



## OPERATIONS AND MAINTENANCE SERVICES REQUEST FOR PROPOSALS (“RFP”)

ISSUE DATE: August 31, 2020

DUE DATE: **2:00 P.M. on September 24, 2020** (“Submission Deadline”)

INSTRUCTIONS: Please submit five (5) paper copies and one (1) electronic copy of the Request for Proposals (“RFP”) on a flash drive. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write “**O&M RFP**” clearly on the outside of the sealed package. All electronic files should include the name of the company as the first part of the file name. Diversity participation information provided by Proposer should be enclosed in a separately-sealed envelope (and in a separate folder on the flash drive) labelled “Diversity”. Submittals received by email, fax, or after the Submission Deadline will be rejected.

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

CONTACT INFO: Any questions concerning this RFP must be submitted by email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than **10:00 a.m. on September 15, 2020**. Materials questions will be answered collectively in one or more Letter(s) of Clarification to be made available at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business). Questions received may be edited or combined with similar questions for clarity or length at the discretion of HFC.

### OVERVIEW AND SCOPE

Houston First Corporation (“HFC”) requests responsive proposals from experienced contractors to provide operations and maintenance services. The Proposer selected is to furnish all labor, supervision, supplies, and other goods and services necessary to provide preventative maintenance and needed repairs throughout HFC’s meeting facilities, theaters, offices, garages, and landscaped properties. Services are to be provided on an as-needed basis, 24 hours per day, seven days per week, 365 days per year, including all holidays.

Trade personnel required to perform services is expected to include a Project Manager, electricians, plumbers, carpenters, painters, operators, and technicians. Positions and service hours will fluctuate due to events, seasons, and other variables.

For information purposes only, HFC has prepared the following table summarizing the various facilities managed by HFC:

Facility	Built	Renovated	Sq. Ft.	Type/Use
Avenida Central Parking	2008	n/a	248,000	Underground Parking
Avenida North Garage	2016	n/a		Above-ground Parking
Avenida South Garage	2003	n/a	480,000	Above-ground Parking
Fish Plaza	1987	n/a	50,000	Plaza/Greenspace

George R. Brown Convention Center	1987	2004, 2016	1,800,000	Exhibition Hall
Jones Hall	1966	2002	185,000	Theater
Jones Plaza/Wyatt Center	1966	Pending	80,656	Plaza/Greenspace
Miller Outdoor Theatre	1968	2000	36,762	Outdoor Theater
Miller Outdoor Theatre Concessions	2002	n/a	5,500	Foodservice Facility
Partnership Tower	2016	n/a	127,000	Office Building
Root Memorial Square	2005	n/a	62,500	Plaza/Greenspace
TBH	1992	2008	17,598	Theater
TD Parking – Civic Center	1965	2019	766,211	Underground Parking
TD Parking – Large Tranquility	1975	2019	496,743	Underground Parking
TD Parking – Small Tranquility	1975	2019	244,664	Underground Parking
Tundra Garage	2001	n/a	1,000,000	Above-ground Parking
Wortham Theater Center	1987	2019	437,000	Theater

The Proposer selected as a result of this RFP will be responsible for the operation and maintenance of, and remedial repairs to, the following equipment and systems: Electrical; plumbing; mechanical; fire, life safety and environmental compliance; and interior/exterior surfaces and finishes. While an exhaustive inventory of equipment is not available, Proposers should refer to the Scope of Services portion of the Operations and Maintenance Services Agreement for additional details on equipment and systems at the facilities.

## BACKGROUND

HFC is a local government corporation created by the City of Houston to facilitate economic growth through the promotion of the greater Houston area and the business of conventions, meetings, tourism, and the arts. HFC is the primary entity responsible for marketing Houston and increasing awareness of its many attractions and amenities.

HFC is responsible for the operation and management of the George R. Brown Convention Center, Avenida Houston, Partnership Tower, Wortham Theater Center, Jones Hall for the Performing Arts, Miller Outdoor Theatre, an array of outdoor properties, and parking facilities that can accommodate nearly 10,000 vehicles.

HFC represents the consolidation of the former City of Houston Convention & Entertainment Facilities Department and the Houston Convention Center Hotel Corporation. The Houston Convention Center Hotel Corporation (now called Houston First Corporation) was organized in 2000. The consolidation with the Convention & Entertainment Facilities Department was effective on July 1, 2011.

## PRE-PROPOSAL MEETING

A Pre-Proposal Meeting will be held for the benefit of all prospective Proposers by video teleconference call at **10:00 a.m.** on **September 10, 2020**. Proposers who expect to attend must visit [https://zoom.us/meeting/register/tJwof-ggrj4gHdzW6gPudUN\\_tQKLBRHxFWje](https://zoom.us/meeting/register/tJwof-ggrj4gHdzW6gPudUN_tQKLBRHxFWje) to register for the meeting. Attendance at the Pre-Proposal Meeting is encouraged, but not mandatory. Potential site tours, by limited appointment, may be discussed or announced at the Pre-Proposal Meeting.

## PROPOSAL FORMAT

Although HFC prefers substance over form, to be considered responsive, Proposers are asked to review the following criteria/information requests and respond, in order, to the best of their ability:

- a. **Transmittal Letter:** Write a letter communicating effectively why the Proposer should be selected to perform facility operations and maintenance services on behalf of HFC. The letter must be signed by a person authorized to make representations on behalf of the Proposer and include a direct phone number and email address. Proposers must make a specific, unambiguous statement accepting and agreeing to comply, if selected, with the Operations and Maintenance Search Services Agreement provided below.
- b. **Company Profile:** Provide a brief profile of the Proposer, noting its history, structure, strengths, and ability to meet the needs of its clients. Provide three current references for operations and maintenance services at comparable facilities, such as hotels, airports, arenas, shopping malls, office buildings, convention centers, and office buildings; include a contact name, phone number, and email address for the manager for each such reference. (Neither HFC nor the City of Houston may be used as a reference.) Proposers must disclose if their firm has, within the past five years, (i) been party to a service contract terminated for cause, or (ii) received material, adverse findings from any governmental authority having regulatory oversight of services similar to those required under this RFP.
- c. **Management Strategy:** Describe the Proposer's approach to the Scope of Services, including Proposer's methods and abilities related to staff scheduling, developing and effectuating a comprehensive program of preventative maintenance, remedial services and emergency repairs. Provide the name and summary of qualifications for the proposed Project Manager and a job description for each service position recommended by Proposer. Clearly and unambiguously identify all services to be subcontracted.
- d. **Pricing:** Proposers must provide comprehensive pricing for the services, including the Management Fee and all Labor Fees (for Proposer and subcontractor personnel), using the Pricing Form available at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business).
- e. **Diversity Commitment:** Proposers should indicate how they intend to make good faith efforts to utilize diverse companies to meet the Diversity Goal set forth in this RFP.

All information provided by Proposers should be organized, clear and concise. Although there are no page limits, Proposers are asked to avoid excessive graphics, title pages, or other extraneous information in their proposal other than requested by HFC.

