



## AIR HANDLER UNIT (AHU) ON-SITE REFURBISHMENT

### INVITATION TO BID

- ISSUE DATE: January 26, 2018
- BIDS DUE: **11:00 a.m. on February 9, 2018** (the "Submission Deadline")
- INSTRUCTIONS: Submit one completed Bid Form/Equipment List in a sealed envelope marked "AHU Refurbishment Bid". Bids must be received by mail or personal delivery no later than the Submission Deadline.
- SUBMIT TO: Houston First Corporation, Attn: Mitch Miskowski, 701 Avenida de las Americas, Suite 200, Houston, TX 77010.
- CONTACT INFO: Any questions concerning this Invitation to Bid must be sent by e-mail to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than **11:00 a.m. on February 5, 2018**. Questions will be answered collectively in the form of a Letter of Clarification.
- BID OPENING: All Bids will be opened and publicly announced at 2:00 p.m. on the Submission Deadline at 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

**OVERVIEW.** Houston First Corporation ("HFC") requests bids from experienced construction contractors to fully rebuild air handling units, modular air handling units and fan coil units as part of the Wortham Theater recovery project. A schedule of equipment required is provided in Exhibit "1" of this Invitation to Bid (the "Equipment").

Time is of the essence as the Wortham Theater Center must be operational on or before July 1, 2018. This Equipment is critical to the proper function of the facility.

It is imperative that all Bidders under this solicitation effort must familiarize and adhere to the procurement standards as referenced in 2 C.F.R. Part 200, Sections 200.317-200.326, and Appendix II, 2 C.F.R. Part 200. Sections 200.317-200.326 and Appendix II.

**BACKGROUND.** HFC is a local government corporation created by the City of Houston to enhance quality of life, advance economic prosperity, and promote Houston as a premier destination for leisure tourism and major events. HFC is responsible for management and operation of more than ten city-owned buildings and plazas, including the George R. Brown Convention Center, Jones Hall, Wortham Theater, Miller Outdoor Theatre, Talento Bilingue de Houston, and outdoor facilities such as Jones Plaza, Sesquicentennial Park, Ray C. Fish Plaza, Root Memorial Square, and several other landscaped properties and parking facilities.

On August 27, 2017, floodwater resulting from Hurricane Harvey inundated the basement of the Wortham Theater Center and filled the Theater District Parking Garages with millions of gallons of water.

**SPECIFICATIONS AND DRAWINGS.** Specifications and drawings pertaining to this Invitation to Bid are available online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business).

**LETTERS OF CLARIFICATION.** Any revisions to this Invitation to Bid, and answers to any material questions timely received, will be confirmed in a letter posted online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business) prior to the Submission Deadline (“Letter of Clarification”). When issued by HFC, Letters of Clarification become part of this Invitation to Bid automatically and supersede any previous specifications or provisions in conflict therewith. By submitting a bid, bidders shall be deemed to have received all Letters of Clarification and to have incorporated them into their bid. It is the responsibility of bidders to monitor the foregoing link and ensure they receive any such Letters of Clarification.

**PRE-BID CONFERENCE.** A pre-bid conference has not been scheduled for the solicitation as of the Issue Date. If a meeting is scheduled subsequently, then HFC will announce the date, time and place in a Letter of Clarification posted online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business).

**NO SALES TAX.** As HFC is exempt from states sales and use tax, bidders should assume that there will be no sales taxes due for the purchase of materials incorporated into the Project.

**MANNER OF SELECTION.** HFC expects to enter into a contract with the Bidder providing the lowest responsible bid received. HFC reserves the right to select or reject all or part of any bid, waive minor technicalities, and accept one or more bids in the manner and to the extent that they serve the best interests of HFC. This solicitation does not commit HFC to award a contract, issue a purchase order, or to pay any costs incurred in the preparation of a bid in response to this solicitation. HFC reserves the right to request clarifications or additional information prior to making a selection.

**GOOD FAITH DIVERSITY EFFORTS.** The bidder selected will be required to use good faith efforts to award subcontracts to diversity participants certified by any of the identified certification agencies as defined in the HFC Diversity Program (see [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business)) equivalent to **30%** of the total value of the agreement. Bidders should note if they are certified as a diversity participant in their SOQ; however, such certification shall not lessen or otherwise alter the requirement to use good faith efforts to award subcontracts to diversity participants.

Pursuant to and in accordance with 2 C.F.R. § 200.321(b), Bidders who intend to subcontract any portion of the work covered by the resulting contract must take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

These affirmative steps are to be made in addition to the “good faith efforts” required by the HFC Diversity Program and are not intended to limit the affirmative steps required under 2 C.F.R. § 200.321(b) whenever subcontractors are solicited. The bidder selected as a result of this invitation to bid shall take

these affirmative steps whenever subcontractors are solicited, regardless of whether it has achieved the aforementioned 30% of the total value of the agreement.

**FORM OF AGREEMENT.** By submitting a response to this solicitation, bidders agree, upon notice of selection by HFC, to enter into the Air Handler Unit Refurbishment Agreement attached hereto as Exhibit "2". If a bidder takes exception to any portion of the Agreement, then such bidder must submit a list of such exceptions as part of its response to this solicitation; bidders are advised, however, that HFC shall reject bidders who take any substantive objections without further review or consideration.

