

CONSTRUCTION AGREEMENT

This Construction Agreement (“Agreement”) is made by and between Houston First Holdings LLC (“HFH”), whose address is 701 Avenida de las Americas, Suites 200, Houston, Texas 77010, and [TBD] (“Construction Manager”), whose address is [TBD]. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below. Terms not defined in this Article shall have the meaning given to them in the General Conditions.

1.1 Additional Pre-construction Phase Services means those services described in §2.3.6.

1.2 Architect means M. Arthur Gensler Jr. & Associates, Inc., a California corporation doing business in Texas as Gensler, whose address for the purposes of this Agreement is 711 Louisiana, Ste. 300, Houston, Texas 77002.

1.3 Construction Phase means the phase of the Project during which CMAR implements and executes the construction work required by the Contract Documents.

1.4 CMAR’s Contingency means the dollar amount set out in the Guaranteed Maximum Price Proposal that includes (but is not limited to) costs that CMAR incurs as a result of: (1) its Subcontractors’ failure to perform or insolvency; (2) fines or penalties imposed by any governmental body for its negligent acts; (3) it or its Subcontractors’ failure to coordinate their work with that of HFH or its contractors after agreeing to a schedule; and (4) its or its Subcontractors’ acts of negligence for costs related to defective, rejected, or nonconforming Work, materials, or equipment. CMAR’s Contingency shall not exceed one and one-half percent (1.5%) of the proposed Cost of the Work.

1.5 Construction Phase Fee means the fee for CMAR’s profit and general overhead.

1.6 Cost of the Work means reasonable costs that CMAR necessarily incurs to perform the Work in strict compliance with the Contract Documents, as described in §3.2.2.4.

1.7 General Conditions means the construction terms and conditions attached hereto as **Exhibit “A”** and made a part hereof for all purposes.

1.8 General Conditions Work means CMAR’s on-site management and on-site administrative personnel, insurance, bonds, equipment, utilities, temporary facilities, and incidental work, including field labor and materials.

1.9 Hotel means the Hilton Americas-Houston Hotel, located at 1600 Lamar St., Houston, Texas 77010.

1.10 Phase means either the Project’s Pre-construction Phase or the Project’s Construction Phase, as those terms are defined in this Article.

1.11 Pre-construction Phase means the phase of the Project during which CMAR performs the services described in §2.3.

1.12 Project means the planned renovation of approximately 1,200 guestrooms, ancillary public areas and back-

of-house space at the Hotel, including all requisite phases of planning, design, and construction work of any kind or type.

1.13 Project Manager means [TBD], the contractor selected by HFH to provide construction consulting services to HFH in connection with the Project and act as owner's representative in connection with the Contract Documents.

1.14 Project Site means the Hilton Americas Houston, located at 1600 Lamar St., Houston, Texas 77010.

1.15 Project Team means HFH, Architect, Project Manager, any separate contractors employed by HFH, and other consultants employed for the purpose of programming, design, and construction of the Project. The composition of the Project Team may vary at different phases of the Project. HFH will designate the Project Team and may modify it from time to time.

II. DUTIES OF CMAR

2.1. Overview

2.1.1. CMAR shall perform the Work in accordance with the Contract Documents.

2.1.2. HFH is entering into this Agreement in reliance on CMAR's special abilities in construction management and in performing its obligations under this Agreement. CMAR accepts the relationship of trust and confidence established between it and HFH by this Agreement. CMAR shall use its best skill, judgment, abilities, and attention to perform the services hereunder and to further the interests of HFH. CMAR represents that it has no obligations or impediments of any kind that will limit or prevent performance of the services required under this Agreement.

2.1.3. CMAR shall coordinate with other contractors on or around the Project site.

2.1.4. CMAR shall establish, implement, and follow a quality assurance and quality control program for the Work. CMAR shall provide HFH with a copy of the written quality assurance and quality control program.

2.1.5. CMAR has no actual knowledge of any strikes, lockouts or other labor disputes pending, or threatened or scheduled to occur, with respect to any of the factories, offices or other facilities of any of CMAR's suppliers, sub-vendors, or proposed subcontractors.

2.1.6. CMAR shall perform Pre-construction Phase services and Construction Phase services for the Project if authorized by HFH.

2.2. CMAR'S Personnel and Subcontractors

2.2.1. CMAR, its employees, and all and its subcontractors are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction.

2.2.2. CMAR's key personnel to be employed in the Project are identified in **Exhibit [TBD]** to the extent known at the time of signing this Agreement. CMAR shall not change such key personnel except with HFH's prior written consent, which shall not be unreasonably withheld. If any of CMAR's key personnel are not identified in the exhibit, then CMAR shall promptly identify in writing such persons to HFH. If HFH does not approve of an individual, then CMAR shall propose an alternate individual reasonably acceptable to HFH.

2.2.3. CMAR shall not award subcontracts or other agreements based on cost plus a fee without the prior consent

of HFH.

2.2.4. CMAR shall require its subcontractors who have not competitively bid to disclose to HFH their markups (both overhead and profit), estimates, and costs calculated in their bids or incurred or expected in sub-subcontracts and the Work performed, including any Change Order Work.

2.3. Pre-Construction Phase Services. CMAR shall perform and complete the following Pre-construction Phase Services:

2.3.1. Budget and Cost Consultation

Provide, throughout the duration of the Pre-construction Phase, updates of ongoing cost and budget impacts as well as cost consultation services. Prepare and be responsible for all procurement and construction cost estimates. Advise the Project Team immediately if at any time CMAR has knowledge or belief that the previously established cost or schedule goals will not be met, and make recommendations to the Project Team for corrective action.

2.3.2. Coordination of Design and Construction Contract Documents

Advise Project Team of inconsistencies, defects, or omissions in the drawings and specifications, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules. Recommend reasonable adjustments in the scope of the Project, including but not limited to: construction feasibility; quality; availability of materials and labor; cost factors, including costs of alternative materials or designs, costs of operation and maintenance, preliminary budgets, and possible cost savings; methods of verification for determining that the requirements and assignment of responsibilities are included in the proposed drawings and specifications; and any other matters necessary to accomplish the Project in accordance with the Project Schedule and Project construction budget established by HFH.

2.3.3. Existing Site Conditions

HFH has given CMAR access to the existing improvements and conditions on the Project site and has given CMAR the opportunity to visually investigate the existing conditions. CMAR will perform a thorough visual, non-destructive, and concise review of the site to become familiar with the existing conditions of the facility building systems and components. CMAR shall perform the review prior to submitting any Guaranteed Maximum Price Proposal. CMAR's submission of a Guaranteed Maximum Price Proposal shall be a representation that it has completed a review of existing site conditions and considered them in establishing the Guaranteed Maximum Price. CMAR shall not be entitled to a claim for an adjustment in time or price under the General Conditions for conditions that it discovered or ought to have reasonably discovered using best practices during its visual and non-destructive review, but any costs incurred shall be a legitimate use of CMAR's Contingency.

2.3.4. Construction Planning

2.3.4.1. Schedule, conduct, and record the minutes of pre-bid conferences with interested bidders, subcontractors, material suppliers, and equipment suppliers.

2.3.4.2. Coordinate and develop with Architect the bid package and work scope description that represents the appropriate portion(s) of the Project.

2.3.4.3. In accordance with applicable law, CMAR shall publicly advertise and solicit either competitive bids or competitive sealed proposals from potential Subcontractors for the performance of all major elements of the Work. CMAR may seek to perform portions of the Work itself if CMAR submits its bid or proposal for those portions of the Work in the same manner as all other subcontractors and if HFH determines, in its sole discretion that CMAR's bid or proposal provides the best value for HFH. HFH's determination in such matters is final. If

CMAR intends to submit a bid or proposal for such Work, then CMAR shall notify HFH in writing prior to soliciting such bids or proposals. CMAR shall receive and open all Subcontractor bids or proposals. CMAR and HFH shall review all Subcontractors' bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to individuals other than those employed by CMAR, HFH, or Architect. All bids and proposals shall be made public after the award of the subcontract or not later than the seventh day after the date of final selection of bids or proposals, whichever is later. If CMAR reviews, evaluates, and recommends to HFH a bid or proposal from a Subcontractor, but HFH requires a bid or proposal from another Subcontractor to be accepted, then, pursuant to the terms of the Agreement, HFH shall compensate CMAR by a change in price, time, or Guaranteed Maximum Price for any additional cost and risk which CMAR may incur because of HFH's requirement that another subcontractor's bid or proposal be accepted.

2.3.5. Guaranteed Maximum Price Proposal

2.3.5.1. When the Cost of the Work has been bid and costs agreed upon, CMAR shall submit a Guaranteed Maximum Price Proposal ("Proposal") for the Project to HFH, which shall include the following:

1. A Schedule of Values showing a breakdown of the Guaranteed Maximum Price of the Project, including the Cost of the Work, CMAR's Contingency, and the Construction Phase Fee;
2. A list of drawings and specifications, including all addenda, used in preparation of the Proposal;
3. A list of any Allowances and the basis for each Allowance;
4. A list of the clarifications and assumptions made by CMAR in the Proposal as well as monetary amounts attributable to them;
5. A breakdown of CMAR's costs organized by trade;
6. A list of the unit prices, if any;
7. A list of the Alternates used in calculating the Guaranteed Maximum Price;
8. The proposed Contract Time, including dates for Notice to Proceed, Date of Commencement of the Work, Date of Substantial Completion (which may be expressed in terms of amount of time after a Notice to Proceed is issued), Date of Final Completion, and any other milestone dates upon which the Proposal is based;
9. General Conditions Work costs;
10. CMAR's Contingency;
11. Construction Phase Fee; and
12. Any other items required by HFH.

2.3.5.2. The Proposal shall separately set forth the portion of the proposed Guaranteed Maximum Price that is allocated to CMAR's Contingency. CMAR may not use CMAR's Contingency without the prior written consent of HFH. CMAR may not charge a Construction Phase Fee on costs attributable to CMAR's Contingency. CMAR shall not include contingency amounts in other portions of the proposed Guaranteed Maximum Price, and the other portions of the proposed Guaranteed Maximum Price shall be based on the cost of actual bids, proposals,

and subcontracts for the Work where they exist, or if they do not exist, then on CMAR's best good faith estimate of what the costs for those portions of the Work will be.

2.3.5.3. CMAR is not bound to a Guaranteed Maximum Price unless HFH accepts the Proposal. CMAR shall not withdraw the GMP Proposal for 60 days. If HFH accepts a GMP Proposal for any phase or portion of the Project, then such GMP Proposal shall be incorporated into this Agreement in the form of an amendment signed by the authorized representatives of CMAR and HFH.

2.3.5.4. HFH, at its sole discretion, may reject the GMP Proposal (with no liability to HFH except for accrued but unpaid invoices, and the termination fee as described in this Section, if any), or attempt to renegotiate the GMP Proposal with CMAR (with the right to cease negotiations at any time and reject the Proposal). If HFH ultimately rejects all Proposals for the Project, then this Agreement shall terminate upon 30 days' advance written notice from HFH to CMAR. HFH shall have no liability to any of CMAR's subcontractors in the event of such termination. CMAR shall include a provision in each subcontract that is legally sufficient to eliminate any legal or equitable liability HFH may have for such termination as to the subcontractors. If HFH terminates the Agreement in its entirety without proceeding with any portion of the Construction Phase services, then HFH will not owe CMAR anything under this Agreement.

2.3.5.5. CMAR shall not be entitled to an increase in the Guaranteed Maximum Price for Work that is not detailed in the Contract Documents but is reasonably inferable, in HFH's sole discretion, from the Contract Documents. If an item or system is either shown or specified, CMAR shall provide, at no extra cost to HFH, all labor, material and equipment required for the proper installation of such item or system and needed to make a complete operating installation, whether or not detailed or specified, omitting only such parts as are specifically excepted by HFH. Any costs incurred by CMAR under this section shall be legitimate use of CMAR's Contingency.

2.4. Construction Phase Services. CMAR shall perform the following Construction Phase Services:

2.4.1 Project Control

2.4.1.1. Supervise and pay for the Work in strict accordance with the Contract Documents. CMAR shall award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the Work in accordance with the requirements of *Texas Government Code* §2269.255 and 2269.256. CMAR shall self-perform only General Conditions Work and other Work that HFH awards to CMAR in accordance with the requirements of *Texas Government Code* §2269.251 *et seq.* and this Agreement. HFH reserves the right to perform work related to the Project and to award separate contracts for work related to the Project.

2.4.1.2. Review drawings and specifications, including any geotechnical data/reports that are available, and notify the Architect and HFH of any defects or omissions in the drawings and specifications it discovers with respect to the existing conditions. Upon discovering a defect or omission in the drawings or specifications or other Contract Documents, CMAR shall submit a written request within ten days from discovery for an explanation or decision to the Architect and HFH. CMAR shall cooperate with HFH and Architect to resolve the discovered defects or omissions so as not to unnecessarily impede the progress of the Work. Should the defect be determined as Work that is reasonably inferable from the Contract Documents or should have been reasonably discovered during the Pre-construction Phase, CMAR shall proceed with the Work and CMAR shall be responsible for all resulting costs, including the cost of redoing or remedying the Work and resulting time delays; such costs shall be a legitimate use of CMAR's Contingency. Any claims for concealed or unknown conditions must comply with the requirements of the General Conditions.

2.4.1.3. Monitor the Work of the subcontractors and coordinate with the Project Team to complete the Work for a cost not to exceed the Guaranteed Maximum Price and attain Substantial Completion by the date(s) required by

the Contract Documents.

2.4.1.4. Attend HFH's Project progress meetings (separate from the meetings described in subsection 2.4.1.5 below) scheduled by HFH (which will occur no less often than biweekly), and fully advise the Project Team, to HFH's satisfaction, at such meetings as to Project status. Record and distribute the minutes of each meeting within seven days of the meeting in a format acceptable to HFH.

2.4.1.5. Schedule, direct, and attend regular meetings with the Project Team during the construction of the Project to discuss jointly such matters as procedures, progress, problems, and scheduling. Prior to each meeting, prepare and distribute to the Project Team a written agenda for the meeting and a memorandum setting forth the list of critical activities that require immediate action and the dates by when the activities must be completed. Record and distribute the minutes of each meeting within seven days of the meeting.

2.4.1.6. Maintain a competent, full-time staff at the Project site to coordinate and provide general direction over the Work and progress of the subcontractors on the Project.

2.4.1.7. Establish on-site organization of personnel and clearly defined lines of authority in order to effectuate the overall plans of the Project Team.

2.4.1.8. Establish and implement procedures for coordination among the Project Team, Subcontractors, separate contractors, Architects, and other consultants with respect to all aspects of the construction of the Project.

2.4.1.9. Expedite and coordinate delivery and installation of HFH-procured material and equipment, if any.

2.4.2. Scheduling

Perform Project scheduling in compliance with the General Conditions, or otherwise provide regular monitoring, updating, and reissuing of the all Project schedules as construction progresses, including, without limitation, Project Schedules, detailed construction schedules, submittal schedules, inspection schedules, and occupancy schedules. Identify potential and actual variances between scheduled and probable completion dates. Review the schedules for Work not started or incomplete and recommend to HFH adjustments in the schedules to conform with the probable completion dates Provide summary reports to HFH of each schedule update and document all changes in construction schedules. Incorporate activities subcontractors and other parties affecting the progress of the Work into scheduling. Include HFH's occupancy requirements and occupancy priorities in scheduling. Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each subcontractor's ability to meet schedules. Recommend action to HFH when any subcontract requirements are not met or appear unlikely to be met.

2.4.3. Cost Control

2.4.3.1. Maintain cost accounting records in good form and in accordance with generally accepted accounting practices on all Project expenditures. Allow HFH unrestricted access to such records and preserve them for a period of three years after HFH makes final payment to CMAR for the Project.

2.4.3.2. Provide to HFH the subcontractors' schedule of values, subcontractors' sworn statements and waivers of lien, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as reasonably required by HFH.

2.4.3.3. Promptly identify all significant variances between estimated costs and actual costs, and promptly report such variances to HFH along with recommendations for action monthly.

2.4.4. Documents, Shop Drawings, and Submissions

2.4.4.1. Request interpretations from the Architect, with HFH's consent, regarding the design intent of the Contract Documents in order to perform CMAR's obligations under this Agreement.

2.4.4.2. In collaboration with the Project Team, establish and implement procedures for expediting the processing of Architects' approval of shop drawings and other submissions. Receive and review all shop drawings and other submissions for conformance with the Contract Documents. Coordinate shop drawings and other submissions with the Contract Documents and other related documents prior to transmitting them to the Project Team.