## EVALUATION

HFC will appoint a selection committee to review and rank every proposal received in response to this RFP based on the following weighted criteria: Transmittal Letter, including expressed acceptance of the Operations and Maintenance Services Agreement as written (15 points); Company Profile (20 points); Management Strategy (25 points); Pricing (30 points); and Diversity Commitment (10 points).

HFC reserves the right to interview the top-ranked Proposers, not to exceed five, prior to selecting a proposal. If interviews are scheduled, then up to 20 additional points may be added to the existing proposal scores of the top-ranked Proposers, for a maximum possible total of 120 points, based on their responsiveness during the interview.

HFC intends to award the contract to the Proposer offering the best value to HFC, as measured by HFC utilizing the foregoing evaluation criteria, including the right to award the contract by criteria other than the lowest price proposed. HFC reserves the right to select or reject all or part of any proposal, waive minor technicalities, and select one or more proposals in the manner and to the extent that they are deemed to serve the best interests of HFC. This RFP does not commit HFC to award a contract, issue a purchase order, or to pay any costs incurred in the preparation

of a proposal in response to this RFP. HFC reserves the right to request proposal clarifications/additional information from some or all Proposers.

### **LETTERS OF CLARIFICATION**

Responses to all material questions timely submitted by potential Proposers, as well as any revisions incorporated into this RFP by HFC, will be confirmed collectively, rather than individually, in a letter made available online at <http://www.houstonfirst.com/do-business/> (each, a “Letter of Clarification”). When issued, Letters of Clarification become part of this RFP and automatically supersede any previous terms, conditions, specifications, or provisions in conflict therewith. By submitting their proposal, Proposers shall be deemed to have reviewed all Letters of Clarification and to have considered all responses, as well as any revisions, and incorporated them into their submittal. Verbal responses by any HFC officer, director or employee cannot alter the terms, conditions, specifications, or provisions as stated herein. It is the responsibility of Proposers to monitor the foregoing link and ensure they receive any such Letters of Clarification and incorporate them in their proposal.

### **DIVERSITY PARTICIPATION**

The Proposer 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](#). HFC has established the following goal for these services: **25%** of the total value of the Agreement. Proposers should note if they are certified as a diversity participant in their submittal; however, such certification shall not lessen or otherwise alter the requirement to use good faith efforts to award subcontracts to diversity participants. Diversity participation information provided by Proposers should be delivered with the Proposal in a **separately-sealed envelope** labelled “**Diversity**”.

### **FORM OF AGREEMENT**

By submitting a response to this RFP, Proposer agrees, upon notice of selection, to promptly enter into the [Operations and Maintenance Services Agreement](#) provided below. Any requests for clarification or modification to the terms of such agreement must be timely submitted by email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com), and responses to material questions and issues will be included in a Letter of Clarification. Proposers are advised that additional or conflicting terms, alternative pricing bids, pre-printed forms, or other objections submitted by a Proposer with their Proposal shall be disregarded and may result in a Proposal being deemed, in HFC’s discretion, as non-responsive.

### **RESTRICTIONS ON COMMUNICATIONS**

Throughout the selection process, commencing with the Issue Date, Proposers are directed not to communicate, directly or indirectly, with any HFC employee, officer, director, or selection committee member regarding their Proposal, or any matter relating to this RFP, other than through [bids@houstonfirst.com](mailto:bids@houstonfirst.com), during the Pre-Proposal Meeting, or in response to a direct inquiry from the HFC Purchasing Agent or General Counsel Department. Proposers who disregard the Restrictions on Communications provision do so at their peril, as **HFC shall have the right to reject any proposal due to violation of this provision.**

### **CONFLICTS OF INTEREST**

Proposers are advised that they have an affirmative obligation to disclose any affiliation or business relationship with an HFC employee, officer, or director creating a conflict of interest (or appearing to a reasonable person to potentially exist). Those who need the disclosure form may find it online at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. By submitting a proposal, Proposers represent to HFC that they have complied with the requirements of Chapter 176 of the Texas Local Government Code.

## **VENDOR CODE OF CONDUCT**

Proposers who do business or seek to do business with HFC are expected to interact with HFC with high ethics and integrity. To promote ethical conduct by its existing and potential contractors, HFC has adopted a Code of Conduct for Vendors, available online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business). HFC requires that all Proposers be familiar with and abide by the Code of Conduct for Vendors.

## **PROTEST PROCEDURES**

Any protest relating to the form, terms and conditions, selection criteria, specifications, exhibits, or any other material RFP content must be filed by the actual or potential Proposer with the Purchasing Agent no later than five business days prior to the Submission Deadline. If the protest consists of a dispute regarding the Proposer recommended by the selection committee, or otherwise relates to the alleged misapplication of selection criteria, then the Purchasing Agent must receive the protest from an actual Proposer after the Submission Deadline, but at least three business days prior to consideration of a contract resulting from this RFP by an HFC committee or Board of Directors, whichever is earlier.

All protests must be made in writing and delivered to Houston First Corporation, Attn: Purchasing Agent, 701 Avenida de las Americas, Ste. 200, Houston, TX 77010. To be considered by HFC, protests must be timely received and include, at a minimum, all of the following information: (a) The name, address and contact information of the Proposer, with sufficient information to establish that a bona fide Proposer is the person or entity filing the protest; (b) The full title of the RFP; (c) Material grounds for the protest, including the provisions of the RFP and the applicable law or regulation that serves as the basis for the protest; (d) A statement of the specific relief requested by the Proposer; (e) Reference to and attachment of any pertinent documents or sources relied upon by the protestor that the protesting party wishes to have HFC consider; and (f) An affidavit attached to support any factual allegations stated in the submission. The Purchasing Agent will notify the Proposer promptly to acknowledge receipt of a protest.

## **PUBLIC INFORMATION**

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

## **RFP PACKETS**

A complete copy of this RFP, including exhibits, necessary forms and other relevant information is available on-line at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business). This RFP provides the information necessary to prepare and submit a proposal for consideration and ranking by HFC.

## **WITHDRAWAL; ERROR**

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

## OPERATIONS AND MAINTENANCE SERVICES AGREEMENT

This Operations and Maintenance Services Agreement (“Agreement”) is made by and between Houston First Corporation (“HFC”), a Texas local government corporation whose address is 701 Avenida de las Americas, Ste. 200, Houston, Texas 77010, and [TBD] (“Contractor”), whose address [TBD]. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

### ARTICLE 1: DEFINITIONS

As used in this Agreement, the following terms shall have the meanings assigned below:

“**Equipment**” means, generally, all mechanical and electrical machinery, systems, components and other apparatus throughout the Facilities, including, by way of example and not limitation, controls, direct digital controllers, facility management system, chillers, boilers, cooling towers, chilled and condenser water pumps, and related electrical switchboards and motor control centers, plus major parts of the above including compressors, speed reducers and increasers, motors, heat exchangers and systems components, and appurtenances. Without limiting the foregoing, the parties acknowledge and agree that the definition of “Equipment” shall include, for purposes of this Agreement, all of the items set forth in Exhibit “[TBD]” attached hereto and made a part hereof for all purposes.

