

**GENERAL CONDITIONS
TO
CONSTRUCTION CONTRACT
(FIXED PRICE)**

between

OWNER

**HOUSTON FIRST CORPORATION
1001 Avenida de las Americas
Houston, TX 77010**

and

Contractor

for

General Construction

at

Project

**ENTERTAINMENT FACILITY
1836 Polk Street
Houston, Texas 77003**

TABLE OF CONTENTS

	PAGE NO.
ARTICLE 1 GENERAL PROVISIONS	1
1.1 Definitions	1
1.2 Execution, Correlation and Intent of Documents	1
1.3 Substitutions	1
1.4 Drawings and Specifications of the Work	2
1.5 Ownership of Drawings	3
1.6 Cost of Construction Documents Furnished.....	3
1.7 Title to Work and Materials.....	3
ARTICLE 2 HFC	3
2.1 General.....	3
2.2 [Intentionally Omitted]	3
2.3 [Intentionally Omitted]	3
2.4 HFCs Right to Stop the Work.....	3
2.5 HFCs Right to Carry Out the Work.....	4
2.6 HFCs Right to Clean Up.....	4
ARTICLE 3 ARCHITECT	4
3.1 General.....	4
3.2 Architect’s Status.....	4
3.3 Architect’s Decisions.....	5
3.4 Applications for Payment	5
3.5 Bulletins.....	5
3.6 Clarification Drawings and Supplemental Instructions.....	5
3.7 Digital (CAD) Files	5
3.8 Site Visits and Field Observation Reports.....	6
3.9 Submittals	6
3.10 Substantial Completion.....	6
3.11 Final Completion	6
ARTICLE 4 CONTRACTOR	7
4.1 General.....	7
4.2 Field Administration.....	11
4.3 CONTRACT ADMINISTRATION	15
4.4 SCHEDULES	20
4.5 SHOP DRAWINGS, SAMPLES AND VISUAL FAÇADE MOCKUP	22
4.6 Temporary Conditions	23
ARTICLE 5 SUBCONTRACTORS	28
5.1 Approval of Subcontractors.....	28
5.2 Award of Subcontracts	28
5.3 Subcontractor Relations.....	29
5.4 Contingent Assignment of Subcontracts	29
5.5 Backcharges.....	29
ARTICLE 6 WORK BY HFC OR BY SEPARATE CONTRACTORS	29
6.1 HFC’s Right to do Work	29
6.2 Separate Contractors.....	29
6.3 HFC Purchased Materials and Equipment.....	30
6.4 Mutual Responsibility of Contractors.....	30

6.5	Insurance.....	31
ARTICLE 7 CHANGES IN THE WORK.....		31
7.1	General.....	31
7.2	Change Orders.....	31
7.3	Minor Changes in the Work.....	32
7.4	Construction Change Directives.....	33
ARTICLE 8 TIME.....		34
8.1	Time is of the Essence of the Contract Documents and all Obligations Thereunder .	34
8.2	Progress and Completion.....	34
8.3	Delays and Extensions of Time.....	35
8.4	Inclement Weather.....	35
8.5	Excusable Delay.....	35
ARTICLE 9 PAYMENTS AND COMPLETION.....		36
9.1	Payments.....	36
9.2	Completion.....	36
ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY.....		37
10.1	Safety Precautions and Programs.....	37
10.2	Safety of Persons and Property.....	38
10.3	Hazardous Materials.....	39
10.4	Emergencies.....	40
ARTICLE 11 INSURANCE AND BONDS.....		40
11.1	General.....	40
ARTICLE 12 UNCOVERING AND CORRECTING WORK.....		40
12.1	Inspection of Work.....	40
12.2	Uncovering of Work.....	40
12.3	Correction of Work before Final Payment.....	41
12.4	Correction of Work After Final Payment.....	42
12.5	HFCs Right to Correct Nonconforming Work.....	43
12.6	Acceptance of Nonconforming Work.....	43
12.7	Deductions for Uncorrected Work.....	43
ARTICLE 13 MISCELLANEOUS PROVISIONS.....		43
13.1	Geotechnical Report.....	43
13.2	Environmental Studies.....	44
13.3	Testing and Inspection.....	44
ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT.....		45
14.1	Termination.....	45
ARTICLE 15 DISPUTES.....		45
15.1	Disputes.....	45
15.2	Claims for Consequential Damages.....	45

ARTICLE 1 GENERAL PROVISIONS

1.1 Definitions. Whenever used in any of the Contract Documents except where the context otherwise requires, the terms defined in **Article 1** of the Contract shall have the meanings as defined therein.

1.2 Execution, Correlation and Intent of Documents. The Contract Documents shall be signed in duplicate by HFC and Contractor. In the event that either HFC or Contractor or both fail to sign the General Conditions, construction Specifications, plans and drawings the Architect shall identify them.

(a) The listing in the Specifications of articles or materials require that Contractor shall provide each item listed (of quality noted), and shall perform each operation or method prescribed according to conditions stated and provide therefor all necessary labor, equipment, and incidentals. Omissions from such listings will not be a basis for Claim for additional compensation on the part of Contractor. Should any item be omitted from the Drawings and Specifications and included in the Specifications or vice-versa, it shall be executed the same as if shown and contained in both at no extra cost to HFC. Should anything be omitted from both the Drawings and Specifications and the Specifications necessary for the proper construction of the Work or should any error or disagreement between the Drawings and Specifications and the Specifications exist, or appear to exist, Contractor shall not avail himself of such manifestly unintentional error or omission, but must have the same explained or adjusted by Architect before proceeding with the Work in question.

(b) Except where specifically stated otherwise, sizes, quantities and periods of time specified are actual and must be adhered to.

(c) For convenience of reference and to facilitate the letting of Subcontracts, the Specifications are separated into titled divisions and sections. Such separations shall not, however, operate to make Architect an arbiter to establish limits to the contracts between Contractor and Subcontractors. The listing of items of Work included and/or related Work in sections is for the convenience of Contractor and is not intended to relieve Contractor from a complete study of the Drawings and Specifications for the purpose of directing its various Subcontractors and suppliers as to their respective responsibilities.

(d) Where standard Specifications (such as Federal, ASTM, AICS, ACI, Underwriters', etc.) are mentioned, the same shall be the edition or revision in effect on date of the Contract, unless noted otherwise. The description of items and parts thereof contained therein is by such reference made a part of the Specifications.

(e) The Drawings and Specifications indicate design, materials, arrangements, scope of Work and results to be accomplished. Contractor shall provide such fastenings and accessories necessary therefor.

(f) The Contract Documents require the specific materials, methods, and equipment specified and/or shown. Where several are specified by name for one use, any one specified may be selected.

(g) Contractor shall furnish all labor, materials, services and equipment necessary to complete the Work as required by the Contract Documents or as reasonably inferable therefrom.

1.3 Substitutions. Whenever the Specifications and/or Drawings and Specifications specify any material, product or service by one or more brands or manufacturers names, and Contractor or a Subcontractor of Contractor wishes to request the use of another item as being equal, such request must be submitted by

Contractor to HFC and Architect with a request for approval. Each request shall be accompanied by a complete written Specification and descriptive data for the proposed item, and with designation of the exact paragraph, page and section of the Specifications where the item is specified. Contractor shall also state where the item is to be used on the Project.

If such a request is submitted, Contractor shall (1) make the proposal for furnishing the material, product or service specified, then (2) for each separate request for substitution, Contractor shall state the monetary change to the Contract Amount if said substitution is accepted. Receipt of a request for approval from any source other than Contractor will not be considered. The Architect's or Consultants' (as applicable) decision as to architectural and engineering acceptability of any proposed substitution will be final, subject to the terms of HFC's agreement with such Architect or Consultant.

Requests by Contractor for approval of substitutions must be timely submitted for the purpose of maximizing monetary savings on the Project. All requests must in addition to the actual change in cost of the item in question, include costs for changing any of the Drawings and Specifications to incorporate the item in question and the cost of its impact to any adjacent Work performed by other trades.

Any change in the Work required to accommodate an approved substitution shall be made in a manner approved by HFC and Architect and the cost of any such approved change shall result in a change to the Contract Amount, as applicable. HFC has no obligation under the Contract to approve the substitution of any item specified herein, and Contractor has no basis for requesting a change in the Contract Amount or Contract Time if HFC fails to approve any request by Contractor for a substitution.

1.4 Drawings and Specifications of the Work. Contractor shall keep one-(1) copy of all Drawings and Specifications, revisions and Clarification Drawings, approved Submittals, samples, Specifications, instructions, Bulletins, Change Orders and modifications to the Contract Documents at the Job Site at all times, in good order, available to HFC, Project Manager and Architect's representatives. All shall be the latest issue.

(a) A set of the Drawings and Specifications bearing the approval stamp and/or seal of the local Building Department have been provided to Contractor. This set shall be kept in Contractor's field office for the exclusive use of the local Building Inspector and its representatives, and as the property of HFC they shall be returned to HFC at the end of the Project.

(b) It shall be the obligation of Architect to use reasonable care to prepare the Contract Documents in accordance with Governmental Requirements and Contractor shall at once report to HFC and Architect any error, inconsistency or omission which Contractor may discover. Contractor shall not be liable for any errors, omissions, inconsistencies or conflicts in the Drawings and Specifications or Specifications unless Contractor knew of such error, omission, inconsistency or conflict but failed to report the error, omission, inconsistency or conflict to HFC or Architect.

(c) The Bulletins will be issued electronically via email or in such other manner selected by the Architect and approved by HFC. With each issuance of such documents, Contractor will receive an updated Drawing Log, a current PDF book for each discipline that has updated or issued new Drawings and Specifications, loose PDF's and CAD files (if applicable) of all updated or new plans. Clarification Drawings will be issued electronically via email by Architect or Consultant as a sketch if minor in nature or as part of a Bulletin as stated above if HFC determines that it is appropriate to do so. All Drawings and Specifications utilized in the field and incorporated into the Contract shall bear the appropriate "HFC Date" and "Issue Purpose" stamp. Any Drawings and Specifications without these stamps should not be used for any purpose.

1.5 Ownership of Drawings. All Drawings and Specifications, Clarification Drawings, Specifications and copies thereof prepared by Architect or Consultants are the property of HFC. They are not to be used on other work, and with the exception of the signed contract set, are to be returned to HFC on request at the completion of the Work. All models, renderings and samples, if any, are also the property of HFC and shall be returned to HFC at the completion of the Work.

1.6 Cost of Construction Documents Furnished. All charges for the services of Architect, Consultants, engineers and specialty consultants for providing necessary Drawings and Specifications are to be paid for by HFC.

1.7 Title to Work and Materials.

(a) The title to all Work completed and to all materials which are delivered and suitably stored at the Job Site and which will necessarily be incorporated in the Work, as between HFC and Contractor or Subcontractors, or Subordinate Subcontractors, shall be in HFC. This **Section 1.7** shall govern the passing of title to all Work and materials affected thereby, any other provision in the Contract Documents to the contrary notwithstanding.

(b) No materials or supplies for the Work shall be purchased by Contractor or by any Subcontractor or Subordinate Subcontractor subject to any chattel mortgage or under a conditional sale or agreement by which an interest is retained by seller. Contractor warrants that Contractor has good title to all materials and supplies used by Contractor in the Work. Contractor warrants that title to all Work materials and equipment covered by an Application for Payment will pass to HFC either by incorporation in to the construction of the Project or upon receipt of payment by Contractor whichever first occurs. Contractor covenants and agrees to deliver to HFC bills of sale or other evidence reasonably satisfactory to HFC of the cost of, and HFC's title in and to, such materials.

ARTICLE 2 HFC

2.1 General. The Project Manager is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. HFC has designated the Project Manager as its authorized representative, who shall have express authority to bind HFC with respect to all matters requiring HFC's approval or authorization. Architect does not have such authority. The term "HFC" means HFC or HFC's authorized representative. Project Manager is the person or entity identified as such in the Contract and is referred to throughout the Contract Document as if singular in number. The term "Project Manager" means the Project Manager or the Project Manager's authorized representative designated by written notice to HFC and Contractor. Project Manager will have the authority to-act on behalf of HFC only to the extent expressly provided in writing in the Contract Documents. Development Manager shall have the authority to act on HFC's behalf to the extent provided for in the Contract.

2.2 [Intentionally Omitted]

2.3 [Intentionally Omitted]

2.4 HFCs Right to Stop the Work. If Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by **Article 12** herein, or fails to carry out Work in accordance with the Contract Documents, and such failure continues for seven-(7) days after written notice to Contractor, 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.

2.5 HFCs Right to Carry Out the Work.

(a) If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-(7) calendar day period after receipt of written notice from HFC to commence and continue correction of such default or neglect with diligence and promptness, 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 to HFC of correcting such deficiencies, including HFC's expenses and compensation for Architect's additional services, if any, 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 immediately upon demand.

(b) In no event shall HFC have care, custody or control over, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Work, since these are solely Contractor's responsibility. HFC will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents. HFC will not have control over or charge of, and will not be responsible for the acts or omissions of, Contractor, Subcontractors or any other Contractor Parties. Contractor shall at all times have care, custody and control over the Project and the Site.

2.6 HFCs 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 3 ARCHITECT

3.1 General. The Work to be performed herein shall be inspected by HFC, Architect and/or other representative designated by HFC, to insure compliance with the Drawings and Specifications, the general and special conditions (if any) and other Contract Documents.

3.2 Architect's Status.

(a) Architect will interpret Drawings and Specifications, upon request of HFC or Contractor, in order that the requirements of Contract Documents shall be faithfully carried out. Architect has authority only to the extent provided in the Contract Documents and when in special instances is authorized in writing by HFC so to act. Subject to approval by HFC, Architect has authority to recommend the rejection of Work that does not conform to the Contract Documents. Contractor will, at Contractor's expense, remove and replace any materials or Work which is so rejected for non-conformance with the Contract Documents.

