

CONSTRUCTION TERMS & CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

§1.1 BASIC DEFINITIONS

§1.1.1 Contract Documents. The Contract Documents form the contract. The term “Contract Documents” consists of the Construction Agreement to which these Construction Terms & Conditions are affixed as an exhibit (“Construction Agreement”), Specifications, Drawings, Construction Terms & Conditions, and any Modifications issued after execution of the original Construction Agreement. The term “Modification” is (1) a written amendment to the Contract Documents signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by Architect.

§1.1.2 Contract. The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between Construction Manager and Architect, between HFC and a Subcontractor or a Sub-subcontractor, between HFC and Architect, or between any persons or entities other than HFC and Construction Manager. In the event of a conflict between the Construction Agreement, the Specifications, Drawings, and Construction Terms & Conditions, the following order shall control: (1) Change Orders and Construction Change Directives; (2) Addenda with later date having greater priority; (3) The Construction Terms & Conditions; (4) Drawings, with detailed drawings taking precedence over large scale; and (5) Specifications (or Project Manual).

§1.1.3 Work. The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Construction Manager to fulfill Construction Manager’s obligations. The Work may constitute the whole or a part of the Project.

§1.1.4 Project and Project Manual. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by HFC and by separate contractors. The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, conditions of the Contract and Specifications; provided, however, that all submissions shall be on forms approved by HFC.

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

§1.1.6 Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§1.1.7 Instruments of Service. Instruments of Service are representations, in any medium, of the tangible and intangible creative work performed by Architect. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§1.1.8 Final Completion. The term “Final Completion” shall mean, with respect to each of the Components, the completion of all items of Work with respect thereto and shall include without limitation all seasonal systems adjustments, demonstration of the operation of all systems and equipment, delivery to HFC of all guarantees and warranties in form and substance as required by the Contract Documents, delivery of all operating manuals concerning and labeling of all components with respect to all mechanical, electrical, elevator and other equipment and systems, delivery of all test certificates and operating permits, delivery of as-built drawings, and issuance by Architect of a final Certificate for Payment approved by HFC. For the avoidance of doubt, “Final Completion” shall be determined separately for each of Component, but “Final Completion” with respect to the entirety of the Work shall mean the final completion of all of the Components.

§1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Construction Manager. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Construction Manager shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts, explanatory notes in the Drawings take precedence over graphic indications, large-scale drawings and details take precedence over smaller scale drawings, and figured dimensions take precedence over scaled dimensions.

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

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

§1.3 CAPITALIZATION. Terms capitalized herein include those that are specifically defined or the titles of numbered articles. Terms capitalized but not defined herein shall have the meanings ascribed to them in the Construction Agreement.

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

all references to a section number shall be references to referenced section number in these Construction Terms & Conditions.

§1.5 OWNERSHIP AND USE OF DRAWINGS AND SPECIFICATIONS

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

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

§1.6 TRANSMISSION OF DATA IN DIGITAL FORM. The parties intend to transmit Instruments to Service in digital form and, when doing so, shall observe and comply with the protocols to be agreed upon the parties in writing following the date hereof.

ARTICLE 2
HFC

§2.1 GENERAL; PROJECT MANAGER

§2.1.1 No employee, contractor or Agent of HFC has the authority to authorize Construction Manager to perform an act or work contrary to the Contract.

§2.1.2 Except to the limited extent provided in the Contract Documents, Architect does not have authority to represent or bind HFC with respect to any matter requiring HFC’s approval or authorization.

§2.1.3 Construction Manager acknowledges that it has been advised by HFC that HFC has engaged the Project Manager as a project manager. HFC hereby designates Project Manager as HFC’s authorized representative under the Contract Documents, subject to the provisions and limitations set forth in this paragraph, with the individual representatives of Project Manager being authorized to act hereunder being any of _____, _____, or _____. HFC shall have the right at any time, by written notice to the Construction Manager, to withdraw, or set forth limits upon, the authority of Project Manager and the Construction Manager shall be bound thereby upon receipt of any such notice from HFC.

§2.1.4 Subject to the following provisions of this Section, the following shall apply with regard to Project Manager and its role, rights and authority, and Construction Manager’s obligations to coordinate and communicate with Project Manager: (a) Project Manager shall be the primary point of contact for Construction Manager in communicating with HFC under or with respect to the

Contract Documents, (b) copies of all notices and deliveries by Construction Manager to HFC under the Contract Documents shall also be provided concurrently to Project Manager, (c) Construction Manager shall cooperate in good faith with Project Manager so as to enable Project Manager to perform and discharge its duties and obligations to HFC with regard to the Work, and (d) subject to the limitations described in the following paragraph hereof and any revocation or subsequent limitation on authority provided by HFC to Construction Manager pursuant to the last sentence of the opening paragraph of Section 2.1.3 hereof, Project Manager shall have the right to make and give all consents, approvals, decisions, elections and determinations which may be made or given by HFC under the Contract Documents.

§2.1.5 Notwithstanding the foregoing provisions with respect to the authority of Project Manager, Construction Manager acknowledges that Project Manager *may not* give or make any consent, approval, decision, election or determination on behalf of HFC (and none purportedly given or made by HFC on behalf of HFC shall be binding upon HFC nor relied upon by Construction Manager) with respect to any of the matters described in Section 2.1.6 hereof (the “Major Decisions”). In all events, Construction Manager shall obtain, with respect to any Major Decision, the written consent, approval, decision, election or determination, from HFC.

§2.1.6 As used herein the term “Major Decisions” shall mean any or all of the following: (1) waiving, compromising or settling any Claim; (2) executing any Change Order; (3) issuing any Construction Change Directive for which Construction Manager believes it is or will be entitled to an increase in the Final Guaranteed Maximum Price or an extension of the Contract Time; (4) accepting any defective work for purposes of Section 12.2.1 of the Construction Terms & Conditions; (5) exercising any rights of HFC to terminate the Contract Documents.; (6) waiving any “material obligation” of Construction Manager under the Contract Documents. For purpose of this provision only, a “material obligation” of Construction Manager means any obligation that, if not performed, would materially or adversely affect the Work, any warranty of the Work, or the appearance, functionality or utility of the Project following its completion; and (7) consenting to any assignment of the Contract Documents by Construction Manager.

§2.2 INFORMATION AND SERVICES REQUIRED OF HFC

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

§2.2.2 When necessary for the performance of the Work, HFC will endeavor to furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The furnishing of surveys and legal descriptions of the Project site shall not relieve Construction Manager from its duties under the Contract Documents. To the extent the existence thereof is reflected in any survey or other written materials that have been provided by HFC to Construction Manager, Construction Manager shall be solely responsible for determining the existence and location of subsurface lines, cables and pipes within the site.

§2.2.3 HFC shall furnish information or services required of HFC by the Contract Documents with reasonable promptness. HFC shall also furnish any other information or services under HFC’s

control and relevant to Construction Manager's performance of the Work with reasonable promptness after receiving Construction Manager's written request for such information or services. If Construction Manager has a reasonable need therefor, HFC shall provide Construction Manager a geotechnical report with respect to the conditions and characteristics of all subsoils and shall have no right to make any Claim for any increase in the Contract Sum attributable to the conditions or characteristics reflected therein.

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

§2.3 HFC'S RIGHT TO STOP THE WORK. If Construction Manager fails to carry out the Work in accordance with the requirements of the Contract Documents and fails to correct the Work as required by Section 12.2 in accordance with the Contract Documents, HFC may issue a written order to Construction Manager to stop the Work, or any portion (including any Component) thereof, until the cause for such order has been eliminated; however, the right of HFC to stop the Work shall not give rise to a duty on the part of HFC to exercise this right for the benefit of Construction Manager or any other person or entity. The rights of HFC under this section shall be in addition to, and not in restriction of, any of HFC's other rights set forth in the Contract Documents.

§2.4 HFC'S RIGHT TO CARRY OUT THE WORK. If Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from HFC to correct such default or neglect, as determined by HFC, HFC may, without prejudice to other remedies HFC may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due Construction Manager the reasonable cost of correcting such deficiencies, including HFC's expenses and compensation for Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, Construction Manager shall pay the difference to HFC. In the event of such action by HFC, Construction Manager shall, at HFC's request as to each subcontract specified by HFC, assign the performance obligations of Subcontractors, or, at HFC's option, the specified subcontracts, to HFC or its designee. No such assignment shall relieve Construction Manager of payment obligations incurred by Construction Manager prior to the date of assignment of the subcontract or subcontract rights to HFC or its designee.