“**Facility**” (and collectively, “**Facilities**”) means the George R. Brown Convention Center; Gus. S. Wortham Theater Center; Jesse H. Jones Hall for the Performing Arts; Miller Outdoor Theatre; Partnership Tower; TBH; Outdoor Properties; Parking Facilities; Fountains; Tunnels; and Miscellaneous Properties, including, respectively in each instance, all affixed or appurtenant structures, lots, loading docks, ramps, stairwells, tunnels, signs, fixtures, equipment, and other improvements of any kind or type, as well as such other buildings, garages, lots, and properties as HFC may designate during the Term in the manner provided in this Agreement.

“**Fountains**” means all of the water features, including all utility connections, pumps, conduit, basins, and other components and accessories, located at Lynn Wyatt Square for the Performing Arts; Ray C. Fish Plaza; and the George Bush Monument; and further including the decorative fountains in downtown Houston known as Manhole (Preston St. and Louisiana St.); Flower Wall (Prairie St. and Travis St.); Market Square Tabletops (Qty. 2); East and West Congress Ave. at Main St.; East and West Preston St. at Main St.; Flooding Bayou (1100 Preston St.); Caroline St. and Preston St.; and Baseball (Preston St. and Crawford St.).

“**Fringe Benefits**” means the employer’s share of FICA, Medicare, premiums for health insurance, life insurance, short-and/or long-term disability insurance, workers’ compensation insurance, and other employee-related fixed charges (excluding applicable payroll tax) to the extent the can be independently verified.

“**George R. Brown Convention Center**” means the convention and meeting facility located at 1001 Avenida de las Americas, Houston, Texas 77010.

**“Gus S. Wortham Theater Center”** means the performing arts venue located at 501 Texas Ave., Houston, Texas 77002. For purposes of the definition, the term “Gus S. Wortham Theater Center” includes the corridor and lobby connecting under Texas Ave., known as the “Wortham Tunnel”.

**“HFC General Manager”** means the individual designated by HFC to serve as general manager of one or more Facilities to oversee day-to-day operations.

**“Jesse H. Jones Hall for the Performing Arts”** means the performing arts venue located at 615 Louisiana St., Houston, Texas 77002.

**“Lynn Wyatt Square for the Performing Arts”** means the landscaped city block and venue, formerly known as Jones Plaza, bounded by Louisiana St., Capitol St., Smith St., and Texas Ave. under redevelopment (as of the Effective Date) to include greenspace, fountains, restaurants, performance space, and other amenities.

**“Miller Outdoor Theatre”** means the outdoor performing arts venue located in Hermann Park, having a street address of 600 Hermann Park. Dr., Houston, Texas 77030. For purposes of the definition, the term “Miller Outdoor Theatre” includes the foodservice facility on the grounds of the theater known as the “Miller Outdoor Theatre Concessions”.

**“Miscellaneous Properties”** means the Albert Thomas Office at Bayou Place; the underpass between Bayou Place and the Bayou Place West Hall on Bagby St.; the parking path at the corner of Smith St. and Preston St.; the heritage oak tree located at the corner of Bagby St. and Capitol St.; artworks and monuments known, respectively, as Wings Over Water, the Seven Wonders, the George Bush Monument, The James A. Baker III Monument, Secretary of State Mosbacher columns, Big Bubble, Sounds of the Past, and Site Seeing, along with their lights, flags and water features.

**“Outdoor Properties”** means Lynn Wyatt Square for the Performing Arts, Ray C. Fish Plaza, Root Memorial Square, and Sweeney Clock Triangle.

**“Parking Facilities”** means the following garages and surface lots, including all appurtenant tunnels, stairwells, ramps, signs, fixtures, and other property:

- a. Avenida North Garage: 1,846-space garage connected to Partnership Tower located at 701 Avenida de las Americas;
- b. Avenida Central Garage: 663-space underground parking facility located at 1002 Avenida de las Americas;
- c. Avenida South Garage: 1,459-space garage located at 1710 Polk St. connected by skybridges to the Hilton Americas-Houston Hotel and the George R. Brown Convention Center;
- d. Tundra Garage: 2,478-space garage located at 1515 Jackson St. serving the Toyota Center and area businesses;
- e. Theater District Parking Garage: 3,369-space underground parking facility located at 511

Rusk St. consisting of three interconnected facilities (the “Green” Civic Center, “Yellow” Large Tranquility and “Blue” Small Tranquility garages);

- f. Lots C&H: 579-space surface lots. Lot C is bounded by Memorial Drive, West Capitol, Buffalo Bayou, and Interstate 45; Lot H is bounded by Memorial Drive, Interstate 45, and Fonde Community Center;
- g. HPD Lot: 85-space surface lot located at 3300 Artesian Rd.;
- h. Staging Lot: Restricted-use marshalling area located at 901 Ruiz;
- i. Lot 4: 245-space restricted-use surface lot located on Chartres St. behind the George R. Brown Convention Center Polk St. and Rusk St.;
- j. Lot 6: 75-space restricted-use surface lot located on Chartres St. between Capitol St. and Texas St.; and
- k. Lot 8: Unpaved restricted-use surface lot on Capitol St. at Hamilton St. featuring up to 120 spaces depending on weather conditions.

**“Partnership Tower”** means the 10-story office tower located at 701 Avenida de las Americas, Houston, Texas 77010.

**“Ray C. Fish Plaza”** means the outdoor plaza and greenspace in front of Wortham Theater Center on Texas Ave. in downtown Houston.

**“Root Memorial Square”** means the landscaped city block and venue bounded by Clay, Bell, Austin and La Branch streets.

**“Sweeney Clock Triangle”** means the small triangular park area bounded by Rusk St., Capitol St., and Bagby St. in downtown Houston, including the 1908 Sweeney Clock.

**“TBH”** means the performing arts theater located at 333 S. Jensen Dr., Houston, Texas 77010.

**“Tunnels”** means the following passageways interconnecting the Theater District Parking Garage and/or area performing arts facilities and buildings, and such other property:

- a. Alley Theatre Tunnel (a/k/a Alley Corridor): The tunnel beginning at the termination of the Bank of America Center tunnel, running along the east wall of the Civic Center Garage and ending at the south end of the tunnel under Texas Avenue (at the commencement of the existing Alley Tunnel);
- b. City Hall Basement Tunnel: The tunnel leading from the south wall of the Large Tranquility Garage into the basement of City Hall;
- c. Jones Hall Tunnel: The section of tunnel from the Jones Hall courtyard to the base of the stairs at the tunnel entrance to Bank of America;



- d. Orange Concourse Tunnel: The section of tunnel beginning at the double doors of the Bank of America tunnel and ending at the west end of the Civic Center Garage;
- e. T-Tunnel: The tunnel from Large Tranquility Garage to City Hall Annex Garage. This tunnel also has an entrance to the Hobby Center for the Performing Arts;
- f. Y-Tunnel: The section of tunnel from the west wall of the Civic Center Garage and under Bayou Place Phase II; and
- g. 611 Walker Tunnel Drop-Off Area: A glass-enclosed transition area located in the southeast corner of the yellow level of the Theater District Garage.