(b) Architect will inform HFC whenever in the reasonable opinion of Architect any of the Work is proceeding contrary to the requirements of the Contract Documents and will be unacceptable, if HFC concurs with Architects finding Contractor will be promptly notified. Failure of Contractor to take corrective action to make the Work conform to the Contract Documents will subject Contractor to any and all remedies available to HFC, including, without limitation, termination pursuant to the Contract. Such notification by Architect will not be a cause for Contractor to Claim either delay of the Work or an increase in the Contract Amount. No action by Architect under this **Article** and no decision made in good faith by Architect either to take or not to take action hereunder will give rise to any duty or responsibility of Architect to Contractor, any Subcontractor, any Subordinate Subcontractor or any other Contractor Parties.

3.3 Architect's Decisions.

(a) Architect shall, within a reasonable time, make decisions on all questions, Claims or Disputes between HFC and Contractor and on all matters relating to the execution and progress of the Work or the interpretation of the Contract Documents.

(b) Architect's decisions, in matters relating to artistic effect, shall be made within a reasonable time but shall not be binding upon HFC or Contractor.

(c) It is specifically understood and agreed that there shall be no arbitration of any questions, Claims or Disputes of whatsoever nature between Contractor and HFC arising out of or in connection with the Contract Documents or the performance thereof whether or not the same shall have been a matter as to which Architect has rendered a decision, opinion or interpretation.

3.4 Applications for Payment. Based on the Architect's evaluations of Contractor's Applications for Payment, Architect will timely review and identify the amounts due Contractor and will issue Certificates for Payment in such amounts, subject, however, to HFC's approval.

3.5 Bulletins. Architect shall promptly review proposals for changes to the Drawings and Specifications and make recommendations to HFC. At least one-(1) original copy of the Drawings and Specifications shall be preserved and maintained by Architect at all times with no changes made thereon. Such revision(s) shall be consecutively numbered, have all changes clouded with a delta number, and have a current revision date included in the title block next to the designation Bulletin "x". Changes to the Specifications shall be made by consecutively numbered and dated revisions. Architect will include a write up with the issuance of each Bulletin listing all changes to the Drawings and Specifications and/or Specifications. Upon the issuance of a subsequent Bulletin changing a previously changed Working Drawing, the previous Bulletins clouds shall be removed but the delta numbers shall remain.

3.6 Clarification Drawings and Supplemental Instructions.

(a) Architect or Consultant shall furnish with reasonable promptness any Clarification Drawings or supplemental instructions ("Supplemental Instructions"), necessary for the proper execution of the Work. Should Contractor deem it necessary to receive drawings and/or instruction from Architect in a manner other than is customary for the Project, Contractor's special request for expedited handling of the matter shall be communicated in writing to HFC and Architect. All such Clarification Drawings and Supplemental Instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom.

(b) The Work shall be executed in conformity therewith and Contractor shall do no Work without proper Clarification Drawings or Supplemental Instructions if the Drawings and Specifications lack clarity as to the intent of Architect or Consultant.

3.7 Digital (CAD) Files. From time to time during the course of the Project, Architect or Consultant may furnish Contractor or one or more of Contractor's or Subcontractor's digital (CAD) files of the Drawings and Specifications. Such digital information is provided for the benefit of the Project and convenience of the recipient, however, due to the ease of and the inability to monitor changes to digital files, and the potential for their deterioration and degradation, Architect's hard copies of the Drawings and Specifications shall govern over the digital files in the event of any Dispute or Claim over differences.

3.8 Site Visits and Field Observation Reports.

(a) Architect, as a representative of HFC, will visit the Site at intervals appropriate to the stage of construction (1) to become generally familiar with and to keep HFC informed about the progress and quality of the portion of the Work completed, and (2) to endeavor 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. However, Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. 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, which are Contractor's rights and responsibilities under the Contract Documents.

Architect shall promptly after each Site visit submit written consecutively numbered field observation reports on the progress of construction with comments as to materials and quality of Work and on any defects and deficiencies in the Work observed. Contractor shall timely correct any defects or deficiencies noted and reply to Architect in writing noting the status of the corrections once they have been concluded.

Architect will not be responsible for Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Architect will not have control over or charge of and will not be responsible for acts or omissions of Contractor, Subcontractors, or their agents or employees, or any other Contractor Parties.

3.9 Submittals. Architect 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 action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of HFC, Contractor, or Separate Contractors, while allowing sufficient time in Architect's professional judgment to permit adequate review, but in no event longer than fourteen-(14) days following receipt by Architect. 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 review of Contractor's Submittals shall not relieve Contractor of the obligations under the Contract Documents. Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences or procedures. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

3.10 Substantial Completion. Architect will conduct inspections for the purpose of making recommendations to HFC with regard to the following (for the avoidance of doubt, the determination of each of the following shall be made by HFC): (a) the date of Substantial Completion in accordance with the Construction Schedule, and (b) the date of Final Completion and shall issue a Certificate of Substantial Completion, subject to the provisions of **Article 9** herein. The Certificate of Substantial Completion issued shall state any conditions to that acceptance (if any), and list any Punch List items outstanding, (if any).

3.11 Final Completion. 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, Architect and HFC will promptly make such inspection and, when Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, Architect will promptly issue a final Certificate for Payment stating that to the best of Architect's knowledge, information and belief, and on the basis of Architect's on-site visits and inspections, the Work has been fully completed in accordance with terms and conditions of the Contract Documents (including all Punch List items) and that the entire balance found to be due Contractor and noted in

the final Certificate is due and payable. Architect will receive from Contractor and forward to HFC after Architect's review for HFC's review and records, all Record Drawings, Warranties, maintenance manuals and related documents required by the Contract and assembled by Contractor pursuant to **Section 4.3** herein. Architect's issuance or failure to issue a Certificate of Payment shall not be binding upon HFC unless approved by HFC.

ARTICLE 4 CONTRACTOR

4.1 General. Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. Contractor shall designate in writing a representative who shall have express authority to bind Contractor with respect to all matters under the Contract. The term "Contractor" means Contractor or Contractor's authorized representative. Contractor shall perform the Work in accordance with the Contract Documents.

Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of Architect in the Architect's administration of the Contract, or by activities or duties of Project Manager, or by tests, inspections or approvals required or performed by persons or entities other than Contractor.

4.1.1. Existing Conditions.

(a) Contractor has made an examination of existing Site conditions. If Contractor determines the Site conditions require any material or labor which is necessary for the proper rendering of the Contract has been omitted from the Drawings and Specifications, or if anything is necessary to bring the Premises to a condition suitable for receiving Contractor's Work in order to guarantee its integrity, Contractor shall report the same at once to HFC and Architect. Contractor's activities shall be limited to the Project Site only, except as may be necessary to perform Work required by the Contract Documents.

(b) Contractor shall investigate the conditions of public thoroughfares, roads, alleys and sidewalks as to availability, clearances, load limits, restrictions and other limitations affecting transportation to, and ingress and egress at, the Job Site. Contractor shall conform to all Governmental Requirements with regard to the temporary closure and use of adjacent roads, alleys and sidewalks, and the transportation of materials to, from and at the Job Site and shall secure, in advance, such permits or approvals as may be necessary.

(c) Third party drawings and information by others which may be acquired by Contractor in addition to the Drawings and Specifications concerning existing conditions and physical aspects of the Job Site are only for the convenience of Contractor. HFC does not warrant the accuracy of any grades, elevations, dimensions or locations given on any such third party drawings or on any survey, Contractor must verify the accuracy of such matters and neither HFC nor Architect assumes such responsibility.

4.1.2. Concealed or Unknown Conditions.

(a) 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 promptly provide notice to HFC and Architect before

conditions are disturbed and in no event later than seven-(7) days after first observance of the conditions. HFC will promptly investigate such conditions and, if HFC 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, HFC will recommend an equitable adjustment in the Contract Amount or Contract Time, or both. If HFC 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 of the Contract is justified, HFC shall so notify Contractor in writing, stating the reasons for such denial.

(b) Contractor acknowledges that with respect to (i) any conditions that are reasonably inferable or anticipatable from the Site surveys as included in the Contract Documents, and (ii) any concealed, physical conditions that are reasonably inferable from the geotechnical report delivered to Contractor, such conditions shall not constitute concealed or unknown conditions.

(c) If, in the course of the Work, Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, Contractor shall immediately suspend any operations that would affect such items and shall notify HFC and Architect. 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. Requests for adjustment in the Contract Amount and Contract Time arising from the existence of such remains or features shall be made as provided in **Article 12** of the Contract.

4.1.3. Review of the Contract Documents. Contractor shall (a) read the entire Specifications and shall carefully examine all Drawings and Specifications and details in order to be familiar with the quantity and quality of Work to be furnished. Because the Contract Documents are complementary, Contractor, before starting each portion of the Work, shall carefully study and compare the various Contract Documents relative to that portion of the Work as well as the information furnished by HFC pursuant to **Section 2.2** herein, (b) shall take field measurements of any existing conditions related to that portion of the Work, and (c) observe any conditions at the Site affecting it.

4.1.4. Compliance With Governmental Requirements, Etc.

(a) Contractor shall timely give all notices and comply with all Governmental Requirements bearing on the conduct of the Work as drawn and specified before a violation or breach would otherwise occur and HFC would suffer any penalty or damages. If Contractor observes that the Drawings and Specifications and/or Specifications are at variance therewith, Contractor shall promptly notify HFC and Architect in writing and any necessary changes shall be made as provided for in the Contract for changes in the Work. If Contractor constructs or performs any Work knowing it to be contrary to such Governmental Requirements and without such notice to HFC and Architect, Contractor shall bear all costs and damages (including HFC's reasonable attorneys' fees and the cost of any direct damages HFC actually incurs in connection with such violation) to the extent caused therefrom and said costs shall not constitute a basis for an increase in the Contract Amount.

(b) The Drawings and Specifications shall be supplemented by all Governmental Requirements. All applicable requirements specified in the Governmental Requirements shall be followed as if specifically noted in the Contract Documents except that where the Contract, Specifications or Drawings and Specifications call for any Work of a more stringent nature or higher quality than required by Laws and Ordinances having jurisdiction over the Work, the Work of the more stringent nature or higher quality called for by the Contract, Specifications or Drawings and Specifications shall in all cases be furnished.

(c) Unless otherwise directed by HFC in writing, Contractor shall secure and pay for all necessary licenses, and other permits and similar authorization from governmental authorities required to perform its obligations hereunder, all at Contractor's cost and expense. Contractor hereby agrees that any risk of additional costs associated with its failure or delay, caused by Contractor's acts or lack of timely action, in obtaining any and all trade permits described herein shall be the responsibility of Contractor and shall not constitute a basis for an increase in the Contract Amount and Contractor shall pay all expenses and costs in connection therewith.

(d) Contractor shall promptly give all notices and comply with all Governmental Requirements in any manner affecting Contractor's conduct of the Work. The obligations of Contractor under this paragraph shall not extend to notices to federal, state and local laws, ordinances and regulations in any manner to the extent relating to the design of the Work.

(e) If any of the Work is required to be inspected or approved by any Governmental Authority, Contractor shall cause that inspection or approval to be performed. No inspection performed or failed to be performed by HFC hereunder shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

(f) Contractor shall consult with the appropriate city and county building and fire departments, as necessary to satisfy all conditions and requirements of the building departments with regard to inspection and shall use its best efforts to expedite resolution of any conflicts and discrepancies concerning inspection requirements for issuance of all phased Certificates of Occupancy. HFC and Architect will provide their full cooperation to this end. Any conflicts between the criteria for inspection or related interpretations of building codes and those interpretations used at the time of "plan check" Contractor may discover will be brought to HFC's attention and shall be resolved immediately with HFC, Architect and said building department. HFC shall pay all connection charges, or assessments which may be imposed by any municipality or government agency or any public or private utility districts or companies, and the costs of obtaining any easement rights for utilities.

4.1.5. Structure Survey. Contractor shall have the structure surveyed, at Contractor's cost (and without an increase in the Contract Amount) by a licensed surveyor, licensed in the State of the Project, once the structural slab is poured to ensure that the structure has been constructed in the correct location onsite, and so that the Project when completed will not encroach on the public right of way or on any abutters property (if any).

4.1.6. Use of the Premises.

(a) Contractor shall prepare for HFC's approval a site utilization (the "**Site Utilization Plan**"). The Site Utilization Plan shall identify the location of all Site access points, fences and barricades, material laydown areas, concrete truck washout areas, concrete pump locations, loading dock, dumpster, trash chute, material and manlift locations, the location of any temporary water, standpipe, fire department connections and electric services, and all storage bin locations. Onsite parking will be limited by the nature of any construction activities taking place at a given time, worker parking within the area parking structure(s), if any, shall be subject to HFC's written approval.

(b) Contractor shall enforce the Contract Documents and HFC's instruction regarding signs and advertisements and temporary facilities.

(c) No photographs of the Project Site or any portion thereof nor any written material may be used for advertising or other purposes, without prior written approval of HFC.

4.1.7. Use of Streets.

(a) During progress of the Work, Contractor, as its expense, shall make ample provision for both vehicular and foot traffic on any public road, alley or sidewalk adjacent to the Site. Contractor shall provide free access to all fire hydrants and water and gas valves located along the perimeter of the Site. Gutters and waterways must be kept open or other provisions made for removal of storm water. Streets shall not be blocked in whole or in part without the written approval of authorities with jurisdiction over said streets. Contractor shall install and maintain temporary driveways, covered walkways, barricades, fences, bridges and crossings, such as are necessary to reasonably accommodate public vehicle and foot traffic, to provide access to private driveways adjacent to the Site and construction access to the Site.

(b) All precautions shall be taken to avoid the tracking or spilling of concrete, dirt, mud or debris on public streets, alleys and sidewalks, including, when necessary the washing down of vehicle tires before leaving the Job Site. Contractor shall prepare all construction access points as "all weather" access points, utilizing crushed stone or metal grating to help prevent dirt and debris being tracked onto the public right of way. Contractor shall employ street sweepers from time to time as necessary to ensure the public right of way remains clean and free of construction dirt and debris.

(c) Contractor's obligations hereunder include providing all traffic control for that of its suppliers and Subcontractors including, without limitation, providing flagmen, barricades, etc., as may be required by Governmental Requirements.

(d) The overnight storage of trucks shall not be permitted on streets adjacent to the Site without HFC's express written approval. All such storage or staging shall be lawfully permitted by, and meet all requirements of HFC and all Governmental Requirements.