**RESTRICTIONS ON COMMUNICATIONS.** Bidders are directed not to communicate with any HFC employee or director regarding any matter relating to this solicitation, other than through [bids@houstonfirst.com](mailto:bids@houstonfirst.com). HFC reserves the right to reject any bid due to violation of this provision.

**COLLUSION.** Bidders represent that the contents of their bids have not been communicated, directly or indirectly, to any potential Bidder and that their bids are made in compliance with federal and state antitrust laws without previous understanding, agreement or connection with any competitor or other potential Bidder.

**PUBLIC INFORMATION.** HFC is subject to the Texas Public Information Act ("TPIA"). Information submitted by bidders is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such clearly and unambiguously. Bidders will be advised of any request for public information that implicates their materials that have been marked "confidential and proprietary" in accordance with the foregoing, and may, in accordance with applicable law, elect to assert objections to disclosure with the Texas Attorney General at their cost and expense.

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

**WITHDRAWAL; ERROR.** Bids may be withdrawn due to errors or for any other reason only by a written request received by [bids@houstonfirst.com](mailto:bids@houstonfirst.com) prior to the Submission Deadline.

**BID PACKAGES.** A complete copy of this Invitation to Bid, including and all necessary forms and information, is available on-line at [www.houstonfirst.com/Do-Business](http://www.houstonfirst.com/Do-Business).

**Exhibit “1”  
Bid Form/Equipment List**

BIDS DUE: **11:00 a.m. on February 9, 2018** (the “Submission Deadline”)

INSTRUCTIONS: Submit one completed Bid Form/Equipment List in a sealed envelope marked “AHU Refurbishment Bid”. Bids must be received by mail or personal delivery no later than the Submission Deadline.

SUBMIT TO: Houston First Corporation, Attn: Mitch Miskowski, 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

**A. BID AMOUNTS**

Bidders are asked to provide their pricing to rebuild the equipment itemized below, based on the terms of this Invitation to Bid, including but not limited to the Equipment Purchase and Delivery Agreement. **Do not alter the official Bid Form.** Submission of company quotation forms and documents containing any supplemental, alternative or conflicting terms is not acceptable.

Item	Equipment Description	Quantity	Base Price (Refurbished Equipment)
A	Rebuild air handling unit (B-1), including labor and supply, delivery and installation of all component parts required.	1	\$
B	Rebuild air handling unit (B-7), including labor and supply, delivery and installation of all component parts required.	1	\$
C	Rebuild air handling unit (B-8), including labor and supply, delivery and installation of all component parts required.	1	\$
D	Rebuild air handling unit (B-9), including labor and supply, delivery and installation of all component parts required.	1	\$
E	Rebuild air handling unit (B-12), including labor and supply, delivery and installation of all component parts required.	1	\$
F	Rebuild air handling unit (B-13), including labor and supply, delivery and installation of all component parts required.	1	\$
G	Rebuild air handling unit (B-15), including labor and supply, delivery and installation of all component parts required.	1	\$
H	Shop Drawings for all air handling unit set forth above, as noted in the Specifications.	As required in Specifications	\$
I	Payment and Performance Bonds*	As required in Agreement	\$
<b>Total:</b>			<b>\$</b>

\*HFC reserves the right, in its sole discretion, to include this Project under the payment and performance bonds submitted by HFC’s construction manager-at-risk, if found to be in the best interests of HFC.

**Bid Form/Equipment List (continued)**

**B. LIQUIDATED DAMAGES FOR DELAY/PREMIUM FOR EARLY PROJECT COMPLETION**

1. Failure to deliver all the Submittals and Re-submittals as required in the Equipment Specifications and Article 1 as required will result in liquidated damages assessed against the Contractor in the amount of \$2,000 per calendar day, but not to exceed \$50,000.
2. Early completion of the Project, including Items A through G above in accordance with the Contract Documents, will result in the Contractor receiving a premium payment of \$1,000 per calendar day, to exceed a total premium payment of \$20,000.

**C. BIDDER INFORMATION**

Bidder Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name/Title: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Is the MWBE or HUB certified? \_\_\_\_\_

**D BID TERMS AND ACKNOWLEDGEMENT**

Submission of a bid represents an offer to contract with Houston First Corporation that shall remain valid for a period of 60 calendar days from the Submission Deadline. By signing below, Bidder represents that all statements made herein by Bidder are true and correct and may be relied upon by Houston First Corporation.

\_\_\_\_\_ (“Bidder”)

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit "2"**  
**AIR HANDLER UNIT REBUILD AGREEMENT**

This Air Handler Unit Rebuild Agreement ("Agreement") is made by and between Houston First Corporation ("HFC"), whose address is 701 Avenida de las Americas, Suite 200, Houston, TX 77010 and [TBD] ("Contractor"), whose address is [TBD]. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

**1.0 Project Overview**

1.1 The name of this project is the Air Handler Unit Refurbishment Project ("Project"). The location of the Project is the Wortham Theater Center, located at 501 Texas Ave., Houston, Texas 77002 (the "Project Site").

1.2 Contractor agrees to and shall complete this Project in strict accordance with this Agreement, including the Terms & Conditions, Specifications and Drawings.