## **ARTICLE 2: DUTIES OF CONTRACTOR**

2.1 Services. Contractor shall provide all labor, supervision, management, administrative and support services, materials, equipment, insurance, tools, machinery, fuel, transportation, parking, and other goods and services of any kind or type necessary to provide comprehensive maintenance and repair services on all Equipment and operate the Facilities throughout the Term, 24 hours per day, seven days per week (or as required by HFC), in strict accordance with the terms and conditions of this Agreement, including the Scope of Services attached hereto as **Exhibit “A”** and made a part hereof for all purposes (“Services”).

2.2 Standard of Care. Contractor represents and warrants to HFC that the Services shall be performed in compliance with applicable federal, state, and local laws, statutes, ordinances, rules, regulations and lawful orders of public authorities, as may be amended from time to time, and in a good and workmanlike order meeting the standards of quality prevailing in Harris County, Texas for services of this kind. Contractor represents and warrants to HFC that it shall control and monitor energy usage at the Facilities and make all adjustments necessary to ensure all building systems are operating at their inherent peak efficiency and maximizing their design capabilities.

2.3 License and Permits. Contractor shall obtain, maintain, and pay, at its sole cost and expense, for all licenses, permits, and certificates necessary to perform the Services, including, but not limited to, all professional licenses required by any statute, ordinance, rule, or regulation.

2.4 Supervision. Contractor shall supervise and direct the Services, using Contractor’s best skill and attention. Contractor shall be solely responsible for, and have control over, means, methods, techniques, sequences and procedures for coordinating all portions of the Services under the Agreement, except the limited extent that other, specific instructions concerning such matters are set forth in this Agreement or Scope of Services. Contractor shall enforce strict discipline and good order among Contractor’s employees and other persons carrying out the Services. Contractor shall perform all Services using trained and skilled persons having substantial experience performing the work required under the Agreement. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

2.5 Safety. Contractor represents and warrants that the Services shall be performed in accordance with applicable safety rules and regulations, including but not limited to OSHA standards and directives for setting-up and utilizing platforms, lifts, ladders, scaffolding, safety lines and belts, and operating other, similar equipment. Contractor acknowledges that this Agreement requires

Services to be performed in a variety of weather conditions, with exposure to outdoor elements, and that the Services shall be performed by Contractor regardless of elevation. Contractor shall ensure that its employees, agents, contractors and subcontractors use personal protective equipment, safety harnesses, fall protection equipment, and other equipment in the manner and to the extent required to perform the Services safely.

2.6 Actions of Personnel. Contractor shall be responsible for all aspects of Services performed by its employees, agents, licensees, invitees, and contractors of any tier, including accuracy, quality of performance, service standards, timeliness, and compliance with applicable law. Contractor shall be liable to HFC for the negligent and intentional acts and omissions of Contractor's employees, agents, contractors, subcontractors, and other persons or entities performing portions of the Services for or on behalf of Contractor, including, but not limited to, damage to any HFC equipment, Facility walls, doors, ceilings, elevators, escalators, lifts, and other property of any kind or type. Contractor shall, at its sole cost and expense, promptly remedy such damages and restore any property or fixtures thereby affected to the condition existing prior to such damage, to the satisfaction of HFC.

2.7 Correction of Services. If any Services performed by Contractor (including its subcontractors) do not meet the standards of this Agreement, as determined by HFC in its reasonable discretion, then Contractor shall correct or modify the Services promptly upon demand from, and at no additional cost to, HFC. If Contractor fails to perform or performs any Service contrary to applicable laws, statutes, ordinances, rules and regulations, and/or lawful orders of public authorities, then Contractor shall be liable for such violation and shall bear the costs attributable to correction.

2.8 Authorized Representative. Contractor shall designate a representative who shall have express authority to bind Contractor with respect to all matters under this Agreement and provide a direct phone number and email address for such authorized representative.

2.9 Parts Warranty. With respect to any equipment, supplies, parts, or other items furnished by Contractor in connection with the Services or this Agreement, Contractor represents and warrants to HFC that: (a) all such items are free of defects in title, design, material, and workmanship; (b) each item meets or exceeds the requirements of the relevant project or work order; (c) any replacement items are new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item being replaced (when the replaced item was new), and will not cause any manufacturer's warranties to lapse or become invalid; and (d) no item or its use infringes any patent, copyright, or proprietary right. Items not conforming to the requirements of this Section shall be deemed defective and repaired or replaced at the sole option of HFC by Contractor, at no cost to HFC. If required by HFC, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor hereby transfers and assigns to HFC all manufacturer's warranties for materials used in connection with the Services, including any Task Orders, 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.

2.10 Field Inspection. Execution of the Agreement by Contractor is a representation to HFC that Contractor has visited and inspected each Facility, examined systems and equipment, become familiar with the conditions under which the Services are to be performed, and correlated personal observations with the requirements of the Agreement.

2.11 Conflicts of Interest. Contractor shall not take for itself or divert to a third party any corporate opportunity arising out of this Agreement or discovered otherwise through the use of HFC property or information. Contractor represents that it is not a party to any outstanding agreement creating or appearing to create a conflict of interest with regard to the Services hereunder or that would preclude Contractor from complying with this Agreement; Contractor shall not enter into any such conflicting agreement during the Term unless prior approved by HFC in its reasonable discretion.

2.12 Phase-in Services. Contractor represents and warrants to HFC that is shall be prepared in all respects to accomplish a smooth and successful transition of the Services prior to the commencement of the Term. During the phase-in period, which shall begin on the Effective Date, Contractor shall arrange to have necessary supervisory, technical, and other personnel on-site to observe the operation of the incumbent contractor's operations and maintenance services. Contractor may use this phase-in period to recruit and transfer personnel, train personnel, arrange for badging, establish management procedures, set up records, ensure adequate equipment is in place for operations (including fixtures and furnishing in the Premises), and otherwise prepare for the assumption of control without disruption of operations.

2.13 Phase-out Services. Contractor recognizes that the Services provided under this Agreement are crucial to operation of the Facilities; that continuity thereof must be maintained at a consistently high level without interruption; that upon expiration of the Agreement, a successor contractor may continue these services; that such contractor shall need phase-in orientation training; and that Contractor shall cooperate in order to affect an orderly and efficient transition of service providers. Accordingly, Contractor agrees to and shall provide phase-out services (including, by way of example and not limitation, a detailed review of system operations and maintenance procedures, record keeping, reports, procurement procedures, and all other pertinent aspects of the Services in order to affect an orderly and efficient transition) for up to 90 calendar days prior to the expiration of this Agreement for any successor contractor at no charge to HFC or such successor contractor. Contractor agrees to disclose necessary personnel records and allow its successor to conduct on-site interviews with its employees, provided Contractor obtains the consent of said employees to disclose their records and to conduct such interviews and provided such disclosure and interviews are conducted in accord with all applicable laws, statutes, rules, regulations, and ordinances which have been passed, enacted or promulgated by any governmental body having jurisdiction over such matters.