4.1.8. Project Signage.

(a) Contractor shall erect and maintain one-(1) sign on the Project Site at a location designated by HFC. The sign located on the Site shall be designed by HFC. No other signs or advertisements shall be permitted on the Project Site, the fencing, barricades, or other areas of the Project unless prior written approval has been obtained from HFC.

(b) Contractor may post safety related signage, as good practice or company safety policy dictates, along the perimeter of the Site and within the Premises to advise and notify workers and visitors of their safety obligations, general Site rules and specific or general safety risks.

4.1.9. Access to the Work. Contractor shall provide HFC, Project Manager, Development Manager, and Architect access to the Work in preparation and progress wherever located. Contractor shall permit HFC, Development Manager, Project Manager, and Architect and their designated representatives access to inspect or examine (a) the Work and the Project, (b) all materials to be used in the performance of the Work and construction of the Project, (c) all documents and Record Drawings relating to the Work which are or may be kept at the Project Site, (d) all Work done, labor performed, materials furnished in and about the Project and the Project Site; (e) all records relating to the Work that are to be provided to HFC in accordance with the Contract Documents (the "Records"), and (f) any other documents of Contractor relating to the performance of the Work. Contractor agrees to cooperate with HFC and its designated representatives, to enable such person or persons to perform such inspections and examinations. Any delay in the progress of the Work caused by any such inspection or examination shall be an "Excusable Delay" (as such term is defined in **Section 8.3** herein) provided that the Contractor complies with the terms and conditions of said **Section 8.3** with respect to such delay.

4.1.10. Use of Completed Portions. HFC reserves the right to take possession of and use any completed or partially completed portions of the Premises, subject to local Governmental Requirements, without affecting the time for completion of the Work or such portions that are used. Taking possession of completed or partially completed portions of the Premises shall not be deemed as acceptance of any Work not completed in accordance with the Contract Documents.

4.2 Field Administration.

4.2.1. Supervision and Construction Procedures.

(a) Contractor shall supervise and direct the Work, using Contractor's best skill and attention as with similar projects. Contractor shall be fully responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall evaluate the Job Site safety thereof and, except as stated herein, shall be fully and solely responsible for the Job Site safety of such means, methods, techniques, sequences or procedures. If Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give timely written notice to HFC, Project Manager, and Architect and shall not proceed with that portion of the Work without further written instructions from Architect and Project Manager. If Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by Contractor, HFC shall be responsible for any loss or damage to the extent caused from those HFC-required means, methods, techniques, sequences or procedures.

(b) Contractor shall be responsible for any damage to or destruction of the property of any Separate Contractor or any other third party caused by the acts or omissions of Contractor, Subcontractors and their respective 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 promptly remedy damage and loss to property at the Site caused in whole or in part by any of the Contractor Parties or by anyone for whose acts they may be liable, except for damage or loss attributable solely to acts or omissions of HFC or Architect or by anyone for whose acts either of them may be liable and not attributable to the fault or negligence of any of the Contractor Parties. The foregoing obligations of the Contractor are in addition to Contractor's obligations under other provisions hereunder.

(c) 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; however, under no circumstances shall Contractor be responsible or liable for any costs, damages or liabilities arising from Separate Contractors work.

4.2.2. Superintendence: Supervision and Engineers.

(a) Contractor is to be represented at the Job Site at all times by a Superintendent who shall be in charge of all construction operations. The Superintendent shall have sufficient competent assistants to execute the Work properly in accordance with the approved Construction Schedule. Neither the Superintendent, nor the Construction Project Manager, shall be replaced without the prior written approval of HFC.

(b) The Construction Project Manager shall represent Contractor and all written directions given to Construction Project Manager shall be as binding as if given to Contractor. In the event of an emergency involving health and safety, HFC, Architect or Project Manager may give oral directions to

the Construction Project Manager, or person designated in his absence which shall be as binding on Contractor as if given to Contractor. Any such oral directions given to the Construction Project Manager, or his designated replacement will be reduced to writing as soon as is reasonable. Contractor shall personally supervise the Work using its best skill and attention as to similar quality projects.

(c) Contractor shall employ an experienced professional surveyor, licensed by the state in which the Project is located to establish lines and levels to properly install the Work. Contractor shall furnish, at its expense, all surveys as may be required to properly locate and lay out the entire Work. Contractor's surveys shall be in accordance with the basic lines and grades as established by the Drawings and Specifications.

(d) Contractor is solely responsible for the proper coordination of all construction activities and shall employ a competent project management staff, subject to the approval of HFC which staff shall be available at all times to coordinate and supervise the Work of all its trades. Contractor shall exercise prudence so that final Work and finish surfaces are in compliance with the Contract Documents.

4.2.3. Labor and Materials.

(a) Unless otherwise stipulated herein, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, 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.

(b) All workmanship and materials shall be of the quality specified. Materials shall be new and the best of the respective kinds, and furnished in sufficient quantity to facilitate proper and timely execution of the Work. Contractor shall furnish satisfactory evidence to HFC, if required, as to the kind and quality of materials employed in the Work.

(c) Insofar as practicable, and unless otherwise specified or directed, materials of one manufacturer for each specific purpose shall be used throughout the entire Work and where the nature of such permits, shall be delivered to the Job Site in the original and unopened cases, cartons or containers with the name and brand of the manufacturer plainly marked thereon.

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

4.2.4. Normal Working Hours. Contractor shall only work during hours where work is permitted to be conducted under applicable Governmental Requirements. Contractor is solely responsible for securing any approvals required under any Governmental Requirements to work hours other than those normal working hours specified herein. If Contractor performs Work during other than normal hours, all extra costs, including those for required inspections, shall be borne by Contractor, and shall not constitute a basis for an increase in the Contract Amount.

4.2.5. Coordination. Contractor shall be responsible for the complete coordination of all Work under the Contract. Contractor shall cooperate with HFC and Architect in order to coordinate the Work under the Contract with work under other contracts that have been awarded or that may be awarded for work within or adjacent to Contractor's Work; however, Contractor shall have full access to all areas of its Work. Contractor shall confine its construction activities to within the Contract Limit Lines.

4.2.6. Cutting and Patching.

(a) Contractor shall, at its expense, do all cutting, fitting or patching of the Work that may be required to make its several parts come together properly and fit to receive or be received by work of other contractors shown upon, or reasonably implied by, the Drawings and Specifications for the completed structure.

(b) 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.

(c) Contractor shall restore at no additional cost to HFC, curbs and gutters; street, alley and sidewalk pavements that may be opened or damaged in the performance of the Work, in a manner consistent with applicable standards for such work or accepted by HFC, Architect and to any governmental authorities having jurisdiction.

(d) Contractor shall locate, protect and save from damage utilities of all kinds found in the areas affected by its Work. Contractor shall be responsible for all damage caused to such utility by the operation of equipment or delivery of materials or as the direct or indirect result of any of its Work and shall repair all such damage at Contractor's cost and expense.

(e) Contractor shall be responsible for providing coordination for the Work of the Subcontractors and various trades for the proper and timely installation of blocking, sleeves, chases, opening, slots, inserts, hangers, anchors and other devices or provisions necessary for the installation of all Work of the Contract, and in providing temporary openings of adequate size for passage of large or bulky items of equipment. Such inserts, hangers, anchors, chases, slots, sleeves, recesses and openings in structural elements shall be subject to the written approval of the structural engineer, which shall not be unreasonably withheld or delayed.

(f) If and when it becomes necessary to cut materials for the proper reception and completion of the Work, the cutting, repairing and rough patching shall be done by the trades whose work is affected, and the finish patching shall be done by the trades for the finish materials.

(g) Every trade requiring blocking, inserts, embeds, hangers, anchors, chases, slots, sleeves, recesses, openings, etc., for the proper installation of the Work shall be responsible for correct sizes, and locations and shall cooperate with the trades affected and provide all information, templates and supervision that may be required, which Contractor shall review and coordinate.

(h) Subcontractors and Subordinate Subcontractors shall be responsible for carrying out the above requirements as a part of their Subcontracts with Contractor and such requirements shall not be the subject of a Change Order. Costs of defective or ill-timed work or unnecessary cutting, patching and repairing, shall be paid by the party responsible for the same, and shall not constitute a basis for an increase in the Contract Amount.

(i) No remedial cutting, patching or repairs shall be done until HFC has been consulted and has granted approval, such consent shall not be unreasonably withheld.

4.2.7. Cleaning Up.

(a) Contractor acknowledges that the execution of the Work will result in an indeterminate amount of debris and that the Contractor is obligated under the Contract to clean completely all Work and remove and dispose of all contributing debris, trash and waste from the Project Site. Contractor shall maintain neat working areas and not permit trash and debris to accumulate unreasonably upon the Premises, and will remove and lawfully dispose of all trash and debris caused by its operations as often as necessary if not daily. Contractor will insure that all fire exits, corridors, doorways, and exit paths shall be clear of debris, trash and waste and open to pedestrian traffic at all times, specifically including nights and weekends.

(b) If Contractor fails, within twenty-four-(24) hours of receipt of written notice to Contractor, to correct a failure to properly clean-up and dispose of all debris, trash and waste materials created by Contractor, its Subcontractors or Subordinate Subcontractors, HFC shall have the right to perform such clean-up, and Contractor agrees to pay HFC all reasonable costs incurred by HFC in performing the clean-up work. In the event of a Dispute, HFC may remove the debris, trash and waste materials and charge the cost of said clean up and removal to Contractor, and decrease the Contract Amount accordingly.

(c) Contractor shall, at its expense, make provisions to remove debris, trash and waste materials from the Job Site as it accumulates so that the Job Site is in a clean condition at all times. At no time shall Contractor allow lack of cleaning and debris, trash and waste material removal to interfere with, or delay, the orderly sequence of the Work. Contractor shall clean and remove debris, particularly before such trades as require clean Premises to begin work or start operations, commence the same.

(d) At the completion of the Work Contractor shall remove all debris, trash and waste materials from and about the Premises including all tools, scaffolding and surplus materials and shall leave the Premises "broom-clean" or its equivalent, unless more exactly specified by HFC. Contractor shall vacuum clean all air handling equipment such as coils, diffusers and induction units. In readiness for occupancy of HFC, Contractor, when requested, by HFC, shall thoroughly clean all portions of the Premises to be occupied and all applicable material and equipment surfaces suitable for occupancy. After replacement of scratched, cracked or broken glass, if any, and when all other installations are right and proper, including painting and finishing, Contractor shall clean and polish all glass and mirrors, remove all stains, paint spatter, spots, marks, dust and dirt, dimension lines and notes, and also clean all hardware, plumbing fixtures, light fixtures, tile, stonework, and in every other manner make the Premises clean and acceptable.

(e) Contractor shall, at its expense, clean and restore to operating condition any sewers, drains and other facilities which have been used by Contractor. All temporary construction and facilities shall be removed at the completion of the Work or when directed by HFC.

4.2.8. Quality Assurance. Contractor shall establish a planned system of activities that provides HFC, Architect, Consultants and the local building official's assurance that the Project was constructed as specified by the Contract Documents. Contractor's Quality Assurance system shall include inspections, verifications, audits, and evaluations of materials and workmanship as necessary to determine and document the quality of the constructed Project. Contractor's Quality Assurance system shall include measures to be taken by Contractor to assess if Subcontractor's or Materialmen are in compliance with the Drawings and Specifications for the Project.

4.2.9. Quality Control. Contractor shall establish a planned system of inspections to directly monitor and control the quality of the Work on the Project and undertake all measures necessary to achieve Quality Control.

4.3 CONTRACT ADMINISTRATION.

4.3.1. Accident Reports. Contractor shall submit to HFC, within one-(1) day of the occurrence of the event, copies of all reports arising out of any injuries to its employees, visitors, or those of any firm or individual to whom they may have sublet Work (a) property damage arising or alleged to have arisen on account of any Work done by Contractor under the Contract, and (b) injuries or property damage to persons or property in connection with the Work.

4.3.2. Allowances.

(a) The Contract Amount may include Allowances for material(s) or work to be incorporated into the Work that are not known as of the execution of the Construction Contract, all of which are set forth on **Exhibit B** attached to the Contract. When the exact cost of such material(s) or work is known, the Contract Amount will be adjusted accordingly.

(b) Unless otherwise provided in the Contract Documents:

(1) Allowances shall cover the cost to Contractor of labor, materials and equipment delivered to the Site and all required taxes, less applicable trade discounts;

(2) Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit and other expenses contemplated for the stated Allowance amounts shall be included in the Contract Amount but not in the Allowances; and

(3) Whenever costs are more than or less than Allowances, the Contract Amount shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (A) the difference between actual costs and the Allowances under **Section 4.3.2(b)(1)** and (B) changes in Contractor's costs under **Section 4.3.2(b)(2)**.

4.3.3. Billing Meetings. Billing Meetings (herein so called) shall be scheduled and conducted monthly after business hours by HFC (or the Development Manager) and Contractor, with meetings to be held on or about on or about the **25th** of each month at the same place and time. Such meetings shall be under the chairmanship of HFC and shall be held at a location to be agreed upon by the Parties. Contractor will deliver a "draft" Application for Payment with all available schedules of values and supporting backup for review at the Billing Meeting. At the conclusion of the Billing Meeting, Contractor will make any requested corrections to the Application, and together with all required schedules of values, supporting backup and releases deliver the final Application within five-(5) days following the Billing Meeting to HFC for approval by HFC. Upon the completion of the review and approval by HFC of the revised and completed Application, HFC will promptly deliver said Application to Architect for signature by Architect and the return of the Application to HFC for payment. HFC will promptly process said Application and make payment to Contractor within the later of fifteen-(15) days following receipt of such items and the twenty-fifth (25th) day of the following month.

4.3.4. Closeout Documents and Attic Stock. Prior to Final Payment, Contractor shall do the following as required by the Contract Documents:

(a) (i) perform all clean-up and disposal herein; (ii) submit all Record Drawings; (iii) submit all Guarantees and Warranties herein; (iv) turn over all Attic Stock; (v) turn over all operation and maintenance data, herein; and (vi) turn over all drawings, permits, models, renderings and samples.