2.4.4.3. Record in writing the progress of the Project. Submit written progress reports to the Project Team on a monthly basis (or on a more frequent basis as HFH may reasonably require), including information on subcontractor Work and the percentage of completion. Keep a daily log of Project construction activities available to the Project Team in accordance with the General Conditions. Submit daily logs to HFH once per week for the immediately preceding week.

2.4.4.4. Maintain at the Project site and make available to HFH a current set of record drawings, the Contract Documents, updated records of subcontracts, drawings, examples, purchases, materials, equipment, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions, a directory of personnel, Project correspondence, inspection procedures (as prepared by others), testing laboratory procedures (as prepared by others), contract changes, time extensions, progress payment data, final acceptance procedures, and instructions from HFH.

2.4.4.5. Provide HFH, at its request, with complete and unaltered copies of all subcontracts, including any amendments.

2.5 Diversity Commitment and Prevailing Wage

2.5.1. CMAR recognizes that HFH has established a goal of **24%** participation in the performance of the Work by diverse suppliers of goods and services, including first tier subcontractors and suppliers, in accordance with the HFC Diversity Program (which is incorporated herein by this reference). CMAR shall disclose to HFH the manner and extent to which it has made good faith efforts to achieve such goal and submit reports on forms provided by HFH with each invoice, or as directed by HFH. CMAR shall maintain accurate records reflecting the amount of participation of diverse suppliers of goods and services, including the aggregate amount of payments made to each and, with each application for payment, shall submit to HFH records with respect thereto.

2.5.2. CMAR shall comply with the governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic providing labor at the Project site. Prevailing wage rates applicable to the Work may be one or a combination of the following wage rates identified at www.houstonfirst.com/Do-Business, which is incorporated herein for all purposes by this reference. CMAR represents and warrants that it has carefully examined the classifications for each craft or type of worker needed to execute the work and determined that such classifications include all necessary categories to perform the work. If CMAR believes that an additional classification for a particular craft or type of worker is necessary to perform work under the agreement, then CMAR shall make a written request to HFH to use an additional labor classification and specify the proposed new classification. If HFH decides that a new classification is necessary, then it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered. Such determination will be made by HFH in compliance with applicable law. CMAR shall submit to HFH and Project Manager with each application for payment certified copies of payrolls showing classifications and wages paid by CMAR, Subcontractors or suppliers for each employee under the Contract Documents for any day included in such month.

III. DUTIES OF HFH

3.1 Overview

3.1.1. HFH hereby designates and appoints CMAR to be the Construction Manager-at-Risk under this Agreement and authorizes CMAR to so act in connection with the scope of Work set forth in the Contract Documents.

3.1.2. HFH will be reasonably acquainted with the Project. Upon CMAR's request, HFH shall furnish the written authorization of each HFH employee authorized to represent him in connection with the Project.

3.1.3. HFH shall cooperate in providing information to the Project Team regarding its requirements for the Project.

3.1.4. If HFH has actual knowledge of any fault or defect in the Project or non-conformance with the drawings and specifications, HFH shall give prompt written notice thereof to CMAR.

3.2 Payment Terms

3.2.1. For CMAR's performance of the Work, HFH shall pay Construction Manager the Contract Sum in current funds. The term "Contract Sum" as used herein is an amount equal to the sum of the Pre-construction Phase Services Fee, plus the Cost of the Work as defined in Article 6 plus, the General Conditions Amount, plus (z) Construction Manager's Fee, but in no event shall the Contract Sum ever exceed the Guaranteed Maximum Price (as the same may be adjusted upward or downward by Change Order after the Guaranteed Maximum Price has been determined).

3.2.1 Pre-construction Phase Services

3.2.1.1. HFH agrees to pay CMAR [TBD] for Pre-construction Phase Services (the "Pre-Construction Phase Services Fee"). Payments of the installments of the Pre-construction Phase Services Fee are due and payable within 30 days following presentation of Construction Manager's invoice.

3.2.2. Construction Phase Services

3.2.2.1. HFH shall pay CMAR for the Work based on the sum of the Cost of the Work plus the Construction Phase Fee, which shall not exceed the Guaranteed Maximum Price, subject to changes authorized by the Contract Documents. CMAR shall pay, without reimbursement from HFH, any cost not authorized by the Contract Documents and Guaranteed Maximum Price, except as per agreed upon Modifications.

3.2.2.2. If the sum of the Cost of the Work and the Construction Phase Fee is less than the Guaranteed Maximum Price, then HFH shall retain all savings. For items in the Contract Documents noted as "Allowances", HFH shall retain 100% of any savings. The Cost of the Work included in the Allowances shall be determined in accordance with General Conditions. Any increase to Allowance amounts based upon estimates by CMAR shall not result in any increase to the Construction Phase Fee.

3.2.2.3. [Intentionally omitted.]

3.2.2.4. The Cost of the Work includes only the following:

3.2.2.4.1. Self-Performed Work performed on a Non-Lump Sum Basis- Labor: Work self-performed must be approved by HFH in accordance with §2.3.4.3 of this Agreement.

1. Reasonable and customary wages paid to construction workers directly employed by CMAR who perform the construction of the Self Performed Work. If requested by HFH, CMAR shall provide certified

payrolls and any other documentation to verify wages and hours for non-salaried employees.

2. Reasonable and customary wages or salaries of CMAR's on-site direct supervisory but only for documented time when directly involved in performance of the Self- Performed Work.

3. Costs paid or incurred by CMAR for labor costs arising out of taxes, insurance, and benefits which are (i) required by law, (ii) required by collective bargaining agreements, (iii), or CMAR's standard fringe benefits, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.

3.2.2.4.2. Self-Performed Work performed on a Non-Lump Sum Basis- Materials, Equipment, Tools, Rentals: Work self-performed must be approved by HFH in accordance with §2.3.4.3 of this Agreement.

1. Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. HFH shall be entitled to take possession of excess materials not incorporated into the Work. This requirement only applies to materials that HFH reimbursed CMAR as a Cost of the Work. Payment for stored materials is subject to HFH's General Conditions.

2. Costs of materials, supplies, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by CMAR, if such items are fully consumed in the construction of the Work. Cost for items used shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.

3. Rental charges for machinery, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by CMAR, and may include transportation, installation, and minor maintenance costs, and removal.

4. Site debris removal and disposal costs in accordance with all applicable laws and regulations.

3.2.2.4.3. Subcontracts

Payments made or owed to Subcontractors by CMAR for the construction of the Work in accordance with the Contract Documents and the requirements of the Subcontracts with such Subcontractors, but only for Subcontracts consented to by HFH in accordance with the requirements of the Contract Documents.

3.2.2.4.4. Other costs:

1. Governmental sales and use taxes directly attributable to the Work. HFH is a home-rule municipal corporation and CMAR shall avail itself of all exemptions which may exist for such taxes based on HFH's status.

2. Permit and inspection fees.

3. Fixed percentages for insurance and bonds to the extent directly attributable to this Agreement per the attached Exhibit [TBD].

4. Testing fees pursuant to the terms and conditions of the General Conditions and Contract Documents.

5. Intellectual property royalties and licenses for items specifically required by the Contract Documents that

are, or will be, incorporated into the Work.

6. Utility charges.
7. Costs associated with emergency actions taken to prevent damage to property or persons.
8. Other costs approved in advance in writing by HFH at HFH's sole option and discretion.
9. CMAR's General Conditions Work expenses.
10. Work self-performed on a lump sum basis. Work self-performed on a lump sum basis must be approved by HFH in accordance with §2.3.4.3 of this Agreement.

3.2.2.5 Cost of the Work does not include:

1. CMAR's Contingency, unless approved by HFH in accordance with §2.3.5.2.
2. Construction Phase Fee.
3. Legal and administrative costs to review and negotiate the Contract Documents.
4. Any cost or expense incurred with respect to Construction Manager's indemnification obligations under the Contract Documents.
5. Expenses of CMAR's principal office and offices other than the site office.
4. Costs resulting from the failure of CMAR or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.
5. Costs not specifically authorized, including any cost that would cause the Guaranteed Maximum Price for any portion of the Work to be exceeded.

3.2.2.4.6. CMAR shall credit the following discounts, rebates, and refunds to the Cost of the Work paid by HFH:

1. If HFH makes funds available to CMAR, discounts earned by CMAR through advance or prompt payments. CMAR shall provide sufficient advance notice of available discounts and the need for funds to be available to HFH for HFH to obtain the benefit of the discounts. CMAR shall purchase materials for this Project in such quantities as will provide the most advantageous prices to HFH.
2. Reasonable market value as approved by HFH at the time of removal of all materials, tools, and equipment actually purchased for the Work and charged as a Cost of the Work and which is retained by CMAR upon completion of the Work.
3. Rebates, discounts, or commissions allowed to and collected by CMAR from Suppliers of materials or from subcontractors, together with all other refunds, returns, or credits received for return of materials, and sales taxes.
4. Deposits made by HFH and not returned to HFH due to the negligent or intentional acts of CMAR. Should CMAR not promptly so reimburse HFH upon demand, HFH shall be entitled to recover said amount from

CMAR, including, but not limited to, by deducting the amount from payments due CMAR.

3.2.3 Miscellaneous Payment Terms

In addition to the payment procedures described in General Conditions, the following payment terms shall apply:

3.2.3.1. In the General Conditions, references to adjustments in “cost” or “costs” refer to Costs of the Work as defined in this Agreement. References to CMAR’s “overhead” and “profit” refer to CMAR’s Construction Phase Fee.

3.2.3.2. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including Construction Phase Fee) shall not exceed the unpaid balance of the Guaranteed Maximum Price (less retainage on Work previously completed). If HFH determines that the amount remaining under the Guaranteed Maximum Price will not be sufficient to pay CMAR for services in accordance with this Agreement, HFH may withhold payments until CMAR, at its sole cost, performs a sufficient portion of the remaining services so that the portion of the amount remaining under the Guaranteed Maximum Price is determined by HFH to be sufficient to so complete the then remaining Work.

3.2.3.3. Any partial payments made by HFH shall not be construed as HFH’s final acceptance or approval of that part of the Work to which the partial payment relates or as a release of CMAR of any of its obligations or liabilities with respect to the Work.

3.2.3.4. The schedule of values may be revised from time to time to adjust allocations of costs to various line items as the costs become better known, but such adjustment shall be subject to the approval of HFH, which shall not be unreasonably withheld. Under no circumstances shall the schedule of values for all or any portion of the Work exceed the Guaranteed Maximum Price. The Construction Phase Fee, the General Conditions Work, and CMAR’s Contingency shall be shown as separate line items on the schedule of values.

3.2.3.5. Each schedule of values submitted shall maintain the originally established value for each work classification line item, and shall contain any revisions to costs or cost estimates for each such classification. The format and tracking method of the original schedule of values and of all updates to it shall be subject to the approval of HFH. This is not a line item GMP. CMAR shall guarantee the overall GMP amount. There shall not be individual guaranteed line items within the overall GMP; provided, however, CMAR shall not exceed any individual line item without prior written notice to HFH.

3.2.3.6. [Intentionally omitted.]

3.2.3.7. CMAR shall submit a monthly cost breakdown, including cost elements, for General Conditions Work over the duration of the construction period to HFH for approval. HFH shall pay for General Conditions Work on a monthly basis per the approved breakdown.

3.2.3.8. Payment for the Cost of the Work shall be made based on percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the application for payment, in accordance with the General Conditions.

3.2.3.9. Retainage as specified in the General Conditions will be applied to the entire amount requested including the Cost of the Work and CMAR’s Construction Phase Fee. Retainage will not be held on HFH’s standard “pass-through” items, such as Cash Allowances. CMAR shall make payments to subcontractors based on the same percentage of Work completed that is allocable to that subcontractor for each respective schedule of values classification, including applicable retainage.

IV. TERM AND TERMINATION

4.1. CMAR shall commence Pre-construction Phase Services upon the Effective Date of this Agreement. After establishment of the Guaranteed Maximum Price, HFH will issue a Construction Phase Notice to Proceed to authorize the start of Construction Phase Services. CMAR shall complete Construction Phase Services within the Contract Time in the agreed-upon Guaranteed Maximum Price, subject to any time extensions granted under the General Conditions.

4.2. Termination rights shall be as provided in General Conditions.

4.3. A termination under this Agreement above shall not relieve CMAR or any of its employees of liability for violations of this Agreement, or for any act, omission, or the negligence of CMAR.

4.4. As of the date of termination of this Agreement, CMAR shall furnish to HFH all statements, accounts, reports and other materials that CMAR has prepared in connection with its responsibilities under this Agreement. HFH shall have the right to use the ideas and designs therein contained for the completion of the services described by this Agreement, and for completion of the Project, or otherwise. All drawings, plans, specifications, renderings and models, etc., prepared by the Architect are the property of HFH or Architect, as set forth in the terms and conditions of the agreement between HFH and the Architect. They are not to be used by any person or entity other than HFH on other projects unless expressly authorized by HFH.

V. MISCELLANEOUS

5.1. Each subcontract agreement is assigned by CMAR to HFH effective only after termination by default of this Agreement by HFH and effective only for those subcontract agreements that HFH accepts by notifying the Subcontractor in writing. CMAR agrees to execute such additional documents as HFH may request to confirm such assignments. CMAR shall include a provision in each subcontract agreement recognizing the rights of HFH pursuant to the foregoing contingent assignment. Despite such acceptance by HFH of any such assignment, HFH shall not be liable for anything under such subcontract prior to the acceptance by HFH of the assignment or for any liability of CMAR to the Subcontractor. Acceptance of any such assignment shall not relieve CMAR or the Subcontractor of their responsibilities and liabilities for any Work performed prior to HFH's acceptance of such assignment.

5.2. Nothing contained in the Contract Documents shall create any obligations or liabilities owed by HFH to any Subcontractor or Supplier. Except as may be required by law, HFH shall have no liability or responsibility for the performance or nonperformance of any Subcontractor, Supplier, or consultant, even if HFH designated, required, identified or approved such Subcontractor, Supplier, consultant, or sub-consultant of any tier.

5.4. If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the others' breach of a term, that waiver does not waive a later breach of this Agreement. An approval by HFH of any part of CMAR's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. HFH is not authorized to vary from the terms of this Agreement.

5.5. HFH hereby expressly reserves the right from time to time to designate by written notice to CMAR one or more representatives to act partially or wholly for HFH in connection with the performance of HFH's obligations hereunder. CMAR shall act only upon instructions from such representatives unless otherwise specifically notified to the contrary.

5.6. CMAR is an independent contractor and not an agent of HFH. CMAR shall be liable to HFH for acts and omissions of CMAR and CMAR's Subcontractors and Suppliers of any tier, and their agents, employees and parties in privity of contract with any of them and anyone acting on behalf of any of them, and any other persons performing any of the Work directly or indirectly under contract with CMAR, including any design professionals and their consultants and sub-consultants of any tier.

The parties hereto have caused this Agreement to be signed by their authorized representatives, to be effective for all purposes as of the date of signature by HFH ("Effective Date"):

[signature block to follow in final agreement]

EXHIBIT “A”
GENERAL CONDITIONS
CONSTRUCTION MANAGER-AT-RISK

ARTICLE 1: GENERAL PROVISIONS

1.1 DEFINITIONS

1.1.1 Agreement: Document signed by the Parties and binding the Parties, containing the name of CMAR, title and location of the Project, enumeration of documents made part of the Agreement, and other provisions.

1.1.2 Allowance: An estimated sum of money to be used only for a limited class of expenditures such as utility relocation costs, fees for special licenses or permits, or other “pass-through” costs that would be the same for any contractor. Cash Allowances may not be used to purchase goods or services that are not specified in the Contract Documents, and exclude profit, overhead, and administrative costs. The unspecified items must be purchased according to the terms of Article 7.

1.1.3 Bonds: Performance Bond, Payment Bond and other Surety instruments executed by Surety. When in singular form, refers to individual instrument.

1.1.4 Certificate of Final Completion: The certificate issued and signed by HFH pursuant to §9.8.

1.1.5 Certificate of Substantial Completion: The certificate issued and signed by HFH pursuant to §9.6.

1.1.6 Change Order: Written instrument prepared by HFH and signed by HFH and CMAR, specifying the following: (1.) a change in the Work; (2.) a change in Contract Price or GMP; and (3.) a change in Contract Time, if any. The value of a Change Order is the net amount after offsetting all deductions against all additions affected by the Change Order.

1.1.7 Claim: Written demand or written assertion by one Party seeking adjustment of the Agreement, payment of money, extension of time, or other relief under the Contract Documents and includes, but is not limited to, claims for materials, labor, equipment, delay, changes, adjustments, substitutions, fees, and third party claims. The Party making the Claim has the responsibility to substantiate the Claim.