### **ARTICLE 3: TERM AND PAYMENT**

3.1 Term. The Term of this Agreement shall begin on **November 1, 2020** and end on **October 31, 2023** (the "Term"), unless sooner terminated according to the terms of this Agreement. HFC may, in its sole discretion, renew the Term for up to two additional terms, each one-year in length, on the same terms and conditions as provided in this Agreement. HFC may exercise such option by notifying Firm in writing prior to the expiration of the initial Term or then-current renewal Term. HFC may further extend the Term by up to an additional six calendar months, on the same terms

and conditions, by notifying Contractor in writing of such extension prior to the expiration of the last renewal Term.

3.2 Management Fee. Subject to all terms and conditions of this Agreement, HFC agrees to pay Contractor the following management fee for its Services monthly, in arrears, based on the following annual amounts, which Contractor represents to be inclusive of all amounts due and payable by HFC for the Services (including, by way of example and not limitation, administrative costs or fees, overhead, finance and accounting services of any kind or type, processing fees, insurance, rent, office supplies, office furniture and equipment, personnel training, personnel certification/licenses, travel, testing, background checks, permits, attorneys' fees, litigation expenses, transportation, vehicles, parking, fuel, and applicable taxes), save and except Labor Rates, Reimbursable Expenses, and payments due pursuant to any Task Orders (the "Management Fee"): [TBD].

3.3 Labor Rates. In addition to the Management Fee and Reimbursable Expenses, HFC agrees to and shall pay Contractor rates for labor by its employees and contractors of any tier in accordance with the tables set forth below, conditioned on submission of biometric timekeeping data (the "Labor Rates"). Contractor represents and warrants to HFC that the following positions are inclusive of all trades necessary to provide and perform the operations, maintenance and repair services required by HFC under this Agreement, including, but not limited to, the essential services set forth in Article 3 of the Scope of Services: [TBD].

Contractor assumes responsibility and liability for all work, acts or omission of any subcontractor for [TBD] services made by Contractor in connection with this Agreement. Contractor shall ensure that any subcontract for such services entered into by Contractor in connection with this Agreement includes, at a minimum, a provision requiring strict compliance with the terms and conditions of this Agreement, including, by way of example and not limitation, service standards, insurance, indemnification, and biometric timekeeping. Contractor agrees to initiate and take all corrective action should a subcontractor fail to comply with the terms of its subcontract with Contractor or any provision of this Agreement.

Contractor acknowledges and agrees that HFC has not represented and cannot guarantee any minimum number of service hours or positions for Contractor or its contractors of any tier.

3.4 Biometric Timekeeping. Prior to the first date of the Term, Contractor shall provide and install, at its sole cost and expense, a reputable biometric timekeeping system (including equipment and payroll-compatible software) of a kind and type prior approved by HFC at each Facility office. Contractor represents and warrants that it shall use and maintain such biometric timekeeping system to record and document the actual hours worked of all personnel for which HFC is to be charged under the Agreement, regardless of whether such individuals are paid hourly or salaried by Contractor. Contractor acknowledges and agrees that, should Contractor fail to record and document actual hours worked by its personnel using such biometric timekeeping system for any reason, HFC shall have no obligation to, and shall not, pay any amount to Contractor for such unrecorded hours.

3.5 Reimbursable Expenses. In addition to the Management Fee and Labor Rates, HFC agrees to reimburse Contractor at cost for equipment, supplies and parts reasonably and commercially required to operate the Facilities in the manner and to the extent (a) allowed under this Agreement,

including the Scope of Services; (b) prior-approved, in writing, by an HFC General Manager; and (c) fully compliant with the restrictions and limitations provided in this Section. Contractor shall include authorized reimbursable expenses on the appropriate Facility invoice, as directed by HFC. Contractor acknowledges and agrees that HFC shall not pay bonuses, vacations, trip charges or mileage fees of any kind or type in connection with the performance of the Services. Contractor shall use its best efforts to seek and obtain the best value for HFC in the procurement of any item for which Contractor will seek reimbursement. Notwithstanding the foregoing or any provision in this Agreement to the contrary (save and except emergency repairs under Section 3.3 of the Scope of Services), if the cost of any specific item will or is reasonably expected to exceed \$3,000, or in the event that the total cost of equipment, supplies and parts for a Facility in a specific calendar month will or is reasonably expected to exceed \$50,000, then Contractor shall provide an advance estimate to the HFC Purchasing Agent and observe, comply with, and abide by procurement methods approved by and acceptable to the HFC General Counsel.

3.6 Invoice Requirement. Contractor will be paid on the basis of, and in response to, separate monthly invoices submitted by Contractor to each HFC General Manager, subject to their individual review and approval. Each such invoice shall (a) be Facility-specific (except to the extent HFC directs the Contractor to combine Facilities); (b) include a prorated (i.e., 1/12<sup>th</sup>) portion of the Management Fee; (c) detail all Services performed; (d) itemize each position, actual labor hours expended and the correct hourly Labor Rate payable by HFC; (e) itemize and detail any Reimbursable Expenses, and include all supporting documentation confirming that such amounts are invoiced at cost and procured in accordance with Section 3.5 of this Agreement; and (f) include such other detail as HFC may require.

3.7 Invoice Procedures. Invoices shall be submitted electronically by the eight (8th) calendar day of the month following each month in which services are performed. HFC shall make payment to Contractor within 30 calendar days of receipt and approval by HFC of such invoices.

3.8 Invoice Disputes. If any items in any invoice submitted by Contractor are disputed by HFC for any reason, including lack of supporting documentation, then HFC shall temporarily delete the disputed item and pay the remaining amount of the invoice; provided, however, that HFC shall promptly notify Contractor of the dispute and request clarification and/or remedial action. After any dispute shall have been settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on an invoice for the disputed item only.

3.9 Taxes. 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 an exemption certificate and federal tax identification number to Contractor if requested.

3.10 Payment of Employees and Subcontractors. Contractor shall make timely payments in accordance with applicable state and federal law to all persons and entities supplying labor, materials or equipment for the performance of this Agreement including Contractor's employees and contractors of any tier. Contractor is solely responsible for the payment of overtime wages in accordance with applicable law. Overtime shall not be payable to Contractor by HFC unless a specific request from Contractor is approved in advance and in writing by HFC. Failure of Contractor to pay its employees or contractors of any tier as required by law shall constitute a material default under this Agreement for which Contractor and its surety shall be liable on

Contractor's performance bond if Contractor fails to cure the default as provided under this Agreement. Contractor shall scrutinize for validity and accuracy all invoices received from its contractors of any tier for any item or service made reimbursable under this Agreement.