ARTICLE 3

CONSTRUCTION MANAGER

§3.1 GENERAL

§3.1.1 Construction Manager is the person or entity identified as such in the Construction Agreement and is referred to throughout the Contract Documents as if singular in number. Construction Manager shall be lawfully licensed. Construction Manager shall designate in writing

to HFC a representative who shall have express authority to bind Construction Manager with respect to all matters under the Contract Documents.

§3.1.2 Construction Manager shall perform the Work in accordance with the Contract Documents.

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

§3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

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

§3.2.2 Because the Contract Documents are complementary, Construction Manager shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as any information furnished by HFC pursuant to Section 2.2.2, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Construction Manager shall promptly report to Architect any errors, inconsistencies or omissions discovered by or made known to Construction Manager as a request for information in such form as Architect may require. Before performing any portion of the Work, Construction Manager shall fully investigate all physical aspects of the Project site and verify all dimensions, measurements, property lines, utility locations, grades and elevations, existing improvements, surface soil conditions, drainage of surface and general suitability of conditions at the Project site.

§3.2.3 Construction Manager shall promptly report to Architect and HFC in writing any nonconformity discovered in the Contract Documents with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities (nothing in this sentence shall release or relieve Construction Manager from its obligations with regard to compliance with laws governing the means and methods of construction) as a request for information in such form as Architect may require.

§3.2.4 If Construction Manager believes that additional cost or time is involved because of clarifications or instructions Architect issues in response to Construction Manager's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, then Construction Manager shall make Claims as provided in Article 15. If Construction Manager fails to perform the obligations of Sections 3.2.2 or 3.2.3, then Construction Manager shall pay such costs and damages to HFC as would have been avoided if Construction Manager had performed such obligations. If the Construction Manager performs those obligations, the Construction Manager shall not be liable to HFC or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents unless the Construction Manager, exercising the Standard of Care (defined below), should have recognized (a) such error, inconsistency, omission or difference or (b)

nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and knowingly failed to report it to Architect and HFC or continue to perform any part of the Work affected thereby without first obtaining direction from Architect.

§3.2.5 Notwithstanding the foregoing or any contrary provisions of the Contract Documents, Construction Manager shall be responsible for costs of Work replaced or damaged as a result of errors, inconsistencies or omissions in the design or the failure of the design when Construction Manager knew, or exercising the skill of a first class contractor in the area where the Project site is located (the “Standard of Care”), should have known of such errors, inconsistencies or omissions but proceeded with the Work without obtaining clarification from Architect.

§3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

§3.3.2 Construction Manager shall be liable to HFC for acts and omissions of Construction Manager’s employees, agents, Subcontractors and their employees, agents and contractors or any tier, and other persons or entities performing portions of the Work for, or on behalf of, Construction Manager or any of its Subcontractors. Construction Manager shall be solely responsible for conforming to the standards declared by OSHA, including but not limited to compliance with federal and state safety standards/directives for setting-up and utilizing platforms, lifts, ladders, scaffolding and safety lines/belts. Construction Manager shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If Construction Manager determines that such means, methods, techniques, sequences or procedures may not be safe, then Construction Manager shall give immediate written notice to HFC and Architect and shall not proceed with that portion of the Work without further written instructions from HFC and Architect.

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

§3.4 LABOR AND MATERIALS

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

§3.4.2 If, with respect to any Component, after the date the Component Maximum Cost of the Work Agreement is executed Construction Manager desires to substitute a material or product of a different brand or manufacturer in lieu of that specified, then Construction Manager shall submit a written request to HFC and Architect for approval of such proposed substitution. Each request for substitution shall state any amount of change to the Contract Sum and shall be accompanied by complete descriptive literature and performance data upon both the specified item and the proposed substitution, plus any samples as may be required by Architect. Each proposed substitution shall require the written approval of HFC and Architect before Construction Manager may make such substitution. Construction Manager shall submit requests for substitution as soon as practicable to allow for adequate consideration of such request and to minimize delay in the progress of the Work. HFC may withhold consent in its sole and absolute discretion.

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

§3.5 WARRANTY

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

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

§3.5.3 Work, materials, or equipment not conforming to the requirements of the Contract Documents shall be considered defective. If required by HFC, Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§3.5.4 The warranties provided by Construction Manager in the Contract Documents shall be assignable by HFC at no expense or fee to HFC and in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. The warranty of the Construction Manager set forth in Section 3.5.1 shall be interpreted to require Construction Manager to replace defective materials and equipment, re-execute defective Work and Work that is not in accordance with the Contract Documents which is disclosed to the Construction Manager by HFC within a period of two (2) calendar years after, with respect to each individual Component, the applicable date of Substantial Completion with respect thereto. Construction Manager warrants corrective Work for the same amount of time after, as originally warranted from, the date of completion of the corrective Work. Should Construction Manager fail to make such warranty

correction required hereby within a reasonable time, not to exceed 30 days after notice thereof from HFC to Construction Manager, HFC may do so at the expense of and for the account of the Construction Manager.

§3.6 TAXES

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

§3.6.2 As more particularly described in the Construction Agreement, HFC is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Construction Manager's invoices to HFC must not contain assessments of any of the taxes from which HFC is exempt. HFC will furnish HFC's exemption certificate and federal tax identification number to Construction Manager if requested.

§3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§3.7.1 Unless otherwise provided in the Contract Documents, Construction Manager shall secure and HFC shall, as part of the Cost of the Work, pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Construction Agreement and legally required at the time bids are received or negotiations concluded. Certificates of inspection, use and occupancy shall be delivered to HFC upon completion of the Work in sufficient time for occupancy of the Project in accordance with the approved schedule for the Work, and until the same are issued Substantial Completion shall not be deemed to have occurred. If the costs of the building permit and costs of the expediter to expedite obtaining the same have not been included in the Final Guaranteed Maximum Price, then Construction Manager may request a Change Order to increase the Final Guaranteed Maximum Price by the actual cost of the building permit and such expediter fees once the same are known.

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

§3.7.3 If Construction Manager performs Work knowing (or, exercising the Standard of Care, should have known) it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Construction Manager shall assume be liable for such Work and shall bear the costs attributable to correction.

§3.7.4 Concealed or Unknown Conditions. If Construction Manager encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Construction Manager shall immediately provide written notice to HFC and Architect before conditions are disturbed and in no event later than 24 hours after first observance of the conditions. Architect will promptly investigate such conditions and, if Architect determines that they differ

materially and cause an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, then Architect will recommend an equitable adjustment in the Contract Sum or Contract Time, or both, for the affected Component. If Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms are justified, then Architect shall promptly notify HFC and Construction Manager in writing, stating the reasons. If either party disputes Architect's determination or recommendation, that party may proceed as provided for in Article 15.

§3.7.5 If, in the course of the Work, Construction Manager encounters human remains or recognizes the existence of burial markers, archaeological sites, cultural artifacts, relics, or objects of antiquity not indicated in the Contract Documents (collectively, "Features"), then Construction Manager shall immediately suspend any operations that would affect them and shall notify HFC and Architect. Upon receipt of such notice, HFC shall promptly take any action necessary to obtain governmental authorization required to resume the operations. Construction Manager shall continue to suspend such operations until otherwise instructed by HFC but shall continue with all other operations that do not affect those Features. Requests for adjustments in the Contract Sum and Contract Time existing from the existence of Features may be made as provided in Article 15.

§3.8 ALLOWANCES

§3.8.1 Construction Manager shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as HFC may direct, but Construction Manager shall not be required to employ persons or entities to whom Construction Manager has reasonable objection.

§3.8.2 Unless otherwise provided in the Contract Documents: (1) allowances shall cover the cost to Construction Manager of materials and equipment delivered at the site and all required taxes, less applicable trade discounts; (2) Construction Manager's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and (3) whenever costs are more than or less than allowances, the Final Guaranteed Maximum Price shall be adjusted accordingly by Change Order. (The amount of the Change Order shall reflect the difference between actual costs and the allowances under Section 3.8.2.1 and changes in Construction Manager's costs under Section 3.8.2.2.)

§3.8.3 Materials and equipment under an allowance shall be selected by HFC within a reasonable time.

§3.09 [Intentionally Omitted]

§3.10 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULES

§3.10.1 Prior to commencement of the Work on the site with respect to each Component, Construction Manager will have submitted to HFC and HFC shall have approved a Schedule of the Work with respect thereto (as described more fully in the Construction Agreement, the final Schedule of the Work shall reflect the schedule for each Component). The Schedule of the Work shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide

for expeditious and practicable execution of the Work. In all events the Schedule of the Work shall reflect each Critical Path Activity for each of the Components. No revision of the Schedule of the Work shall be deemed incorporated into the Contract Documents or otherwise effective unless and until approved in writing by HFC.