(b) Furnish and deliver to HFC special tools and instruments, accessories, spare parts, and other maintenance materials required by the Contract Documents, and furnish and deliver the special tools, instruments, accessories and the special lifting and handling devices shown in the manuals approved under and unless otherwise specified or directed, deliver such items to HFC, with Contractor's written transmittal accompanying each shipment, in the manufacturer's original containers labeled to describe the content and the equipment for which it is furnished.

(c) Unless otherwise specified or directed, furnish and deliver all attic stock required by the Contract Documents to HFC, with Contractor's written transmittal accompanying each shipment, in the manufacturer's original containers labeled to describe the contents.

4.3.5. Communications and Email.

(a) Communications by and with Subcontractors and Materialmen shall be through the Contractor. Communications by and with Separate Contractors shall be through HFC. Communications by and with Architect, Consultants and inspection and testing consultants shall be through HFC. However Contractor may from time to time communicate directly with Architect or Consultants if HFC is unavailable to be included and Contractor needs to timely communicate with said Architect or Consultants. In the event Contractor does communicate with said Architect or Consultants without owner's participation, Contractor will promptly advise HFC of the nature of said communications. Notwithstanding the forgoing, Contractor may schedule HFC's inspection and testing Consultants to undertake their requisite inspections and tests as necessary to maintain the flow of the Work and the Schedule. Contractor shall copy HFC on all email communications with any member of the design team, any inspection and testing consultant, or any building, fire, public works, health department, or utility company employee. The intent of this **Section 4.3.5** is to ensure that HFC is copied on all communications of any nature regarding the Work on the Project.

(b) Contractor shall furnish to HFC written progress reports on the Work under the Contract with each Application for Payment, reflecting the actual progress of the Work as measured against the Schedule, including information on the status of materials and equipment which may be in the course of preparation or manufacture. As requested by HFC, Contractor shall meet with HFC, and secure the attendance of those personnel whose attendance may be requested by HFC to address any issues or matters affecting the progress of the Work as identified by HFC or Contractor.

4.3.6. [Intentionally Omitted]

4.3.7. [Intentionally Omitted]

4.3.8. [Intentionally Omitted]

4.3.9. Field Observation Reports. Architect or Consultant as a representative of HFC will visit the Site at intervals appropriate to the stage of construction to become generally familiar with and to keep HFC informed about the progress and quality of the portion of the Work completed. Architect or Consultant shall promptly after each Site visit submit written consecutively numbered field observation reports on the progress of construction with comments as to materials and quality of work and on any defects and deficiencies in the Work observed by Architect or Consultant. Contractor shall promptly correct any defects or deficiencies

noted in said reports and reply to Architect or Consultant in writing noting the status of the corrections once they have been concluded.

4.3.10. Operation and Maintenance Data. Contractor shall obtain data from various manufacturers and submit instruction, operation, and maintenance manuals to HFC, to the extent required under the Specifications. Each manual shall have an index listing the contents.

4.3.11. Inspections and Notices. Contractor shall secure and pay for all inspections (on an overtime basis) customarily and legally required. Contractor shall procure all certificates of inspection, use and occupancy, and all related permits and licenses (other than the building permits to be obtained by HFC), pay all charges, deposits and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use and occupancy shall be delivered to HFC upon receipt for each Phase of the Work in sufficient time for occupancy of the Project in accordance with the Schedule for the Work as approved by HFC.

4.3.12. Project Meetings. Project meetings (“**Project Meetings**”) shall be scheduled and conducted weekly during business hours by Contractor (HFC reserves the right to conduct the Project Meetings and approve the format of all minutes taken), with meetings ideally held on the same day and at the same place and time each week. Such meetings shall be under the chairmanship of Contractor and shall be held in Contractor's Job Site office; or elsewhere as agreed to by the Parties. At such Project Meetings, the practical points of construction are to be taken up and settled. Sequentially numbered minutes of the Project Meetings will be recorded by Contractor, and a copy will be delivered to Architect, HFC and all attendee's promptly after each Project Meeting, but in no event forty-eight (48) hours before the next scheduled meeting. Minutes of the prior week's Project Meeting shall serve as the agenda for the current weeks Project Meeting, continually carrying issues forward until resolved. A four (4) Week Look Ahead Schedule, Submittal log and RFI log shall be attached to each weeks meeting minutes, along with any other documents deemed necessary for a productive and informative meeting.

4.3.13. Proposals. Contractor shall present to HFC all proposals received from Subcontractors and Materialmen for any portion of the Work to be performed by Contractor. HFC reserves the right to participate in any negotiations with any Subcontractor or Materialmen, and to reasonably reject any and all proposals.

4.3.14. Requests for Information (RFI).

(a) Contractor shall submit a written request, sequentially numbered, to HFC, Architect or Consultant seeking verification that Contractor's proposed solution to the issue or matter that is the subject of the RFI is an acceptable solution. Upon receipt, HFC, Architect or Consultant may either accept Contractor's proposed solution or propose an alternative solution. HFC shall be entitled to deduct from the Contract Amount amounts paid to Architect or Consultant for Architect or Consultant to evaluate and respond to Contractor's RFI's, where such information was available to Contractor from a careful study and comparison of the Contract Documents, field conditions, other HFC provided information, Contractor prepared coordination drawings, and/or prior Project correspondence or documentation.

4.3.15. Record Drawings. Before Final Payment is made, Contractor shall, at its expense, furnish and submit to Architect or appropriate Consultant for approval, a complete set of the Record Drawings. The Record Drawings, which may be produced using Architect's digital (CAD) files as backgrounds, shall also show the size, location, elevation, arrangement and details of all concealed or underground utilities, such as irrigation lines, water, sewer, storm drainage, gas, chilled water, electrical power and lighting, telephone, cable and fiber etc. The Record Drawings shall be carefully drawn to scale and shall give accurate dimensions of all

concealed pipes, ducts, conduit, fittings, equipment, etc., measured from walls, columns, floors, beams or other fixed objects. The Record Drawings shall be prepared at the start of the Work and shall be, at all times, kept up-to-date, with the construction as the Work progresses.

4.3.16. Royalties, Patents and License Fees. Contractor shall timely pay all royalties and license fees incident to the use thereof in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified, by Architect and/or HFC, in the Contract Documents for use in the performance of the Work, then said fees and/or royalties shall be paid by HFC. Contractor shall indemnify and hold harmless HFC, and their respective affiliated entities, Architect and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorney's fees, and court costs) arising out of any claim of infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

4.3.17. Safety Meetings. Contractor shall schedule and conduct weekly safety meetings in compliance with OSHA's safety requirements during business hours, with such meetings ideally held on the same day and at the same place and time each week. Such meetings shall be under the chairmanship of Contractor and shall be held in Contractor's Job Site office; or elsewhere, as agreed by the Parties. Present at such meetings shall be all Subcontractors and Subordinate Subcontractors working on the Site. At such meetings, Contractor shall instruct employees in the recognition and avoidance of unsafe conditions and the regulations applicable to the Job Site work environment to control or eliminate any hazards or other exposure to illness or injury. The subject matter of the weekly safety meetings shall change each week and each attendee shall sign an attendance sheet verifying his attendance at the weekly safety meeting. Contractor shall archive and maintain all records of said meetings. Contractor will provide notice to HFC of the time and place of such meetings and HFC has the right, but not the obligation, to attend said safety meetings.

4.3.18. Stored Materials Procedures.

(a) Contractor, its Subcontractors, and Subordinate Subcontractors shall obtain from HFC prior written approval, which shall not be unreasonably withheld, to store materials fabricated specifically for this Project either on Site or at an off-site location. Cost and expense of any and all charges for such storage, and related transportation and handling shall be borne by Contractor or Subcontractor requesting said storage of materials.

(b) During the period that materials are stored either on Site or at an approved off-site storage area, Contractor shall provide evidence reasonably satisfactory to HFC that adequate security measures have been taken for the safe storage and protection against theft, vandalism and malicious mischief, mysterious disappearance or damage by any cause.

(c) Retainage shall be applicable to all materials so long as they are in storage, notwithstanding anything to the contrary in the Contract Documents.

(d) Title to stored materials for which payment has been made by HFC shall be in HFC.

(e) Each Application containing a request for payment of materials stored either on the Site or an off-site location shall be accompanied by a signed receipt from the supplier of the materials in storage certifying that any amount requested for such payment in all previous Applications has been paid.

(f) Payment for materials in storage shall not be construed as acceptance of the materials as to quality or compliance with the Contract Documents.

(g) Contractor, Subcontractor or Subordinate Subcontractor requesting said storage shall not be entitled to any mark-up on stored materials until they are incorporated into the Work.

4.3.19. Warranty.

(a) Contractor shall, before requesting Final Payment, provide the Guarantees required by the Contract Documents in favor of HFC on the form provided as **Exhibit U** to the Contract. Contractor warrants to HFC and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by HFC or Architect, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

(b) All Subcontractors and Subordinate Subcontractors are to provide a Guarantee for the Work which was performed pursuant to their contract with Contractor, unless otherwise waived by HFC in writing. All Subcontractors and Subordinate Subcontractors' Guarantees herein specified shall be underwritten by Contractor who shall obtain and deliver same to HFC before the Work will be deemed finished and accepted.

(c) In addition, Contractor shall be responsible for and pay for replacement or repair any of adjacent materials or work which may be damaged due to the failure of Contractor's material or workmanship and/or damaged as a result of the replacement or repairs thereof. In the case of bought-out equipment, the manufacturer's Guarantees and Warranties may, in some cases, be less than one (1) year, but that shall not affect Contractor's obligations hereunder.

(d) The warranty period shall be one-(1) year (or such longer period as may be prescribed by law or by the terms of the Contract Documents), from date of Substantial Completion of the Work as defined in the Contract Documents, except to the extent of the corrective Work, which shall be guaranteed for the later of the one-year period or six-(6) months after such corrective Work is completed. In addition to any specific Guarantee and all Warranties required by the Contract Documents or available under applicable law, Contractor, in signing the Contract, agrees at its own expense to replace or repair any faulty or defective material or workmanship within one-(1) year (or longer if required by the Contract Documents) from the day of Notice of Completion of the Project, or HFC's beneficial occupancy, whichever occurs first.

(e) In addition to the warranty terms stipulated, warranties of materials or equipment furnished by any manufacturer or supplier shall include any terms which cover a longer period of time than stipulated in the Contract Documents.

(f) Warranties for materials, equipment and work shall be governed by the law of the place where the Project is located.

(g) Warranties shall not deprive HFC of other rights and remedies HFC may have under other provisions of the Contract Documents or by law, and shall be in addition to and run concurrent with other warranties made by Contractor under requirements of the Contract Documents.

4.4 SCHEDULES.

4.4.1. Submittal of Schedule, Progress Schedules and Updates. Contractor has submitted to HFC the Construction Schedule prior to receiving the Notice to Proceed, and updated versions of the Schedule on dates established by HFC each week or month thereafter.

(a) All updated or revised Schedules submitted after the original Schedule shall be in the same detail as the original Schedule, unless modifications are approved in writing by HFC.

(b) Once each month, on a date established by the HFC, a review meeting for coordination of the Schedule will be held. The meeting shall be attended by HFC and Contractor's Project Manager and Superintendent and those major Subcontractors as determined to be necessary by HFC and/or Contractor.

(c) Prior to the monthly Schedule review meeting, Contractor shall obtain from the Subcontractors and staff, the necessary information as required reflecting progress to date. An updated Schedule containing the following information shall be made available for review at the meeting by Contractor. The updated Schedule shall include all information available as of the cutoff date established by HFC. A detailed list of all Schedule changes (logic, duration, status, additions, and deletions) shall be submitted with the update.

(1) For Activities started and/or completed during the previous period: Actual start and actual completion dates and number of work days.

(2) For Activities begun but not yet completed: The actual start date, percentage complete to date.

(3) For Activities not yet started: Estimated start dates, durations, and estimated completion dates.

(4) For approved Change Orders: Revised Activities, and durations, where required.

(5) The monthly update of the Schedule shall be for the month preceding the meeting and for three (3) months following the meeting. The previous month's Activities shall be reported as they actually took place.

(6) Portions of the Schedule on which all Activities are complete need not be reprinted and submitted in subsequent updates. However, the file of the submitted Schedule shall constitute a clear record of progress of the Work from Notice to Proceed to final completion.

(7) The monthly submittal to HFC shall be comprised of a PDF of the Schedule in sufficient size as to be legible to read without a magnifying glass and a digital copy of the Schedule in its native format.

4.4.2. Delays and Recovery.

(a) If at any time during the course of the performance of the Work, Contractor fails to complete any Activity on the Critical Path by its latest scheduled completion date or otherwise is not reasonably likely to complete the Work within the Contract Time, it shall within seven (7) days, submit to HFC, a written statement as to how and when it will reorganize its work force to return to its current approved Construction Schedule, provided said delays are not caused by HFC, Architect or Separate Contractor.

(b) Whenever it becomes apparent from the current monthly progress evaluation and updated schedule data that any milestone date(s) and/or the Contract completion date will not be met, Contractor shall take some or all of the following actions:

(1) Increase construction manpower in such quantities and crafts as required to substantially eliminate the backlog of work.

(2) Reschedule work items to achieve concurrency of accomplishment.

(c) Under no circumstances will the addition of equipment or construction manpower, increasing the working days or hours or any other method, manner or procedure to return to the Schedule to the contractually required completion date be considered justification for a Change Order or treated as acceleration, provided said delays are not caused by HFC, Architect or Separate Contractor.

4.4.3. Revisions to Accepted Schedule. Contractor shall prosecute the Work in accordance with the approved Schedule. Changes made to the approved Schedule for accomplishing the Work shall require prior approval of HFC.

(a) Upon approval of a Change Order or acceptance of a Change Estimate, the approved change shall be reflected in the next Schedule submittal by Contractor.