3.11 Records. Contractor shall maintain true, complete and accurate documentation on any and all charges payable or reimbursable by HFC under this Agreement. Books, records and documents of the Contractor, insofar as they relate to services performed or money received under this Agreement, shall be maintained by Contractor for a period of three calendar years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by HFC or its designee. These records shall be maintained in accordance with generally accepted accounting principles. Contractor shall not combine or commingle any accounts, records, reports, statements, ledgers, billings, invoices, receipts, collections, or other documents of any nature whatsoever pertaining to HFC or the Facilities with any similar or dissimilar record or document pertaining to any other contract, agreement, account, or understanding to which Contractor is a party.

#### **ARTICLE 4: INSURANCE AND BOND REQUIREMENTS**

4.1 Insurance Requirements. With no intent to limit Contractor's liability under the indemnification provisions hereof, Contractor shall provide and maintain, and shall require its contractors and subcontractors to maintain, for the full duration of the Term, including any extension thereof, at least the following insurance and available limits of liability:

- a. Commercial General Liability, including broad form coverage, contractual liability, bodily injury/death, and property damage in amounts not less than \$1,000,000 each occurrence and \$2,000,000 aggregate;
- b. Automobile Liability, with a combined single limit of \$1,000,000 per occurrence;
- c. Workers' Compensation with statutory limits (Contractor shall not self-insure for Workers' Compensation); and
- d. Employer's Liability, with limits of \$1,000,000 for each accident, disease limits of \$1,000,000 per policy and \$1,000,000 per employee.

4.2 Additional Insured Parties. Each policy, except those for Workers' Compensation and Employer's Liability, must include an additional insured endorsement in favor of HFC and the City of Houston on the original policy and all renewals or replacements during the term of this Agreement.

4.3 Waiver of Subrogation. Each policy must contain an endorsement approved by HFC waiving any claim or right in the nature of subrogation in favor of HFC and the City of Houston on the original policy and all renewals or replacements during the term of this Agreement.

4.4 Rating. The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or shall be an eligible non-admitted insurer in the State of Texas and have an A.M. Best's rating of at least A- with a financial size category of Class VI or better, according to the most current edition of Best's Key Rating Guide, Property-Casualty United States.

4.5 Premiums and Deductibles. Contractor shall be solely responsible for payment of all insurance premiums hereunder. Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for same against HFC, its officers or employees.

4.6 Primary Insurance. Each policy hereunder, except Workers' Compensation, shall be primary and noncontributory to any other policies of insurance which may be available to HFC with respect to claims arising in connection with this Agreement.

4.7 Certificates of Insurance. Contractor shall deliver a certificate of insurance evidencing all of the policies, endorsements and requirements set forth in the Agreement within 10 calendar days of the Effective Date and annually thereafter. Neither the issuance of any insurance policy required under this Agreement nor the minimum limits specified herein shall be deemed to limit or restrict in any manner that liability of Contractor under or out of this Agreement and Contractor shall be liable for any loss, damage or liability suffered or incurred by HFC as the result of the failure of Contractor to maintain or cause to be maintained the types or amounts of insurance required to be maintained under this Agreement.

4.8 Performance Bond. Contractor shall provide a statutory performance bond for \$1,750,000.00 on a form approved by HFC covering faithful performance of the services arising under the Agreement. The bond that is given or tendered to HFC must be executed by a surety company that is authorized and admitted to write surety bonds in the State of Texas and accompanied by power of attorney stating that the attorney in fact executing such bond has requisite authority to execute such Bond. Contractor shall deliver the initial bond required to HFC prior to the first date of the Term and annually thereafter.

4.9 Subcontractor Insurance. Contractor shall ensure that its contractors of any tier provide insurance of the types and amounts commensurate with the foregoing requirements, except that Commercial General Liability limits of \$1,000,000 per occurrence with a \$2,000,000 and Automobile Liability limits of \$1,000,000 per occurrence.

## **ARTICLE 5: LIMITATION OF LIABILITY**

5.1 Release. **CONTRACTOR AGREES TO AND SHALL RELEASE HFC, ITS 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 BY CONTRACTOR UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED IN PART BY THE NEGLIGENCE OF HFC CONCURRENTLY WITH CONTRACTOR.**

5.2 Indemnification. **TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW, CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HFC, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND AGENTS, (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, JUDGMENTS, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES,**

**COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) (COLLECTIVELY, "CLAIMS") FOR INJURY, DEATH, DAMAGE, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE OF SERVICES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CLAIMS CAUSED BY OR RELATING TO CONTRACTOR AND/OR ITS ANY IF ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "CONTRACTOR'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE (EXCLUDING CLAIMS CAUSED BY THE SOLE OR GROSS NEGLIGENCE OF INDEMNITEES); AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ANY AND ALL CLAIMS 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.**

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

**5.4 Notice of Claims. If HFC or Contractor receive notice of any claim or circumstances that could give rise to an indemnified loss, then the receiving party shall give written notice to the other party within 30 calendar days. The notice must include a description of the indemnification event in reasonable detail, the basis on which indemnification may be due, and the anticipated amount of the indemnified loss. 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 calendar 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.**

**5.5 Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to HFC. Within 10 calendar 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, then HFC may assume and control the defense, and all defense expenses constitute an indemnification loss.**

**5.6 Continued Participation. 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 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; require the Indemnitees to pay amounts that Contractor does not fund in full; or does 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.

## ARTICLE 6: DEFAULT AND TERMINATION

6.1 Default. Contractor shall be deemed to be in default under this Agreement due to the occurrence of any of the following events: (a) Contractor fails to perform or observe any material term, condition or requirement under this Agreement; (b) Contractor, or any employee, agent, contractor, or subcontractor of Contractor, violates applicable law in connection with the performance of the Services; (c) Contractor becomes insolvent; (d) All or substantial part of Contractor's assets are assigned for the benefit of its creditors; (e) A receiver or trustee is appointed for Contractor; or (f) Contractor assigns this Agreement without the prior written consent of HFC.

6.2 Remedies. If default by Contractor occurs, then HFC shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, HFC shall have the right, but not the obligation, to cure or cause to be cured on behalf of Contractor any such default, and Contractor shall pay HFC on demand all costs and expenses incurred by HFC in effecting such cure, in addition to all actual damages, losses, costs or expenses incurred by HFC as a result of such default by Contractor.

6.3 Termination for Convenience. HFC reserves the right to terminate this Agreement for convenience at any time by giving 30 calendar days' written notice to Contractor. The right of HFC to terminate this Agreement for convenience is cumulative of all rights and remedies that exist now or in the future. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the service performed under this Agreement up to the termination date. HFC shall then pay the fees to Contractor for Services actually performed, but not already paid for. **TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE THE SOLE AND EXCLUSIVE REMEDIES OF CONTRACTOR FOR TERMINATION FOR CONVENIENCE BY HFC, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED HEREIN), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM TERMINATION OF THIS AGREEMENT BY HFC FOR CONVENIENCE.**

6.4 Termination by Contractor. Contractor may terminate this Agreement only if HFC defaults and fails to cure the default after receiving written notice thereof. Default by HFC occurs if HFC fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor seeks to terminate the Agreement, then Contractor must deliver a written notice to HFC describing the default and proposed termination date. Such date must be at least 90 days after HFC receives notice. If HFC cures the default before the proposed termination date, then the proposed termination date is ineffective. If HFC does not cure the default before the proposed termination date, then Contractor may terminate this Agreement upon 30 days' notice to HFC and may seek any remedy available under applicable law, subject to the provisions and limitations of this Agreement.