§3.10.2 Construction Manager shall prepare a submittal schedule, promptly after execution of the Construction Agreement and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for Architect's and HFC's approval. Approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with Construction Manager's construction schedule, and (2) allow Architect reasonable time to review submittals. If Construction Manager fails to timely submit a submittal schedule, then Construction Manager shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§3.10.3 Construction Manager shall perform the Work in general accordance with the most recent schedules submitted to HFC and Architect.

§3.11 DOCUMENTS AT THE SITE; MONTHLY REPORTS.

§3.11.1 Construction Manager shall maintain, at the Project site, one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to Architect and shall be delivered to Architect for submittal to HFC upon completion of the Work as a record of the Work as constructed.

§3.11.2 Construction Manager shall make available to HFC a copy of Construction Manager's Superintendent's daily report at the conclusion of each day that Work is performed at the Project. Such daily report shall summarize activities and any problems occurring with respect to the Work during that day, and shall provide a manpower count for the day, organized by trade and number of man days.

§3.11.3 No later than the fifth day of each calendar month, Construction Manager shall submit to HFC and Architect a report for the preceding calendar month providing the following separate items, separately stated for each Component: (1) a narrative providing a summary of the status of the construction of the Project; (2) a report of particular problems and significant issues pending or resolved during the period; (3) photographs showing the progress of construction and any particular problem areas; (4) an update of the construction schedule, including depiction of the status of construction compared to schedule; (5) a report of remaining anticipated costs; (6) a log of Subcontractor change orders; (7) a report on the status of subcontracts; and (8) a listing of pending change order requests, construction change directives, and requests for information.

§3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

§3.12.9 Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by

Architect on previous submittals. In the absence of such written notice, Architect's approval of a resubmission shall not apply to such revisions.

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

§3.12.11 Shop drawings for all work, including but not limited to architectural, structural, mechanical and electrical work shall be submitted for approval to Architect along with one copy to HFC.

§3.12.12 Construction Manager shall assemble for and deliver to HFC one complete copy, in a loose leaf binder, all operating and maintenance data for all equipment installed as a part of the Work as well as all of the following: copies of all warranties with regard to the Work and the names and telephone numbers, and addresses of the persons to contact in regard thereto; and copies of all test reports with regard to the Work. In addition, Construction Manager shall provide one electronic copy of such all materials on a flash drive to be provided to HFC.

§3.13 USE OF SITE. Construction Manager shall confine operations at the Project site to areas designated by HFC and as permitted under applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Construction Manager shall cooperate with and coordinate the Work with adjoining landowners in order to minimize and avoid disruption and damage to the activities and property of adjoining landowners. Construction Manager shall comply with all easements of record affecting the Project site.

§3.14 CUTTING AND PATCHING

§3.14.1 Construction Manager shall be responsible for cutting, fitting, grinding, sanding or patching required to complete the Work or to make its parts fit together properly and present a completed appearance that conforms to the intent of the design documents. All areas requiring cutting, fitting, grinding, sanding and patching shall be restored to the condition existing prior to the cutting, fitting, grinding, sanding and patching.

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

§3.15 CLEANING UP

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

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

§3.16 ACCESS TO WORK. Construction Manager shall provide HFC, Project Manager and Architect access to the Work in preparation and progress wherever located.

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

§3.18 INSURANCE, BONDS AND INDEMNITY. The provisions of the Construction Agreement regarding the provision of insurance, bonds and indemnity are hereby incorporated herein and shall be observed and complied with by Construction Manager.

§3.19 FEMA REQUIREMENTS. The provisions of the Construction Agreement regarding federal law, regulations, executive orders, FEMA policies, procedures, and directives are hereby incorporated herein and shall be observed and complied with by Construction Manager, including

by way of example and not limitation, Equal Employment Opportunity (41 C.F.R. Part 60 et seq.); the Contract Work Hours and Safety Standards Act (40 U.S.C. §§3702 and 3704, as supplemented by Department of Labor regulations at 29 CFR part 5); the Clean Air Act, as amended (42 U.S.C. §7401 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.); federal guidelines on government-wide debarment and suspension (2 C.F.R. pt. 180 et seq. and 2 C.F.R. pt. 3000 et seq.); the Byrd Anti-Lobbying Amendment (31 U.S.C. §1352, as amended); the Solid Waste Disposal Act (42 U.S.C. §6962 et seq); regulations requiring access to records (DHS Standard Terms and Conditions, v 3.0, ¶XXVI (2013)); regulations prohibiting or restricting use of the Department of Homeland Security (“DHS”) seal, logo, images, and flags (See DHS Standard Terms and Conditions, v 3.0, ¶XXV (2013)); and Administrative Remedies for False Claims and Statements (31 U.S.C. Chap. 38).

ARTICLE 4 **ARCHITECT**

§4.1 GENERAL

§4.1.1 Architect is the person or entity is identified as Architect in the Construction Agreement and is referred to throughout the Contract Documents as if singular in number. Architect shall designate, by written notice to HFC and Construction Manager, a representative who shall have express authority to make and give or provide all decisions, comments and determination on behalf of Architect under the Contract Documents.

§4.1.2 HFC reserves the right to appoint a representative empowered to act for HFC during the Construction Phase and supersede Architect’s Construction Phase responsibility, including without limitation any or all responsibilities set forth in this Article 4, to the extent set forth in written notice to Architect and Construction Manager. With respect to such superseded responsibilities as set forth in the notice to Architect and Construction Manager, Architect shall no longer bear responsibility in those areas from and after the effective date of such notice, unless and only to the extent from the time that Architect shall be redirected to resume responsibility by HFC. Similarly, from time to time, HFC may expand or reduce HFC’s delegation or powers to Architect, with HFC so notifying Construction Manager of any such changes. Architect shall not be construed as a third-party beneficiary to this Agreement and can in no way object to any expansion or reduction of powers as set forth herein. In the event of an inconsistency between the terms hereof and the terms of any separate agreements between HFC and Architect the terms of such separate agreements shall, as between HFC and Architect prevail. In no event, however, shall HFC have control over or charge of, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Work, as these are, as between HFC and Construction Manager, solely Construction Manager’s responsibility. HFC shall not be responsible for Construction Manager’s failure to carry out the Work in accordance with the Contract Documents. HFC shall not have control over or charge of and will not be responsible for the acts or omissions of Construction Manager, Subcontractors or their agents or employees, or of any other persons performing portions of the Work.

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

§4.1.4 If the employment of Architect is terminated, then HFC shall employ a successor architect whose status under the Contract Documents shall be that of Architect.

§4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§4.2.4 Communications Facilitating Contract Administration. Communications by and with Architect's consultants shall be through Architect. Communications by and with Subcontractors and material suppliers shall be through Construction Manager. Communications by and with separate contractors shall be through HFC. Communications between HFC and Construction Manager shall be made through Architect and Project Manager.

§4.2.5 Based on Architect's evaluations of Construction Manager's Applications for Payment, Architect will review and make recommendations to HFC regarding the amounts due Construction Manager and, upon approval by HFC of such recommendations, will issue Certificates for Payment in such amounts.

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

§4.2.7 Architect will review and approve, or take other appropriate action upon, Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Architect's action will be taken in accordance with the submittal schedule

approved by Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Construction Manager as required by the Contract Documents. Architect's review of Construction Manager's submittals shall not relieve Construction Manager of the obligations under Sections 3.3, 3.5 and 3.12. Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences or procedures. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§4.2.8 Subject to the prior approval thereof by HFC, Architect will prepare Change Orders and Construction Change Directives. Architect will investigate and make recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§4.2.9 Architect will assist HFC in the determination of the dates of Substantial Completion and the dates of Final Completion (it being understood that there shall be a date of both Substantial Completion and Final Completion with respect to each Component); issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to HFC, for HFC's review and records, written warranties and related documents required by the Contract Documents and assembled by Construction Manager pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§4.2.10 Upon request of HFC or Construction Manager, Architect will issue Architect's opinion concerning performance under, and requirements of, the Contract Documents. Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§4.2.11 Interpretations, decisions and opinions of Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, Architect will not show partiality to either.

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

ARTICLE 5

SUBCONTRACTORS

§5.1 DEFINITIONS

§5.1.1 A Subcontractor is a person or entity who has a direct contract with Construction Manager to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of

the Subcontractor. The term “Subcontractor” does not include a separate contractor engaged by HFC or subcontractors of a separate contractor.