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

1.4 HFC has retained joint venturers Harrison Kornberg Architects, LLC and ARUP Texas, Inc., ("Architect") to perform professional architectural services relating to the Project.

1.5 Contractor agrees to and shall commence the Work immediately on the Effective Date and shall complete the Project by **June 8, 2018** ("Contract Time"). Contractor agrees that time is of the essence.

1.6 All work performed by the Contractor shall be in accordance with the latest City of Houston Building and Electrical Codes. Electricians employed by Contractor or its subcontractors must be licensed by the Texas Department of Licensing and Regulation.

1.7 The manner and extent to which Contractor may use common areas of the facility, including, but not limited to, entrances and loading docks, shall be determined by HFC in its sole discretion.

1.8 In accordance with the Specifications, Contractor shall provide Submittals for Equipment components and shall provide a summary schedule of overall unit performance to confirm compliance with design documents no later than 7 calendar days after the Effective Date. If Re-Submittal is required, engineer comments will be provided by no later than 14 calendar days after the Effective Date. Final AHU equipment parts Re-Submittal (if required) shall be received no later than no later than 14 calendar days after the Effective Date with engineering comments provided 2 days after submission. Re-Submittal shall not extend the Contract Time.

**2.0 Equipment Delivery Procedures**

2.1 Contractor shall coordinate the schedule of delivery of Equipment components, parts, and supplies with HFC or its designated contractor. Contractor shall ensure that delivery of the Equipment is made during normal business hours, and shall provide all transportation, labor, packaging, crating or padding necessary to load, tie down and unload Equipment components, parts, and supplies to be delivered, so that same shall be transported in a normal, safe manner without damage.

2.3 Title and risk of loss of the Equipment components, parts, and supplies shall remain with Contractor until goods have been delivered and installed in accordance with the Contract Documents. Contractor is responsible for any freight charges incurred in so delivering the goods to HFC.

**3.0 Payment**

3.1 Subject to the terms of this Agreement, HFC agrees to pay Contractor [TBD] ("Contract Sum"). Contractor may request a progress payment based on the quantity of work completed in accordance with Article 9 of the Terms and Conditions. In no event shall HFC pay Contractor more than **90%** of the Contract Sum prior to Final Completion of the Project and approval by HFC.

**4.0 Insurance**

4.1 With no intent to limit Contractor's liability hereunder, Contractor shall provide and maintain in full force and effect, from the Effective Date through completion of the Work, at least the following insurance and available limits of liability:

a. Commercial General Liability, including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products and Completed Operations	Combined single limit of \$1,000,000 per occurrence, subject to a general aggregate of \$2,000,000; Products and Completed Operations \$1,000,000 aggregate
b. Automobile Liability Insurance	\$1,000,000 combined single limit including Owned, Hired, and Non-Owned and Auto Coverage
c. Workers' Compensation	Statutory amounts for Workers' Compensation, Contractor is not allowed to self-insure Workers' Compensation
d. Employer's Liability	Bodily Injury by accident \$1,000,000 (each accident); Bodily Injury by disease \$1,000,000 (policy limit); and Bodily Injury by disease \$1,000,000 (each employee)
e. Owner's and Contractor's Protective Liability	\$1,000,000 combined single limit

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

4.3 Each policy, except Workers' Compensation and Owner's and Contractor's Protective Liability, must include an endorsement naming HFC and the City of Houston (collectively, as used throughout this Agreement, the "Additional Insured Parties") as additional insureds.

4.4 Each policy, except Owner's and Contractor's Protective Liability, must include an endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against the Additional Insured Parties.

4.5 Each policy, except Workers' Compensation and Owner's and Contractor's Protective Liability, must contain an endorsement that the policy is primary insurance to any other insurance available to the additional insureds with respect to claims arising hereunder.

4.6 Contractor is solely responsible for payment of all insurance premium requirements.

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

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

**5.0 Release**

**5.1 CONTRACTOR AGREES TO AND SHALL RELEASE THE ADDITIONAL INSURED PARTIES, INCLUDING THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED IN PART BY THE CONCURRENT NEGLIGENCE OF CONTRACTOR AND ONE OR MORE OF THE ADDITIONAL INSURED PARTIES, INCLUDING BUT NOT LIMITED TO LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY CONTRACTOR UNDER THIS AGREEMENT.**

**6.0 Indemnification**

**6.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE ADDITIONAL INSURED PARTIES, INCLUDING THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS**

(COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, TICKETS, CITATIONS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO CONTRACTOR AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL AND/OR EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ALL CLAIMS AND CAUSES OF ACTION BROUGHT AGAINST INDEMNITEES BY CONTRACTOR'S PERSONNEL AND/OR GOVERNMENT AGENCIES ARISING FROM, RELATING TO, OR INVOLVING SERVICES OF CONTRACTOR'S PERSONNEL UNDER THIS AGREEMENT.

**6.2 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD INDEMNITEES HARMLESS DURING THE CONTRACT TIME AND FOR FOUR YEARS AFTER THE PROJECT IS COMPLETED. CONTRACTOR DOES NOT AGREE TO INDEMNIFY INDEMNITEES FOR THEIR SOLE NEGLIGENCE.**

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

#### **7.0 Indemnification Procedures**

7.1 If HFC or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include the following (i) a description of the indemnification event in reasonable detail, (ii) the basis on which indemnification may be due, and (iii) the anticipated amount of the indemnified loss.