1.1.8 Contract Documents: The Agreement, these General Conditions, Drawings, Specifications, any Addenda issued prior to the Effective Date, all documents listed in the Agreement and in the Modifications as being incorporated into the Agreement or the Contract Documents, Modifications, and written amendments duly authorized and signed by HFH and CMAR. In the event of a conflict between the Agreement, General Conditions, Drawings, and Specifications, the following order shall control: Agreement; General Conditions; Drawings; Specifications. The Contract Documents form the contract between HFH and CMAR, and the Contract Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations, representation, and agreements between the Parties, whether written or oral.

1.1.9 CMAR: The construction manager-at-risk firm identified as such in the Agreement, including its successors and its authorized representatives.

1.1.10 Contract Time: The time period stated in an approved GMP proposal to substantially complete the portion of the Work described in the approved GMP proposal, plus days authorized by Change Order.

1.1.11 Date of Commencement of the Work: Date established in Notice to Proceed with a Construction Phase on which Contract Time will commence. This date will not be changed by failure of Design Build Contractor, or persons or entities for whom CMAR is responsible, to act. If and to the extent this provision is inconsistent with §6.01 of the Agreement, §6.01 of the Agreement shall govern.

1.1.12 Date of Final Completion or “Final Completion”: The date upon which all Work has been completed to HFH’s satisfaction and is certified by HFH to be at Final Completion.

1.1.13 Date of Substantial Completion: Date that a Construction Phase, or portion thereof designated by HFH, is certified by HFH to be substantially complete.

1.1.14 Drawings: Graphic and pictorial portions of the Contract Documents that define the character and scope of the Work. Until otherwise identified with more specificity in a Modification, the Drawings are the most recent Drawings prepared by CMAR and accepted by HFH.

1.1.15 Extra Unit Price: Unit Prices, which may be required for completion of the Work.

1.1.16 Final Completion: Final Completion occurs when CMAR fulfills all requirements for achieving Final Completion as set forth in the Contract Documents, including §9.8, and HFH issues a Certificate of Final Completion.

1.1.17 Furnish: To supply, initially pay for, deliver to the site, and unload.

1.1.18 Guaranteed Maximum Price (“GMP”): The amount or amounts agreed upon by HFH and CMAR as the maximum cost to HFH for the Work for a defined Phase of the Work, including the Cost of the Work and CMAR’s Construction Phase Fee for such Phase.

1.1.20 Holiday: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.21 Install: Unpack, assemble, erect, place, anchor, apply, work to dimension, finish, cure, clean, protect, and similar operations.

1.1.22 Minor Change in the Work: A written change in the Work, ordered by HFH that does not change GMP or Contract Time, and that is consistent with the general scope of the Contract Documents.

1.1.23 Modification: Change Order, Work Change Directive, or Minor Change in the Work, all of which are required to be in writing.

1.1.24 Notice of Noncompliance: A written notice by HFH to CMAR regarding defective or nonconforming work that does not meet the requirements of the Contract Documents, and that establishes a time by which CMAR shall correct the defective or nonconforming work.

1.1.25 Notice to Proceed (“NTP”): An authorization issued by HFH to CMAR authorizing CMAR Manager to commence performing the portion of the Work, per the Notice to Proceed.

1.1.26 Parties: CMAR and HFH. “Party,” in singular form, refers to CMAR or HFH, as appropriate.

1.1.27 Pollutant: Any materials subject to the Texas Solid Waste Disposal Act.

1.1.28 Pollutant Facility: Any facility regulated by the State of Texas to protect the health and environment from contamination by Pollutants, including without limitation, landfills, oil and gas production and storage facilities, wastewater facilities, waste injection wells, and storage tanks (including drums).

1.1.29 Product: Materials, equipment, or systems permanently incorporated into the Work (or to be incorporated into the Work) and materials, tools, equipment or systems temporarily used in performance of the Work. Products may include existing construction or components intended for reuse.

1.1.30 Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by CMAR to illustrate a Product.

1.1.31 Project: Total construction, of which the Work performed under the Contract Documents may be the whole or a part, and which may include construction by HFH or by separate contractors.

1.1.32 [Intentionally omitted.]

1.1.33 Provide: Furnish and Install, complete, ready for intended use.

1.1.34 Samples: Physical examples that illustrate Products, or workmanship, and establish standards by which the Work is judged.

1.1.35 Shop Drawings: Drawings, diagrams, schedules, and other data specially prepared for the Work by CMAR, Subcontractor or Supplier, to illustrate a portion of the Work.

1.1.36 Subcontractor: All trade contractors, separate contractors, consultants, and subcontractors entering into contracts (“Subcontracts”) with CMAR for the performance of the Work. The relationship between CMAR and the Subcontractors shall be that of a general contractor to its subcontractors unless otherwise approved in advance in writing by HFH, or except when HFH enters into a separate contract directly with a Subcontractor.

1.1.37 Substantial Completion: Substantial Completion occurs when CMAR fulfills all the requirements for achieving Substantial Completion of a Construction Phase as set forth in the Contract Documents, including §9.6, and HFH issues a Certificate of Substantial Completion.

1.1.38 Superintendent: Employee of CMAR having authority and responsibility to act for and represent CMAR.

1.1.39 Supplier: Manufacturer, distributor, materialman, or vendor having a direct agreement with CMAR or Subcontractor for Products, or services and its authorized representatives.

1.1.40 Surety: Corporate entity that is bound by one or more Bonds and is responsible for completion of the Work, including the correction period, and for payment of debts incurred in fulfilling the contract. Surety shall include co-surety or reinsurer, as applicable.

1.1.41 Underground Facilities: Pipes, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and encasements containing such facilities that exist below ground level.

1.1.42 Unit Price: An amount stated in the Contract Documents for an individual, measurable item of work, which, when multiplied by actual quantity incorporated into the Work, amounts to full compensation for completion of the item, including work incidental to it.

1.1.43 Unit Price Quantities: Quantities indicated in the Contract Documents that are approximations made by HFH for contracting purposes.

1.1.44 Work: All services, supervision, labor, materials, supplies, equipment, Products and other items for a Construction Phase required to perform this Agreement (whether completed or partially completed) in strict accordance with the Contract Documents (as such may be modified or amended), including all things reasonably inferable from the Contract Documents and all of the foregoing provided or to be provided by CMAR to fulfill CMAR's obligations under the Contract Documents.

1.1.45 Work Change Directive: A written change in the Work, ordered by HFH, that is within the general scope of the Contract Documents and consisting of additions, deletions, or other revisions. A Work Change Directive will state the proposed basis for adjustment, if any, in any GMP, Contract Time, or both.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Construction Documents have been read and carefully considered by CMAR who understands and agrees to their sufficiency for the Work. CMAR represents that it is not aware of any insufficiency or defect in the Contract Documents. Execution of the Agreement by CMAR is conclusive that it has visited the Work site, become familiar with local conditions under which the Work will be performed, and fully informed itself as to conditions and matters which can affect the Work or costs. CMAR further agrees that it has carefully correlated personal observations with requirements of the Contract Documents. The Contract Documents shall not be more strongly construed against HFH than against CMAR.

1.2.2 CMAR shall include all items necessary for proper execution and completion of the Work in strict accordance with Contract Documents and reasonably inferable therefrom.

1.2.3 Reference to standard specifications, manuals, or codes of a technical society, organization, or association, or to laws or regulations of a governmental authority, whether specific or implied, mean the latest edition in effect as of date of written agreement as to the GMP for the portion of the Work covered by that GMP, except as may be otherwise specifically stated in the Contract Documents.

1.2.4 No provision of any referenced standard, specification, or manual changes the duties and responsibilities of HFH or HFH from those set forth in the Contract Documents.

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

1.2.6 Unless otherwise defined in the Contract Documents, words which have well-known construction industry technical meanings are used in the Contract Documents in accordance with these recognized meanings.

1.2.7 Any ambiguity or uncertainty in Drawings, Specifications, Addenda, and Modifications shall be interpreted and construed by HFH and HFH's decision shall be final and binding upon all parties.

1.2.8 Where the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall mean the direction, requirement, permission, order, designation, or prescription of HFH unless explicitly stated otherwise. The words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to HFH, unless explicitly stated otherwise.

1.2.9 Reference to a specific requirement of a cited standard shall include all general requirements of the entire cited standard pertinent to the specific reference.

1.2.10 When the Contract Documents use the capitalized term “Contractor,” that term shall be deemed to refer to CMAR unless otherwise indicated.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 Drawings, Specifications, and other documents prepared by HFH or by CMAR are instruments of service through which the Work to be executed by CMAR is described. CMAR may retain one record set.

1.3.2 Neither CMAR, Subcontractor, nor Supplier will own or claim a copyright to documents contained in the Contract Documents or any part of the Agreement.

1.3.3 Documents contained in the Contract Documents, prepared by HFH or by CMAR, and copies furnished to CMAR, are for use solely with respect to the Work. They may not be used by CMAR, Subcontractors or Suppliers on other projects or for additions to the Work, outside the scope of the Work, without the specific written consent of HFH.

1.3.4 CMAR, Subcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Contract Documents appropriate to and for use in execution of their Work under the Contract Documents.

1.4 INTERPRETATION

1.4.1 Specifications are written in an imperative streamlined form and are directed to CMAR, unless noted otherwise. When written in this form, words “shall be” are included by inference where a colon (:) is used within sentences or phrases.

1.4.2 In the interest of brevity, the Contract Documents frequently omits modifying words such as “all” and “any” and articles such as “the” and “an”, but an absent modifier or article is not intended to affect interpretation of a statement.

ARTICLE 2: HFH

2.1 LIMITATIONS OF HFH’S OFFICERS AND EMPLOYEES

2.1.1 No officer or employee of HFH may authorize CMAR to perform an act or work contrary to the Contract Documents, except as otherwise provided in the Agreement.

2.2 DUTIES OF HFH

2.2.1 If a building permit is required for the Project, then Architect will process an application for, and HFH or its designee shall purchase and obtain such permit before Date of Commencement of the Work or applicable Construction Phase of the Work.

2.2.2 HFH will make available to CMAR a reproducible set of Drawings. Additional copies will be furnished, on CMAR’s request, at the cost of reproduction.

2.2.3 When necessary for performance of the Work, HFH will provide surveys describing physical characteristics, legal limitations, legal description of site, and horizontal and vertical control adequate to lay out the Work.

2.2.4 Information or services that HFH is required to provide under the Contract Documents will be provided by HFH with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 The Agreement imposes no implied duty on HFH. HFH does not warrant any plans or specifications associated with the Contract Documents.

2.3 AVAILABILITY OF LAND AND USE OF SITE

2.3.1 HFH will furnish, as indicated in the Contract Documents, rights-of-way, land on which the Work is to be performed, and other land designated in the Contract Documents for use by CMAR unless otherwise provided in the Agreement.

2.3.2 CMAR shall confine operations at site to those areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the Project site with materials or equipment.

2.4 HFH'S RIGHT TO STOP THE WORK

2.4.1 If CMAR fails to carry out the Work in accordance with the Contract Documents, or fails to correct Work which is not in accordance with requirements of the Contract Documents as required in §12.1.1 and §12.2, HFH may order CMAR to stop the Work or any portion of the Work until the cause for the order has been eliminated. However, the right of HFH to stop the Work will not give rise to a Claim for delay or an increase in compensation or to a duty on the part of HFH to exercise this right for the benefit of CMAR or any other person or entity, except to the extent required by §6.2. If CMAR corrects the defective or nonconforming work within the time established in Notice of Noncompliance, HFH will give written notice to CMAR to resume performance of the Work.

2.5 HFH'S RIGHT TO CARRY OUT WORK

2.5.1 If CMAR fails to carry out work in accordance with the Contract Documents, and fails within the period established in a Notice of Noncompliance to correct the nonconforming work, HFH may, after expiration of the required period, correct the deficiencies without prejudice to other remedies HFH may have, including rights of HFH under §14.1.

2.5.1.1 When HFH corrects deficiencies, HFH will issue an appropriate Change Order and deduct from payments then or thereafter due CMAR the cost of correcting the deficiencies, including compensation for other Architects and HFH's additional services and expenses made necessary by such default, neglect, or failure. This action by HFH and amounts charged to CMAR are both subject to prior approval of HFH. If payments, then or thereafter due CMAR are not sufficient to cover these amounts, CMAR shall pay the difference to HFH. Costs of correcting deficiencies which would have otherwise been reimbursable to CMAR, as determined by HFH in its sole discretion, shall not be deducted from sums otherwise due CMAR, but shall be considered a Cost of the Work, as determined by HFH in its sole discretion, in determining GMP and any savings shall revert to HFH.

2.5.2 Notwithstanding HFH's right to carry out Work, maintenance and protection of the Work remains CMAR's responsibility, as provided in the Contract Documents.

2.6 HFH'S RIGHT TO REJECT WORK

2.6.1 HFH shall have the right to reject Work that does not conform to the Contract Documents. HFH shall also have the right to require special inspection or testing of the Work, whether or not such Work is then fabricated, installed, or completed. Neither HFH's right to act under this Section nor any decision by HFH either to exercise or not to exercise such right shall give rise to any duty or responsibility of HFH to CMAR or to any other person or entity, or result in a waiver of any of HFH's rights or relieve CMAR of its obligations.

ARTICLE 3: CMAR

3.1 RESPONSIBILITIES

3.1.1 CMAR shall maintain an office with agent in the greater Houston area during CMAR's performance under the Agreement.

3.1.2 CMAR and CMAR's employees shall not give or lend money or anything of value to an officer or employee of HFH.

3.1.3 CMAR shall submit to HFH written monthly progress reports ("Progress Reports"). Such Progress Reports shall be submitted to HFH on forms approved by HFH with each application for payment. Such monthly reports shall include: (i) an updated Project Schedule, including a description of any deviations from HFH's approved Project Schedule; (ii) a complete cost report, including a description of deviations from the line items contained in a GMP for that particular Construction Phase of the Project and a description of the amounts committed against Allowances, if any; (iii) a report of all Subcontractor Change Orders and pending claims; (iv) a description of problems, claims, disputes of any sort and potential problems, claims, or disputes of any sort arising in connection relating to the Work, including potential delays, materials and supplies availability, disputes with Subcontractors or suppliers, and similar items; (v) a statement indicating methods of overcoming any past delay; (vi) all past and an estimate of all future cash flow requirements; and (vii) any additional information as may be reasonably required by HFH.

3.2 REVIEW OF CONTRACT AND FIELD CONDITIONS BY CMAR

3.2.1 CMAR shall carefully prepare and study the Contract Documents and any information furnished by HFH and shall immediately report, in writing, any known or reasonably inferable errors, inconsistencies, or omissions to HFH. If Work is affected, then CMAR shall obtain a written interpretation or clarification from HFH before proceeding with the affected Work.

3.2.2 CMAR shall take field measurements and verify field conditions, and shall carefully compare the conditions and other information known to CMAR with the Contract Documents, before commencing activities. CMAR shall immediately report, in writing, to HFH for interpretation or clarification of discrepancies, inconsistencies, or omissions discovered during this process.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 CMAR shall supervise, direct, and inspect the Work competently and efficiently, devoting the attention and applying the skills and expertise as necessary to perform the Work in accordance with the Contract Documents. CMAR is solely responsible for and has control over construction means, methods, techniques, sequences, and procedures of construction; for safety precautions and programs in connection with the Work; and for coordinating all Work under the Agreement.

3.3.2 Regardless of observations or inspections by HFH or HFH's consultants, CMAR shall perform and complete the Work in accordance with the Contract Documents and submittals approved pursuant to §3.18. HFH is not liable or responsible to CMAR or Surety for Work performed by CMAR that is not in accordance with the Contract Documents regardless of whether such nonconformities are discovered during construction or after acceptance of the Work.

3.4 SUPERINTENDENT

3.4.1 CMAR shall employ a competent Superintendent and necessary assistants who shall be present at the site during performance of the Work. Communications given to Superintendent are binding on CMAR.

3.4.2 CMAR shall notify HFH in writing of its intent to replace the Superintendent. CMAR shall not replace the Superintendent if HFH makes a reasonable objection in writing.

3.5 LABOR

3.5.1 CMAR shall provide competent, qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. HFH may, by written notice, require CMAR to remove from the Work any employee of CMAR or Subcontractors to whom HFH makes reasonable objection.

3.6 [Intentionally omitted.]

3.7 LABOR CONDITIONS

3.7.1 In the event of labor disputes affecting CMAR or CMAR's employees, CMAR shall utilize all reasonable means to resolve disputes in order that the Work not be delayed to any extent. These means will include seeking injunctive relief and filing unfair labor practice charges, and any other action available to CMAR.

3.7.2 When CMAR has knowledge that any actual or potential labor dispute is delaying or is threatening to delay timely performance of the Work, CMAR shall immediately notify HFH in writing. No Claims will be accepted by HFH for costs incurred as a result of jurisdictional or labor disputes.