(b) If Contractor desires to make a change to the approved Schedule, Contractor shall notify HFC in writing stating the reasons for the change. If HFC considers the change to be of a major nature, HFC may require Contractor to revise and submit for acceptance the entire affected portion of the Schedule and analysis to show the effect on the entire Project. The proposed revision and analysis shall be submitted to HFC within seven-(7) calendar days after HFC notifies Contractor the revision is of a major nature. A change will be considered of a major nature if the time estimated to be required for an Activity or the sequence of Activities is varied from the original plan to a degree that there is reasonable doubt that the Contract Completion date will be met or if the change impacts the work of other Contractors at the Jobsite. Changes to Activities having adequate float shall be considered as minor changes, except that an accumulation of minor changes may be considered a major change when such changes affect the Contract completion date.

4.4.4. Four Week Look Ahead Schedule. Contractor shall prepare and distribute at each week's Project Meeting a progress schedule listing the Activities completed and in progress for the previous week and the Activities scheduled for the succeeding four-(4) weeks.

4.4.5. Submittal Schedule. Contractor shall, within fourteen-(14) days after receipt of Notice to Proceed, submit to HFC and Architect, Contractor's Submittal Schedule. This Submittal Schedule shall be revised monthly or more often as information becomes available, to show the status of the respective shop drawings and samples. The Submittal Schedule shall be arranged in accordance with section headings, as listed in the table of contents for the Specifications.

4.5 SHOP DRAWINGS, SAMPLES AND VISUAL FACADE MOCKUP.

4.5.1. General. In order to ensure that the Work that is being contracted for is performed in a coordinated manner, that it is of the type and quality specified or anticipated, and that any potential problems are identified as soon as possible so as to not impact the sequence of the Work and the Schedule, all Subcontractors are required to provide Submittals for review and approval by HFC, Architect, or Consultant, as applicable.

(a) Contractor shall prepare a Submittal Schedule and shall, at its expense, prepare and submit to Architect for approval all shop drawings, including any sketches, layouts, detail drawings, shop fabricating drawings, shop detail drawings, erection diagrams, setting drawings, catalog cuts, samples, schedules, manufacturer's printed instructions when required, etc., and any other drawings of any kind as may be required by the Specifications or as may be required in amplification of the Contract Drawings and any Clarification Drawings.

(b) Each Subcontractor shall be required to submit a list of proposed Submittals within fourteen (14) days of receipt of its fully executed subcontract. Contractor will review this list along with the Drawings and Specifications in order to determine if it is complete. Once approved by Contractor, Subcontractor's Submittal Schedule list will be used to update Contractor's master Submittal Schedule so that the individual items on the list may be tracked in a timely manner.

(c) All Submittals shall be submitted on dates sufficiently in advance of requirements to afford Architect, HFC or appropriate Consultant reasonable time for checking same, including time for correction, re-submission and re-check, and no claim for extension of the Contract Time will be granted Contractor by reason of its failure to timely submit the Submittals.

(d) Each Subcontractor is required to submit one-(1) digital file (PDF), of each sheet or print required plus six-(6) samples of any standard manufactured items, six-(6) samples of specified materials or six-(6) copies of manufacturer's catalog sheets, etc. until final approval of Architect, HFC or appropriate Consultant is obtained. **Making Submittals that are not in a digital format (PDF), is strongly discouraged.**

(e) The following Submittal procedures outline those steps that are to be taken in order to track and process a given Submittal once Contractor receives it:

(1) Contractor shall, prior to submission to Architect, HFC or appropriate Consultant thoroughly review all Submittals for complete dimensional accuracy to insure existing Work, work of other Contractors and work contiguous with, and having bearing on, the Work shown on the Submittals is accurately and clearly shown and that all Work complies with the Contract Documents. Submittals found to be incomplete by Contractor shall be corrected before submission to Architect. Contractor shall date stamp all PDF Submittals and electronically affix its Submittal stamp on each PDF Submittal to indicate Contractor's review and reference number. Any Submittal not submitted in accordance with this procedure will not be processed for approval, and will be returned to Contractor for its review in which event Contractor shall bear the risk of all delays as if no Submittal had been submitted. If Contractor's Submittals show variations from the requirements of the Contract Documents, Contractor shall make specific mention of such variations in the letter of transmittal in order that if such variations are acceptable, suitable action may be taken by HFC for proper adjustment in Contractor's compensation. Contractor shall receive directly all Submittals prepared by Subcontractors and Subordinate Subcontractors and Contractor is responsible for examination and submittal to Architect, HFC or the appropriate Consultant of same as above required.

(2) Contractor shall log in the submittal prior to making distribution to the Architect, HFC or the appropriate Consultant.

(3) The Architect, HFC or Consultant's action on submittals will result in the making one of the following four-(4) notations on the Submittals: namely, "**APPROVED**," "**APPROVED AS NOTED**," "**DISAPPROVED**," or "**RESUBMIT**."

(4) No Submittal shall be used for fabrication, erection, or construction purposes unless it is stamped "**APPROVED**" or "**APPROVED AS NOTED**" by both Contractor and Architect, or HFC or appropriate Consultant.

(f) The approval of Submittals by Architect, HFC or appropriate Consultant shall not relieve Contractor of the responsibility for the accuracy of such drawings, nor for proper fitting, construction of Work, furnishing of materials, or for Work required by the Contract Documents and not indicated on Submittal. Architect's approval shall not be construed as approving departures from the requirements of the Contract Documents.

(g) Contractor shall maintain a current log of all Submittals submitted for approval.

4.6 Temporary Conditions.

4.6.1. General. Contractor shall provide, maintain and remove at its own expense, all temporary Work and facilities required for the Project Site, including, but not limited to, sanitary facilities, fire protection, barricades, pedestrian walkways, cranes, hoists, stairs, scaffolds, dust and weather protection, etc., and all temporary utilities, including water, heat, light, power, air, gas, etc. Contractor shall pay for all quantities of the aforesaid utilities and any required connection fees.

The installation of temporary facilities and utilities shall be subject to HFC's approval and shall meet all Governmental Requirements.

4.6.2. Barricades, Covered Walkways and Fences. Contractor shall protect adjoining private or municipal property and shall provide barricades, temporary fences, and covered walkways as necessary to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances or other Governmental Requirements, and the Contract Documents.

4.6.3. Contractor's Field Office and Sheds.

(a) Contractor shall provide and maintain on the Job Site or other location approved by HFC, adequate field office(s) from which Contractor shall administer the Work under the Contract.

(b) Contractor shall furnish and/or erect temporary trailers, storage sheds, Conex boxes and worker's changing areas, as may be required in order to properly conduct the Work under the Contract. The location of these temporary facilities shall be subject to HFC's approval.

4.6.4. Explosives. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. Explosives shall be stored safely under lock and key. Storage places shall be plainly marked "**DANGEROUS EXPLOSIVES**" and be in care of a responsible person, at all times. The use, storing and handling of explosives and highly inflammable materials shall conform to all Governmental Requirements relating thereto. Proper precautions shall be used to avoid damage, by blasting, to public and private property. Flagmen shall be provided to warn passing traffic

4.6.5. Fire Protection. Any work done by Contractor on or about the Premises, shall be done in a careful manner with full consideration to fire protection as required by HFC, Architect, and all Governmental Requirements; and using fire-resistant materials where necessary for temporary enclosures. Contractor shall provide adequate fire protection for the Work, with extensions from the temporary water system using hose valves of the type required by the local fire department, the American Insurance Association (formerly the National Board of Fire Underwriters) and the Insurance Service Office. Approved chemical extinguishers shall be provided by Contractor where and as required by the local fire department and the American Insurance Association. Open fires on the Job Site or in any structure constructed are prohibited.

4.6.6. Noise. Contractor shall ensure that all Work complies with any local noise ordinances affecting construction work and is in accordance with the requirements of all applicable Governmental Requirements.

4.6.7. Scaffolding and Shoring. Contractor shall, at its expense, provide, install and maintain all necessary scaffolding and shoring for the performance of all Work under the Contract. Scaffolding and shoring shall comply with all Governmental Requirements and shall be designed and approved by a registered professional engineer, licensed in the State where the Project is located and employed by Contractor or an appropriate Subcontractor if required by Governmental Requirements.

4.6.8. Sewage, Surface, Floor Flows, Etc.

(a) Contractor shall furnish required labor and equipment and take all necessary precautions and assume entire responsibility and cost of handling any sewage, seepage, storm, surface, floor flows, etc., which may be encountered at any time during construction of the Work. Manner of controlling these flows shall meet the approval of HFC and Architect and comply with any Governmental Requirements.

(b) During the construction period and until permanent drainage facilities are installed, Contractor shall maintain the entire Job Site free of surface water by use of adequate temporary measures, as approved by HFC and any Governmental Requirements. Contractor shall not conduct water onto adjacent property at any time. The offsite discharge of any water shall be approved and permitted by the appropriate governmental agencies.

4.6.9. Temporary Erosion and Sediment Control. Contractor shall comply with all requirements of U.S. Environmental Protection Agency for erosion and sedimentation control, as specified for the National Pollutant Discharge Elimination (“NPDES”), Phases I and II, under requirements for the 2003 Construction General Permit (“CGP”), whether or not the Project is required by law to comply with such requirements. Contractor shall also comply with any more stringent requirements of the State of Texas Erosion and Sedimentation Control Manual and any requirements of the City and County where the Project is located.

4.6.10. Temporary Heat, Ventilating and Air Conditioning.

(a) If portable heaters are used, Contractor shall take all precautions necessary to ensure that they are safely used and that all fuel is safely and lawfully stored, but in no event shall it be stored within the Premises. If portable ventilating fans are used, Contractor shall provide the same with adequate safety guards and the area shall be "broom-clean" to insure protection of personnel. All tarpaulins shall be flame proofed.

(b) Contractor shall pay all costs in connection with providing personnel, fuel and electric energy to operate the permanent heating, ventilating and air conditioning system (the “**HVAC System**”) prior to acceptance of such systems by HFC and the issuance of one or more Temporary Certificates of

Occupancy as applicable. The use of such systems shall be subject to the prior written approval of HFC, and contractor will properly maintain the HVAC System during such temporary usage, including the regularly scheduled replacement of filters. Prior to turnover, the HVAC System shall be thoroughly cleaned, all filters shall be replaced, and it shall be restored to new condition.

4.6.11. Temporary Light and Power.

(a) Contractor shall provide, install and maintain a temporary lighting system, consisting of wiring, fixtures, sockets, lamps, fuses, locked type guards, trailers and any other equipment or material as required for the proper installation of all Work under the Contract. The temporary lighting system shall be extended as required as the Work progresses. Temporary lighting shall be maintained in operation at all times during which Work is being performed and at such other times as required by Governmental Requirements, recommended by OSHA and/or by the nature of the Work.

(b) The temporary lighting system is not to be used for power purposes, except that light hand tools may be operated therefrom. Contractor shall install adequate temporary power lines as required for the operation of electrical equipment used in connection with the Work.

(c) Temporary electric service shall remain energized beyond the normal working hours of Contractor as required to provide electric current for night lighting, for temporary heating system (if connected to the temporary electrical system), for hoisting equipment and tower cranes, and for such other uses as Contractor requires.

(d) All temporary lighting and temporary electric power shall meet the requirements of the National Electric Code (and any other applicable code) and the America Insurance Association, formerly National Board of Fire Underwriters. HFC may permit the use of the permanent electrical system. If such permission is granted, in writing, such permanent installations shall be reconditioned to the satisfaction of HFC, including the replacement of all burned-out or broken lamps prior to the permanent facility being accepted by HFC.

(e) All temporary lighting used for concrete pours and other late night or early morning activities will be shielded or directed away from adjacent properties to ensure that all temporary lighting remains onsite and does not spill over onto adjacent properties.

4.6.12. Temporary Shoring and Bracing.

(a) Contractor acknowledges and agrees that it shall be responsible for the design and method of construction of any temporary shoring and bracing system used in excavation for the construction of the foundation system, including sizing, sequence, placement and details of construction. Contractor hereby unconditionally guarantees that:

(1) Such shoring system shall be constructed in compliance with all building codes and ordinances and shall be fit and proper for its intended use;

(2) The design and method of construction of such shoring does not incorporate or employ the use of any product, process or technique which may be protected by common law or statutory patent, copyright or trade secret rights unless Contractor or its Subcontractors shall be the lawful owner or licensee of same; and

(3) The technique and method of construction of such shoring system shall not adversely affect any abutting or adjacent property and shall not cause or result in the lateral or horizontal movement of any abutting or adjacent properties or improvements located thereon.

(b) Notwithstanding the generality of any other warranties or indemnities contained in this Contract or any other Contract Documents, Contractor agrees to defend, indemnify, and hold HFC harmless from any and all claims resulting from breach or failure by Contractor to perform fully any of the foregoing obligations and specifically agrees to defend, indemnify and hold HFC harmless from any and all claims of its employees, agents, Subcontractors, suppliers or third parties and to make good any damages suffered by HFC, including damage to the Work, in any way resulting from collapse or lateral or horizontal movement resulting from the inadequacies of the design or techniques or methods of construction of such shoring system.

4.6.13. Temporary Stairs and Ladders. Contractor shall, at its expense, furnish and maintain all necessary temporary stairs, ladders, ramps, chutes, runways, derricks and similar facilities as required for the proper execution of all Work and in conformance with all applicable Governmental Requirements. If steel stairs are erected, the pan treads and platforms shall be provided with well fitted, temporary wood fillers so that the stairs may be used without damage thereto. All temporary stairs and ladders shall be designed and approved by a registered professional engineer employed by Contractor or appropriate Subcontractor if required by applicable Governmental Requirements.

4.6.14. Temporary Toilets.

(a) **Temporary Field Toilet Accommodations.** Contractor shall provide and erect adequate temporary field toilet facilities for the use of all persons working at the Site. The number, location, size and arrangement of the temporary toilet facilities shall be subject to the approval of HFC and shall comply with all Governmental Requirements. Temporary field toilet facilities shall be readily accessible to all workers and shall be properly enclosed, sheltered from view and weather and shall be protected from any hazard of falling objects. Temporary field toilet facilities shall include toilet fixtures and accessories and connections to the waste and water lines as required. If required, frost proofing or other measures to prevent freezing during the course of the Work shall be provided. Connections shall be made to water mains and sewers which may be available to the adjoining streets. When directed by HFC, Contractor shall promptly remove temporary field toilet facilities, temporary fixtures and temporary piping and shall plug temporary sewer connections. The use of chemical toilets will be acceptable if permitted by the Governmental Requirements.