7.2 This notice does not stop or prevent HFC from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If HFC does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

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

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

#### **8.0 Diversity Commitment**

8.1 Contractor shall make good faith efforts to award subcontracts equal to **30%** of the Contract Sum to certified, diverse suppliers of goods and services in accordance with the Diversity Program established by HFC, which is incorporated herein by this reference. Contractor shall disclose to HFC the manner and extent to which it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC.

#### **9.0 Prevailing Wage Requirement**

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



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

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

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

### **10.0 Required Contract Clauses**

10.1. Equal Employment Opportunity. During the performance of this Agreement, Contractor agrees as follows:

- (1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the

event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

10.2. Contract Work Hours and Safety Standards Act. Contractor shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. sections 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5), including all of the following requirements:

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in this section, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. HFC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.
- (4) Subcontracts. Contractor and its subcontractors shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor, as prime contractor, shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

10.3. Clean Air Act. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. Contractor agrees to report each violation to HFC and understands and agrees that HFC will, in turn, report each violation as required to assure notification to the Texas Division of Emergency Management, FEMA, and the appropriate regional office of the Environmental Protection Agency. Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

10.4. Federal Water Pollution Control Act. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor shall report all violations to HFC, and understands and agrees that HFC will, in turn, report each violation as required to assure notification to the Texas Division of Emergency Management, FEMA, and the appropriate regional office of the Environmental Protection Agency. Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

10.5 Suspension and Debarment. Contractor acknowledges that this Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into so as to verify that none of any such contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Such certifications are a material representation of fact relied upon by HFC. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to HFC, the City of Houston, and the State of

Texas, and the Federal Government (including any department, agency or division thereof) may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of the Agreement. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions, including but not limited to offers from bidders or proposers, to require their agreement to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while their offer is valid and throughout the period of any contract that may arise from their offer or proposal.

10.6 Byrd Anti-Lobbying Amendment. Contractor and its contractors of any tier who apply or bid for an award of \$100,000 or more shall file the required certification in accordance with 31 U.S.C. §1352 (as amended). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor shall promptly forward each such disclosure from tier to tier up to HFC.

10.7 Certification Regarding Lobbying. Contractor shall cause each of its contractors of any tier to complete and submit the following certification regarding lobbying (See Appendix A, 44 C.F.R. Part 18) with each bid or offer exceeding \$100,000:

[Name of contractor], the undersigned, certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this agreement or any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement or any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Name of contractor] certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name/Title of Authorized Official

10.8. Procurement of Recovered Materials. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are Environmental Protection Agency (“EPA”)-designated items, unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price. Information about this requirement, along with the list of EPA-designate items, is available online at the EPA’s Comprehensive Procurement Guidelines site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

10.9 Changes. This Agreement may not be changed or altered except in the form of a written amendment signed by authorized representatives of Contractor and HFC. Any such amendment requiring payment of additional fees shall include a defined scope of services and a detailed description of the specific methodology used to determine the additional fees, which Contractor agrees shall be reasonable and calculated in good faith in a manner substantially similar to the method used to determine the fee under this Agreement.

10.10 Access to Records. Contractor grants HFC, FEMA, the Texas Department of Emergency Management, and the Comptroller General of the United States, including any of their authorized representatives, access and the right to examine and review Contractor’s books, documents, papers, and records that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Contractor shall maintain such books, records, and billing documents for 3 years after the cessation of Contractor’s services under this Agreement. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations. Contractor agrees to provide HFC, FEMA, the Texas Department of Emergency Management, and the Comptroller General of the United States, including any of their authorized representatives, access to construction or other work sites pertaining to the work being completed under this Agreement.

10.11 DHS Seal, Logo, and Flags. Contractor shall not use the Department of Homeland Security (“DHS”) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

10.12 Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund the Agreement only. Contractor will comply will Applicable Law, including but not limited to federal law, regulations, executive orders, FEMA policies, procedures, and directives.

10.13 No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to HFC, Contractor, or any other party pertaining to any matter resulting from the Agreement.

10.14 Program Fraud and False or Fraudulent Statements or Related Acts. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor’s actions pertaining to this Agreement.

10.15 Affirmative Steps. Prior to subcontracting any portion of the work covered by this Agreement, Contractor agrees to and shall take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include: (1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

## **ARTICLE 6: MISCELLANEOUS PROVISIONS**

6.1 Assignment. Contractor shall not assign this Agreement in whole or in part without the prior written consent of HFC. For purposes hereof, any transfer of ownership interests in Contractor, direct or indirect, occurring after the Effective Date shall be deemed an assignment by Contractor requiring prior written consent of HFC. HFC may assign this Agreement in whole or in part, including any enforcement rights granted hereunder, at any time upon written notice to Contractor.

6.2 Non-Waiver. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

6.3 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

6.4 Independent Contractor. The relationship of Contractor to HFC shall be that of an independent contractor. No principal/agent, partnership, joint venture, joint employer, or other relationship, other than an independent contractor relationship, is created or intended by this Agreement.

6.5 Governing Law/Venue. To the extent not preempted by federal law or regulation, this Agreement shall be construed and enforced in accordance with the laws of the State of Texas, notwithstanding any choice-of-law or conflicts-of-law rules to the contrary. Any action to enforce this Agreement or any litigation or claims otherwise regarding this Agreement must be brought in a court of competent jurisdiction in Harris County, Texas.