3.8 DRUG DETECTION AND DETERRENCE

It is the policy of HFH to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on the project site is prohibited. CMAR shall comply with this policy and shall subject its employees to drug testing if there is a reasonable suspicion that the employees may be abusing drugs or alcohol while working on the Project. CMAR shall provide HFH with copies of all such drug tests upon request. If an employee's drug test result is positive, then CMAR shall prevent the employee with the positive drug test result from continuing to perform work related to this Agreement.

3.9 MATERIALS & EQUIPMENT

3.9.1 Unless otherwise provided in the Contract Documents, CMAR shall provide and assume full responsibility for Products, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, transportation, temporary facilities, supplies, and other facilities and incidentals necessary for Furnishing, performing, testing, starting-up, and completing the Work.

3.9.1.1 [Intentionally omitted.]

3.9.2 CMAR shall provide Products that are: new, unless otherwise required or permitted by the Contract Documents, and of specified quality. If required by HFH, CMAR shall furnish satisfactory evidence, including reports of required tests, as to kind and quality of Products.

3.9.3 CMAR shall store Products in a safe, neat, compact, and protected manner. CMAR shall also store Products so as to cause the least inconvenience to property owners, tenants, and general public; and so as not to block access to, or be closer than, three feet to any fire hydrant. CMAR shall protect trees, lawns, walks, drives, streets, and other improvements that are to remain, from damage. If private or public property is damaged by CMAR, then CMAR shall, at its sole expense, restore the damaged property to at least its original condition.

3.10 PRODUCT OPTIONS AND SUBSTITUTIONS

3.10.1 For Products specified by reference standards or by description only, CMAR may provide any Product meeting those standards or description.

3.10.2 For Products specified by naming one or more manufacturers with provision for substitutions or equal, CMAR may submit a request for substitution for any manufacturer not named.

3.10.3 [Intentionally omitted.]

3.10.4 CMAR shall document each request for substitution with complete data substantiating compliance of proposed substitution with the Contract Documents.

3.10.5 A request for substitution constitutes a representation that CMAR: (.1) has investigated the proposed Product and determined that it meets or exceeds the quality standard of the specified Product; (.2) shall provide the same warranty for the substitution as for the specified Product; (.3) shall coordinate installation of the proposed substitution and make changes to other work which may be required for the Work to be completed, with no additional cost or increase in time to HFH; (.4) confirms that cost data is complete and includes all related costs under the Contract Documents; (.5) waives related Claim for additional costs or time extensions that may subsequently become apparent; and (.6) shall provide review or redesign services by a Architect with appropriate professional license and shall obtain re-approval and permits from authorities.

3.10.6 HFH will not consider and will not approve substitutions when they are indicated or implied on Shop Drawing or Product Data submittals without separate written request; or acceptance will require revision to the Contract Documents.

3.10.7 HFH may reject requests for substitution, and its decision will be final and binding on the Parties.

3.11 ALLOWANCES

3.11.1 The GMP may include Allowances as identified in the Contract Documents.

3.11.2 HFH will pay the actual costs of Allowance item and they will not be considered a Cost of the Work. If actual costs exceed the Allowance, HFH must approve a Change Order for the additional costs.

3.12 WARRANTY

3.12.1 CMAR warrants to HFH that Products furnished under the Contract Documents are free of defects in title; of good quality; new, unless otherwise required or permitted by the Contract Documents; and free from defects and in strict conformance with the requirements of the Contract Documents. If required by HFH, CMAR shall furnish satisfactory evidence as to kind, quality and title of Products, and that Products conform to requirements of the Contract Documents.

3.12.2 In the event of a defect in a Product, either during construction or warranty period, CMAR shall take appropriate action with manufacturer of Product to assure correction or replacement of defective Product with minimum delay.

3.12.3 CMAR warrants that the Work is free of defects not inherent in the quality required or permitted, and that the Work does conform with the requirements of the Contract Documents. CMAR further warrants that the Work has been performed in a good and workmanlike manner. If required in writing by HFH, CMAR shall furnish satisfactory evidence, including reports or required tests, as to kind, quality and title of Products, and that Products conform to requirements of the Contract Documents. In the event of a defect in a Product, either during construction or correction period, CMAR shall take appropriate action with the manufacturer of the Product to assure correction or replacement of the defective Product with minimum delay.

3.12.4 CMAR warrants that the Work is free of concentrations on polychlorinated biphenyl (PCB) and other substances defined as hazardous by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or any other applicable law or regulation.

3.12.5 Work not conforming to requirements of §3.12, including substitutions not properly approved and authorized, may be considered nonconforming work.

3.12.6 CMAR's warranty excludes remedy for damage or defect caused by improper or insufficient maintenance by HFH; normal wear and tear under normal usage; or claim that hazardous material was incorporated into the Work, if that material was specified in the Contract Documents.

3.12.7 CMAR warrants that title to all Work covered by CMAR's request for payment passes to HFH upon incorporation into the Work or upon CMAR's receipt of payment, whichever occurs first. CMAR further warrants that the title is free of all liens, claims, security interests or other interests ("Encumbrances"). If not, upon written demand from HFH, CMAR shall immediately take legal action necessary to remove Encumbrances.

3.13 TAXES

3.13.1 CMAR shall pay all applicable sales, consumer, use, and similar taxes, which are related to work provided by CMAR and to which any sales or use tax exemption is not applicable.

3.13.2 CMAR shall obtain, and require Subcontractors and Suppliers to obtain, necessary permits from applicable state and local taxing authorities to perform contractual obligations under the Agreement, including sales tax permits (to the extent any sales or use tax exemption is not applicable).

3.13.3 HFH is exempt from the Federal Transportation and Excise Tax. CMAR shall comply with federal regulations governing the exemptions.

3.13.4 Products incorporated into the Work are exempt from state sales tax according to provisions of the TEX. TAX CODE ANN. CH. 151.

3.14 PERMITS, FEES, AND NOTICES

3.14.1 Except as provided in §2.2.1, CMAR shall secure and pay for all construction permits, licenses, and inspections necessary for proper execution and completion of the Work; and legally required at time a GMP for a construction Phase is approved by HFH.

3.14.2 CMAR shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work, including CMAR's or Subcontractor's licenses; neither HFH nor its agents, nor Architect, shall be responsible for monitoring CMAR's compliance with this requirement.

3.15 CONSTRUCTION SCHEDULES

3.15.1 Upon receipt of a Notice to Proceed for a particular Construction Phase, CMAR shall promptly prepare and submit a construction schedule for such Construction Phase for HFH's review. The schedule must reflect the minimum time required to complete the Work of the Construction Phase, not to exceed the Contract Time.

3.15.2 CMAR shall give prior notice to HFH before commencing work or resuming work where work has been stopped.

3.15.3 [Intentionally omitted.]

3.15.4 Each week, or as directed by HFH, CMAR shall submit to HFH a copy of the updated construction schedule indicating actual progress, incorporating applicable changes, and indicating courses of action required to assure completion of each Construction Phase of the Work within Contract Time.

3.15.5 CMAR shall keep a current schedule of all submittals that correlates with the schedules for each Construction Phase, and shall submit the initial schedule of submittals and any subsequent changes to HFH for approval.

3.16 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

3.16.1 CMAR shall maintain at the Project site, and make available to HFH, one record copy of Drawings, Specifications, and Modifications. CMAR shall maintain the documents in good order and marked currently to record changes and selections made during construction. In addition, CMAR shall maintain at the site, approved Shop Drawings, Product Data, Samples, and similar submittals, which will be delivered to HFH prior to final inspection as required in §9.8.4.

3.16.2 CMAR shall maintain all books, documents, papers, accounting records, and other relevant documentation pursuant to the Work and shall make the books, documents, papers, and accounting records available to representatives of HFH for review and audits during performance of the Work and for the greater of three years following Date of Substantial Completion of each Construction Phase or until all litigation or audits are fully resolved.

3.17 MANUFACTURER'S SPECIFICATIONS

3.17.1 CMAR shall handle, store, protect, and Install Products and perform all Work in the manner required by Product manufacturer. Should the Contract Documents and manufacturer's instructions conflict, CMAR shall report conflict to HFH for resolution prior to proceeding with the affected portions of the Work.

3.17.2 References in the Contract Documents to the manufacturer's specifications, directions, or recommendations, mean manufacturer's current published documents in effect as of date of receipt of a GMP proposal, or in the case of a Modification, as of date of Modification.

3.18 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.18.1 Shop Drawings, Product Data, and Samples are not part of the Contract Documents. The purpose of CMAR submittals is to demonstrate, for those portions of the Work for which submittals are required, the way CMAR proposes to conform to information given and design concept expressed in the Contract Documents.

3.18.2 CMAR shall submit to HFH, if required by HFH for review the Shop Drawings, Product Data, and Samples, which are required by the Contract Documents. Review by HFH is subject to limitations of §4.1.4. CMAR shall transmit the submittals to HFH with reasonable promptness and in a sequence, so as to cause no delay in the Work or in activities of HFH or of separate contractors. CMAR shall transmit submittals in time to allow a minimum of 30 days for HFH's review prior to date CMAR needs reviewed submittals returned. This time may be shortened for a particular job requirement if approved by HFH in advance of submittal.

3.18.3 CMAR shall certify that the content of submittals conforms to the Contract Documents without exception by affixing CMAR's approval stamp and signature. By certifying and submitting Shop Drawings, Product Data, and Samples, CMAR represents, and CMAR's stamp of approval shall state, that CMAR has determined and verified materials, quantities, field measurements, and field construction criteria related to the submittal, and has checked and coordinated information contained within the submittals with requirements of the Contract Documents and for compatibility with other submittals.

3.18.4 CMAR shall not perform any work requiring submittal and review of Shop Drawings, Product Data, or Samples until the submittal has been returned with appropriate review decision by HFH. CMAR shall perform Work in accordance with the review.

3.18.5 If CMAR performs any Work requiring submittals prior to review and acceptance of the submittals by HFH, such Work is at CMAR's risk and HFH is not obligated to accept work if the submittals are later found to be unacceptable.

3.18.6 If, in the opinion of HFH, the submittals are incomplete, or demonstrate an inadequate understanding of the Work or lack of review by CMAR, then submittals may be returned to CMAR for correction and resubmittal.

3.18.7 CMAR shall direct specific attention in writing and on the resubmitted Shop Drawings, Product Data, or Samples to any additional proposed revisions, other than those revisions requested by HFH on previous submittals.

3.18.8 CMAR is not relieved of responsibility for deviations from requirements of the Contract Documents by HFH's review or approval of Shop Drawings, Product Data, or Samples unless CMAR has specifically informed HFH in writing of the deviation at the time of the submittal, and HFH has given written approval of the deviation.

3.18.9 When professional certification of performance criteria of Products is required by the Contract Documents, HFH may rely upon accuracy and completeness of the calculations and certifications.

3.18.10 For Product colors or textures to be selected by HFH, CMAR shall submit all samples together to allow preparation of a complete selection schedule.

3.18.11 CMAR shall submit informational submittals, on which HFH is not expected to take responsive action, as required by the Contract Documents.

3.18.12 Submittals made by CMAR which are not required by the Contract Documents may be returned to CMAR without action.

3.19 CULTURAL RESOURCES AND ENDANGERED SPECIES

3.19.1 CMAR shall not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If CMAR discovers one of these items, CMAR shall immediately notify HFH and further comply with the requirements of Applicable Law. CMAR shall protect site and cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by HFH.

3.20 CUTTING AND PATCHING

3.20.1 CMAR is responsible for necessary cutting, fitting, and patching to accomplish the Work and shall suitably support, anchor, attach, match, and trim or seal materials to work of other contractors. CMAR shall coordinate the Work with work of other contractors to minimize conflicts, as provided in Article 6.

3.20.2 CMAR shall not endanger work by cutting, digging, or other action, and may not cut or alter work of other contractors except by written consent of HFH and affected contractor.

3.20.3 If authorized by HFH, cutting shall be accurately located and neatly done. Unnecessary cutting shall be avoided. Patching shall be done by skilled mechanics experienced in the particular type of work involved. Patching work shall conform to the standards of the Drawings and Specifications where applicable, and where

not specified, such work shall conform to the highest standards of the trade. Finished patching in the work of a separate contractor shall be acceptable to the contractor whose work has been patched.

3.20.4 CMAR shall leave all holes, chases, and other openings in its construction required by other contractors for the installation of their work, provided such openings are accurately located by the party requiring them before the execution of the construction. CMAR shall afford other contractors a reasonable opportunity to locate such openings.

3.21 CLEANING

3.21.1 CMAR shall perform daily cleanup of all dirt, debris, scrap materials and other disposable items resulting from CMAR's operations, whether on-site or off-site. Unless otherwise authorized in writing by HFH, CMAR shall keep all streets, access streets, driveways, areas of public access, walkways, and other designated areas clean and open at all times.

3.21.2 Failure of CMAR to maintain a clean site, including access streets, is the basis for HFH to issue a Notice of Noncompliance. Should compliance not be attained within the time period in the Notice of Noncompliance, HFH may authorize necessary cleanup to be performed by others and the cost of the cleanup will be deducted from monies due CMAR.

3.21.3 CMAR shall legally dispose off site all waste products and debris resulting from CMAR's on site and off site operations.

3.22 SANITATION

3.22.1 CMAR shall provide and maintain sanitary facilities at site for use of all construction personnel retained under the Contract Documents. Newly-constructed or existing sanitary facilities may not be used by CMAR.

3.23 ACCESS TO WORK AND TO INFORMATION

3.23.1 CMAR shall provide HFH, HFH's Architect(s), testing laboratories, and governmental agencies which have jurisdictional interests, access to the Work in preparation and in progress wherever located. CMAR shall provide proper and safe conditions for the access.

3.23.2 If required by HFH, CMAR shall furnish information concerning character of Products and progress and manner of the Work, including information necessary to determine cost of the Work, such as number of employees, pay of employees, and time employees worked on various classes of the Work.

3.24 TRADE SECRETS

3.24.1 CMAR will not make any claim of ownership of trade secrets as to Products used in the Work, or preparation of any mixture for the Work. HFH will at all times have the right to demand and CMAR shall furnish information concerning materials or samples of ingredients of any materials used, or proposed to be used, in preparation of concrete placed or other work to be done. Mixtures, once agreed on, shall not be changed in any manner without knowledge and consent of HFH. HFH will make its best efforts to protect confidentiality of proprietary information.

3.22.1 CMAR shall provide and maintain sanitary facilities at site for use of all construction forces under

3.25 RELEASE OF LIABILITY

3.25.1 CMAR AGREES TO AND SHALL RELEASE HFH, HOUSTON FIRST CORPORATION, HILTON WORLDWIDE, INC., AND THE VARIABLE ANNUITY LIFE INSURANCE COMPANY C/O AIG ASSET MANAGEMENT, AND THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL

REPRESENTATIVES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE BY CMAR UNDER THIS AGREEMENT.

3.26 INDEMNIFICATION

3.26.1 CMAR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HFH, HOUSTON FIRST CORPORATION, HILTON WORLDWIDE, INC., AND THE VARIABLE ANNUITY LIFE INSURANCE COMPANY C/O AIG ASSET MANAGEMENT, INCLUDING THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS, AND DIRECTORS (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, JUDGEMENTS, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COPYRIGHT INFRINGEMENT, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR ANY INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, (I) ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS BY CMAR, ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, OR CONTRACTORS OF ANY TIER; (II) RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL ENGAGED BY CMAR IN THE PERFORMANCE OF WORK UNDER THIS AGREEMENT, INCLUDING CONTRACTORS OF ANY TIER; (III) CMAR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CMAR IS IMMUNE FROM LIABILITY OR NOT.

3.26.2 CMAR SHALL REQUIRE ALL OF ITS CONTRACTORS AND SUBCONTRACTORS TO RELEASE AND INDEMNIFY THE INDEMNITEES TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE INDEMNITEES.

3.26.3 THE INDEMNIFICATION OBLIGATIONS UNDER §3.26 SHALL NOT BE LIMITED IN ANY WAY BY THE LIMITS OF ANY INSURANCE COVERAGE OR ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY, FOR, OR TO CMAR OR ANY SUBCONTRACTOR, SUPPLIER, OR ANY OTHER INDIVIDUAL OR ENTITY UNDER ANY INSURANCE POLICY, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

3.26.4 INDEMNITEES SHALL NOT BE LIABLE TO CMAR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS (DIRECT OF INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF INDEMNITEES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.

3.27 INDEMNIFICATION PROCEDURES

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

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

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

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

ARTICLE 4: ADMINISTRATION OF THE CONTRACT

4.1 CONTRACT ADMINISTRATION

4.1.1 HFH will provide administration of the Contract Documents, and, subject to §7.1.2, HFH is authorized to issue Change Orders, Work Change Directives, and Minor Changes in the Work.