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

§5.1.3 Although material suppliers are not included in the definition of Subcontractors, Construction Manager shall include in all requests for payment, lien warranties and copies of purchase orders in the same manner as if they were Subcontractors under the other issues of the Contract Documents, and Construction Manager shall indemnify HFC from any and all liens or claims incurred by HFC in connection therewith other than claims asserted against HFC that are attributable to a failure by HFC to have paid Construction Manager any sums actually due and payable by HFC to Construction Manager pursuant to the Contract Documents.

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

§5.2.1 Construction Manager shall, as soon as practicable after execution of the Construction Agreement, commence the process described in the Construction Agreement with respect to selection of Subcontractors.

§5.2.2 Construction Manager shall not contract with a proposed person or entity to serve as a Subcontractor other than in accordance with applicable law and the procedures for selection and award of Subcontracts set forth in the Construction Agreement. Construction Manager represents and warrants that it shall not enter into any subcontract, contract, agreement, purchase order, or other arrangement for the furnishing of any portion of the materials, services, or other components of the Work with any party related to Construction Manager (which for the purposes hereof includes direct or indirect ownership or common ownership in excess of 10% of any class of equity or debt, direct or indirect control or common control, and family relationship with respect to Construction Manager, any such other party, and any officer, director, employee, partner, or shareholder of Construction Manager or any other such party).

§5.2.3 Construction Manager shall not substitute a Subcontractor, person or entity previously selected without prior approval by HFC which approval shall not be withheld if such Subcontractor is in material breach of its subcontract with Construction Manager. No increase in the Contract Sum will occur for any substitution. HFC’s acceptance of any Subcontractor does not constitute a warranty of said Subcontractor or its ability to conduct its portion of the Work.

§5.3 SUBCONTRACTUAL RELATIONS.

§5.3.1 Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Construction Manager by terms of the Contract Documents, and to assume toward Construction Manager all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work, which Construction Manager, by the Contract Documents, assumes toward HFC, Project Manager or Architect. Each subcontract agreement shall preserve and protect the rights of HFC, Project Manager and Architect under the

Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Construction Manager that Construction Manager, by the Contract Documents, has against HFC. Where appropriate, Construction Manager shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§5.3.2 Any part of the Work performed for Construction Manager by a Subcontractor shall be pursuant to a written subcontract between Construction Manager and Subcontractor. All Subcontracts shall be on forms and include terms required by applicable law and approved in advance by HFC. Each subcontract shall (a) require that such Work to be performed in accordance with the requirements of the Contract Documents; (b) waive all rights the contracting parties may have against another or that the Subcontractor may have against HFC or Project Manager for damages caused by fire or other perils covered by the property insurance required by the Contract Documents; (c) require the Subcontractor to furnish such certificates and lien waivers and/or releases as a condition to payment or as HFC may reasonably request; and (d) provide that all warranties and guaranties, and other obligations to correct defective or non-conforming Work, shall expressly inure to the benefit of, and be enforceable by, HFC. In addition, each subcontract shall include a provision that HFC shall be deemed a third party beneficiary of such subcontract and may, if HFC elects (following Construction Manager's default under this Agreement or HFC's termination of the Agreement), require that the Subcontractor perform all of the then-unperformed duties and obligations of such Subcontractor thereunder for the benefit of HFC. HFC's liability in this connection, however, is not to exceed the amount obtained by subtracting from the subcontract price the total of all sums paid by Construction Manager to Subcontractor prior to HFC's invoking its rights hereunder with respect to direct performance by Subcontractor for HFC. In the event that HFC elects to invoke such rights, HFC shall give written notice of such election to Construction Manager and such Subcontractor.

§5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§5.4.1 Each subcontract agreement for a portion of the Work is hereby assigned by Construction Manager to HFC, provided that such (1) assignment is effective only after termination of the Construction Agreement by HFC and only for those subcontract agreements that HFC accepts by notifying the Subcontractor and Construction Manager in writing; and (2) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Construction Agreement.

§5.4.2 HFC shall only be responsible for compensating Subcontractor for work done or materials supplied accruing after the date that HFC gives written notice of its acceptance of the Subcontractor's subcontract.

§5.4.3 At any time after the assignment to HFC under this Section 5.4 becomes effective, HFC may further assign the subcontract to a successor construction manager or other entity.

ARTICLE 6
CONSTRUCTION BY HFC OR BY SEPARATE CONTRACTORS

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

§6.1.1 HFC reserves the right to perform construction or operations related to the Project with HFC's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If Construction Manager claims that delay or additional cost is involved because of such action by HFC, then Construction Manager shall make such Claim as provided in Article 15.

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

§6.2 MUTUAL RESPONSIBILITY

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

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

§6.2.3 Construction Manager shall be liable to HFC for costs HFC incurs that are payable to a separate contractor because of Construction Manager's delays, improperly timed activities or defective construction. Subject to Section 8.3 hereof, HFC shall be responsible to the Construction Manager for costs the Construction Manager incurs because of delays, improperly timed activities, damage to the Work or defective construction of any separate contractor engaged by HFC; provided, that no such Claim may be made by Construction Manager unless Construction Manager has provided written notice to HFC of the alleged delay, improperly timed activity, damage to the Work or defective construction and the effect thereof is not remedied by such separate contractor within a reasonable time following such notice to HFC.

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

§6.3 HFC'S RIGHT TO CLEAN UP

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

ARTICLE 7
CHANGES IN THE WORK

§7.1 GENERAL

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

§7.1.2 A field directive or field order shall not be recognized as having any impact upon the Contract Sum or the Contract Time, and Construction Manager shall have no Claim therefor unless, prior to complying with same and in no event later than 10 days from the date such direction or order was given, Construction Manager shall have submitted same to HFC in writing and obtained HFC's written approval thereof.

§7.1.3 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or a change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealing between the parties, nor express or implied acceptance of alteration or additions to the Work, and no claim that HFC has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or change in the Contract Time.

§7.1.4 A Change Order shall be based upon agreement between HFC and Construction Manager; a Construction Change Directive may be issued by HFC (or with HFC's approval, by Architect) and may or may not be agreed to by Construction Manager; an order for a non-compensable minor change in the Work may be issued by HFC or Architect.

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

§7.2 CHANGE ORDERS

§7.2.1 A Change Order is a written instrument prepared by Architect and signed by HFC and Construction Manager (and may, at HFC's election, also be executed by Architect) stating their agreement upon all of the following: (1) The change in the Work; (2) The amount of the adjustment, if any, in the Contract Sum; and (3) The extent of the adjustment, if any, in the Contract Time.

§7.2.2 Upon request of HFC, Construction Manager shall submit to HFC, in a form subject to HFC's approval, an accurate written estimate of the cost of any proposed change in the Work (a "Change Proposal"). The Change Proposal shall indicate the quantity and unit cost of each item of materials, and the number of hours of work and hourly rates for each class of labor, as well as the description and amount of all of the Cost of the Work attributable thereto. Unit and labor costs for the installation of each item of materials shall be shown if required by HFC. Construction Manager shall promptly revise and resubmit such Change Proposal if HFC determines that it is not in compliance with these requirements, or that it contains errors of fact or mathematical errors. Construction Manager shall obtain and furnish to HFC bona fide proposals from Subcontractors and suppliers for furnishing any labor and materials included in such Change Proposal. Construction Manager shall state in the Change Proposal any extension of the Contract Time (and any change in the time to achieve any of the construction milestones) that would be required for the completion of the Work if the proposed change is ordered. If Construction Manager does not submit such Change Proposal within 10 days of HFC's request for Change Proposal and HFC directs the proposed change in the Work to be performed, then the method and the adjustment of the Contract Sum shall be determined in accordance with Section 7.3.7.

§7.3 CONSTRUCTION CHANGE DIRECTIVES

§7.3.1 A Construction Change Directive is a written order prepared by Architect and signed by either HFC or, subject to the limitations set forth in Section 2.1.3 above, Project Manager (and may, at HFC's election, also be executed by Architect) directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. HFC may by Construction Change Directive, without invalidating the Contract Documents, order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods: (1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; (2) unit prices stated in the Contract Documents or subsequently agreed upon; or (3) the Cost of the Work attributable to the Work described in the Construction Change Directive plus the Construction Manager's Fee thereon.

§7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work

proposed will cause substantial inequity to HFC or Construction Manager, the applicable unit prices shall be equitably adjusted.