(b) **Temporary Interior Toilet Facilities.** Contractor shall provide and install adequate temporary interior toilet facilities for the use of all persons working at the Site. The number, location, size and arrangement of temporary toilet facilities shall be subject to the approval of HFC and shall comply with all Governmental Requirements. Temporary interior toilet facilities shall be readily accessible to all workers. They shall be properly enclosed, sheltered from view and weather and shall be protected from any hazard of falling objects. Temporary interior toilet facilities shall include toilet fixtures and accessories and connections to the waste and water lines as required. If required frost proofing or other measures to prevent freezing during the course of the Work shall be provided. HFC may permit the use of permanent water and waste facilities in the structures for temporary interior toilets. If such use is permitted, the permanent facilities shall be turned over to HFC in perfect condition. Permanent fixtures shall not be used for temporary services specified, under this **Section 4.6.19(b)**. When directed by HFC, Contractor shall remove all temporary piping fixtures and enclosures. The use of chemical toilets will be acceptable if permitted by Governmental Requirements.

(c) **Use of Permanent Toilets.** When required for the progress of the Work, the temporary interior toilet facilities may be removed and permanent washrooms and toilets may be used. Extent of use of permanent installations shall be subject to the approval of HFC. Upon completion of the Work, Contractor shall make all necessary repairs to the permanent toilet facilities and shall turn same over to HFC in perfect condition.

(d) **Maintenance.** Contractor shall maintain the temporary exterior and interior of the toilet facilities and the permanent toilet facilities, when used, and the areas surrounding each of these facilities, in a clean and sanitary condition at all times. All such toilet facilities shall be adequately supplied and re-supplied with toilet paper and deodorizers.

4.6.15. Temporary Water.

(a) Contractor shall provide, install and maintain a temporary water system, including, if necessary, temporary water meters, water lines, valves, fittings, pumps and all other appurtenances, all of such size and capacity as to adequately supply the needs of Contractor under the Contract. Contractor shall make the necessary arrangements with the local water supply utility for connecting to the water mains and to insure an adequate source of supply. Contractor shall provide temporary power for pumps, if required, for the temporary water service. Contractor shall pay for all water used.

(b) Temporary water risers shall be installed in readily accessible locations and shall have outlets at each floor to facilitate the Work under the Contract. All temporary lines shall be protected against freezing if required.

(c) Contractor shall provide and maintain suitable sanitary drinking water facilities for use of all persons working at the Job Site.

(d) HFC may permit the use of permanent water and waste facilities. If such use is permitted, the permanent facilities shall be turned over to HFC in perfect condition.

(e) Contractor shall keep waste lines free of debris and shall remove all obstructions which may occur and shall be responsible for any damages caused by leaky, defective or broken water and waste piping, connections, or other fixtures and appurtenances installed by Contractor. When directed by HFC, Contractor shall remove all temporary water facilities.

4.6.16. Trash Disposal and Recycling. Contractor shall establish a waste management plan for either disposing of some or all of the construction and demolition waste, recycling some or all of the construction and demolition waste or salvaging some or all of the construction and demolition waste. The plan shall comply with all local green building or LEED requirements for this Project, and be administered and documented so as to comply with all said requirements and the Specifications.

4.6.17. Watchmen.

(a) Contractor shall provide watchmen, at its expense, as Contractor deems necessary to guard and protect HFC's and Contractor's property and Work to be installed under the Contract and as required by Laws and Ordinances and this Contract.

(b) Contractor shall provide, as necessary, at its expense, security personnel to assure that unauthorized people are kept off the Job Site. Such security personnel shall be trained for fire protection and have access to a phone for emergency communications.

4.6.18. Welding.

(a) Where electric or gas welding or cutting Work is done above or within ten (10) feet of combustible material or above space that may be occupied by persons, interposed shields of incombustible material or other measures as required by Governmental Requirements, shall be used to protect against fire damage or injury due to sparks and hot metal.

(b) Tanks supplying gases for gas welding or cutting shall be (i) placed at no greater distance from the Work than is necessary for safety, (ii) securely fastened and (iii) maintained in upright position. Such tanks, when stored, should be remote from any combustible material and free from exposure to rays of the sun or high temperatures.

(c) Suitable fire extinguishing equipment shall be maintained near all welding and cutting operations. When operations cease for the noon hour or at the end of the day, surroundings adjacent to welding and cutting operations that are combustible shall be thoroughly wet down.

ARTICLE 5 SUBCONTRACTORS

5.1 Approval of Subcontractors. Contractor shall not contract with a proposed person or entity to which HFC, in its sole discretion, objects. If HFC has reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another to whom HFC has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Amount and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Amount or Contract Time shall be allowed for such change unless Contractor has acted promptly and responsively in submitting names as required.

Contractor shall not substitute a Subcontractor, person or entity previously selected if HFC makes reasonable objection to such substitution.

5.2 Award of Subcontracts.

(a) Upon execution of each subcontract or purchase order, Contractor shall deliver a copy of same to HFC. Approval of any Subcontractor or Materialmen by HFC hereunder shall not in any way alter or impair the rights of HFC or the obligations of Contractor under this Contract. No Subcontractor or Materialmen shall be employed by Contractor until approved by HFC in writing.

(b) Contractor agrees that it is ultimately responsible to HFC for the acts and omissions of the Subcontractors, Subordinate Subcontractors, and Materialmen and of persons either directly or indirectly employed by them, as if such persons were directly employed by Contractor except as set forth in Article 10 of the Contract.

(c) Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor, Subordinate Subcontractor or Materialmen and HFC. Contractor is responsible for the proper execution of the entire Work under the Contract.

5.3 Subcontractor Relations.

(a) Contractor shall require each Subcontractor by written agreement, to the extent of the Work to be performed by Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of Subcontractor's Work, which Contractor, by the Contract Documents, assumes toward HFC. Each subcontract agreement shall preserve and protect the rights of HFC, Project Manager, and Architect under the Contract Documents with respect to the Work to be performed by Subcontractor so that subcontracting thereof will not prejudice such rights.

(b) Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Subordinate 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. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Subordinate Subcontractors.

(c) Notwithstanding any provision herein, any part of the Work performed for Contractor by a Subcontractor shall be pursuant to a written subcontract between Contractor and such Subcontractor, which shall be prepared on Contractor's standard form of subcontract.

5.4 Contingent Assignment of Subcontracts. Contractor hereby assigns to HFC all of its interest in each subcontract and purchase order now existing or hereafter entered into by Contractor for performance of any part of the Work, which assignment will be effective only upon HFC's termination of the Contract and acceptance by HFC in writing and only as to those subcontracts and purchase orders which HFC designates in said writing.

5.5 Backcharges. Contractor shall notify HFC whenever Contractor makes a backcharge against a Subcontractor or Materialmen (of any tier) with respect to Contractor's Work on the Project. Backcharges shall not be made against any Subcontractor or Materialmen on this Project relating to the Work performed by the Subcontractor or Materialmen for Contractor on other projects.

ARTICLE 6 WORK BY HFC OR BY SEPARATE CONTRACTORS

6.1 HFC's Right to do Work. If Contractor shall (a) fail to perform or complete the Work in the manner herein required, whereby damage or injury may result to persons or property, (b) do or fail to do anything whereby safety or proper construction may be endangered, (c) fail to adhere to the Construction Schedule established for said Work, either because of a lack of sufficient materials, personnel, or otherwise or (d) breach any covenant, condition, or warranty of the Contract, Contractor shall be deemed to be in default under the Contract. If any such default is not cured, or arrangements made with HFC to commence a cure within seven-(7) days after receipt of written notice from HFC, HFC, at its sole option, without prejudice to any other rights or remedies which it may have, may, without taking over the Work, furnish or cause to be furnished, the necessary materials and workers to assist Contractor.

In the event that HFC takes such action, the Contract Amount shall be reduced by such costs as are incurred by HFC and if the costs incurred by HFC, when added to the portion of the Contract Amount paid by HFC exceed the Contract Amount, Contractor shall reimburse HFC for said overage.

6.2 Separate Contractors.

(a) HFC reserves the right to let other contracts (each, a "**Separate Contract**") in connection with the Work and to permit its tenants, buyers, licensees, grantees, assignees, etc., to do

likewise. Contractor shall afford Separate Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, including reasonable use of elevators, and shall properly connect and coordinate its Work with others provided that said Separate Contractors reimburse Contractor for its reasonable costs associated with providing said use of the Premises.

(b) When Separate Contracts are awarded for different portions of the Work or other construction or operations on the Site, the term "Contractor" in the Contract Documents with respect to such Work in each case shall mean the Separate Contractor who executes each Separate Contract.

(c) 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 the Separate Contractors. Contractor shall participate with other Separate Contractors and HFC in reviewing the construction schedules of the Separate Contractors and shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The approved construction schedule shall then constitute the schedule to be used by Contractor, Separate Contractors and HFC until subsequently revised.

(d) Unless otherwise provided in the Contract Documents, when HFC performs construction or operations related to the Project with HFC's own forces, HFC shall be deemed to be subject to the same obligations and to have the same rights that apply to Contractor under the Contract.

(e) If any part of Contractor's Work depends for proper execution upon the work of any Separate Contractor, Contractor shall inspect and promptly report to HFC and Architect any defects discovered in such work that render it unsuitable for such proper execution. Contractor's failure to so inspect and report shall constitute an acceptance of such Separate Contractor's work as fit and proper for the reception of Contractor's Work, except as to defects which may develop in the Separate Contractor's work after the execution of such Work. Contractor shall have no responsibility for Separate Contractor's work or work performed by HFC's own forces.

(f) To insure the proper execution of Contractor's subsequent Work, Contractor shall inspect Work already in place and shall, at once, report to HFC and Architect any discrepancy between the executed Work and the Drawings and Specifications.

6.3 HFC Purchased Materials and Equipment. Contractor accepts assignment of all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. Contractor shall be responsible for such pre-purchased items, if any, as if Contractor were the original purchaser, provided such purchase orders and other agreements for procurement can be assigned to Contractor and Contractor is entitled to the enforcement of such purchase order and agreements. Contractor shall have no responsibility to determine if the materials and equipment are fit for their intended use and purpose or for the design of such materials and equipment incorporated in to the Work. The Contract Amount includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise, provided such purchase orders and other agreements for procurement of pre-purchased items can be assigned to Contractor and Contractor is entitled to the enforcement of such purchase orders and agreements.

6.4 Mutual Responsibility of Contractors. Should Contractor cause damage to any Work (or adjacent work) of any Separate Contractor, Contractor agrees, upon due notice from HFC or Separate Contractor, to settle any such damage claim with such Separate Contractor by agreement. If such Separate Contractor sues HFC on account of any damage alleged to have been so sustained, HFC shall notify Contractor.

If any judgment against HFC results therefrom, Contractor shall pay or satisfy it and pay all costs incurred by HFC. Should anyone cause damage to the Work performed by Contractor, Contractor shall be entitled to pursue all of its rights and remedies as provided by law against such persons.

6.5 Insurance. HFC shall cause any Separate Contractor who executes a contract with HFC after the date of signing of this Contract to perform work on the Project Site, to carry comprehensive public liability insurance.

ARTICLE 7 CHANGES IN THE WORK

7.1 General. It is understood and agreed that refinement and detailing will be accomplished from time to time with respect to the Drawings and Specifications. No adjustments in the Contract Amount or the Contract Time shall be made unless such refinement or detailing results in Changes in the Scope of Work or intent of the Drawings and Specifications or could not be reasonably inferable or anticipatable by a Contractor of Contractor's experience and expertise. If HFC requests a change in the Work which Contractor and HFC agree does not involve a Change in the Scope of Work, Contractor shall diligently proceed to complete the change without extensions of time or increases in the Contract Amount. .

7.2 Change Orders.

(a) HFC, without invalidating the Contract, may from time to time, or at any time, order extra Work, or make changes by altering, adding to, or deducting from the Work required by the Contract Documents, and in such event the Contract Amount will be adjusted accordingly. All such Work shall be executed under the conditions of the Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. Materials and workmanship of additional Work shall conform to that in the Specifications as modified by any Change Order.

(b) Architect shall have authority to make minor changes in the Work, not involving extra cost, not forming the basis for a change in the Contract Time, and not inconsistent with the purposes of the building through the issuance of instructions. Except in an emergency, endangering life or property, no extra Work shall be performed or change shall be made unless in pursuance of a written Change Order from HFC, stating that HFC has authorized the extra Work or change; and no claim for additional compensation or credit shall be valid unless so ordered. Change Orders signed by HFC will be issued in numerical sequence and will indicate:

- (1) Nature and extent of Work added or omitted.
- (2) Value of Work added or omitted.
- (3) Adjustment of time schedule, of any.

(c) The value of any such extra Work or omitted Work shall be determined in one or more of the following ways, at the option of HFC:

- (1) By unit prices listed in the Contract or subsequently agreed upon.
- (2) By previously approved estimate and acceptance as a lump sum amount.

(d) Unit prices shall be all-inclusive of the cost of all labor, materials, freight, layout, drafting, balancing and testing, tools and sundries, taxes, permits, coordination, supervision, bonds, overhead and profit, and any and all other costs of whatsoever nature in connection therewith for Work

in place and accepted or omitted, as the case may be. The calculations for determining the number of units of Work shall be actual surface, volume, length, hours or number of individual items listed for the class of Work, completed, in place and accepted or omitted. The AISC method of calculating the changes in structural steel quantities, if any, shall be used. In applying unit prices, the total net difference for each and any add(s) and/or deduct(s) within each item shall be calculated within the scope of each individual Change Order before multiplying this net amount by the appropriate add and deduct unit price for each item.

(e) If changes in the Work are requested and the value of such changes are to be determined by **subsection (b)(2)** above, then Contractor shall submit a detailed and itemized estimate for all trades involved. This estimate shall include an itemized list of all costs including, but not limited to, materials, the estimated man hours of labor for each operation, the federal and state benefits that apply on labor and any benefits that apply on labor in accordance with applicable union agreements, if applicable, and shall include Work by all trades necessary to make a complete installation.