6.6 Severability. Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, then the validity and enforceability of the remaining provisions of this Agreement to another person or circumstance shall not be affected thereby.

6.7 Survival. Contractor shall remain obligated to HFC under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of the term of this Agreement.

6.8 Extent of Agreement. This Agreement, including the exhibits made a part hereof, represents the entire and integrated agreement between HFC and Contractor and supersedes all prior negotiations, representations or agreements either written or oral.

[Remainder of page blank intentionally; signature block and Equipment exhibit to be inserted in final agreement]

## 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 Air Handler Unit Rebuild Agreement (the "Agreement"), Specifications, Drawings, Terms & Conditions, and any Modifications issued after execution of the original Agreement. The term "Modification" is (1) a written amendment to the Contract Documents signed by both parties, (2) a Change Order, (3) a 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 Contractor 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 Contractor. In the event of a conflict between the Agreement, the Specifications, Drawings, and Terms & Conditions, the following order shall control: (1) The Agreement; (2) the Drawings; (3) the Specifications; (4) the Terms & Conditions.

**§1.1.3 Work.** The term "Work" means the equipment and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, supervision, Equipment components, materials, supplies, parts, tools, equipment and services provided or to be provided by Contractor to complete the Project in strict accordance with the Contract Documents.

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

**§1.1.5 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.

**§1.1.6 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 are written in an imperative mood and streamlined form and are directed to Contractor, unless noted otherwise. When written in this form, words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

**§1.1.7 Instruments of Service.** 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.

#### **§1.2 Correlation and Intent of the Contract Documents**

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

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

**§1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or air conditioning 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.

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

**§1.5 Ownership and Use of Drawings and Specifications**

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

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

**ARTICLE 2**  
**HFC**

**§2.1 General**

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

**§2.1.2** Except to the limited extent provided in Section 4.2.1, Architect does not have authority to represent or bind HFC with respect to any matter requiring HFC’s approval or authorization.

**§2.2 Information and Services Required of HFC**

**§2.2.1** Except for permits and fees that are the responsibility of Contractor under the Contract Documents, including those required under Section 3.7, HFC shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

**§2.3 HFC’S Right to Stop the Work.** If Contractor fails to carry out the Work in accordance with the requirements of the Contract Documents or fails to correct the Work as required by Section 12.2 in accordance with the Contract Documents, HFC may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of HFC to stop the Work shall not give rise to a duty on the part of HFC to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 6.1.3.

**§2.4 HFC’S Right to Carry Out the Work.** If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from HFC to correct such default or neglect, as determined by HFC, HFC may, without prejudice to other remedies HFC may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the reasonable cost of correcting such deficiencies, including HFC’s expenses and compensation for Architect’s additional services made necessary by such default, neglect or failure. If payments

then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to HFC.

### **ARTICLE 3** **CONTRACTOR**

#### **§3.1 General**

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

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

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

#### **§3.2 Review of Contract Documents and Field Conditions by Contractor**

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

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

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

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

#### **§3.3 Supervision and Replacement Procedures**

**§3.3.1** Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for, and have control over, air conditioning replacement 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 replacement means, methods, techniques, sequences or procedures, Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

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

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



### **§3.4 Labor and Materials**

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

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

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

### **§3.5 WARRANTY**

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

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

**§3.5.3** Work, equipment, components, materials or supplies not conforming to the requirements of this Section shall be deemed defective and shall be repaired or replaced by Contractor (at HFC's sole option) at no cost to HFC. If required by HFC, Contractor shall furnish satisfactory evidence as to the kind and quality of replacement materials and equipment.

**§3.5.4** Contractor hereby transfers and assigns to HFC all manufacturer's warranties for equipment, components, materials and supplies used to complete the Work and shall complete and execute all forms required to further evidence such transfer and assignment. The parties agree that no warranty made by Contractor is intended to limit, nor shall it be construed as limiting in any manner or to any extent, any manufacturer's or supplier's warranty. Upon request from HFC, Contractor agrees to provide reasonable assistance in enforcing such warranties against the manufacturer or supplier at no additional cost to HFC.

### **§3.6 Taxes**

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

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

**§3.6.3** Contractor shall take all action required to cause the purchase of the Equipment, including all component materials and items, to be treated as a tax-exempt transaction.

### **§3.7 Permits, Fees, Notice and Compliance with Laws**

**§3.7.1** Unless otherwise provided in the Contract Documents, Contractor shall secure and 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 Agreement and legally required at the time bids are received or negotiations concluded.

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

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

**§3.7.4 Concealed or Unknown Conditions.** If Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in the Contract Documents, Contractor 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 Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms are justified, Architect shall promptly notify HFC and Contractor in writing, stating the reasons.

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

**§3.8** [Intentionally omitted.]

### **§3.9 Superintendent**

**§3.9.1** Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent Contractor, and communications given to the superintendent shall be as binding as if given to Contractor.

**§3.9.2** Upon execution of the Agreement, Contractor shall furnish in writing to HFC through Architect the name and qualifications of a proposed superintendent. Architect may reply within seven days to Contractor in writing stating (1) whether HFC or Architect has reasonable objection to the proposed superintendent or (2) that Architect requires additional time to review. Failure of Architect to reply within the seven day period shall constitute notice of no reasonable objection.