§7.3.5 Upon receipt of a Construction Change Directive, Construction Manager shall promptly proceed with the change in the Work involved and advise Architect and HFC of Construction Manager's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§7.3.6 A Construction Change Directive signed by Construction Manager indicates Construction Manager's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§7.3.7 If Construction Manager does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the adjustment shall be made on the basis of the Cost of the Work attributable to the Work described therein plus the Construction Manager's Fee thereon. In no event shall the Cost of the Work include any costs associated with General Conditions Items, nor shall there be any increase in the General Conditions Amount, except for increases in the General Conditions Amount attributable to any extension of the Contract Time as a result of the Construction Change Directive.

§7.3.8 The amount of credit to be allowed by Construction Manager to HFC for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§7.3.9 Pending final determination of the total cost of a Construction Change Directive to HFC, Construction Manager may request payment for Work completed under the Construction Change Directive in Applications for Payment. Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that Architect determines, in Architect's professional judgment, to be reasonably justified. Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§7.3.10 When HFC and Construction Manager agree with a determination made by Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

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

ARTICLE 8
TIME

§8.1 DEFINITIONS

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

§8.1.2 The date of commencement of the Work is the date established in the Construction Agreement. Construction Manager acknowledges that there may be a separate date of commencement for each Component.

§8.1.3 The date of Substantial Completion for each Component shall be separately determined and shall, in each case, be the date certified by Architect and approved by HFC in accordance with Section 9.8.

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

§8.2 PROGRESS AND COMPLETION

§8.2.1 Time limits stated in the Contract Documents are of the essence. By commencing construction of the Work, Construction Manager acknowledges and agrees that the Contract Time for each Component is a reasonable period for performing the Work.

§8.2.2 Construction Manager shall not commence operations on the site or elsewhere prior to the effective date of insurance required under the Contract Documents.

§8.2.3 Construction Manager shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time for each Component and thereafter achieve Final Completion with respect thereto in accordance with the Contract Documents.

§8.2.4 Construction Manager shall proceed expeditiously with adequate forces and shall achieve each construction milestone and Substantial Completion in a timely manner. Construction Manager shall provide sufficient supervision, labor, equipment and materials to assure an efficient and expeditious construction process. If Construction Manager is behind schedule to such an extent that it is reasonably likely that Construction Manager will be unable to meet a construction milestone on the critical path or a date of Substantial Completion or the date of Final Completion, as such dates may be extended pursuant to the terms of this Agreement, then Construction Manager shall employ such additional forces, obtain such additional equipment, employ such additional supervision and pay such additional overtime wages as may be required to bring the progress of the Work back into conformity with the Schedule of the Work, as required to achieve timely each construction milestone, each date of Substantial Completion and Final Completion. The cost of such additional forces, equipment, and supervision and such overtime wages shall be included as a Cost of the Work, but shall not cause an increase in the Final Guaranteed Maximum Price. Construction Manager shall use Construction Manager’s Contingency for additional costs associated with overtime and additional resources for expediting the work as required by this section.

§8.2.5 Construction Manager shall report to HFC monthly on actual job progress describing the extent to which various items of Work were performed during the preceding month and are expected to be performed during the current month, the reasons why any items of Work are not proceeding in accordance with the applicable Schedule of the Work and any adjustments to the critical path and scheduling of Work necessary in order to substantially complete all Work within the Contract Time. With such monthly reports, Construction Manager shall furnish three sets of four views of job progress photographs showing the progress of the Work.

§8.3 DELAYS AND EXTENSIONS OF TIME

§8.3.1 If Construction Manager is actually delayed at any time in the commencement or progress of any Critical Path Activity by (i) an act or neglect of HFC or Architect (which is not remedied within three business days following written notice thereof from Construction Manager to HFC), or of an employee of either, or of a separate contractor employed by HFC (which is not remedied within 10 days following written notice thereof from Construction Manager to HFC); or by changes ordered by HFC in the Work, (ii) by fire, unavoidable casualties, (iii) labor unrest that is associated with an industry-wide strike or (iv) other similar causes beyond Construction Manager's control and which are in no way attributable to Construction Manager's failure to perform its obligations under the Contract Documents; or by delay authorized by HFC then, subject to the provisions of Article 15, then the Contract Time for the affected Component(s) may be extended by Change Order for the period of such delay.

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

§8.3.3 If the Contract Time is extended solely on account of an act of HFC or Architect directly causing a delay, then the Final Guaranteed Maximum Price shall be increased by Change Order in the amount of (but only of) Construction Manager's clearly identifiable and direct additional costs (based on the costs and rates set forth in *Schedule 4* to the Construction Agreement) incurred during such extension which are not mitigated by reasonable efforts on the part of Construction Manager. Construction Manager shall cooperate with HFC in mitigating any such additional costs through appropriate measures reasonable under the circumstances for conserving costs during any period of such delay. In any event, within 10 days of the event giving rise to such a claimed extension of the Contract Time, Construction Manager shall notify HFC thereof in writing; and within 30 days of such event, Construction Manager shall submit an itemization of such additional costs claimed together with an itemization of the mitigation measures undertaken or to be undertaken, such itemizations in each case stating in reasonable detail those costs known or ascertainable, and where not known or ascertainable, stating likely cost with such detail as is then reasonably possible.

ARTICLE 9 **PAYMENTS AND COMPLETION**

§9.1 CONTRACT SUM. The Contract Sum is stated in the Construction Agreement and, including authorized adjustments, is the total amount payable by HFC to Construction Manager for performance of the Work under the Contract Documents.

§9.2 SCHEDULE OF VALUES. As provided for in the Construction Agreement, prior to commencement of the Work at the site for each o Component, Construction Manager will submit for approval by HFC a schedule of values (and, when approved by HFC, the same shall constitute the “Schedule of Values”) with respect thereto. The Schedule of Values shall be used as a basis for reviewing Construction Manager’s Applications for Payment.

§9.3 APPLICATIONS FOR PAYMENT

§9.3.1 The provisions of the Agreement regarding the preparation of the Pencil Application for Payment and the signed Application for Payment are incorporated herein and shall be observed and complied with by the parties. Such materials shall be supported by lien waivers from Construction Manager and all Subcontractors, laborers and materialmen for Work done through the last day for which the immediately prior Application for Payment was presented.

§9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of Architect and HFC, but not yet included in Change Orders.

§9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which Construction Manager does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom Construction Manager intends to pay.

§9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by HFC, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by Construction Manager with procedures satisfactory to HFC to establish HFC’s title to such materials and equipment or otherwise protect HFC’s interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Without limiting the foregoing, In the event any Application for Payment includes the cost of materials stored at a location other than the site that have been approved by HFC (“Off-Site Materials”), such Application for Payment shall include each of the following: (a) evidence, in the form of Bill of Sale, that HFC holds title to Off-Site Materials, (b) evidence that the Off-Site Materials have been segregated from other materials in the facility and have been appropriately marked to indicate HFC’s ownership thereof; and (c) evidence that the Off-Site Materials are insured as required by HFC.

§9.3.3 Construction Manager represents and warrants to HFC that title to all Work covered by an Application for Payment will pass to HFC no later than the time of payment. Construction Manager further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from HFC shall be free and clear

of liens, claims, security interests or encumbrances in favor of Construction Manager, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§9.3.4 In addition to Construction Manager's other indemnification obligations hereunder, Construction Manager shall indemnify, defend and hold HFC harmless against any and all claims, suits, proceedings, actions, losses, damages, or expenses asserted against or suffered by HFC as a result of liens or claims filed against the Work or any improvements thereon (unless the same are the result of HFC's failure to pay Construction Manager when due any sums due and payable under the Contract Documents). If any liens or claims have been filed against the Project site and the same are not promptly bonded by Construction Manager, then HFC may elect, at HFC's sole discretion, to make payments thereafter to Construction Manager by joint check payable to Construction Manager and Subcontractor(s). In no event, however, shall any such joint payment be construed to create any contractual relationship or obligation between HFC or any Subcontractor or other party, nor shall such joint payment relieve Construction Manager from its obligation to pay remaining funds properly due and owing Subcontractors and suppliers.

§9.3.5 Construction Manager shall and hereby does subordinate any and all liens, rights and interest (whether choate or inchoate and including, without limitation, all mechanics' and materialmen's liens under the applicable laws of the State of Texas, whether contractual, statutory or constitutional) owned, claimed or held, or to be owned, claimed or held by Construction Manager in and to any part of the Work or the property on which the Work is performed, to the liens securing payments of sums now or hereafter borrowed by HFC in connection with the development, design and/or construction of the Project and to all liens, rights and interest of any lessee of the Project. Construction Manager acknowledges that it has been advised that HFC does not own the Project but only leases the Project from the City of Houston, Texas. Construction Manager shall execute such further and additional evidence of the subordination of liens, rights and interests as HFC may require. The subordination of lien is made in consideration of and as an inducement to the execution and delivery of the Contract Documents, and shall be applicable despite any dispute between the parties hereto or any others, or any default by HFC under the Contract Documents or otherwise.