(f) HFC shall at all times have the right to participate jointly in the negotiations of Requests for Changes with Subcontractors and Materialmen. Contractor shall make available to HFC, Project Manager, or an agent appointed by them or any of them, all books, records and documents relating to any Change Order or other change in the Work.

(g) In the event of disagreement as to any adjustment in the Contract Amount, Contractor shall proceed with the performance of this Contract, including the changes, additions or omissions, pending the resolution of the amount of any adjustment.

(h) Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Amount and the Contract Time. Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents. Upon agreement between HFC and Contractor as to the amount of any equitable adjustment to the Contract Amount as a result of a Change Order, the Change Order shall contain the following language:

"Both Contractor and HFC hereby agree and acknowledge that execution of this Change Order constitutes a mutual accord and satisfaction as to the Work covered hereby, and Contractor specifically waives and releases any and all claims, rights or interest, including, but not limited to, those for impact, disruption, loss of efficiency, 'ripple', or other extraordinary or consequential costs, arising directly or indirectly out of the Work described in this Change Order except as specifically included herein."

(i) Change Orders may include a maximum of _____ percent (____%) for Contractor's fee, and _____ percent (____%) for Contractor's overhead and other general conditions.

7.3 Minor Changes in the Work. Architect has the authority to order minor changes in the Work not involving adjustment in the Contract Amount 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 HFC and Contractor.

Notwithstanding anything contained in **Article 8** to the contrary, in no event shall any changes in the Work with respect to the manufacturer of a specified item or material, or the color, quality or grade, or physical composition of any specific item or material be made without the written consent of HFC, nor shall any change

in any dimension of any component of the Work or equipment incorporated into the Work be made without the written consent of HFC if such changes affect the operation or functionality of the Project or aesthetics of the Project, even if any of the above described changes would be considered a minor change in the Work.

7.4 Construction Change Directives.

(a) A Construction Change Directive is a written order prepared by Architect or HFC and signed by HFC, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Amount or Contract Time, or both. HFC may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time being adjusted accordingly.

(b) A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. If the Construction Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on one of the following methods:

- (1) Mutual acceptance of a lump Amount properly itemized and supported by sufficient substantiating data to permit evaluation;
- (2) Unit prices stated in the Contract Documents or subsequently agreed upon;
- (3) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (4) As provided in **Section 7.4(e)** below.

(c) Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise Architect of Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Amount or Contract Time. If Contractor has not submitted a preliminary estimate of the proposed adjustment to the Contract Amount and/or Contract Time; if any, resulting from the Construction Change Directive, prior to commencement of the Work involved, Contractor shall deliver its proposed adjustment in the Contract Amount and/or Contract Time, if any, within ten (10) days following receipt of a signed Construction Change Directive from HFC and Architect, or such longer period of time as may be reasonably required under the circumstances.

(d) A Construction Change Directive signed by Contractor indicates Contractor's agreement therewith, including adjustment in Contract Amount and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

(e) If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Amount, Project Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Amount, a reasonable allowance for overhead and profit. In such case, and also under **Section 7.4(b)**, Contractor shall keep and present, in such form as the Project Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Section 7(e)** shall be limited to the following:

(1) Costs of labor, including social security and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

(2) Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

(3) Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

(4) Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

(5) Additional costs of supervision and field office personnel directly attributable to the change.

(f) The amount of credit to be allowed by Contractor to HFC for a deletion or change that results in a net decrease in the Contract Amount shall be actual net cost as determined by Project Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

(g) Pending final determination of the total cost of a Construction Change Directive to HFC, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a written Change Order indicating the parties' agreement with part or all of such costs. For any portion of such costs that remain in dispute, Project Manager will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Amount on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with **Article 16**.

(h) When HFC and Contractor agree with a determination made by Project Manager concerning the adjustments in the Contract Amount and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

ARTICLE 8 TIME

8.1 Time is of the Essence of the Contract Documents and all Obligations Thereunder.

Contractor acknowledges and recognizes that time is of the essence and HFC is entitled to full and beneficial occupancy and use of the Project on the Substantial Completion Date, and that HFC has entered into, or will enter into, binding agreements demising or leasing all or part of the premises where Work is to be completed based upon Contractor's achieving Substantial Completion of the Project in accordance with the Phased Delivery of the Project and the Construction Schedule.

8.2 Progress and Completion. Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. With Work commencing on the date established in the Notice to Proceed, and concluding when Architect issues a final Certificate of Substantial Completion.

8.3 Delays and Extensions of Time.

(a) If the Work specified by Contractor to be on the Critical Path pursuant to the Construction Schedule is delayed at any time by the acts or omission or commission of Architect or HFC or Separate Contractors or by the employees or agents of Architect or HFC or Separate Contractors, or acts, omissions, decrees or restraints of Federal, State, or local governments, acts of God, war, terrorism (or in each case threats of such acts of God, war or terrorism); or by the elements for which Contractor could not reasonably foresee and provide against, or by other causes beyond Contractor's reasonable control, including without limitation, shortage of labor, materials or equipment (provided that Contractor has ordered all necessary materials and equipment at the proper times and used reasonable effort to obtain delivery of such materials and equipment at the time and in the order required to carry on the Work properly), strikes, boycotts, or like obstructive action by employees or labor organizations, or lockouts, or other defensive action by other employers whether general or individuals, or by organizations of other employees, (collectively "**Excusable Delays**"), then the time of completion shall be extended for such reasonable time as the Parties may mutually decide.

(b) Contractor shall give written notice to HFC and Architect of any acts, on their part to be performed in sufficient time for them to perform in a timely manner. Contractor shall not be entitled to, and does hereby waive any and all damages, except actual costs, which it may suffer by reason of HFC or Architect hindering or delaying Contractor in the progress of the Work or any portion thereof.

(c) If Contractor claims Excusable Delays, Contractor shall give written notice to HFC specifying the full particulars thereof, to the extent known to Contractor at the time. No extension of the Contract Time or adjustment of the Contract Amount shall be made for any delay occurring more than seven-(7) days before Claim therefore is made in writing to HFC; otherwise it shall be waived. Contractor shall provide with its notice, an estimate of the probable effect of such delay on the progress of the Work, including any and all efforts used or to be used by Contractor to mitigate the effects of the delay upon the progress of the Work. Contractor shall amend or provide additional information to any such written notice to HFC if in doing so Contractor furthers the intent of this notice provision.

8.4 Inclement Weather. The Contract Time contains an allowance for delays caused by inclement weather as set forth in the Contract. In order to make a Claim for one or more weather days, Contractor shall give written notice to HFC specifying the full particulars thereof including an estimate of the probable effect of such delay on the progress of the Work, including any and all efforts used or to be used by Contractor to mitigate the effects of the delay upon the progress of the Work. In the event Contractor is unable to mitigate the delay resulting from the weather day, Contractor shall endeavor to offer HFC mitigation at HFC's expense, which HFC can elect to accept in lieu of using a Weather Day. However, in no event shall there be an extension of the Contract Time for delays due to weather unless the allowance set forth in the Contract is exceeded.

8.5 Excusable Delay. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor is delayed at any time in the commencement or progress of the Work by any of the Excusable Delays, and provided that Contractor exercises reasonable diligence to overcome the impediment of such causes of delay, then the Contract Time shall be extended for a period equal to the length of the Excusable Delay. As used herein, the term "Excusable Delay" shall mean any delay described in **Section 8.3** for which Contractor has met and complied with the terms and conditions of **Section 8.3** and has obtained HFC's approval. In the event HFC and Contractor fail to agree on any requested Excusable Delay, the request shall be handled in accordance with the provisions of Contract.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 Payments. All of the provisions of the Contract relating to payment are incorporated herein by reference.

9.2 Completion.

9.2.1. Punch List and Turnover Process. The Punch List completion verification process shall be undertaken by HFC and Architect. In the event HFC and Architect are required to make more than two-(2) re-inspections Contractor shall pay the cost of all additional re-inspections. The Punch List completion verification process shall be conducted as outlined in **Sections 9.2.1(a)** through **(g)** below.

(a) **Contractor Ready for Punch List Notice.** Contractor shall send an email to HFC and Architect advising that Contractor believes the Work has been Substantially Completed and that Contractor wants HFC and Architect to “punch”, including with the request Contractor’s “Punch List”. Contractor shall identify any “Exceptions” that Contractor wants to be considered for Work outstanding or otherwise not ready to be punched.

(b) **HFC and Architect Prepare Punch List.** HFC and Architect will within ten-(10) business days punch the Work and deliver to Contractor via email the final Punch List if the Work is deemed ready to be “punched” by HFC and Architect. If the Project is for any reason deemed to not be ready to be punched, HFC and Architect will send an email stating the reasons it was not ready. Should this occur, Contractor shall re-notify HFC and Architect via email when the Project is ready to be punched.

(c) **Contractor Completes Punch List Items.** After Contractor receives the Punch List, Contractor will have ten -(10) business days to complete the items listed in the Punch List and send a new email requesting a “Back Check” of the Punch List work completed.

(d) **HFC and Architect Back Check the Punch List.** HFC and Architect will within two (2) business days of said notice re-inspect the Project to determine if all the outstanding Punch List items have been completed. If the Punch List items are completed, Contractor will be so notified and a Certificate of Substantial Completion will be prepared for the Project. If there are remaining or new Punch List items added to the Punch List, the process will repeat until all unit Punch List items are completed, and only then will a Certificate of Substantial Completion be issued.

(e) **Substantial Completion.** All such Punch List items which will be noted on the Certificate of Substantial Completion must be completed within ten-(10) business days.

(f) **Sequence of Punch List and Back Check Inspections.** The Construction Schedule and the above outlined process anticipates an orderly process of inspecting and turning over the Project.

(g) **Notification.** All notifications to HFC and Architect to conduct either a Punch List or a Back Check, or in the alternative HFC’s and Architect’s transmission of a given Punch List or notice that either a Punch List cannot be performed or a floor is ready for issuance of a Certificate of Substantial Completion, must be done in writing, which writing can be sent by email; verbal or un-documentable methods of communication will not be considered as proper notice.

(h) If prior to the date of Substantial Completion, Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation,

mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, Contractor shall cause such item to be restored to "like new" condition at no expense to HFC.

9.2.2. Substantial Completion.

(a) The Contract Time is the period of time allotted in the Contract for Substantial Completion of the Work.

(b) The time of Completion is as established in **Article 5** of the Contract.

(c) Substantial Completion of the Work shall include, but will not be limited to, the following:

(1) Completion of the Work in accordance with the Contract Documents, other than minor Punch List items as described in **Section 9.2.2(d)** below;

(2) All Building Department approvals required for the issuance of a Certificate of Occupancy;

(3) All HVAC Systems functioning in accordance with the Contract Documents;

(4) All plumbing, electrical and low voltage systems functioning in accordance with the Contract Documents;

(5) All life safety systems functioning in accordance with the Contract Documents;
and

(6) Issuance of a Certificate of Substantial Completion by Architect.

(d) The existence of minor punch list items and clean up shall not be cause to delay the issuance of a Certificate of Substantial Completion, provided that the Work is sufficiently complete in accordance with the Contract Documents, so HFC can occupy or utilize the Work for the purpose for which it is intended. This **Section 9.2.2(d)** only pertains to the exterior improvements, the building envelope, the systems, the parking areas, and all back of house and public areas. No Punch List items may remain on the list of work needing to be repaired or completed within any apartment or hotel room.

9.2.3. Final Completion and Final Payment. Final Completion of the Work shall occur not later than thirty-(30) days after Substantial Completion of the Work, subject to the adjustments of the Contract Time as provided in the Contract Documents.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs.

(a) Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. Contractor shall, at its expense, continuously maintain adequate protection of all Work from damage and shall protect HFC's property from injury or loss arising in connection with the Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly caused by agents or employees of HFC, Architect or Separate Contractors, and shall adequately protect property as provided by Laws and Ordinances and the Contract Documents.

(b) Contractor shall, at its expense, repair any and all damage or injury to adjoining property to the extent caused by the Work and leave such property in as good condition as before the Work was commenced including promptly repairing any damage or disturbance to walls, utilities, sidewalks, streets, curbs and the property of third parties (including municipalities) resulting from the performance of the Work. Contractor releases HFC of responsibility of any claims due to such damage or injury.

10.2 Safety of Persons and Property.

(a) Contractor shall maintain, implement and comply with a safety plan which is in accordance with Governmental Requirements and orders of any public authority for the safety of persons or property. In addition, Contractor shall conduct operations in a safe manner. Contractor shall be liable to HFC for any additional costs HFC incurs as a result of Contractor's failure to operate safely. HFC may conduct safety inspections from time to time, provided such inspections shall not relieve Contractor from its obligations to adhere to safety requirements nor shall such inspections create any HFC liability.

Contractor shall report immediately to HFC any injury at the Project site to any of the employees or agents of Contractor, Subcontractors, and Subordinate Subcontractors, Materialmen or visitors.

(b) Contractor shall, at its expense, maintain an active program of accident prevention to keep workers safety conscious. Contractor shall comply with all recommendations of safety engineers and other representatives of insurance carriers covering the Project Site or any part thereof. Contractor shall adhere to the most stringent requirements of the above references and of all Laws and Ordinances pertinent to safety provisions for all persons, including, without limitation, the provisions of the Occupational Safety and Health Act of 1970 and all regulations and standards issued pursuant thereto.

(c) Contractor shall cooperate with the insurance company's representatives so that the Work will proceed with the greatest degree of safety and efficiency.

(d) Contractor shall designate one member of its organization on each shift whose duty shall be to execute and coordinate accident control measures of Contractor and all Subcontractors and Subordinate Subcontractors under Contractor's jurisdiction. Contractor shall enforce safety discipline and be in full charge of such provisions and measures as are necessary to safeguard all persons who visit the Job Site.

(e) Contractor shall take such protective measures and precautions as are required by all Governmental Requirements as are necessary to prevent injury or damage through accident to persons and property. Contractor shall provide and maintain guardrails, fences, barricades, sand bags, planking, lighting and any other protective measures as may be required by the particular circumstances on the Job Site.

(f) Upon completion of the Work, Contractor shall remove such guardrails, fences, barricades and other protective measures as are no longer required for the protection of persons or property.