6.5 Remedies Cumulative. The rights and remedies of HFC under this Agreement shall be cumulative. HFC shall have and may exercise all other rights and remedies not inconsistent herewith as provided under applicable law, or in equity. No exercise by HFC of one right or remedy shall be deemed an election, and no delay by HFC shall constitute a waiver, election or acquiescence to any default, breach, violation, or non-performance by Contractor.

## **ARTICLE 7: REQUIRED PROVISIONS**

7.1 Diversity Program. Contractor shall make good faith efforts to award subcontracts equal to **twenty five percent (25%)** of the value of this Agreement to certified, diverse suppliers of good and services in accordance with the Diversity Program established by HFC, which is made a part hereof for all purposes. 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 with each invoice, or as directed by HFC.

7.2 Additions and Deletions. HFC, by means of a written directive to Contractor, may add or delete Facilities or services to or from this Agreement and any items or services provided by Contractor that are reasonably related to the scope of this Agreement. Written notification of the added or deleted Facilities, items or services shall take effect upon Contractor's receipt of such notice or on such other day as specified therein. Charges for deletions shall be excluded from any sums otherwise due under the Agreement as of the date such notice is received by Contractor. Charges for additions shall be provided at the same cost as existing Services under the Agreement or, in the absence thereof, at a reasonable price agreed upon in advance by HFC and Contractor.

7.3 Task Orders. At any time during the Agreement, HFC may issue a written task order to Contractor, in a form approved by the HFC General Counsel, to perform specific capital projects (i.e., creating a material Facility addition, physical enlargement or expansion; replacing a major component or structural part of a Facility, or rebuilding it after the end of its economic useful life; or adapting a material portion of a Facility to a new or different use) or ancillary services (e.g., electrical services of 600 or more volts) HFC deems necessary to accomplish the general purposes of this Agreement (each a "Task Order" and collectively "Task Orders"). Each Task Order shall require an authorized signature from both parties and include, as applicable, the following information: (a) A description of the project; the date of issuance; a lump-sum or a not-to-exceed amount based on hourly rates; (b) any expenses; (c) a 10-20% retainage; (d) any subcontractors; (e) period of performance/project milestones; (f) a description of the services or tasks to be performed; and (g) any deliverables. Contractor agrees to and shall complete each Task Order in accordance the scope thereof, subject to the terms, conditions and restrictions of this Agreement. The parties agree that the total amount of all Task Orders issued under this Section will not exceed 25% of the Management Fee per Term year.

7.4 Drug Testing. It is the policy of HFC to achieve a drug-free workforce and workplace; Contractor shall comply with this policy and shall subject its employees to drug testing if there is a reasonable suspicion that the employees may be abusing drugs or alcohol while working in a Facility. Prior to their employment by Contractor, all personnel performing Services under this Agreement on a routine basis shall be drug tested at Contractor's sole cost and expense. Subsequent drug testing, whether at random or for reasonable suspicion, shall also be conducted at Contractor's sole cost and expense. Any employee or applicant testing positive for drugs or alcohol shall not be

permitted to perform Services for HFC under this Agreement. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractor, including its employees, agents and subcontractors, is prohibited at the Facilities.

7.5 Background Checks. Contractor shall conduct national and local background checks on all temporary and permanent employees, including subcontractor employees, at its sole cost and expense, before they are assigned to work at any of the Facilities. Background checks shall include a thorough criminal history check, including registered sex offender status, prior employment history check, inclusive of dismissals and reasons, if any, and level of education. Background checks shall be conducted in accordance with EEOC regulations, as may be amended from time to time. Upon request by HFC, Contractor shall provide evidence that the background checks have been conducted, both at the beginning of the Term and at any other time deemed necessary by HFC throughout the Term. Contractor may be required by HFC at Contractor's expense to conduct additional background checks, at its sole cost and expense, for special events. Failure to strictly comply with this requirement is grounds for immediate termination of the Agreement.

7.6 Environmental Laws. Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Contractor shall promptly reimburse HFC for any fines or penalties levied against HFC because of Contractor's failure to comply with Environmental Laws. Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Facilities except in strict compliance with the Environmental Laws. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable Federal, State, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease lubricants or any ignitable or hazardous liquids, materials, or substances in the storm sewer system or sanitary sewer system or elsewhere on HFC property in violation of the Environmental Laws. Contractor shall provide a Safety Data Sheet for each and every Hazardous Material used in performance of the work on HFC property as required under the Environmental Laws.

7.7 Sponsorship and Advertising. Contractor shall not display or permit to be displayed any advertisement or sponsor information at the Facilities without prior written approval from HFC. The term "sponsor information" includes any third-party name, logo, brand, symbol, motto, trademark, service mark, or any other indicia of service, product and/or corporate identification. Contractor shall not enter into any advertising or sponsorship agreements in connection with this Agreement or otherwise related to the Facilities, including but not limited to sponsoring or supporting an event, HFC licensee, or Facility user for consideration or name/brand promotion without prior written consent of HFC, as determined by HFC in its sole discretion. Contractor shall not display or use the name, logo, trademark or service mark of HFC in any manner without prior written permission from HFC. This Agreement shall not be construed to restrict or otherwise affect the right of HFC to use third party services (including but not limited to competitors of Contractor) or enter into agreements relating to advertising or sponsorship in any manner.

## **ARTICLE 8: MISCELLANEOUS PROVISIONS**

8.1 Record Inspections and Audits. HFC shall have the right to examine and review all books, records and billing documents held by Contractor, including its subcontractors and agents, which

relate to performance of Services or payment under this Agreement at any time. Contractor shall keep its books and records available for this purpose for at least three years after this Agreement expires or terminates. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations. Any discrepancies identified in connection with any such audit shall be corrected by the Contractor within 30 calendar days, and Contractor shall provide HFC a written explanation for each discrepancy, remit any amounts owed to HFC, and take corrective action within such time.

8.2 Confidentiality. Contractor agrees to and shall hold all Confidential Information in strict confidence and protect it with the same degree of care with which the Contractor protects its own confidential information, but in any event with no less than a commercially reasonable standard of care. Contractor agrees that use of Confidential Information shall be limited to purposes necessary to fulfill its service obligations hereunder. Contractor shall not take for itself or divert to a third party any corporate opportunity arising out of this Agreement or discovered otherwise through the use of Confidential Information. As used herein, the term “Confidential Information” shall mean any information relating to the business, operations, plans, accounts, clients, leases, licenses, finances, or assets of HFC (whether oral or written, and whether in electronic or other form) disclosed to Contractor or learned or developed by Contractor in connection with the performance of the Services. Contractor shall not assert, and hereby irrevocably waives, any right to confidentiality or proprietary interest with regard to any content of this Agreement that includes information provided in whole or in part by Contractor, including, by way of example and not limitation, the Management Fee and Labor Rates.