§9.4 CERTIFICATES FOR PAYMENT

§9.4.1 HFC will pay the amount of the signed Application for Payment as provided for in the Construction Agreement, and then only upon receipt of a Certificate of Payment from Architect.

§9.4.2 The issuance of a Certificate for Payment will constitute a representation by Architect to HFC, based on Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by Architect. The issuance of a Certificate for Payment will further constitute a representation that Construction Manager is entitled to payment in the amount certified.

§9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to HFC by Architect in respect of the amounts to be paid to Construction Manager. Such recommendation shall be non-binding on HFC, and HFC shall be entitled to refuse to make payment on any Certificate for Payment as provided in Section 9.6.1 hereof.

§9.5 DECISIONS TO WITHHOLD CERTIFICATION

§9.5.1 Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect HFC, if in Architect's opinion the representations to HFC required by Section 9.4.2 cannot be made. If Architect is unable to certify payment in the amount of the Application, then Architect will notify Construction Manager and HFC as provided in Section 9.4.1. If Construction Manager and Architect cannot agree on a revised amount, then Architect will promptly issue a Certificate for Payment for the amount for which Architect is able to make such representations to HFC. Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary in Architect's opinion to protect HFC from loss for which the Construction Manager is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of any of the following listed items. Notwithstanding the foregoing, HFC may withhold payment to such extent as may be necessary in HFC's opinion to protect HFC from loss for which the Construction Manager is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of (1) defective Work not remedied; (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to HFC is provided by Construction Manager; (3) failure of Construction Manager to make payments properly to Subcontractors or for labor, materials or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; (5) damage to HFC or a separate contractor; (6) reasonable evidence that the Work for any of the Components will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or (7) failure to carry out the Work in accordance with the Contract Documents.

§9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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

§9.5.4 HFC shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment pursuant to any provision of Contract Documents provided Architect has approved HFC's action or the Work in question shall have been rejected by any governmental authority. If HFC has in good faith withheld payment from Construction Manager and Construction Manager disputes such determination by HFC with regard to all or any part of a payment withheld, which when aggregated with all other disputed amounts which remain unpaid, is Two Hundred Thousand and No/100 Dollars (\$200,000.00) or less in the aggregate,

Construction Manager shall nevertheless expeditiously continue to prosecute the Work (but may institute the dispute resolution procedures set forth in the Contract Documents). If the aggregate of the disputed, unpaid amounts is more than Two Hundred Thousand and No/100 Dollars (\$200,000.00), Construction Manager may stop work until the dispute is resolved. If HFC declines to make payments requested, HFC will promptly notify the Construction Manager in writing thereof and the reasons therefor.

§9.6 PROGRESS PAYMENTS

§9.6.1 After Architect has issued a Certificate for Payment, HFC shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify Architect. HFC may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) if Construction Manager fails to perform in accordance with the Contract Documents, including those failures set forth in clauses 9.5.1.1 through 9.5.1.7 hereof; provided, however, HFC shall specify the nature of the failure to Construction Manager in writing and shall withhold from payment only one hundred twenty-five percent (125%) of the cost of the Work or costs incurred by HFC that is the subject of the failure. HFC shall not be deemed in default by reason of withholding payment in accordance with the preceding sentence while any of such Construction Manager failures remain uncured or a good faith dispute exists as to whether any withheld amounts are owed.

§9.6.2 Construction Manager shall pay each Subcontractor no later than seven (7) days after receipt of payment from HFC the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to Construction Manager on account of the Subcontractor's portion of the Work. Construction Manager shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§9.6.4 HFC shall have the right to request written evidence from Construction Manager that Construction Manager has properly paid Subcontractors and material and equipment suppliers amounts paid by HFC to Construction Manager for subcontracted Work. If Construction Manager fails to furnish such evidence within five days, then HFC shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither HFC nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

§9.7 FAILURE OF PAYMENT. If Architect does not issue a Certificate for Payment, through no fault of Construction Manager, within seven days after receipt of Construction Manager's Application for Payment, or if for reasons other than failure of the Construction Manager to perform in accordance with the Contract Documents, HFC does not pay Construction Manager within 30 days after the date established in the Contract Documents the amount certified by Architect, then Construction Manager may, upon 15 additional days' written notice to HFC and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of Construction Manager's reasonable and verifiable costs of shut-down, delay and start-up, plus interest if provided for in the Contract Documents. No amount shall be added to the Contract Sum as a result of a bona fide dispute between HFC and Construction Manager unless, until and to the extent that such dispute is resolved in Construction Manager's favor.

§9.8 SUBSTANTIAL COMPLETION

§9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or a designated portion thereof is sufficiently complete in accordance with the Contract Documents so that HFC can occupy or utilize the Work for its intended use. Substantial Completion shall be separately determined for each Component. The Work with regard thereto will not be considered suitable for Substantial Completion review until all Project systems included in such Component are operational as designed and scheduled, all designated or required governmental inspections, certifications and certificates (including, without limitation, certificates of occupancy) have been made, posted and delivered. Substantial Completion shall not be considered to have been achieved until Construction Manager's instructions of HFC's designated personnel in the operation of systems has been completed and all final finishes contemplated by the Contract Documents are in place. In general, Substantial Completion shall require that the only Work that is remaining to be completed shall be minor in nature and can be completed in 30 days, and shall be of a nature so that HFC could occupy and use the Component for the purposes and the completion of the Work by the Construction Manager will not materially interfere with or hamper HFC's normal operations or the commencement. As a further condition of Substantial Completion, the Construction Manager shall certify that all remaining Work, the same being solely of a "punch list" nature, will be completed within 30 days thereafter (or such other period as may be agreed upon in a writing signed by HFC) following the date of Substantial Completion. Notwithstanding the foregoing, HFC may refuse to make payment on any Certificate of Substantial Completion or any Certificate of Payment (including, without limitation, the final Certificate of Payment) on account of any default of the Construction Manager for which HFC has previously provided written notice to Construction Manager but shall only refuse payment in such amounts as are, in HFC's reasonable judgment, adequate to pay the costs to remedy such default. HFC shall not be in default by reason of withholding payment while any of such Construction Manager's defaults remain uncured. Further and without limiting the foregoing, the Construction Manager shall, in order to achieve Substantial Completion, have done or performed all of the requirements of this Section 9.8.

§9.8.2 When Construction Manager considers that the Work, or a portion thereof which HFC agrees to accept separately, is substantially complete, Construction Manager shall prepare and submit to Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of Construction Manager to complete all Work in accordance with the Contract Documents.

§9.8.3 Upon receipt of Construction Manager’s list, Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If Architect’s inspection discloses any item, whether or not included on Construction Manager’s list, which is not sufficiently complete in accordance with the Contract Documents so that HFC can occupy or utilize the Work or designated portion thereof for its intended use, then Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Architect. In such case, Construction Manager shall then submit a request for another inspection by Architect to determine Substantial Completion. As a further condition of Substantial Completion acceptance, Construction Manager shall certify that all remaining Work, the same being solely of a “punchlist” nature, will be completed as agreed upon following the date of Substantial Completion.

§9.8.4 When the Work or designated portion thereof is substantially complete, Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of HFC and Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which Construction Manager shall finish all items on the list accompanying the Certificate. Warranties required by Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§9.8.5 The Certificate of Substantial Completion shall be submitted to HFC and Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate.

§9.9 PARTIAL OCCUPANCY OR USE

§9.9.1 HFC may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by HFC, provided such occupancy or use is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided HFC and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Construction Manager considers a portion substantially complete, Construction Manager shall prepare and submit a list to Architect as provided under Section 9.8.2. Consent of Construction Manager to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between HFC and Construction Manager or, if no agreement is reached, by decision of Architect. At HFC’s request, Construction Manager shall also cooperate with any leasee or licensee in permitting such leasee or licensee of space within a Component to take occupancy, or commence construction of tenant improvements within their leased or licensed premises, so long as such separate work will not unreasonably interfere with Construction Manager’s work.