**§3.9.3** Contractor shall not employ a proposed superintendent to whom HFC or Architect has made reasonable and timely objection. Contractor shall not change the superintendent without HFC's consent, which shall not unreasonably be withheld or delayed.

### **§3.10 Contractor's Replacement Schedules**

**§3.10.1** Contractor, promptly after execution of the Agreement, shall prepare and submit for HFC's and Architect's information a Contractor's schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, 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.

**§3.10.2** Contractor shall prepare a submittal schedule, promptly after execution of the Agreement and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for HFC's representative's approval. The approval of HFC's representative shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with Contractor's schedule, and (2) allow Architect reasonable time to review submittals. If Contractor fails to submit a submittal schedule, Contractor 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** Contractor shall perform the Work in general accordance with the most recent schedules submitted to HFC and Architect.

**§3.11 Documents and Samples at the Project Site.** Contractor shall maintain at the Project Site for HFC 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.

**§3.12 Shop Drawings, Product Data and Samples**

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

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

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

**§3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by Architect 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** Contractor 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, Contractor represents to HFC and Architect that Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

**§3.12.8** The Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed Architect 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, or (2) a Change Order or Change Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Architect's approval thereof.

**§3.12.9** Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Architect 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** Contractor shall not be required to provide professional services that constitute the practice of Architect unless such services are specifically required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for air conditioning replacement means, methods, techniques, sequences and procedures. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, HFC and Architect will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications,

certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Architect. 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 Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section, 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.

**§3.13 Use of Project Site.** Contractor 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.

**§3.14 Cutting and Patching**

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

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

**§3.15 Cleaning Up**

**§3.15.1** Contractor shall keep 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, Contractor shall remove waste materials, rubbish, Contractor's tools, equipment, machinery and surplus materials from and about the Project.

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

**§3.16 Access to Work.** Contractor shall provide HFC and Architect access to the Work in preparation and progress wherever located.

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

**§3.18 Intellectual Property.** In the event that the work and material which is the subject of this contract is copyrightable subject matter, HFC and Contractor hereby agree that for the purpose of this Contract the work and material shall be a work-made-for-hire and the property of HFC. In the event that the work and material which is the subject of this contract is not copyrightable subject matter, or for any reason is determined not to be a work-made-for-hire, then Contractor hereby grants all right, title and interest to said work and material to HFC, and Contractor will promptly execute and deliver such documents as may be requested by HFC, in order to accomplish the transfer of all such right, title and interest.

**ARTICLE 4**  
**HFC'S ARCHITECT**

**§4.1 General**

**§4.1.1** Architect is the person or entity is identified as Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§4.1.2** 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, Contractor and Architect.

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

**§4.2 Administration of the Contract Documents**

**§4.2.1** Architect will provide administration of the Contract Documents and will act as an HFC representative during air conditioning replacement 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 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 work schedule submitted by Contractor, and (2) defects and deficiencies observed in the Work.

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

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

**§4.2.6** Architect has authority to reject Work that does not conform to the Contract Documents. Whenever Architect considers it necessary or advisable, Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of Architect 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 to Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§4.2.7** Architect will review and approve, or take other appropriate action upon, Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Architect's action will be taken 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 Contractor as required by the Contract Documents. Architect's review of Contractor's submittals shall not relieve Contractor 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 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** Architect will assist HFC in the preparation of Change Orders and Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§4.2.9** Architect will conduct inspections to determine the date or dates of completion; issue Certificates of 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 Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

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

**§4.2.12** Interpretations and decisions of Architect 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 endeavor to secure faithful performance by both HFC and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

**§4.2.13** 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 Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

### **§5.2 Award of Subcontract and Other Contracts for Portions of the Work**

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

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

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

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

**§5.3 Subcontractual Relations.** Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which Contractor, by these Documents, assumes toward HFC and Architect. Each subcontract agreement shall preserve and protect the rights of HFC 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 Contractor that Contractor, by the Contract Documents, has against HFC. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## **ARTICLE 6** **WORK BY HFC OR BY SEPARATE CONTRACTORS**

### **§6.1 HFC'S Right to Perform Work and to Award Separate Contracts**

**§6.1.1** HFC reserves the right to perform work 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 work or operations on the site under conditions identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If Contractor claims that delay or additional cost is involved because of such action by HFC, Contractor shall make such Claim as provided in Article 15.

**§6.1.2** When separate contracts are awarded for different portions of the Project or other work or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean Contractor who executes each separate HFC-Contractor agreement.

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

### **§6.2 Mutual Responsibility**

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

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

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

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

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

### **§6.3 HFC'S Right to Clean Up**

If a dispute arises among Contractor, separate contractors and HFC as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, HFC may clean up and Architect 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 Agreement, and without invalidating the Contract Documents, by Change Order, Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

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

**§7.1.4** In no event shall the aggregate amount of Change Orders and Change Directives under this Agreement exceed **five percent (5%)** of the Contract Sum.

**§7.2 Change Orders**

**§7.2.1** A Change Order is a written instrument prepared by Architect and signed by HFC, Contractor and 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.

