.

Proposer shall complete the parentheses in the chart below:

A. Unit Price Book Pre-Priced Items

1. Coefficient Factor: Standard/Normal Working Hours (_____)
2. Coefficient Factor: Non-Standard/Normal Working Hours (_____)

B. Non Pre-Priced Items

1. Coefficient Factor: Standard/Normal Working Hours (_____)
2. Coefficient Factor: Non-Standard/Normal Working Hours (_____)

“Unit Price Book” or “UPB” means the “Total Bare Costs” column in the latest quarterly edition of the R.S. MEANS Facilities Construction Cost Data, with certain exceptions that are outlined in Exhibit “2” to the Job Order Construction Agreement. The Houston, Texas City Cost Index “total weighted average” as of the date of each Work Order will be applied to the R.S. MEANS prices.

C. GENERAL TERMS AND REPRESENTATIONS

1. Submission of a Proposal represents an offer to contract with Houston First Corporation based on the foregoing Job Order Construction Agreement.
2. The Proposal as submitted, including this Pricing Schedule, shall remain valid for 90 days from the Submission Deadline.
3. Proposer accepts the foregoing Manner of Selection section and criteria established for this RFP. Proposer recognizes that the assignment of points during the evaluation process invariably involves a degree of subjectivity.
4. Proposer is prepared to deliver statutory payment and performance bonds upon 7 days’ notice of selection.

D. ACKNOWLEDGMENT

By signing below, Proposer represents that all statements made herein are true and correct and may be relied upon by Houston First Corporation.

Respectfully submitted on behalf of _____ “Proposer”

By:

Signature: _____

Printed Name: _____

Title: _____