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

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

§9.10 COMPLETION AND FINAL PAYMENT

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

§9.10.2 Neither final payment nor any remaining retained percentage shall become due until Construction Manager submits to Architect and HFC (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which HFC or HFC's property might be responsible or encumbered (less amounts withheld by HFC) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to HFC, (3) a written statement satisfactory to HFC that Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5), if required by HFC, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by HFC, and (6) delivery to HFC of all warranties required under the Contract Documents in form and substance consistent with the Contract Documents. If a Subcontractor refuses to furnish a release or waiver required by HFC and asserts a lien against the Project, then Construction Manager shall be responsible for causing the same to be discharged at Construction Manager's sole cost and expense (and not as a Cost of the Work).

§9.10.3 If, after Substantial Completion of a Component, Final Completion thereof is materially delayed through no fault of Construction Manager or by issuance of Change Orders affecting Final Completion, and Architect so confirms in writing, then HFC shall, upon application by Construction Manager and certification by Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted less the five percent (5%) retainage described in the Construction Agreement that has not previously been released pursuant to the Construction Agreement. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, then the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Construction Manager to

Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

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

§10.2 SAFETY OF PERSONS AND PROPERTY

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

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

§10.2.3 Construction Manager shall erect and maintain (or cause its Subcontractors to erect and maintain), as required by existing conditions and performance of the Contract Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§10.2.4 When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for execution of the Work, Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The term "Hazardous Material" shall be defined as any toxic or hazardous material or substance as described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, with all amendments and revisions thereto.

§10.2.5 Construction Manager, at its sole cost and expense, shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by Construction Manager, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly

employed by any of them, or by anyone for whose acts they may be liable and for which Construction Manager is responsible under Sections 10.2.1.2 and 10.2.1.3. The foregoing obligations of Construction Manager are in addition to Construction Manager's obligations under Section 3.18.

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

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

§10.3 HAZARDOUS MATERIALS

§10.3.1 Construction Manager is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials. If Construction Manager encounters a 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 asbestos or polychlorinated biphenyl (PCB), encountered on the site by Construction Manager, then Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to HFC and Architect in writing.

§10.3.2 Upon receipt of Construction Manager's written notice, HFC shall obtain the services of a licensed laboratory to verify the presence or absence of the Hazardous Material or substance reported by Construction Manager. Upon request from Construction Manager, HFC will furnish in writing to Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of HFC and Construction Manager. If a Critical Path Activity has been delayed as a result thereof, then by Change Order, the Contract Time may be extended appropriately.

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

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

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

ARTICLE 11

CERTAIN MISCELLANEOUS MATTERS

§11.1 Time is of the essence in the performance of the Contract Documents.

§11.2 Each party has received independent legal advice from its attorneys with respect to the advisability of executing the Contract Documents and their provision shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question. Headings used in the Contract Documents are for convenience of reference only and shall not be used in construing the Contract Documents. If any term, covenant, condition or provision of these Construction Terms & Conditions or the Agreement, or the application thereof to any person or circumstance, to any extent shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, then unless such term, covenant, condition or provision or the application thereof is integral to the transactions contemplated by the Contract Documents as determined by such court, then the remainder of the terms, covenants, conditions or provisions of the Contract Documents, or the application thereof to any person or circumstance, shall remain in full force and effect and in no way shall be affected, impaired or invalidated thereby. The waiver by one party of the performance of any covenant, condition or promise under the Contract Documents shall not invalidate the Contract Documents nor shall it be considered a waiver by it of any other covenant, condition or promise under the Contract Documents. The waiver by either or both parties of the time for performing any act under the Contract Documents shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§12.1 UNCOVERING OF WORK

§12.1.1 If a portion of the Work is covered contrary to Architect's request or to requirements specifically expressed in the Contract Documents, then it must, if requested in writing by Architect or HFC, be uncovered for Architect's examination and be replaced at Construction Manager's expense (and not as a Cost of the Work and without a change in the Final Guaranteed Maximum Price) and without change in the Contract Time.

§12.1.2 If a portion of the Work has been covered that Architect has not specifically requested to examine prior to its being covered, then Architect or HFC may request to see such Work and it shall be uncovered by Construction Manager. If such Work is in accordance with the Contract Documents, then the costs of uncovering and replacement shall, by appropriate Change Order, be at HFC's expense (and shall not constitute part of the Cost of the Work or result in a change in the Final Guaranteed Maximum Price). If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Construction Manager's expense (and shall constitute part of the Cost of the Work but shall not result in a change in the Final Guaranteed Maximum Price); provided, however, if the condition was caused by HFC or a separate contractor, then HFC shall be responsible for payment of such costs (and, in such event, the cost shall not constitute a part of the Cost of the Work or result in a change in the Final Guaranteed Maximum Price).

§12.2 CORRECTION OF WORK

§12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

Construction Manager shall promptly correct Work rejected by Architect or HFC or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for Architect's and HFC's services and expenses made necessary thereby, shall be at Construction Manager's expense (and, subject to the limitations of Section 6.6.3 of the Construction Agreement, shall constitute part of the Cost of the Work but shall not in any event result in a change in the Final Guaranteed Maximum Price).

§12.2.2 AFTER SUBSTANTIAL COMPLETION

§12.2.2.1 The two-year period described in this Section 12.2.2 shall be determined and applied separately to each Component. In addition to Construction Manager's obligations under Section 3.5, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, then Construction Manager shall correct it promptly after receipt of written notice from HFC to do so. HFC shall give such notice promptly after discovery of the condition. If Construction Manager fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from HFC or Architect, then HFC may correct it in accordance with Section 2.4.

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

§12.2.3 Construction Manager shall remove from the Project site, at its sole cost and expense, all portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by Construction Manager nor accepted by HFC.

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

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

forth in this Section 12.2 are not exclusive and shall not deprive HFC of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

§12.3 ACCEPTANCE OF NON-CONFORMING WORK. If HFC prefers to accept Work that is not in accordance with the requirements of the Contract Documents, then HFC may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. HFC's election to accept Work not in accordance with the Contract Documents may only be made if in a writing addressed to the Construction Manager, signed by HFC, and which sets forth expressly that HFC is making such election pursuant to this paragraph.

ARTICLE 13 **MISCELLANEOUS PROVISIONS**

§13.1 GOVERNING LAW. Except to the extent preempted by federal law or regulation, the Contract Documents shall be governed by the laws of the State of Texas without giving effect to principles of conflicts of laws. The parties hereby agree that venue for any litigation relating to the Contract Documents lies solely and exclusively in the District Courts of Harris County, Texas for any action arising out of matters relating to the Contract Documents. To the maximum extent permitted under applicable law, each party waives the right to commence an action in connection with the Contract Documents in any court outside of Harris County, Texas.

§13.2 SUCCESSORS AND ASSIGNS. HFC and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Construction Manager shall not have the right to assign the Contract Documents in whole or in part without written consent of HFC. If Construction Manager attempts to make such an assignment without such consent, then Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract Documents. Any entity which shall succeed to the rights of HFC shall be entitled to enforce the rights of HFC hereunder.

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

§13.4 RIGHTS AND REMEDIES

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

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

§13.4.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

§13.5 TESTS AND INSPECTIONS

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

§13.5.2 If Architect, HFC or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, then Architect will, upon written authorization from HFC, instruct Construction Manager to make arrangements for such additional testing, inspection or approval by an entity acceptable to HFC, and Construction Manager shall give timely notice to Architect of when and where tests and inspections are to be made so that Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at HFC's expense.

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

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

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

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

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

ARTICLE 14
TERMINATION OR SUSPENSION OF THE CONTRACT DOCUMENTS

§14.1 TERMINATION BY CONSTRUCTION MANAGER

§14.1.1 Construction Manager may terminate the Contract Documents as to one or more Components if following the Notice to Proceed therefor the Work with respect thereto is stopped for a period of 60 consecutive days through no act or fault of Construction Manager or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Construction Manager, for any of the following reasons: (1) issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; (2) an act of government, such as a declaration of national emergency that requires all Work to be stopped; or (3) because HFC has wrongfully refused or failed to make payment as provided in Section 9.4.1 (except as provided in Section 9.5.4 above).

§14.1.2 If one of the reasons described in Section 14.1.1 exists, then Construction Manager may, upon 15 days' written notice to HFC and Architect, terminate the Contract Documents as to the affected Component, as applicable. No termination by Construction Manager due to the reasons set forth in Section 14.1.1(3) shall operate to release or relieve HFC from any of its liabilities hereunder arising from such failure or refusal, nor shall such termination affect or impair, or operate to waive or release, any of Construction Manager's rights and remedies arising therefrom.