**§7.3 Change Directives**

**§7.3.1** A Change Directive is a written order prepared by Architect and signed by HFC and 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 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 Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§7.3.3** If the 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; (.3) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or (.4) As provided in Section 7.3.7.

**§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 Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to HFC or Contractor, the applicable unit prices shall be equitably adjusted.

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

**§7.3.6** A Change Directive signed by Contractor indicates Contractor'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 Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, Contractor shall keep and present, in such form as Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section shall be limited to the following: (.1)



Costs of labor; (.2) Costs of materials, supplies and equipment; (.3) Rental costs of machinery and equipment, exclusive of hand tools; and (.4) Additional costs of supervision and field office personnel directly attributable to the change.

**§7.3.8** The amount of credit to be allowed by Contractor to HFC for a deletion or change that results in a net decrease in the Contract 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 Change Directive to HFC, Contractor may request payment for Work completed under the 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 Contractor 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 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 intent of the Contract Documents. Such changes will be effected by written order signed by Architect and shall be binding on Contractor.

## **ARTICLE 8** **TIME**

### **§8.1 Definitions**

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

**§8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§8.1.3** The date of Completion is the date certified by Architect 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 executing the Agreement, Contractor acknowledges and agrees that the Contract Time is a reasonable period for performing the Work.

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

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

### **§8.3 Delays and Extensions of Time**

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

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

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

## **ARTICLE 9** **PAYMENTS AND COMPLETION**

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

**§9.2 Schedule of Values.** Where the Agreement is based on a stipulated sum or guaranteed maximum price, Contractor shall submit to Architect and HFC, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as Architect may require. Architect may elect to use this schedule as a basis for reviewing Contractor's Applications for Payment.

### **§9.3 Applications for Payment**

**§9.3.1** At least 10 days before the date established for each progress payment, Contractor shall submit to Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating Contractor's right to payment as HFC or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§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 Change Directives, or by interim determinations of Architect, 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 Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom Contractor 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 Contractor 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.

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

### **§9.4 Certificates for Payment**

**§9.4.1** Architect will, within 7 days after receipt of Contractor's Application for Payment, either issue to HFC a Certificate for Payment, with a copy to Contractor, for such amount as Architect determines is properly due, or notify Contractor and HFC in writing of Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§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 Contractor is entitled to payment in the amount certified.

## **§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, Architect will notify Contractor and HFC as provided in Section 9.4.1. If Contractor and Architect cannot agree on a revised amount, 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 Contractor 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 Contractor; (.3) failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment; (.4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; (.5) damage to HFC or a separate contractor; (.6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or (.7) failure to carry out the Work in accordance with the Contract Documents.

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

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

## **§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.

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

**§9.6.3** Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by 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 Contractor that Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by HFC to Contractor for subcontracted Work. If Contractor fails to furnish such evidence within 7 days, HFC shall have the right to contact Subcontractors to ascertain whether they have been properly paid. 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** Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

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

**§9.7 Failure of Payment.** If Architect does not issue a Certificate for Payment, through no fault of Contractor, within 30 days after receipt of Contractor's Application for Payment, or if HFC does not pay Contractor within 30 days after the date established in the Contract Documents the amount certified by Architect, then Contractor may, upon 10 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 Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

### **§9.8 Substantial Completion**

**§9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or 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 provided that as a condition precedent to Substantial Completion, HFC has received all certificates of occupancy and/or any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project and the cost of completing the Work that remains incomplete or defective shall not exceed 10% of the Contract Sum.

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

**§9.8.3** Upon receipt of Contractor's list, Architect, accompanied by HFC's representative, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If Architect's and the HFC representative's inspection discloses any item, whether or not included on Contractor'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 Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Architect. In such case, Contractor shall then submit a request for another inspection by Architect and HFC's representative to determine 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 Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the 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 Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

**§9.8.6.1** Contractor shall use its best efforts to complete any punchlist Work by the 10th calendar day (the "Punchlist Finish Date"), but in no event more than 30 calendar days (the "Outside Punchlist Finish Date") following the delivery of the punchlist for the Project to Contractor. If additional punchlist Work is identified after delivery of the initial punchlist for the Project thereof, then the Punchlist Finish Date and Outside Punchlist Finish Date for the additional punchlist work shall run from the delivery of the punchlist for the additional punchlist Work to Contractor. In the event any punchlist Work or additional punchlist Work includes any "long lead" items, as determined by Architect, then the applicable Punchlist Finish Date and Outside Punchlist Finish Date shall be extended by the period of time beginning with the placement of the order of such items and ending with the delivery of such items to Contractor.

**§9.8.6.2** If Contractor fails to complete the punchlist Work or additional punchlist Work applicable to the Project or to a Designated Portion thereof by each applicable Outside Punchlist Finish Date, then Contractor agrees to pay HFC, as a liquidated damage and not as a penalty, an amount equal to \$1,000 per each day that the punchlist Work or additional punchlist Work is not complete after each applicable Punchlist Finish Date. The liquidated damages for Contractor's failure to complete punchlist Work or additional punchlist Work by the applicable Outside Punchlist Finish Date shall start to accrue on the Punchlist Finish Date of the Work or Designated Portion thereof; however, if the Contractor completes the punchlist Work of additional punchlist work by the Outside Punchlist Finish Date of the Work or Designated Portion thereof, then Contractor shall not be charged liquidated damages. The liquidated

damages established by this Section 9.8 will run and be calculated separately for each punchlist and additional punchlist.