4.1.1.1 HFH may act through its Architect or affiliated entities. When the term “HFH” is used in the Contract Documents, action by HFH is required unless HFH delegates its authority in writing.

4.1.2 HFH does not have control over or charge of, and is not responsible for, supervision, construction, and safety procedures enumerated in §3.3. HFH does not have control over or charge of and is not responsible for acts or omissions of CMAR, Subcontractors, or Suppliers.

4.1.3 HFH and HFH’s Architect(s) may attend project meetings and visit the site to observe progress and quality of the Work. HFH and its Architect(s) are not required to make exhaustive or continuous on-site inspections or to check quality or quantity of the Work.

4.1.4 HFH will review and approve or take other appropriate action on CMAR’s submittals, but only for limited purpose of checking for conformance with information given and design concept expressed in the Contract Documents.

4.1.4.1 HFH’s review of the submittals is not conducted for purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of Products, all of which remain the responsibility of CMAR.

4.1.4.2 HFH and HFH’s Architect’s review and/or approval of submittals shall not relieve CMAR of CMAR’s obligations to perform the Work in strict conformance with the Contract Documents, including without limitation CMAR’s obligations under §§3.3, 3.10, 3.12, 3.16 and 3.18 of these Document 00700-General Conditions and shall not constitute approval of safety precautions or, unless otherwise specifically stated by HFH or HFH’s Architect(s), of any construction means, methods, techniques, sequences, or procedures. HFH’s or HFH’s

Architect's review and/or approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.1.4.3 HFH's Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

4.1.5 Based on field observations and evaluations, HFH will process CMAR's progress payments, certify amounts due Design build Contractor, and issue Certificates for Payment in the amount certified.

4.1.6 CMAR shall deliver to HFH for its review and records, written warranties and related documents required by the Contract Documents and assembled by CMAR.

4.1.7 Upon written request by CMAR or HFH, HFH will resolve matters of interpretation of or performance of the Contract Documents, which are not Claims. HFH's decisions are final and binding on the Parties.

4.1.8 HFH may reject Work which does not conform to the Contract Documents.

4.1.9 When HFH considers it necessary to implement the intent of the Contract Documents, HFH may require additional inspection or testing of work in accordance with §13.6.3 and §13.6.4, whether such work is fabricated, Installed, or completed.

4.1.10 Except as expressly stated in this Article or other provisions of this Contract, HFH owes no duty to CMAR or any subcontractor.

4.2 COMMUNICATIONS IN ADMINISTRATION OF THE CONTRACT

4.2.1 Except as otherwise provided in the Contract Documents or when authorized by HFH in writing, CMAR shall communicate with HFH. CMAR shall communicate with HFH's Architect(s), Architect's sub-consultants, and separate contractors through HFH. HFH will communicate with Subcontractors and Suppliers through CMAR, but HFH is entitled to communicate directly with Subcontractors and Suppliers at any time to obtain information.

4.3 CLAIMS AND DISPUTES

4.3.1 Documentation by HFH: CMAR shall submit Claims, including those alleging an error or omission by HFH or HFH's Architect(s), to HFH.

4.3.2 Decision of HFH: Upon submission of Claim by CMAR, HFH will resolve Claims in accordance with §4.4.

4.3.3 Time Limits on Claims: Claims by CMAR shall be made within 90 days after the occurrence of the event giving rise to such Claim. Claims by CMAR not made within the time required in the required manner shall be deemed waived by CMAR.

4.3.4 Continuing Performance: Pending final resolution of a Claim including referral to non-binding mediation, unless otherwise agreed in writing, CMAR shall proceed diligently with the performance of the Work and HFH will continue to make payments in accordance with the Contract Documents.

4.3.4.1 Pending final resolution of a Claim including referral to non-binding mediation, CMAR is responsible for safety and protection of physical properties and conditions at the Project site.

4.3.5 Claims for Concealed or Unknown Conditions: Concealed or unknown physical conditions may include utility lines, other man-made structures, storage facilities, Pollutants and Pollutant Facilities, and the like, but do not include conditions discovered or that should have been discovered through reasonable visual site inspection, geotechnical testing, geotechnical information available to CMAR, or otherwise, or that do not materially differ from those indicated in the Contract Documents, or information provided by HFH or those that should reasonably be anticipated, arising from CMAR's operations, or failure of CMAR to properly protect and safeguard subsurface facilities, or that do not materially differ from those indicated in the Contract Documents, or information provided by HFH or those that should reasonably be anticipated. Subject to the foregoing, concealed conditions also include naturally-occurring soil conditions outside the range of soil conditions identified through geotechnical investigations, but do not include conditions arising from groundwater, rain, or flood. CMAR is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If CMAR encounters any hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to hazardous soils, asbestos or polychlorinated biphenyl (PCB), encountered on the site by CMAR, CMAR shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to HFH and Architect in writing. CMAR is not responsible for existing subsurface soil conditions. Upon removal of concrete, a testing agency may be engaged (upon the mutual agreement of CMAR and HFH) to test the soil for hazardous materials including but not limited to hazardous soils, asbestos or polychlorinated biphenyl (PCB). CMAR is not responsible for delays or costs as a result of the testing or remediation.

4.3.5.1 If conditions are encountered at the site which are Underground Facilities or otherwise concealed or unknown conditions as defined in §4.3.5, then CMAR will give written notice to HFH no later than five days after CMAR's first observation of the condition and before condition is disturbed.

4.3.5.2 HFH will promptly investigate concealed or unknown conditions. If HFH determines that conditions at the site are not materially different and that no change in the GMP or Contract Time is justified, then HFH will notify CMAR in writing, stating reasons. If HFH determines the conditions differ materially and cause increase or decrease in CMAR's cost or time required for performance of part of the Work, HFH will recommend an adjustment in the appropriate GMP, Contract Time, or both, as provided in Article 7. Opposition by a Party to HFH's determination must be made within 21 days after HFH has given notice of the decision. If the Parties cannot agree on adjustment to a GMP or Contract Time, adjustment is subject to further proceedings pursuant to §4.4.

4.3.6 Claims for Additional Cost: If CMAR wishes to make a Claim for increase in a GMP, then CMAR shall give written notice before proceeding with work for which CMAR intends to submit a Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under §10.4.

4.3.6.1 CMAR may file a Claim in accordance with §4.4 if CMAR believes it has incurred additional costs, for the following reasons: (.1) written interpretation of HFH contrary to the terms of the Contract Documents; (.2) order by HFH to stop the Work when CMAR is not at fault; (.3) suspension of the Work by HFH when CMAR is not at fault; (.4) errors or omissions in the Drawings or Specifications that are not the responsibility of CMAR; or (.5) HFH's non-compliance with another provision of the Contract Documents.

4.3.6.2 No increase in a GMP is allowed for delays or hindrances to the Work, except for direct and unavoidable extra costs to CMAR that qualify as a Cost of the Work caused by failure of HFH to perform HFH's obligations under the Contract Documents. Any increase claimed is subject to the provisions of §4.4 and Article 7.

4.3.6.3 HFH is not liable for Claims for delay when Date of Substantial Completion of a Construction Phase occurs prior to expiration of Contract Time, except as provided in Section 14.3.

4.3.7 Claims for Additional Time: If CMAR wishes to make a Claim for an increase in Contract Time, CMAR shall give written notice as provided in §8.2. In case of continuing delay, only one Claim is necessary.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 HFH will review Claims and take one or more of the following preliminary actions within 30 days of receipt of Claim: (.1) submit a suggested time to meet and discuss the Claim with HFH; (.2) reject Claim, in whole or in part, stating reasons for rejection; (.3) recommend approval of the Claim by the other Party; (.4) suggest a compromise; or (.5) take other actions as HFH deems appropriate to resolve the Claim.

4.4.2 HFH may request additional supporting data from claimant. Party making Claim shall, within 10 days after receipt of HFH's request, submit additional supporting data requested by HFH.

4.4.3 At any time prior to rendering a written decision regarding a Claim, HFH may refer Claim to non-binding mediation as provided in §4.5. If Claim is resolved, HFH will prepare and obtain all appropriate documentation.

4.4.3.1 If Claim is not referred to non-binding mediation, HFH will render a written decision within 75 days of receipt of the Claim, or a time mutually agreed upon by the Parties in writing. HFH may notify Surety and request Surety's assistance in resolving a Claim. HFH's decision is final and binding on the Parties.

4.5 WAIVER OF ATTORNEY FEES AND INTEREST

4.5.1 Neither HFH nor CMAR may recover attorney fees for any claim brought in connection with this Agreement.

4.5.2 Neither HFH nor CMAR may recover interest for any damages claim brought in connection with this Agreement.

4.6 INTERIM PAYMENT WAIVER AND RELEASE

4.6.1 In accordance with §4.3, CMAR shall use due diligence in the discovery and submission of any Claim against HFH related to the Work.

4.6.2 CMAR shall submit any Claim to HFH not later than the 90th day after the occurrence of the event giving rise to the Claim.

4.6.3 Any failure to timely comply with the requirements of §4.6.2 waives and releases any Claim when CMAR submits an application for payment after the 90th day.

4.6.4 This waiver does not cover any retainage. In case of any conflict of law, this language shall be revised to the minimum extent necessary to avoid legal conflict. This waiver is made specifically for the benefit of HFH.

ARTICLE 5: SUBCONTRACTORS AND SUPPLIERS

5.1 AWARD OF SUBCONTRACTS OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 CMAR may not contract with a Subcontractor, Supplier, person, or entity that HFH has made a reasonable and timely objection to.

5.1.2 If HFH has a reasonable objection to person proposed by CMAR, CMAR shall propose another with whom HFH has no reasonable objection.

5.1.3 CMAR shall execute contracts with approved Subcontractors and Suppliers, persons or entities before the Subcontractors, Suppliers, persons or entity begins work under the Contract Documents.

5.1.4 CMAR shall notify HFH in writing of any proposed change of Subcontractor or Supplier, person or entity previously approved by HFH.

5.1.5 CMAR shall make timely payments to Subcontractors, Suppliers, persons and entities for performance of the Contract Documents. CMAR SHALL PROTECT, DEFEND, AND INDEMNIFY HFH FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CMAR'S FAILURE TO MAKE PAYMENTS.

5.2 CMAR RESPONSIBILITY FOR SUBCONTRACTORS

5.2.1 CMAR is responsible to HFH, as may be required by laws and regulations, for all acts and omissions of Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under direct or indirect contract with CMAR.

5.2.2 CMAR shall make available to each proposed Subcontractor, prior to execution of subcontract, copies of the Contract Documents to which Subcontractor is bound by this §5.2. CMAR shall notify Subcontractor of any terms of proposed subcontract which may be at variance with the Contract Documents.

5.2.3 HFH's approval of Subcontractor or Suppliers does not relieve CMAR of its obligation to perform, or to have performed to the full satisfaction of HFH, the Work required by the Contract Documents.

5.2.4 Unless there is a contractual relationship between CMAR and a Subcontractor or Supplier to the contrary, CMAR shall withhold no more retainage from Subcontractors or Suppliers than HFH withholds from CMAR under this Agreement. However, once a Subcontractor or Supplier completes performance, CMAR shall release all retainage to that Subcontractor or Supplier regardless if HFH continues to retain under this Agreement.

5.2.5 Prior to a Subcontractor or Supplier commencing performance for CMAR, CMAR shall meet with that Subcontractor or Supplier to provide instructions on invoicing procedures, dispute resolution procedures, and statutory rights, if any. Subcontractors and Suppliers must certify to HFH that CMAR has fulfilled the requirements of this Section.

ARTICLE 6: CONSTRUCTION BY HFH OR BY SEPARATE CONTRACTORS

6.1 HFH'S RIGHT TO PERFORM CONSTRUCTION AND AWARD SEPARATE CONTRACTS

6.1.1 HFH shall have the right to perform on-site construction operations related to the Work and as part of the Project with its own forces or with separate contractors.

6.2 COORDINATION

6.2.1 HFH will coordinate activities of HFH's workforce and of each separate contractor with work of CMAR, and CMAR shall cooperate with HFH and separate contractors.

6.2.1.1 CMAR agrees to and shall participate with other separate contractors, including the Architect, and HFH in reviewing their construction schedules when directed to do so by HFH. CMAR shall make revisions to construction schedule and any GMP deemed necessary after joint review and mutual agreement. Construction

schedules shall then constitute schedules to be used by CMAR, separate contractors, and HFH, until subsequently revised.

6.2.2 CMAR shall afford to HFH and separate contractors reasonable opportunity for introduction and storage of their materials and equipment, and for performance of their activities.

6.2.3 If part of CMAR's work depends on proper execution of construction or operations by HFH or a separate contractor, CMAR shall, prior to proceeding with that portion of the Work, inspect the other work and promptly report to HFH apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Work. Failure of CMAR to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that HFH's or separate contractor's completed or partially completed construction is fit and proper to receive CMAR's work, except as to discrepancies or defects not then reasonably discoverable.

6.3 MUTUAL RESPONSIBILITY

6.3.1 The responsible Party bears the costs caused by delays due to improperly timed activities, or by nonconforming construction.

6.3.2 CMAR shall promptly remedy damage caused by CMAR to completed or partially completed construction or to property of HFH or separate contractor.

6.3.3 Claims or disputes between CMAR and other HFH contractors, or subcontractors of other HFH contractors, working on the Project shall be submitted to binding arbitration in accordance with Construction Industry Arbitration Rules of the American Arbitration Association upon demand by any party to the dispute or by HFH. HFH is not required to arbitrate and is not bound by the result of any such arbitration.

6.4 HFH'S RIGHT TO CLEAN UP

6.4.1 If a dispute arises among CMAR, separate contractors, and HFH as to responsibility under their respective contracts with regard to the responsibility for maintaining premises and surrounding area free from waste materials and rubbish as described in §3.21, HFH may clean up and allocate cost among those responsible, as determined by HFH.

ARTICLE 7: CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in scope of the Work, subject to limitations in Article 7 and elsewhere in the Contract, may be accomplished without invalidating the Contract, or without notifying Surety by: (.1) Change Order; (.2) Work Change Directive; or (.3) Minor Change in the Work.

7.2 WORK CHANGE DIRECTIVES

7.2.1 A Work Change Directive cannot change a GMP or Contract Time, but is evidence that the Parties agree that a change, ordered by directive, will be incorporated in a subsequently issued Change Order as to its effect, if any, on a GMP or the Contract Time.

7.2.2 Failure by CMAR to commence work identified in a Work Change Directive within the time specified by HFH, or to complete the work in a reasonable period of time, may be determined by HFH to be a material breach of the Contract.

7.2.3 A Work Change Directive is used in the absence of total agreement of the terms of a Change Order. Interim payments are made in accordance with §9.6.1. CMAR may include a request for payment for undisputed Work under a Work Change Directive with applications for payment submitted in accordance with the Contract Documents.

7.2.4 If CMAR signs a Work Change Directive, then CMAR agrees to its terms including adjustment in a GMP and Contract Time or method for determining them. Agreement by the Parties to adjustments in a GMP or Contract Time shall immediately be recorded as a Change Order.

7.2.5 HFH, by Work Change Directive, may direct CMAR to take measures as necessary to expedite construction to achieve Date of Substantial Completion on or before expiration of Contract Time. When the Work is expedited solely for convenience of HFH and not due to CMAR's failure to prosecute timely completion of the Work, then CMAR is entitled to an adjustment in the GMP equal to actual Cost of the Work described in §11.8 of the Agreement. CMAR's agreed to fee, as defined in §6.4 of the Agreement, shall be applied to the incremental increase in the Cost of the Work, if any, resulting from any such Work Change Directive.

7.3 ADJUSTMENTS IN CONTRACT TIME OR GMP

7.3.1 Adjustments to a GMP or Contract Time shall be accomplished only by Change Order after the parties have agreed to amending the approved GMP Proposal under Article 6 of the Agreement.

7.3.2 If HFH deletes or makes a change which results in a net decrease in a GMP, then HFH is entitled to a credit by CMAR in such GMP and the Cost of the Work.

7.4 MINOR CHANGES IN THE WORK

7.4.1 A Minor Change in Work is binding on the Parties. CMAR shall acknowledge, in a written form acceptable to HFH, that there is no change in Contract Time or GMP and shall carry out the written orders promptly.