§14.2 TERMINATION BY HFC FOR CAUSE

§14.2.1 HFC may terminate the Contract Documents if Construction Manager (1) refuses or fails to supply enough properly skilled workers or proper materials; (2) fails to make payment to Subcontractors for materials or labor; (3) disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; (4) disregards the instruction of Architect or HFC (when such instructions are based on the requirements of the Contract Documents); (5) files or records or allows anyone claiming by, through or under Construction Manager to file or record a lien or other claim against HFC, or HFC's property without removing and discharging same as required under the Contract Documents; or (6) otherwise does not fully comply with the Contract Documents.

§14.2.2 When any of the above reasons exist, HFC may, without prejudice to any other rights or remedies of HFC and after giving Construction Manager and Construction Manager's surety, if any, seven (7) days' written notice, terminate the Contract Documents and may, subject to any prior rights of the surety: (1) Exclude Construction Manager from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by Construction Manager; (2) Accept assignment of subcontracts pursuant to Section 5.4; and (3) Finish the Work by whatever reasonable method HFC may deem expedient. Upon written request of Construction Manager, HFC shall furnish to Construction Manager a reasonably detailed accounting of the costs incurred by HFC in finishing the Work.

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

finished. No termination by HFC shall operate to release or relieve Construction Manager from any of its liabilities hereunder arising from its default or failure to perform, nor shall such termination affect or impair, or operate to waive or release, any of HFC's rights and remedies arising therefrom.

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

§14.2.5 It is recognized that: (1) if an order for relief is entered on behalf of Construction Manager pursuant to Title 11 of the United States Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Construction Manager makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of its creditors, or (5) if a receiver is appointed on account of its insolvency, that any such event could impair or frustrate Construction Manager's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, HFC shall be entitled to request of Construction Manager or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within 10 days of delivery of the request shall entitle HFC to terminate the Agreement and to the accompanying rights set forth above in Section 14.2.1 through 14.2.4 hereof. Upon the occurrence of one of the events described above, during the pendency of HFC's receipt of adequate assurance of performance and actual performance in accordance therewith, HFC shall be entitled to proceed with the Work with its own forces or with other construction managers on a time and materials or other appropriate basis, the cost of which will be back charged against the Contract Sum.

§14.2.6. Upon a determination by a court of competent jurisdiction that termination of Construction Manager pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4 and Construction Manager's remedy for wrongful termination shall be limited to recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

§14.3 SUSPENSION BY HFC FOR CONVENIENCE

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

§14.3.2 If any Critical Path Activity with respect to a Component is delayed as a result thereof, then the Contract Sum and Contract Time for whichever of the Components is affected thereby may be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1 in the manner and to the extent agreed to mutually by the parties and Architect. Adjustment of the Contract Sum may include profit. No adjustment shall be made to the extent that (1) performance is, was or would have been so suspended, delayed or interrupted by another cause for which Construction Manager is responsible; or (2) an equitable adjustment is made or denied under another provision of the Contract.

§14.4 TERMINATION BY HFC FOR CONVENIENCE

§14.4.1 HFC may, at any time, terminate the Contract Documents (in whole or as to either or both of the Components) for HFC's convenience and without cause.

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

§14.4.3 In case of such termination for HFC's convenience, Construction Manager shall be entitled to receive payment for Work executed (and the Construction Manager's Fee thereon, calculated on the Cost of the Work incurred to the date of termination) to the date thereof as well as any sums actually owed to third parties which have been incurred or irrevocably committed to by Construction Manager and which would have constituted part of the Cost of the Work had HFC not terminated the Contract Documents for convenience (but in no event shall Construction Manager ever be entitled to any sums for lost profits, any costs or claims associated with any lost opportunities or similar costs). If HFC terminates the Contract under Section 14.2 but it should be determined that Construction Manager was not in default hereunder, then such termination shall be deemed, as of the date made, to have been made under Section 14.4.

§14.4.4 In addition to HFC's right to remove Construction Manager from any part of the Work pursuant to the Contract Documents, HFC may, at any time, at will and without cause, terminate any part of the Work or any subcontract or all remaining Work for any reason whatsoever by giving seven days prior written notice to Construction Manager specifying the Work or subcontract to be terminated and the effective date of termination. Construction Manager shall continue to prosecute the part of the Work not terminated. If the Work or any subcontract is so terminated, then HFC shall incur no liability to Construction Manager by reason of such termination, except that Construction Manager shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract Documents), and for costs directly related to Work theretofore and thereafter performed by Construction Manager in terminating such Work or subcontract including reasonable demobilization charges (provided said charges are authorized in advance and in writing by Architect and HFC). No payment shall be made by HFC, however, to the extent that such Work or subcontract is, was, or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract Documents. In case of such termination, HFC will issue a Construction Change Directive or authorize a Change Order in making any required adjustment to the date of Substantial Completion and/or the Contract Sum. For the part of the Work terminated, the applicable provisions of the Contract Documents shall continue in full force and effect as to all Work performed prior to the effective date of termination. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

ARTICLE 15

CLAIMS AND DISPUTES

§15.1 CLAIMS

§15.1.1 Definition.

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Agreement. The term “Claim” also includes other disputes between HFC and Construction Manager arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§15.1.2 Continuing Contract Performance.

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, Construction Manager shall proceed diligently with performance of the Work and HFC shall continue to make payments in accordance with the Contract Documents. To the extent HFC approves Construction Manager’s Claim or such Claim is later determined to be valid, the Contract Sum or Contract Time (for the affected Component(s)) shall be adjusted by Change Order. If HFC denies in whole or in part Construction Manager’s Claim, then Construction Manager shall have the right to commence an action against HFC, but he shall proceed with the Work without delay. By so proceeding with the Work, Construction Manager will not waive its right later to commence an action against HFC on account of such Claim. At all times Construction Manager shall carry on the Work and maintain its progress during the pendency of any Claim or any action against HFC, and HFC shall continue to make all other uncontested payments due to Construction Manager in accordance with the Contract Documents.

§15.1.3 Claims for Concealed or Unknown Condition.

If during excavation conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven days after first observance of the conditions. If the conditions encountered are materially different and exceed any applicable allowances, then the Contract Sum and Contract Time (for the affected Component(s)) shall be equitably adjusted.

§15.1.4 Claims for Additional Cost.

§15.1.4.1 If Construction Manager wishes to make a Claim for an increase in the Contract Sum, then detailed written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§15.1.4.2 If Construction Manager believes additional cost is involved to which Construction Manager is entitled under the Contract Documents for reasons including but not limited to (1) a written interpretation from Architect; (2) an order by HFC to stop the Work where Construction Manager was not at fault; (3) a written order for a minor change in the Work issued by Architect; (4) Failure of payment by HFC; (5) termination of the Contract by HFC; (6) HFC’s suspension; or (7) other reasonable grounds, then a Claim shall be filed in accordance with this Section 15.1.4.1.

§15.1.5 Claims for Additional Time.

§15.1.5.1 If Construction Manager wishes to make a Claim for an increase in the Contract Time, then written notice as provided herein shall be given. Construction Manager's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If the impacted tasks are not a Critical Path Activity set forth in the Schedule of the Work, then Construction Manager shall not be entitled to a Change Order extending the Contract Time or increasing the Contract Sum because of the delay.

§15.2 INITIAL DECISION

§15.2.1 Claims, excluding those arising under Sections 10.3 or 10.4, shall be referred to the Initial Decision Maker for initial decision. Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree in a written instrument executed by each of them setting forth their express agreement that they shall be bound by, with respect to a particular Claim, the decision of the Initial Decisions Maker, the decision of the Initial Decision Maker will not be binding upon Construction Manager or HFC.

§15.2.2 The Initial Decision Maker will review Claims and within 15 days of the receipt of the Claim will either: (1) Request additional supporting information from the claimant; (2) Reject the Claim in whole or in part; (3) Recommend approval of the Claim in whole or in part; or (4) Suggest a compromise. The Initial Decision Maker's action under the preceding sentence shall be reported to HFC and Construction Manager. If a Claim is not resolved after consideration of the foregoing and of any further evidence provided to Architect, then the claimant shall be entitled to pursue its Claim in any lawful manner, subject to the limitations contained in the Agreement. Any recommendation of the Initial Decision Maker for the disposition of any Claim shall not be binding on HFC or Construction Manager.

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

§15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, then such party shall respond, within 10 days after receipt of such request, and shall either: (1) Provide a response on the requested supporting data; (2) Advise the Initial Decision Maker when the response or supporting data will be furnished; or (3) Advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision

shall: (1) Be in writing; (2) State the reasons therefor; and (3) Notify the parties of any change in the Contract Sum or Contract Time or both.

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

§15.2.7 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Initial Decision Maker, by mediation or by litigation.