(g) The indemnity contained in the Contract shall extend to any Claims as a result of Contractor's failure to properly provide and maintain the protective measures herein or elsewhere specified or required.

(h) Contractor shall be fully and solely responsible for the safeguarding of the health, well-being and safety of its personnel, and shall ensure that each Subcontractor shall be responsible for the health, well-being and safety of its personnel and the personnel of the Subcontractors and Subordinate Subcontractors.

(i) Contractor shall maintain records of all injuries or illness caused in or by the course of the Work in accordance with any Governmental Requirements.

10.3 Hazardous Materials.

(a) If any hazardous or toxic material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), is 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.

(b) Upon receipt of Contractor's written notice, HFC shall obtain the services of an environmental consultant to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, HFC shall 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. Contractor will promptly reply to HFC in writing stating whether or not either it has reasonable objection to the persons or entities proposed by HFC. If Contractor has an objection to a person or entity proposed by HFC, HFC shall propose another to whom Contractor has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of HFC and Contractor. The Contract Time shall be extended appropriately and the Contract Amount shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in **Article 10** hereof.

(c) To the fullest extent permitted by law, and provided that if Contractor discovers any hazardous or toxic material or substance, Contractor immediately notifies HFC of same in writing and stops the Work until the affected area has been rendered safe for workmen, HFC shall indemnify and hold harmless Contractor and Subcontractors and agents and employees of any of them from and against claims, damages, losses and expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if the material or substance presents the risk of bodily injury or death as described in this **Section 10.3** and has not been rendered harmless and reasonable precautions were inadequate to prevent foreseeable bodily injury or death to person, except to the extent that such damage, loss or expense is not due to the fault or negligence of any party seeking indemnity.

(d) HFC shall not be responsible under this **Section 10.3** for materials or substances brought to the Site by Contractor or Contractor's Subcontractors, suppliers and/or Materialmen (of any tier).

(e) 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**, except to the extent that the cost and expense are due to HFC's fault or negligence or the fault or negligence of the Architect or Separate Contractors.

(f) If, without negligence on the part of Contractor, Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, HFC shall indemnify Contractor for all cost and expense thereby incurred.

10.4 Emergencies. In an emergency affecting the safety of persons, of the Work or of the adjoining property, Contractor, without special instructions or authorization from Architect or HFC, is hereby permitted to act, in Contractor's reasonable discretion, to prevent such threatened loss or injury. Any compensation, claimed by Contractor on account of emergency Work, shall be determined by agreement between the Parties.

ARTICLE 11 INSURANCE AND BONDS

11.1 General. Contractor shall carry insurance of the types set forth in the Contract. Contractor shall cause all Subcontractors to carry insurance of the types set forth in the Contract, or required by Governmental Requirements, whichever coverage is greater.

ARTICLE 12 UNCOVERING AND CORRECTING WORK

12.1 Inspection of Work.

(a) Architect, HFC and their representatives and duly authorized public authorities, shall, at all times, have access to the Work at the Job Site and at the shops or places of fabrication or assembly of Work, materials or equipment, or wherever it is in preparation, progress or storage. Contractor shall provide proper facilities for such access and for inspection. The presence or absence of any inspector shall not relieve Contractor from any obligation or requirement contained in the Contract Documents.

(b) If the Specifications, Architect's instructions, or Governmental Requirements require any Work to be specially tested or approved, Contractor shall give HFC and Architect timely notice of its readiness for inspection or observation, and if the inspection is by another authority than Architect, of the date fixed for such inspection. Contractor shall arrange for such inspection by all authorities. Inspection by Architect shall be promptly made, and where practicable, at the source of supply. If such Work should be covered up without approval or consent of Architect, it must, if required by Architect, be uncovered for examination at Contractor's expense.

(c) Required certificates of inspection, testing or approval shall be secured by Contractor and promptly delivered to HFC and Architect.

12.2 Uncovering of Work.

(a) If a portion of the Work is covered contrary to the HFC's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by HFC, Architect or Project Manager, be uncovered for examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Amount.

(b) If a portion of the Work has been covered that the HFC or Architect has not specifically requested to examine prior to its being covered, HFC or Architect may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at HFC's expense unless the uncovering of the Work is as a result of Contractor's failure to give notice of the readiness of that portion of the Work. 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 HFC or a

Separate Contractor in which event HFC shall be responsible for payment of such costs. In the event that Contractor refused to pay such cost, HFC will pay for same and reduce the Contract Amount by the amount of any such payment. Contractor shall be held responsible for and pay for the correction of such faulty Work performed by Contractor, Subcontractors and Subordinate Subcontractors.

12.3 Correction of Work before Final Payment.

(a) Contractor shall promptly correct Work rejected by Architect or HFC or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, and reasonable and necessary costs reasonably incurred by HFC for Architect's services and expenses made necessary thereby, shall be at Contractor's expense. If prior to the date of Substantial Completion, Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, Contractor shall cause such item to be restored to "like new" condition at no expense to HFC.

(b) Contractor shall promptly remove from the Premises, all Work rejected by HFC as failing to conform to the Contract Documents, whether incorporated or not, and Contractor shall promptly replace and re-execute the defective Work in accordance with the terms of the Contract and shall bear any costs of making good all Work of other Contractors destroyed or damaged by such removal or replacement.

(c) If Contractor does not proceed promptly with correction of such nonconforming Work, HFC may remove it and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay costs of such removal and storage within ten-(10) days after written notice, HFC may upon ten-(10) additional days written notice to Contractor, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by Contractor, including compensation for Architect's services and expenses made necessary thereby. If the proceeds of sale do not cover costs which are Contractor's obligation to pay, the Contract Amount shall be reduced by the deficiency. If payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to HFC.

(d) Contractor shall remedy any defects due to faulty materials or workmanship (and pay for any damage to other Work resulting therefrom) which shall appear within a period of one-(1) year, or for such other period of time called for under separate sections of the Specifications or any applicable Governmental Requirements, from the date of Substantial Completion and opening of the hotel portion of the Project for work specifically attributable to the hotel, and separately from the date of Substantial Completion of the apartment portion of the Project for work specifically attributable to the shell and core, parking and the apartments. HFC shall give notice of observed defects with reasonable promptness. All determinations regarding the conformance of the Work with the Contract Documents arising under this **Section 12.3** shall be decided by Architect notwithstanding the payment of the Final Payment. This obligation shall survive the termination of the Contract.

(e) Nothing contained in this **Section 12.3** shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents. The establishment of the time period of one-(1) year from the date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any Warranty required by the Contract Documents, relates only to the specific obligation of Contractor to correct the

Work and has no relationship to the time within which its 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 its obligations other than specifically to correct the Work.

(f) The corrective work referred to above shall include, without limitations, the cost of repairing or removing defective, deficient or nonconforming materials, equipment or work from the Project Site, the cost of correcting all work of other contractors destroyed or damaged by defective, deficient or nonconforming materials, equipment or work, including the cost of removal of such damaged or deficient materials, equipment or work from the Project Site, and the cost of correcting all damages to work of other contractors caused by the removal of defective, deficient or nonconforming materials, equipment or work.

(g) Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, whether before or after Final Payment, 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.

12.4 Correction of Work After Final Payment.

(a) In addition to Contractor's obligations under **Sections 4.3** and **12.3**, if, within one-(1) year after the date of Substantial Completion of the Work or after the date for commencement of warranties established under the Contract Documents, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct it promptly after receipt of written notice from HFC to do so unless HFC has previously given Contractor a written acceptance of such condition. HFC shall give such notice promptly after discovery of the condition.

(b) Contractor shall remedy any defects due to faulty materials or workmanship (and pay for any damage to other Work resulting therefrom) which shall appear within a period of one-(1) year, or for such other period of time called for under separate sections of the Specifications or any applicable Governmental Requirements, from the date of Substantial Completion of the Project. HFC shall give notice of observed defects with reasonable promptness. All determinations regarding defective work or materials arising under this **Section 12.4** shall be decided by Architect notwithstanding the payment of the Final Payment. This obligation shall survive the termination of the Contract.

(c) Nothing contained in this **Section 12.4** shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents. The establishment of the time period of one-(1) year from the date of Final Payment or such longer period of time as may be prescribed by law or by the terms of any Warranty required by the Contract Documents, relates only to the specific obligation of Contractor to correct the Work and has no relationship to the time within which its 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 its obligations other than specifically to correct the Work.

(d) During the one-(1) year period for correction of Work, if HFC fails to notify Contractor and give Contractor an opportunity to make the correction, HFC waives the rights to require correction by Contractor and to make a claim for breach of warranty. If Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the HFC or Architect, HFC may correct it in accordance with **Section 12.5**.

(e) The one-(1) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

(f) 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.

(g) Contractor acknowledges that HFC has granted Tenant rights to enforce the obligations of Contractor under this Section 12.4 and Contractor agrees to perform its obligations under this **Section 12.4** for and at the request of both HFC and Tenant,

12.5 HFCs Right to Correct Nonconforming Work. If Contractor fails to correct nonconforming Work, and fails within a seven-(7) calendar day period after receipt of written notice from HFC to commence correction of any nonconforming Work with diligence and promptness, HFC may after such seven-(7) day period give Contractor a second written notice to correct such nonconforming Work within a three-(3) day period. If Contractor within such three-(3) day period after receipt of such second notice fails to commence to correct such nonconforming Work, HFC may, without prejudice to other remedies HFC may have, (but shall not be obligated to) correct it. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the reasonable cost of correcting such nonconforming Work, including HFC's expenses and compensation for Architect's additional services, if any, 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 immediately upon demand.

12.6 Acceptance of Nonconforming Work. If HFC prefers to accept Work that is not in accordance with the requirements of the Contract Documents, HFC may accept such nonconforming Work instead of requiring its removal and correction, in which case the Parties may negotiate an adjustment in the Contract Amount. Such adjustment shall be effected whether or not Final Payment has been made and until such adjustment, HFC may withhold such amounts as are reasonable from payments, if any, due Contractor.

12.7 Deductions for Uncorrected Work. If Architect and HFC deem it un-expedient to correct Work damaged or done not in accordance with the Contract Documents, an equitable deduction (as determined by HFC) from the Contract Amount shall be made therefore and the procedure shall be as provided for in **Article 16** of the Contract.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 Geotechnical Report. The results of certain borings made upon the Job Site are available, upon written request to HFC, upon the following conditions:

(a) HFC makes no representation or guarantee as to the correctness, adequacy or completeness, or as to the conclusions to be drawn therefrom. However to the extent any such information is not correct or complete and the Contract Amount or the Contract Time is impacted by such incorrect or incomplete information, Contractor shall be entitled to an adjustment in the Contract Amount and Contract Time as applicable.

(b) HFC makes them available to Contractor merely for the purpose of providing such data as is in the possession of HFC, whether or not such data may be pertinent or of any value to Contractor in forming an opinion on the extent and nature of the Work to be performed.

(c) Contractor shall be responsible under the Contract for construction means and methods as based on such borings and tests.

(d) It is agreed by and between the Parties hereto that Contractor has, by careful examination, informed himself, to the best of its ability, as to the general nature and location of the Work, and conformation of the ground, sub-soil and ground water, the character, quality, quantity and location of the bedrock and other materials to be encountered as represented by the Geotechnical Report, the general character and quantity of equipment, and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions and other observable matters which can in any way affect the Work under the Contract. No verbal agreement or conversation with any officer, agent or employee of HFC or of Architect, either before or after the execution of the Contract shall affect or modify any of the terms or obligations contained herein.

(e) Test boring information is not part of the Contract Documents but is made available for reference and examination by Contractor. Contractor does not assume any risk or liability for any unknown subsurface matters or conditions.

13.2 Environmental Studies. The results of certain environmental studies made upon the Job Site are available, upon written request to HFC, upon the following conditions:

(a) HFC makes no representation or guarantee as to the correctness, adequacy or completeness, or as to the conclusions to be drawn therefrom.

(b) HFC makes them available to Contractor merely for the purpose of providing such data as is in the possession of HFC, whether or not such data may be pertinent or of any value to Contractor in forming an opinion on the extent and nature of the Work to be performed.

(c) It is agreed by and between the Parties hereto that Contractor has, by careful examination, informed himself, to the best of its ability, as to the general nature and location of the Work, and conformation of the ground, sub-soil and ground water, the general and local conditions and other observable matters which can in any way affect the Work under the Contract. No verbal agreement or conversation with any officer, agent or employee of HFC or of Architect, either before or after the execution of the Contract shall affect or modify any of the terms or obligations contained herein.

(d) Environmental studies information is not part of the Contract Documents but is made available for reference and examination by Contractor. Contractor does not assume any risk or liability for any Environmental matters or conditions, unless Contractor brings the materials or substances to the site, or he finds hazardous or toxic materials or substances on site and fails to take action as required as required by the Contract Documents.

13.3 Testing and Inspection.

(a) Unless otherwise provided, HFC shall be responsible for any costs and expenses for the geotechnical, independent materials testing lab, Commissioning, and other third party inspection and testing services, except to the extent that unanticipated costs for the geotechnical, independent materials testing labs and other third party inspection and testing services are required as the result of defective Work performed by Contractor. Unless otherwise provided, Contractor shall bear all the costs of such inspections, tests, or approvals conducted by public authorities or required of Contractor for the convenience of Contractor in carrying out the Work. Contractor shall give HFC and Architect timely

notice of when and where tests and inspections are to be made so that HFC and Architect may be present for such procedures.

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

(c) If Architect is to observe tests, inspections or approvals required by the Contract Documents, Architect will do so promptly and, where practicable, at the normal place of testing.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 Termination. Article 14 of the Contract is incorporated in its entirety into this **Article 14**.

ARTICLE 15 DISPUTES

15.1 Disputes. All of the provisions regarding disputes set forth in the Contract is are incorporated in their entirety herein.

15.2 Claims for Consequential Damages. Contractor and HFC waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

(1) damages incurred by 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.

(b) This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination in accordance with **Article 14** of the Contract. Nothing contained in this **Section 15.2** shall be deemed to preclude an award of liquidated damages, if applicable, in accordance with the requirements of the Contract Documents.