7.5 CHANGES IN APPLICABLE LAW

7.5.1 To the extent that a change in Applicable Law enacted after the GMP for an affected Phase is agreed upon affects to a material extent CMAR's time or cost of performing the Work for the affected Construction Phase, CMAR shall give HFH written notice within 90 Days of the effective date of such a change in Applicable Law, setting forth the details of the change in Applicable Law and CMAR's good-faith determination of its anticipated impact on CMAR's performance obligations under the Contract Documents. HFH will investigate such change in Applicable Law and, if HFH determines that it causes an increase or decrease in CMAR's cost of, or time required for, performance of the Work for the affected Construction Phase and that the notice was given timely, HFH and CMAR shall enter into a Change Order in accordance with the provisions of Article 7 herein.

ARTICLE 8: TIME

8.1 PROGRESS AND COMPLETION

8.1.1 Time is of the essence. By executing a GMP proposal and any GMP contract amendment or change order, as determined by HFH, CMAR agrees that Contract Time is a reasonable period for performing the Work.

8.1.2 Computation of Time: In computing any period of time prescribed or allowed by the Document 00700-General Conditions, the day of the act, event, or default after which designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or Holiday, in which event the period runs until end of the next day that is not a Sunday or Holiday. Sundays and Holidays are considered to be days and are to be included in all other time computations relative to Contract Time.

8.1.2.1 CMAR shall provide HFH an accounting of inclement weather delay days.

8.1.2.2 HFH may grant an extension of Contract Time due to inclement weather where CMAR establishes an actual delay impacting the critical path of the Construction Schedule and otherwise complies with the requirements of Article 8.

8.1.3 CMAR may not commence the Construction Phase Work prior to the effective date of insurance and Bonds required by Article 11.

8.1.4 CMAR shall proceed expeditiously and without interruption, with adequate forces, and shall achieve Substantial Completion within the Contract Time.

8.1.5 Should progress of the Work fall behind construction schedule, except for reasons stated in §8.2.1, CMAR shall promptly submit at the request of HFH, updated construction schedule to HFH for approval. CMAR's failure to submit updated schedule may, at HFH's discretion, constitute a material breach of this Agreement. CMAR shall take action necessary to restore progress by working the hours, including night shifts and lawful overtime operations as necessary, to achieve Date of Substantial Completion within Contract Time.

8.1.6 Except in connection with safety or protection of persons or the Work or property at the site or adjacent to the site, and except as otherwise indicated in the Contract Documents, all the Work at the site will be performed Monday through Saturday between the hours of 7:00 a.m. and 7:00 p.m. CMAR shall not perform work between 7:00 p.m. and 7:00 a.m., on a Sunday, or on a Holiday, without giving HFH 24 hour prior written notice and receiving written consent of HFH, which consent shall not unreasonably be withheld.

8.2 DELAYS AND EXTENSIONS OF TIME

8.2.1 CMAR may request extension of Contract Time for a delay in performance of work that arises from causes beyond CMAR's control and without fault or negligence of CMAR. Examples of these causes are: (.1) acts of God or of the public enemy; (.2) acts of government in its sovereign capacities; (.3) fires; (.4) floods; (.5) epidemics; (.6) quarantine restrictions; (.7) strikes; (.8) freight embargoes; (.9) unusually severe weather; and (.10) discovery of Pollutants or Pollutant Facilities at the site.

8.2.2 For any reason other than those listed in §4.3.6.2, if CMAR's work is delayed in any manner or respect, CMAR shall have no claim for damages and shall have no right of additional compensation from HFH by reason of any delay or increased expense to CMAR's work, except for an extension of time as provided in this provision.

8.2.3 CMAR may request and may be entitled to an extension of Contract Time for delay only if: (.1) delay is not caused by failure of CMAR or any of its Subcontractors or Suppliers to perform (or cause to be performed) or make progress for a cause within its control; and (.2) cause of the delay was not reasonably anticipated and is beyond control of CMAR; and (.3) the delay has been mitigated by all reasonable available efforts; and (.4) CMAR can fully document and prove the impact of the event on CMAR's critical path of planned Work in the Project Schedule.

8.2.4 Claims relating to Contract Time must be made in accordance with §4.3.7.

8.2.5 Claims for extending or shortening Contract Time are based on written notice promptly delivered by CMAR to HFH. A Claim must accurately describe occurrence generating the Claim, and a statement of probable effect on progress of the Work.

8.2.6 Claims for extension of Contract Time are considered only when a Claim is filed within the time limits stated in §4.3.3.

8.2.7 Written notice of a Claim must be accompanied by claimant's written statement that adjustment claimed is entire adjustment to which claimant is entitled as a result of the occurrence of the event. When the Parties cannot agree, Claims for adjustment in Contract Time are determined by HFH in accordance with §4.4.

8.2.8 Adjustments to Contract Time shall be accomplished only by Change Order.

ARTICLE 9: PAYMENTS AND COMPLETION

9.1 APPLICATION FOR PAYMENT

9.1.1 Ten days before submittal of the first application for payment for a Construction Phase of Work, CMAR shall submit to HFH a Schedule of Values accurately allocating the GMP for such Construction Phase to the various portions of the Work for such Construction Phase, prepared in the form and supported by the data as HFH may require to substantiate its accuracy. The Schedule of Values shall contain, at a minimum, separate line items for the close out of the Work for such Construction Phase, the delivery of record "as-built" drawings, delivery of operation and maintenance manuals, delivery of warranty documents, and final cleanup. The Schedule of Values shall be balanced and not contain any "front end loading." The Schedule of Values, as approved by HFH, shall be used as a basis for approval of CMAR's applications for payment.

9.1.2 CMAR shall submit applications for payment to HFH each month on a form acceptable to HFH in accordance with Schedule of Values. Each application for payment shall indicate percentages of completion of each portion of the Work listed in Schedule of Values as of the end of the period covered by the application for payment. The period covered by each application for payment shall be one calendar month ending on the last day of the month.

9.1.3 Each Schedule of Values submitted with an application for payment shall include the originally established value for each Work classification line item or subcontract and shall identify, by the addition of new data rows immediately below the previously accepted data rows, any revisions to the costs or cost estimates for each Work classification or subcontract. The format and tracking method of the original Schedule of Values and of all updates shall be subject to approval by HFH. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work, including CMAR's Fee, shall not exceed the unpaid balance of a GMP, less retainage on Work previously completed.

9.1.4 If previously unpaid, the Pre-Construction Services costs shall be identified separately in each application for payment.

9.1.5 CMAR shall deliver to HFH three copies of each itemized application for payment in such detail as is required by HFH. Applications for payment must be supported by such substantiating data as HFH may require and shall reflect retainages as provided in the Contract Documents. The application for payment must be sworn to and notarized.

9.1.6 Before submitting the next application for payment (and with the application for final payment), CMAR shall submit any evidence required by HFH to verify the Cost of the Work and to demonstrate that the cash disbursements already made by CMAR on account of the Cost of the Work are equal to or exceed (1) progress payments already received by CMAR; less (2) that portion of those payments attributable to CMAR's Fee; plus (3) payrolls for the period covered by the most recent application for payment; less (4) retainage provided for in the Contract Documents applicable to prior progress payments. This documentation of the most recent application

for payment, if required by HFH, shall have a summary sheet (in two copies) that descriptively itemizes all expenses and individuals. No payment is required to be made for Work for which CMAR fails to provide required documentation.

9.1.7 Each application for payment shall be based upon the Cost of the Work and the most recent Schedule of Values submitted by CMAR in accordance with the Contract Documents and accepted by HFH.

9.1.8 Applications for Payment shall show the Cost of the Work actually incurred by CMAR through the end of the period covered by the application for payment and for which CMAR has made or intends to make actual payment prior to the next application for payment and the percentage completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed or (2) the percentage obtained by dividing (a) the Cost of the Work that has actually been incurred by CMAR on account of that portion of the Work for which CMAR has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

9.1.9 Each application for payment, including the application for Final Payment shall constitute a certification by CMAR to HFH that the Work has progressed to the point indicated and the Work represented has actually been performed; the quality of the Work covered in the application for payment is in accordance with the Contract Documents; CMAR is entitled to payment in the amount requested; CMAR remains capable of performing the Work to completion; and CMAR is current in payment with Subcontractors and Suppliers.

9.1.10 CMAR shall promptly and in all events before interest charges accrue to the Subcontractor pay each of its Subcontractors, upon receipt of payment from HFH, out of the amount paid to CMAR on account of such Subcontractor's work, the amount to which such Subcontractor is entitled in accordance with the terms of CMAR's Subcontract with such Subcontractor. CMAR shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-subcontractors in similar manner. HFH shall have no obligation to pay or to be responsible in any way for payment to any Subcontractor or Supplier.

9.1.11 With each application for payment, CMAR shall submit a certified "waiver and release." The waiver and release shall state: "In consideration for the payment received, CMAR waives all claims of every sort against HFH arising out of the Work performed through the effective date of the application for payment, except for retainage and such claims as have been properly submitted in accordance with the provisions of the Contract Documents or claims that can be made timely within the requirements of the Contract Documents."

9.1.12 Retainage shall be ten percent (10%) of the Cost of the Work and CMAR's Fee for each Phase of the Work. There shall be no retainage on CMAR's building permit cost, bond and insurance cost, or the Preconstruction Services. Otherwise, HFH shall be entitled to withhold retainage from all applications for Payment by CMAR. Retainage is not held by HFH for the benefit of any others and shall be deemed amounts not yet earned by or owed to CMAR.

9.1.13 In addition to other rights under the Contract Documents and Applicable Law, HFH, in its discretion, may retain amounts owing to CMAR as HFH deems appropriate to protect HFH's interest. CMAR shall not receive payments from HFH for any amounts CMAR retains from its Subcontractors, and CMAR shall immediately return to HFH any amounts paid to CMAR on behalf of any Subcontractor or Supplier or other which CMAR does not pass on as payment before the next application for payment. In the event HFH withholds all or any portion of CMAR's payments under this paragraph or under 9.4 hereof, HFH shall provide specific written accounting for same and shall allocate specific amounts for each reason justifying withholding. Such explanation

shall be provided at the time payments would otherwise be due and sums withheld shall be paid when each such reason for withholding same has been cured to the reasonable satisfaction of HFH.

9.1.14 Materials and services utilized in the construction of the Project may be exempted from state and local taxes. CMAR is responsible for taking full advantage of all tax exemptions applicable to the Project. HFH will deduct from the applications for payment and from the request for final payment any taxes paid for materials or services that were entitled to tax exemption.

9.1.15 Amounts to which HFH is entitled by way of setoff or recovery, may be deducted from any monies otherwise due CMAR.

9.1.16 CMAR's records shall be kept on the basis of generally accepted accounting principles in accordance with cost accounting standards issued by the Federal Office of Management and Budget Cost Accounting Standards Board consistently applied and organized by each application for payment period.

9.1.17 Applications for Payment must be supported by substantiating back-up data as required by HFH and must reflect retainages as required herein. Evidence satisfactory to HFH of payments made to Subcontractors and Suppliers for the month preceding the month for which the application for payment is submitted must accompany each application for payment on a form approved by the Director of the Mayor's Office of Business Opportunity. The application must be sworn and notarized.

9.2 CERTIFICATES FOR PAYMENT

9.2.1 Prior to issuing each application for payment under §9.1, CMAR shall submit a "draft" application for payment that is valid and has all required documentation no later than the 25th of the same month with Work projected through the end of the month. Within five (5) days of receipt of the Draft, HFH shall review the Draft and provide CMAR with any adjustments to the progress of the Work or amount requested, within reason. CMAR shall make agreed to corrections to the Draft and submit to HFH a "final" application for payment that is valid and has all required documentation within five (5) days from receipt of HFH's adjustments. Upon receipt of the final application for payment, HFH shall make payment to CMAR not later than thirty (30) days from receipt. If, and in the event, HFH holds all or part of a final application for payment for one or more reasons, HFH will issue a written explanation apportioning the amount withheld to each such cause.

9.2.1.1 With its draft application for payment, CMAR shall submit to HFH on a form approved by HFH, evidence satisfactory to HFH of payments made to Subcontractors and Suppliers for the month preceding the month for which the application for payment is prepared.

9.2.2 Unless otherwise provided in the Contract Documents, payment for completed Work and for properly stored Products is conditioned upon compliance with procedures satisfactory to and agreed to by HFH to protect HFH's interests. Procedures will include applicable insurance, storage, and transportation to the site (with suitable on site storage and protection) for Products stored off site and proper documentation for such delivered Products, including certified copies of invoices and freight bills. CMAR is responsible for maintaining materials and equipment until the Date of Substantial Completion.

9.3 COMPUTATIONS OF CERTIFICATES FOR PAYMENT

9.3.1 Subject to the provisions of the Contract Documents, the amount of each Certificate for Payment is calculated as follows: (.1) Take that portion of a GMP for a Construction Phase properly allocated to completed Work for such Construction Phase based upon the percentage completion of each portion of the Work as set forth above. Pending final determination of cost to HFH of changes in the Work, amounts not in dispute may be included after increases and decreases have been netted out against each other, even though a GMP has not yet

been adjusted by Change Order. (.2) Add CMAR's Fee. (.3) Subtract the amount of retainage and such other amounts as HFH is entitled to withhold. (.4) Subtract the aggregate of the previous payments made by HFH. (.5) Subtract the shortfall, if any, indicated by CMAR in the documentation required to substantiate prior applications for payment or CMAR's payment of Costs of the Work covered by previous payments, or resulting from errors subsequently discovered by HFH in such documentation. (.6) Subtract amounts, if any, for which HFH has withheld or nullified an application for payment.

9.4 DECISIONS TO WITHHOLD CERTIFICATION

9.4.1 HFH may decline to issue a Certificate for Payment and may withhold payment in whole or in part to the extent reasonably necessary to protect HFH if, in HFH's opinion, there is reason to believe that: (.1) nonconforming work has not been remedied; (.2) the Work cannot be completed for unpaid balance of a GMP; (.3) there is damage to HFH or another contractor; (.4) CMAR has persistently failed to complete the Work in accordance with the Project Schedule or the Work will not be completed within Contract Time and that unpaid balance will not be adequate to cover actual damages; (.5) evidence that third party claims will probably be filed in court, in arbitration, or otherwise; (.6) CMAR has failed to make payments to Subcontractors or Suppliers or other third parties related to the Work; (.7) CMAR has failed to carry out the Work in accordance with the Contract Documents; (.8) The payment request has insufficient documentation to support the amount of payment requested; (.9) CMAR fails to obtain, maintain or renew insurance coverage as required by the Contract Documents; (.10) CMAR is in breach or default under the Contract Documents or any loss or damage may result from negligence by CMAR or any Subcontractor or failure of CMAR or any Subcontractor to perform their obligations under the Contract Documents; (.11) CMAR has not paid Subcontractors or Suppliers because of a payment dispute; or, (.12) CMAR has failed to provide satisfactory evidence described in §§9.1.16, 9.2.1.1, and 9.5.2.

9.4.2 When the above reasons for withholding a Certificate for Payment are removed, certification will be made for amounts previously withheld.

9.4.3 HFH may decline to issue a Certificate for Payment and may withhold request for payment in whole or in part upon failure of CMAR to submit initial construction schedule or monthly schedule updates, as required in §3.15 or elsewhere in the Contract Documents.

9.4.4 HFH shall at any time during regular business hours have the right to inspect and copy the books and records (however kept) of CMAR for verification of Work done, costs, bids, estimates, markups, payments due, amounts claimed, obligations owed Subcontractors or Suppliers, or any other aspect of CMAR's obligations as they relate to the Project. At HFH's request, CMAR, shall promptly provide evidence satisfactory to HFH of CMAR's compliance with the Contract Documents. CMAR shall require its Subcontractors and Suppliers to comply with this §, and similarly require their sub-subcontractors and Suppliers of any tier, to comply with this Section.

9.5 PROGRESS PAYMENTS

9.5.1 HFH will make payment, in an amount certified by HFH, within 30 days after HFH has issued a Certificate for Payment.

9.5.2 HFH has no obligation to pay or to facilitate the payment to any Subcontractor, Supplier, person or entity, except as may otherwise be required by law. CMAR shall comply with the prompt payment requirements of Chapter 2251 of the Government Code. However, CMAR shall pay Subcontractors and Suppliers within 7 calendar days of CMAR's receipt of payment from HFH unless there is a payment dispute between CMAR and a Subcontractor or Supplier evidenced on a form approved by the Director of Mayor's Office of Business Opportunity and submitted to HFH each month with its application for payment.

9.5.2.1 HFH may, upon request and at the discretion of HFH, furnish to Subcontractor information regarding percentages of completion or the amounts applied for by CMAR, and action taken thereon by HFH because of Work done by the Subcontractor.

9.5.2.2 CMAR shall prepare and submit to HFH a Certification of Payment to Subcontractors, Suppliers, persons and entities form to be attached to each monthly application for payment.

9.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by HFH, does not constitute acceptance of work that is not in accordance with the Contract Documents.