### **§9.9 Partial Occupancy or Use**

**§9.9.1** HFC may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor, provided such occupancy or use is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is complete, provided HFC and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion complete, Contractor shall prepare and submit a list to Architect as provided under Section 9.8.2. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between HFC and Contractor or, if no agreement is reached, by decision of Architect.

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

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

### **§9.10 Completion and Final Payment**

**§9.10.1** Upon receipt of Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, 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 Contractor 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 Contractor's being entitled to final payment have been fulfilled.

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

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

## **ARTICLE 10** **PROTECTION OF PERSONS AND PROPERTY**

**§10.1 Safety Precautions and Programs.** Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract Documents.

### **§10.2 Safety of Persons and Property**

**§10.2.1** Contractor shall take all necessary precautions to ensure safety of, and shall provide protection to prevent damage, injury or loss to (.1) Employees on the Work and other persons who may be affected thereby; (.2) The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care,

custody or control of Contractor or Contractor's Subcontractors or Sub-subcontractors; and (.3) Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

**§10.2.3** Contractor represents and warrants to HFC that the Work and all related services performed by Contractor shall conform to the standards declared by OSHA, including, but not limited to, compliance with federal and state safety standards/directives for setting-up and utilizing platforms, lifts, ladders, scaffolding, safety lines and belts, and similar equipment used for demolition, and posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Contractor's employees, agents, contractors and Subcontractors shall use personal protective equipment, safety harnesses, fall protection equipment, hard hats or other equipment required to perform the Work in safe manner.

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

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

**§10.2.6** Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents and shall promptly report any accidents, injuries, spills, or near misses to HFC. Contractor's designee shall be Contractor's superintendent unless otherwise designated by Contractor in writing to HFC and Architect.

### **§10.3 Hazardous Materials**

**§10.3.1** Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If Contractor 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 Contractor, Contractor 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 Contractor's written notice, HFC shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor. Upon request from Contractor, HFC will furnish in writing to Contractor 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 Contractor. By Change Order, the Contract Time shall be extended appropriately.

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

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

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

**ARTICLE 11**  
**BONDS**

**§11.1 Performance and Payment Bonds.** Contractor shall provide Bonds for 100% of the Contract Sum on a form approved by HFC covering faithful performance of the Work and payment of obligations arising thereunder as required in the Contract Documents pursuant to Chapter 2253 of the Government Code. The cost of such Bonds is included in Contract Sum.

**§11.2 Surety**

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

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

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

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

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

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

**§11.6** Contractor shall furnish information to a payment bond beneficiary as required by TEX. GOV'T CODE ANN. CH. 2253.

**§11.7** Contractor shall deliver required Bonds to HFC prior to commencing Work.

**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, it must, if requested in writing by Architect, be uncovered for Architect's examination and be replaced at Contractor's expense without change in the Contract Time.

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

## **§12.2 Correction of Work**

### **§12.2.1 Before or After Completion**

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

### **§12.2.2 After Completion**

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

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

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

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

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

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

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

## **ARTICLE 13** **MISCELLANEOUS PROVISIONS**

### **§13.1 Rights and Remedies**

**§13.1.1** 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.

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

### **§13.2 Tests and Inspections**

**§13.2.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to HFC, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Contractor shall give Architect timely



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

**§13.2.2** If Architect, HFC or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.2.1, Architect will, upon written authorization from HFC, instruct Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to HFC, and Contractor shall give timely notice to Architect of when and where tests and inspections are to be made so that Architect may be present for such procedures.

**§13.2.3** 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 Contractor's expense.

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

**§13.2.5** 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.

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

## **ARTICLE 14**

### **TERMINATION OR SUSPENSION OF THE CONTRACT DOCUMENTS**

#### **§14.1 Termination by Contractor**

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

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

#### **§14.2 Termination by HFC for Cause**

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

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

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

**§14.2.4** If the unpaid balance of 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, such excess shall be paid to Contractor. If such costs and damages exceed the unpaid balance, Contractor

shall pay the difference to HFC. The amount to be paid to Contractor or HFC, as the case may be, shall survive termination of the Contract Documents.

#### **§14.3 Suspension by HFC for Convenience**

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

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

#### **§14.4 Termination by HFC for Convenience**

**§14.4.1** HFC may, at any time, terminate the Contract Documents for HFC's convenience and without cause.

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

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

### **ARTICLE 15** **CLAIMS AND DISPUTES**

#### **§15.1 Claims**

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

**§15.1.2 Notice of Claims.** Claims by either HFC or Contractor must be initiated by written notice to the other party with a copy sent to Architect. Except as provided in the Air Handler Unit Rebuild Agreement, claims by either party must be initiated within 30 days after occurrence of the event giving rise to such Claim or within 30 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

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

#### **§15.1.5 Claims for Additional Time**

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

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

#### **§ 15.1.6 Claims for Consequential Damages**

To the extent permitted by law, in no event shall HFC be liable to Contractor for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. HFC's liability to Contractor shall under no circumstances exceed the total amount of fees actually paid by HFC to Contractor in connection with the contract between the parties.

## **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. 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 litigation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the HFC.

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

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

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

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

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

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

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

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