9.6 DATE OF SUBSTANTIAL COMPLETION

9.6.1 When CMAR considers that a Construction Phase, or a portion thereof designated by HFH, to be substantially complete, CMAR shall prepare and submit to HFH a comprehensive punch list of items to be completed or corrected. Failure to include an item on the punch list does not alter the responsibility of CMAR to comply with the Contract Documents.

9.6.1.1 By submitting the punch list to HFH, CMAR represents that work on the punch list will be completed within the time provided for in §9.6.4.3.

9.6.2 Upon receipt of CMAR's punch list, HFH will inspect the Work, or designated portion thereof, to verify that the punch list contains all items needing completion or correction. If HFH's inspection discloses items not on CMAR's punch list, the items must be added to the punch list of items to be completed or corrected. If HFH's inspection reveals that CMAR is not yet substantially complete, CMAR shall complete or correct the deficiencies and request another inspection by HFH. HFH may recover the costs of re-inspection from CMAR. HFH will use reasonable efforts to inspect the Construction Phase within a reasonable time following receipt of CMAR's punch list, and if HFH disagrees that Substantial Completion has been achieved, HFH will provide written notice as to what remains before Substantial Completion is achieved (but HFH shall not be prohibited from identifying other deficiencies later).

9.6.3 Prior to HFH's issuing a Certificate of Substantial Completion for the Work or other portion of the Work designated by HFH, CMAR shall also provide: (.1) Certificate of Occupancy (a temporary Certificate of Occupancy is acceptable provided CMAR promptly and diligently proceeds to obtain a permanent Certificate of Occupancy without conditions) for new construction, or Certificate of Compliance for remodeled work, as applicable; (.2) deliver all operations and maintenance manuals for the Project to HFH and have them approved by HFH and provide all training required under the Contract Documents. It is mutually understood and agreed that CMAR will make every effort to deliver the operation and maintenance manuals prior to the building or partial building substantial completion date but the requirement for the delivery of all operation manuals shall not be the sole reason for the delay in the issuance of the Certificate of Substantial Completion; and (.3) compliance with Texas Accessibility Standards through state inspection of the Work, if required. If CMAR calls for inspection in a timely manner and the inspection is delayed through no fault of CMAR, and HFH so confirms, HFH may, upon request by CMAR, add the inspection to the punch list in §9.6.2 and issue a Certificate of Substantial Completion.

9.6.4 When the Work, or designated portion thereof, is determined by HFH to be sufficiently complete in accordance with the Contract Documents so HFH can occupy or utilize the Construction Phase, or designated portion thereof, for the purpose for which it is intended, and all other conditions and requirements are satisfied, HFH will prepare a Certificate of Substantial Completion that incorporates the punch list in §9.6.2 and establishes: (.1) Date of Substantial Completion; (.2) responsibilities of the Parties for security, maintenance, heating,

ventilating and air conditioning, utilities, damage to the Work, and insurance; and (.3) fixed time within which CMAR shall complete all items on punch list to be corrected or completed accompanying the certificate.

9.6.5 Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of each Construction Phase unless otherwise provided by HFH in Certificate of Substantial Completion. Warranties shall not commence on items not yet completed until the Date of Final Completion.

9.6.6 CMAR shall complete or correct the items in §9.6.2 within the time period set out in the Certificate of Substantial Completion. If CMAR fails to do so, HFH may issue a Notice of Noncompliance and exercise all of its legal remedies under the Contract Documents, including those remedies set forth in §2.5.

9.6.7 CMAR shall keep the premises free from accumulation of waste materials or rubbish caused by CMAR's operations. At the completion of the Work, CMAR shall remove from and about the Project CMAR's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

9.6.8 Immediately prior to the review of a portion of the Work for Substantial Completion, CMAR shall remove all waste materials, rubbish, CMAR's tools, construction equipment, machinery and surplus materials from the area to be inspected. CMAR shall also remove all protective coatings, temporary work, barriers and other protective devices.

9.6.8.1 Finished spaces that are to be inspected shall be cleaned as required to remove all stains, dirt and dust. Glass shall be cleaned on both faces, and carpet shall be vacuumed.

9.6.8.2 Unfinished spaces such as mechanical and electrical equipment rooms that are to be inspected shall be "broom clean."

9.6.8.3 Mechanical work such as duct work, unit heaters, finned tube radiation and its covers, air conditioning units, grilles and registers shall be cleaned as required to remove all stains, dirt and dust.

9.6.8.4 Electrical work shall be cleaned as necessary to remove all stains, dirt and dust.

9.6.9 CMAR shall maintain the Work in a clean condition until HFH determines the Date of Substantial Completion for the Construction Phase. After the Date of Substantial Completion of the Construction Phase, CMAR is responsible for removing waste materials, rubbish, dirt and dust caused by its continued operations.

9.6.10 Prior to final acceptance, or prior to HFH's partial or complete occupancy of a portion of the Work, CMAR shall do the following: (1) clean all spaces of the Work so that they are ready for HFH's occupancy without additional cleaning; (2) remove from the Project site all temporary buildings or facilities for that Work unless needed for other portions of the Work; (3) replace filters in air handling equipment according to the Specifications; and (4) replace burned out lamps. This obligation is in addition to and not by way of limitation of Design Build Contractor's obligation to prove the Project complete and ready to use in all respects by the time limits set forth in the Contract Documents.

9.7 PARTIAL OCCUPANCY OR USE

9.7.1 HFH may occupy or use any completed or partially completed portion of the Work that is less than a completed Construction Phase of the Work, provided the occupancy or use is consented to by CMAR and CMAR's insurer and authorized by public authorities having jurisdiction over the Work. Consent of CMAR to partial occupancy or use may not be unreasonably withheld. Occupancy by HFH of a completed Construction Phase of the Work shall not require any consent.

9.7.2 Immediately prior to the partial occupancy or use, HFH and CMAR shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record condition of the Work.

9.7.3 Partial occupancy or use of a portion of the Work does not constitute acceptance of Work not in compliance with requirements of the Contract Documents.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 CMAR shall review the Contract Documents and inspect the Work prior to CMAR notification to HFH that the Work is complete and ready for final inspection. CMAR shall submit an affidavit that CMAR has inspected the Work and that the Work is complete in accordance with the requirements of the Contract Documents.

9.8.2 HFH will make final inspection within 15 days after receipt of CMAR's written notice that the Work is ready for final inspection and acceptance. If HFH finds the Work has been completed in accordance with the Contract Documents, CMAR shall submit items set out in §9.8.4 and a final application for payment. Within 30 days of receipt of the items set out in §9.8.4, HFH may perform an audit to determine the accuracy of CMAR's accounting of the Costs of the Work and the final application for payment. HFH will, within 10 days thereafter, either notify CMAR that CMAR has not achieved Final Completion of the Construction Phase as provided in §9.8.3 or issue a Certificate of Final Completion stating that to the best of HFH's knowledge, information, and belief, the Work has been completed in accordance with the Contract Documents. If there is only one Construction Phase, HFH will recommend acceptance of the Work and release the remaining retainage. If there is more than one Construction Phase, the Parties shall confer upon the issuance of each Certificate of Final Completion to determine whether it is appropriate to release the remaining retainage held for the particular Construction Phase that is certified as complete.

9.8.3 Should Work be found not in compliance with requirements of the Contract Documents, HFH will notify CMAR in writing of items of noncompliance. Upon inspection and acceptance of the corrections by HFH, compliance with all procedures of §9.8.2, and CMAR's submission of the items set out in §9.8.4. HFH will issue Certificate of Final Completion to CMAR's as provided in §9.8.2.

9.8.4 CMAR shall submit the following items to HFH before HFH will issue a Certificate of Final Completion: (.1) affidavit that payrolls, invoices for materials and equipment, and other indebtedness of CMAR connected with the Phase of the Work, less amounts withheld by HFH, have been paid or otherwise satisfied. If required by HFH, CMAR shall submit further proof including waiver or release of lien or claims from Subcontractors, Suppliers, laborers (which may be conditioned upon HFH making payment to CMAR); (.2) certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, will not be canceled or materially changed until at least 30 days written notice has been given to HFH; (.3) written statement that CMAR knows of no substantial reason that insurance will not be renewable to cover correction and warranty period required by the Contract Documents; (.4) consent of Surety to final payment; (.5) copies of record documents, maintenance manuals, tests, inspections, and approvals and deliver the required record documents that describe changes or deviations from the Contract Documents, which occurred during construction and that reflect the actual "as-built" conditions of the completed Work; (.6) compliance with Texas Accessibility Standards through state inspections of the Work, if required.

9.8.5 [Intentionally omitted.]

9.8.6 If final completion is materially delayed through no fault of CMAR, or by issuance of Change Orders affecting Date of Final Completion, and HFH so confirms, HFH may, upon application by CMAR and

certification by HFH, and without terminating the Agreement, make payment of balance due for that portion of the Work fully completed and accepted.

9.8.7 [Intentionally omitted.]

9.8.8 If remaining balance due for work not corrected is less than retainage stipulated in the Contract Documents, CMAR shall submit to HFH written consent of Surety to payment of balance due for that portion of the Work fully completed and accepted, prior to certification of the payment. The payment is made under terms governing final payment, except that it does not constitute waiver of Claims.

9.8.9 Final Payment. HFH will make final payment to CMAR within 30 days after the issuance of the Certificate of Final Completion by HFH and acceptance of the Work by HFH, subject to limitations, if any, as stated in the Contract Documents. HFH is entitled to deduct from any payment any amounts owed by CMAR to HFH.

9.8.10 Acceptance of final payment by CMAR shall constitute a waiver of all Claims, whether known or unknown, by CMAR, except those previously made in writing and identified by CMAR as unsettled at time of final application for payment.

ARTICLE 10: SAFETY PRECAUTIONS

10.1 SAFETY PROGRAMS

10.1.1 CMAR is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with performance of the Work. CMAR shall submit a safety program to HFH prior to mobilizing for the Work, and is solely responsible for safety, efficiency, and adequacy of ways, means, and methods, and for all loss, injury, or damage which might result from failure or improper construction, maintenance, or operation performed by CMAR.

10.2 POLLUTANTS AND POLLUTANT FACILITIES

10.2.1 If CMAR encounters material on-site that it reasonably believes to be a Pollutant or facilities that it reasonably believes to be a Pollutant Facility, CMAR shall immediately stop work in affected area and immediately notify HFH, confirming the notice thereafter in writing.

10.2.2 If HFH determines that the material is a Pollutant or facility is a Pollutant Facility, work in affected area may not be resumed except by Modification, and only if the work would not violate applicable laws or regulations.

10.2.3 If HFH determines that the material is not a Pollutant or a facility is not a Pollutant Facility, work in affected area will be resumed upon issuance of a Modification.

10.2.4 CMAR is not required to perform, unless authorized by Change Order, work relating to Pollutants or Pollutant Facilities except for that work relating to Pollutants or Pollutant Facilities specified in the Contract Documents.

10.3 SAFETY OF THE ENVIRONMENT, PERSONS, AND PROPERTY

10.3.1 CMAR shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury, or loss from all causes, to: (.1) employees performing work on-site, and other persons who may be affected thereby; (.2) work, including Products to be incorporated into the Work, whether in proper storage, under control of CMAR or Subcontractor; and (.3) other property at or adjacent to the site, such as trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal or replacement in course of construction.

10.3.2 CMAR shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons, property, or environment.

10.3.2.1 CMAR shall comply with requirements of Underground Facility Damage Prevention and Safety Act TEX. UTIL. CODE ANN. Ch. 251.

10.3.2.2 CMAR shall comply with all safety rules and regulations of the Federal Occupational Health and Safety Act of 1970 and subsequent amendments (OSHA).

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

10.3.4 CMAR shall designate a responsible member of CMAR's organization at site whose duty is prevention of accidents. This person will be CMAR's Superintendent unless otherwise designated by CMAR in writing to HFH.

10.3.5 CMAR shall prevent windblown dust and shall not burn or bury trash debris or waste products on-site or use sewers for disposal of trash or debris. CMAR shall prevent unlawful and other environmental pollution, including but not limited to particulates, gases and noise, as a result of the Work.

10.3.6 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, CMAR shall exercise utmost care and carry on the activities under supervision of properly qualified personnel.

10.3.7 CMAR shall promptly remedy damage and loss to property referred to in § 10.3.1.2 and §10.3.1.3, caused in whole or in part by CMAR, or Subcontractors, which is not covered by insurance required by the Contract Documents. CMAR is not required to remedy damage or loss attributable to HFH, HFH's Architect, or other contractors.

10.4 EMERGENCIES

10.4.1 In emergencies affecting safety of persons or property, CMAR shall act at CMAR's discretion to prevent imminent damage, injury, or loss. Additional compensation or extension of time claimed by CMAR because of emergencies will be determined as provided in Article 7.

ARTICLE 11: INSURANCE AND BONDS

11.1 GENERAL INSURANCE REQUIREMENTS

11.1.1 With no intent to limit CMAR's liability under indemnification and other provisions set forth in this Agreement, CMAR shall provide and maintain in full force and effect during the performance of the Work and all Contract Time extensions and other amendments thereto, at least the following insurance and available limits of liability.

11.1.2 If any of the following insurance is written as "claims made" coverage and HFH is required to be carried as additional insured, then CMAR's insurance shall include a two-year extended discovery period after last date that CMAR provides any work under the Agreement.

11.1.3 Aggregate amounts of coverage, for purposes of this Agreement, are agreed to be amounts of coverage available during fixed 12-month policy period.

11.2 INSURANCE TO BE PROVIDED BY CMAR

11.2.1 With no intent to limit CMAR’s liability under indemnification provisions set forth herein, CMAR shall, at its sole cost and expense, shall obtain and maintain the types and amounts of insurance:

Commercial General Liability, including Contractor’s Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products and Completed Operations	Combined single limit of \$2,000,000 per occurrence, subject to a general aggregate of \$2,000,000; Products and Completed Operations \$1,000,000 aggregate
Automobile Liability Insurance	\$1,000,000 combined single limit including Owned, Hired, and Non-Owned and Auto Coverage
Workers' Compensation	Statutory for Workers' Compensation. CMAR is not allowed to self-insure Workers' Compensation
Employer’s Liability	Bodily Injury by accident \$1,000,000 (each accident) Bodily Injury by Disease \$1,000,000 (policy limit) Bodily Injury by Disease \$1,000,000 (each employee)
Owner’s and Contractor’s Protective Liability	\$1,000,000 combined single limit
Excess Coverage	\$1,000,000 each Occurrence/combined aggregate in excess of limits specified for Employer’s Liability, Commercial General Liability, and Automobile Liability
Builder’s Risk	Coverage for all structures under construction, temporary structures, property, and materials shall be provided in an amount equal at all time to the full value of the Agreement. Coverage shall be at least as broad as an unmodified ISO Special form and shall be provided on a completed-value basis.

11.2.2 The issuer of any policy shall have a Certificate of Authority to transact insurance business in the State of Texas or have a Best’s rating of at least A– and a Best’s Financial Size Category of Class VI or better, according to the most current edition Best’s Key Rating Guide, Property-Casualty United States.

11.2.3 Endorsements. To the maximum extent allowed by applicable law, each policy, except those for Workers’ Compensation and Employer’s Liability, must include an additional insured endorsement in favor of HFH, Houston First Corporation, Hilton Worldwide, Inc., and the Variable Annuity Life Insurance Company c/o AIG Asset Management (collectively, the “Additional Insured Parties”).

11.2.4 Subrogation. Each policy must contain an endorsement in favor of the Additional Insured Parties waiving any claim or right in the nature of subrogation.

11.2.5 Completed Operations. Completed Operations coverage shall be maintained through the purchase of renewal policies to protect the insured and additional insured for at least 10 years after HFH accepts the Project or this Agreement is terminated.

11.2.6 Premiums and Deductibles. CMAR shall be solely responsible for payment of all insurance premiums hereunder. CMAR shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for same.

11.2.7 Primary Insurance. Each policy hereunder, except Worker's Compensation, shall be primary insurance to any other insurance available to the additional insured parties with respect to claims arising hereunder.

11.2.8 Endorsement of Primary Insurance. Each policy, except Workers' Compensation policies, must contain an endorsement that the policy is primary insurance to any other insurance available to the additional insureds with respect to claims arising hereunder.

11.2.9 Liability for Premium. CMAR is solely responsible for payment of all insurance premium requirements.

11.2.10 Subcontractor Insurance Requirements. CMAR shall require its subcontractors to provide proof of Commercial General Liability, Workers' Compensation, and Employer's Liability coverage that meets all the requirements of this Section.

11.2.11 CMAR represents and warrants to HFH that all employees of CMAR who will provide services on the Work will be covered by Workers' Compensation coverage for the duration of the Work, that coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with appropriate insurance carrier.

11.2.12 Subcontractor Insurance Requirements: CMAR shall require Subcontractors and Suppliers to obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the requirements of §11.2. The amount must be commensurate with the amount of the subcontract, but not less than \$1,000,000 per occurrence. CMAR shall require all Subcontractors with whom it contracts directly, whose subcontracts exceed \$100,000, to provide proof of all insurance coverage meeting the above requirements. CMAR shall deliver such certificates of insurance to HFH. CMAR shall comply with all requirements set out under §11.2.10 as to Workers' Compensation Insurance for all Subcontractors and Suppliers.

11.2.13 CMAR AND HFH ACKNOWLEDGE AND AGREE THAT THE PROJECT AND ALL WORK RELATED THERETO CONSTITUTE AND SHALL BE CONSIDERED TO BE A PUBLIC WORKS PROJECT OF A MUNICIPALITY FOR ALL PURPOSES, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE.

11.3 PROOF OF INSURANCE

11.3.1 CMAR shall furnish HFH with Certificates of Insurance within 10 days of the Effective Date of the Agreement. Failure of CMAR to provide proof of insurance upon request shall be deemed a material breach of this Agreement.

11.3.2 Notwithstanding the proof of insurance requirements, CMAR shall continuously maintain in effect required insurance coverage set forth in §11.2. Failure of CMAR to comply with this requirement does constitute

a material breach by CMAR allowing HFH, at its option, to immediately suspend or terminate CMAR from performing the Work, or exercise any other remedy allowed under the Contract Documents. CMAR agrees that HFH has not waived or is not estopped to assert a material breach of this Agreement because of any acts or omissions by HFH regarding its review or non-review of insurance documents provided by CMAR, its agents, employees, or assigns.

11.4 PERFORMANCE AND PAYMENT BONDS

11.4.1 Unless waived in writing by HFH, CMAR shall arrange and furnish (the cost thereof shall constitute part of the Cost of the Work) statutory Bonds on a form approved by HFH covering faithful performance under the Contract Documents and payment of obligations arising thereunder, as required in the Agreement pursuant to Chapter 2253 of the Government Code, except for the Pre-construction Services. The Bonds must be for 100% of each GMP.

11.5 [Intentionally omitted.]

11.6 SURETY

11.6.1 A Bond that is given or tendered to HFH pursuant to this Agreement shall be executed by a surety company that is authorized and admitted to write surety Bonds in the State of Texas.

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

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

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

11.6.5 Each Bond given or tendered to HFH pursuant to this Agreement must be on HFH forms with no changes made by CMAR or Surety, and must be dated, executed, and accompanied by power of attorney stating that the attorney in fact executing such the bond has requisite authority to execute such Bond. The Bonds must be dated and must be no more than 30 days old.

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

11.6.7 CMAR shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.

11.7 DELIVERY OF BONDS

11.7.1 CMAR shall deliver required Bonds to HFH within time limits stated in the Contract Documents or such earlier date as required by HFH and in any event prior to Date of Commencement of the Work.

ARTICLE 12: UNCOVERING AND CORRECTION OF THE WORK

12.1 UNCOVERING OF THE WORK

12.1.1 If a portion of the Work has been covered that HFH has not specifically asked to observe prior to its being covered, HFH may request to see such work and it must be uncovered by CMAR. If such work is in accordance with the Contract Documents, the costs of uncovering and covering such Work that qualify as Costs of the Work are charged to HFH by Change Order in accordance with Article 7. If such Work is not in accordance with the Contract Documents, CMAR shall pay for uncovering and shall correct the nonconforming Work promptly after receipt of Notice of Noncompliance to do so.

12.2 CORRECTION OF THE WORK

12.2.1 CMAR shall promptly remove work rejected by HFH as failing to conform to requirements of the Contract Documents, whether observed before or after the Date of Substantial Completion of a Construction Phase and whether fabricated, installed, or completed.

12.2.2 CMAR bears the costs of correcting the rejected or nonconforming work including additional testing and inspections, and compensation for HFH's Architect's services and expenses made necessary thereby.

12.2.3 If within five years after Date of Substantial Completion of a Construction Phase or after the date of commencement of warranties established under §9.6.5, or by other applicable special warranty required by the Contract Documents, whichever is later in time, any of the Work is found not to be in accordance with the requirements of the Contract Documents, CMAR shall correct such work promptly after receipt of Notice of Noncompliance to do so.

12.2.4 The five-year correction period for portions of the Work completed after Date of Substantial Completion of a Construction Phase will begin on the date of acceptance of that portion of the Work. This obligation under this Section survives acceptance of the Work under the Contract Documents and termination of the Agreement.

12.2.5 The five-year correction period does not establish a duration for CMAR's general warranty under §3.12 and other obligations under the Contract Documents. HFH retains the right to recover damages from CMAR as long as may be permitted by the applicable statutes of limitations and repose.

12.2.6 If CMAR does not proceed with correction of the nonconforming work within the reasonable time fixed by Notice of Noncompliance, HFH may correct nonconforming work or remove nonconforming work and store salvageable Products at CMAR's expense. CMAR shall pay the costs of correction of nonconforming work and removal and storage of salvageable Products to HFH. If CMAR does not pay costs of the correction or removal and storage within 10 days after written notice, HFH may sell the Products at auction or at private sale. HFH will account for proceeds thereof after deducting costs and damages that would have been borne by CMAR, including compensation for services of HFH's Architect and necessary expenses. If the proceeds of sale do not cover costs that CMAR should have borne, CMAR shall pay the value of the deficiency to HFH.

12.2.7 CMAR shall pay the cost of correcting work originally installed by CMAR, HFH, or by separate contractors and damaged by CMAR's correction or removal of CMAR's Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If HFH prefers to accept work which is not in accordance with requirements of the Contract Documents, HFH may do so only by issuance of Change Order, instead of requiring its removal and correction. HFH and CMAR will mutually agree on any GMP reduction. The reduction will become effective even if final payment has been made.

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAWS

13.1.1 This Agreement is subject to the laws of the State of Texas, shall be governed by the laws of the State of Texas without regard to conflicts of laws principles. The district courts of the State of Texas located in Harris County, Texas shall be the exclusive place of venue in respect to any legal action or proceeding in respect to or arising out of the Contract Documents.

13.2 SUCCESSORS

13.2.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this §13.2.1 does not alter the restrictions on assignment and disposal of assets set out in §13.3.1. This Agreement does not create any personal liability on the part of any officer or agent of HFH.

13.3 BUSINESS STRUCTURE AND ASSIGNMENTS

13.3.1 CMAR may not assign this Agreement at law or otherwise, or dispose of all or substantially all of its assets without HFH's prior written consent. Nothing in this Section, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, CMAR shall immediately furnish HFH with proof of the assignment and the name, telephone number, and address of the assignee and a clear identification of the fees to be paid to the assignee.

13.3.2 Any series, as defined by the TEX. BUS. ORG. CODE ANN., affiliate, subsidiary, or successor to which CMAR assigns or transfers assets shall join in privity and be jointly and severally liable under this Agreement.

13.4 WRITTEN NOTICE

13.4.1 All notices required or permitted under this Agreement must be in writing and must be effected by hand delivery; registered or certified mail, return receipt requested; or via Federal Express, UPS or any other national overnight express delivery service. Notice is sufficient if made or addressed with proper postage to the address stated in the Agreement for each Party ("Notice Address"). The notice is deemed delivered on the earlier of the date the Notice is actually received or the third day following deposit in a United States Postal Service post office or receptacle. Any Party may change its Notice Address at any time by giving written notice of the change to the other Party in the manner provided for in this Section at least 15 days prior to the date the change is effected.

13.5 RIGHTS AND REMEDIES

13.5.1 Duties and obligations imposed by this Agreement and rights and remedies available thereunder are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

13.5.2 No act or failure to act by HFH or CMAR is a waiver of rights or duties afforded them under this Agreement, nor does the act or failure to act constitute approval of or acquiescence in a breach of this Agreement. No waiver, approval or acquiescence is binding unless in writing and, in the case of HFH, signed by HFH.

13.6 TESTS AND INSPECTIONS

13.6.1 CMAR shall give HFH and HFH's Architect(s) timely notice of the time and place where tests and inspections are to be made. CMAR shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.6.2 HFH will employ and pay for services of an independent testing laboratory to perform inspections or acceptance tests required by the Contract Documents except: (.1) inspections or tests covered by §13.6.3; (.2) those otherwise specifically provided in the Contract Documents; or (.3) costs incurred in connection with tests or inspections conducted pursuant to §12.2.2.

13.6.3 CMAR is responsible for and shall initially pay all costs in connection with inspection or testing required in connection with HFH's acceptance of a Product to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to CMAR's purchase thereof for incorporation into the Work.

13.6.4 Neither observations by HFH or HFH's Architect(s), nor inspections, tests, or approvals by others, relieves CMAR from CMAR's obligations to perform the Work in accordance with the Contract Documents.

13.6.5 If testing, inspection, or approval should reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, then CMAR shall bear all costs made necessary by such failure, including those of repeated procedures and compensation for HFH's services and expenses.

13.7 INTEREST

13.7.1 No interest will accrue on late payments by HFH.

13.8 PARTIES IN INTEREST

13.8.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the Parties only.

13.9 ENTIRE AGREEMENT

13.9.1 The Contract Documents, which include this Agreement and the other documents attached or incorporated herein by reference, represents the entire and integrated agreement between HFH and CMAR with regard to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both HFH and CMAR. If any provision in any document incorporated into this Agreement is inconsistent with this Agreement, then this Agreement shall govern.

13.10 WRITTEN AMENDMENT

13.10.1 Changes to this Agreement that cannot be made by Modifications, must be made by written amendment, which will not be effective until approved by HFH.

13.11 COMPLIANCE WITH ADA

13.11.1 CMAR shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.

13.11.2 CMAR shall comply with all applicable federal, state, and HFH laws, ordinances, rules and regulations. Nothing herein shall be construed to require that CMAR ensures that the Contract Documents are prepared in accordance with applicable laws.

13.12 SEVERABILITY

13.12.1 If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable to the extent permitted by law.

ARTICLE 14: TERMINATION OR SUSPENSION OF THE AGREEMENT

14.1 TERMINATION BY HFH FOR CAUSE

14.1.1 Each of the following acts or omissions of CMAR or occurrences shall constitute an “Event of Default” under this Agreement: (.1) CMAR refuses or fails to supply enough properly skilled workers or proper Products; (.2) CMAR disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; (.3) CMAR is guilty of material breach of any duty or obligation of CMAR under this Agreement; or (.4) CMAR has had any other contract with HFH terminated for cause at any time subsequent to the Effective Date of the Agreement.

14.1.2 If an Event of Default occurs, HFH may, at its option and without prejudice to any other rights or remedies which HFH may have, deliver a written notice to CMAR describing the Event of Default and giving CMAR 10 days to cure the Event of Default. If after the 10 day cure period, CMAR has failed or refused to cure the Event of Default, then HFH may deliver a second written notice to CMAR giving notice of the termination of this Agreement or of the termination of CMAR’s performance under the Contract Documents (“Notice of Termination”). If HFH issues a Notice of Termination, then HFH may, subject to any prior rights of Surety and any other rights of HFH under the Contract Documents or at law: (.1) request that Surety take over and restart the Work within thirty (30) days of termination and complete the Work within a reasonable period of time as established by HFH; or (.2) take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by CMAR; and (.3) finish the Work by whatever reasonable method HFH may deem expedient.

14.1.3 After CMAR’s receipt of a Notice of Termination, and except as otherwise directed in writing by HFH, CMAR shall: (.1) stop the Work on the date and to the extent specified in the Notice of Termination; (.2) place no further orders or subcontracts for Products or services; (.3) suspend all orders and subcontracts to the extent that they relate to performance of work terminated; (.4) assign to HFH, in the manner, at the times, and to the extent directed by HFH, all rights, title, and interest of CMAR, under the terminated supply orders and subcontracts. HFH may settle or pay claims arising out of termination of the orders and subcontracts; (.5) settle all outstanding liabilities and all claims arising out of the termination of supply orders and subcontracts with approval of HFH; (.6) take action as may be necessary, or as HFH may direct, for protection and preservation of property related to the Work that is in possession of CMAR, and in which HFH has or may acquire an interest; and (.7) secure the Work in a safe state before leaving the site, return all rented equipment, providing any necessary safety measures, shoring, or other devices.

14.1.4 If HFH terminates this Agreement or terminates CMAR’s performance under the Contract Documents for any one or more of the reasons stated in §14.1.1, CMAR may not receive any further payment until the Work is complete, subject to §14.1.5.

14.1.5 If the unpaid balance of a GMP exceeds the costs of finishing the Work, then the balance will be paid to HFH. If the costs of finishing the Work exceed the unpaid balance, CMAR shall, within 10 days of receipt of written notice setting out the amount of the excess costs, pay the difference to HFH. The amount to be paid to CMAR or HFH will be certified by HFH in writing, and this obligation for payment shall survive termination of this Agreement or termination of CMAR’s performance under the Contract Documents. Termination of CMAR for cause shall not relieve the Surety from its obligation to complete the Project.

14.2 TERMINATION BY HFH FOR CONVENIENCE

14.2.1 HFH may, without cause and without prejudice to any other rights or remedies of HFH, give CMAR a Notice of Termination with seven days written notice.

14.2.2 After receipt of HFH's Notice of Termination, and except as otherwise approved by HFH, CMAR shall conform to requirements of §14.1.3.

14.2.3 After receipt of the Notice of Termination, CMAR shall submit to HFH its termination Claim, in forms required by HFH. The Claim will be submitted to HFH promptly, but no later than six months from the effective date of termination, unless one or more extensions are granted by HFH in writing. If CMAR fails to submit its termination Claim within the time allowed, in accordance with §14.2.4, HFH will determine, on the basis of available information, the amount, if any, due to CMAR because of termination, and HFH's determination is final and binding on the Parties. HFH will then pay to CMAR the amount so determined.

14.2.4 HFH will determine, on the basis of information available to HFH, the amount due, if any, to CMAR for the termination as follows: (.1) Payment for all Work performed in accordance with the Contract Documents up to the date of termination determined in the manner prescribed for monthly payments in Article 9 and other applicable Contract Documents, except no retainage is withheld by HFH with respect to the terminated Work either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage or in transit. (.2) Reasonable termination expenses that would qualify as Cost of the Work, including, to the extent they qualify as Costs of the Work, costs for settling and paying Subcontractor and Supplier claims arising out of termination of the Work under their respective Subcontracts and purchase orders, reasonable cost of preservation and protection of HFH's property after termination if required, and the cost of Claim preparation Termination expenses do not include field or central office overhead, salaries of employees of CMAR or litigation costs (including, but not limited to, attorneys' fees). No amount is allowed for anticipated profit or central office overhead on uncompleted work, or any cost or lost profit for other business of CMAR alleged to be damaged by the termination.

14.2.5 CMAR shall promptly remove from the site any construction equipment, tools, and temporary facilities not needed for Work not terminated, except the temporary facilities that HFH may wish to purchase and retain.

14.2.6 CMAR shall cooperate with HFH during the transition period.

14.2.7 HFH will take possession of the Work and materials delivered to the site, in storage, or in transit, as of date or dates specified in the Notice of Termination, and is responsible for maintenance, utilities, security, and insurance, as stated in Notice of Termination.

14.3 SUSPENSION BY HFH FOR CONVENIENCE

14.3.1 CMAR acknowledges that the Project site will be occupied throughout the course of the work and that the Work will be subject to suspension, delay or interruption and represents that it has anticipated same in the preparation of any GMP Proposal. CMAR agrees that HFH may suspend, delay or interrupt the services of the CMAR in the manner and to the extent as HFH may determine in its sole, but reasonable discretion for such reason.

14.3.2 An adjustment may be made in Contract Time equivalent to the time of suspension; no adjustment will be made to GMP for increases in the Cost of the Work, caused by such suspension, delay, or interruption of the Work.

14.4 TERMINATION BY CMAR

14.4.1 CMAR may terminate the Agreement if the Work is stopped for a period of 30 days through no act or fault of CMAR, directly related to one of these events: (.1) issuance of an order of a court or other public authority having jurisdiction; (.2) act of government, such as a declaration of national emergency that makes material

unavailable; or, (.3) if repeated suspensions, delays, or interruptions by HFH as described in §14.3 constitute, in the aggregate, more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; CMAR shall deliver written notice to HFH describing the reason for termination, giving the proposed termination date, and granting HFH a reasonable opportunity to respond and cure any HFH default before termination is effective.

14.4.2 If the Agreement is terminated pursuant to this §14.4, then CMAR shall comply with the requirements of §14.2.2 through §14.2.7.