8.3 Force Majeure. Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by an occurrence of Force Majeure. For purposes of this Agreement, the term “Force Majeure” shall mean fires, floods, hurricanes, tornadoes, explosions, war, terrorism, and the acts of a superior governmental or military authority. The term Force Majeure does not include strikes, slowdowns or other labor disputes; changes in general economic conditions, such as inflation, interest rates, economic downturn, or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Relief is not applicable unless the affected party uses due diligence to remove the Force Majeure as quickly as possible and provides the notice describing the actual delay or non-performance incurred within 20 calendar days after the Force Majeure ceases. An occurrence of Force Majeure shall not extend the Term. Without limiting the foregoing, HFC further reserves the right, due to an occurrence of Force Majeure or other cause beyond the control of HFC, to suspend performance by Contractor at one or more Facilities for such period of time as HFC may determine in its sole discretion, and Contractor acknowledges and agrees that the Management Fee and other fees for Services or other payments of any kind or type shall abate for the duration of such period. **CONTRACTOR AGREES TO AND SHALL WAIVE ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSS OR OTHER DAMAGES RESULTING FROM SUSPENSION OF SERVICES OR TERMINATION OF THIS AGREEMENT DUE TO FORCE MAJEURE, EXCEPT FOR AMOUNTS DUE HEREUNDER UP TO THE TIME SERVICES WERE SUSPENDED OR TERMINATED.**

8.4 Notices. Notices to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt (or electronic return receipt) requested, Federal Express, UPS or any other national overnight express delivery service. The

notice must be addressed to the party to whom the notice is given at its address set out in this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

8.5 Independent Contractor. HFC and Contractor agree that they do not intend to form, and this Agreement shall not be construed as creating, a partnership or joint venture under any circumstances. Neither party hereto shall have any authority, in any manner or to any extent, to bind the other party. With respect to each other, the parties shall be independent contractors for all purposes.

8.6 Venue and Laws. Contractor shall strictly comply with all applicable laws, ordinances, codes, and regulations that affect performance by Contractor hereunder. This Agreement shall be construed in accordance with the laws of the State of Texas without regard to conflict of law principles. Any litigation in connection with this Agreement shall be in a court of competent jurisdiction in Harris County, Texas.

8.7 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.

8.8 No Liens or Encumbrances. Contractor shall keep the Facilities free and clear of all liens and encumbrances resulting from any action of Contractor or in connection with the Services.

8.8 Ambiguities. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

8.9 Non-Exclusivity. Services under this Agreement are non-exclusive, and HFC reserves the right to contract, license, grant, or allow other third-parties persons and entities to perform similar or dissimilar services in its sole discretion without incurring any liability or obligation whatsoever to Contractor.

8.10 Survival. The parties shall remain obligated to each other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration of the Term or termination of the Agreement.

8.11 Assignment and Severability. Contractor shall not assign this Agreement in whole or in part without the prior written consent of HFC. HFC reserves the right to assign this Agreement in whole or in part, including any or all rights granted hereunder, at any time upon written notice to Contractor. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

8.12 Entire Agreement. This Agreement, including the Exhibits attached hereto, represents the entire and integrated agreement between HFC and Contractor with regard to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of a conflict between the Agreement and the Exhibits, this Agreement shall control

and prevail. This Agreement may not be altered or amended except in a writing executed on behalf of HFC and Contractor.

[signature page to follow in final Agreement]

**EXHIBIT “A”  
SCOPE OF SERVICES**

[TBD] (“Contractor”) agrees to and shall provide all labor, supervision, management, administrative and support services, materials, equipment, insurance, tools, machinery, fuel, transportation, parking, and other goods and services of any kind or type necessary to provide operations, maintenance and repair services for HFC throughout the Facilities in strict accordance with the terms and conditions of the foregoing Agreement and the following Scope of Services:

**Article 1. Services in General**

1.1 Contractor accepts and assumes the duty and obligation to provide the Services at the Facilities in the manner provided in the Agreement, including this Scope of Services, so as to ensure the safe and reliable use, operation and functionality of Equipment at each Facility throughout the Term by HFC, its employees, directors, officers, contractors, agents, licensees, invitees, and other users.

1.2 Contractor shall take every precaution to minimize disruption of events at the Facilities to minimize dust, noise, and fumes, and to prevent power outages or the disturbance of utilities, fire suppression equipment, plumbing systems, and any other equipment or systems connected to the Facilities.

1.3 As a safety precaution, Contractor shall be responsible for the placement and removal of barricades warning signs and hazard signs during the performance of its Services and shall use best industry practices to obstruct access to any Equipment throughout the period of time such Equipment is out of service due to maintenance or repairs, or otherwise not operating in good working condition for any reason.

1.4 Contractor shall secure cords and cables used in connection with the Services using best industry practices. Contractor shall arrange cords, cables and other connections to avoid crossing walkways, creating trip hazards, exposure to moisture or the elements, or physical damage.

1.5 Contractor shall assist HFC as needed to utilize and enforce any and all Equipment warranties for and on behalf of HFC. Contractor shall not cause or allow any Equipment warranty to become void or otherwise invalid due to the Services.

1.6 Contractor shall not mix control of instrumentation devices from different manufacturers within a specific control system without the prior written approval of HFC.

1.7 Contractor shall maintain a corporate office throughout the Term and is solely responsible for the provision of administrative, accounting, and clerical staff in sufficient number to support the Services.

1.8 Services for the Albert Thomas Office at Bayou Place and the underpass are limited to maintenance of luminaires, ballasts, fixtures and maintenance of the small air conditioning unit at the Albert Thomas Office.

1.9 Contractor shall be responsible for the prompt environmentally-friendly disposal of any and all worn, malfunctioning, cracked, defective, faulty, or damaged Equipment and components

thereof, including any disposable oil, fuel, lubricants or any ignitable or hazardous liquids, materials, or other substances; provided, however, that Contractor shall preserve all replaced Equipment components in the event of any Equipment failure resulting in a personal injury to any Facility user, unless directed otherwise by an HFC General Manager.

1.10 Throughout the Term, HFC shall require Contractor to attend meetings to discuss the Services, identify and resolve performance issues, and advise HFC on matters related to the Services. HFC will notify Contractor either orally or in writing and will designate the time, date, location, requested attendees, and the general purpose of the meeting. Contractor attendees must be present at any such performance meeting for its duration at no additional cost to HFC. Contractor shall prepare materials covering the topics discussed in a form satisfactory to HFC.

## **Article 2. Personnel Requirements**

2.1 Project Manager. Contractor shall engage a Project Manager with at least 10 years' experience in facility operations and maintenance, who shall use and occupy a portion of the Facility as his or her primary business office, so as to ensure the safe, timely and effective performance of the Services. Contractor represents and warrants to HFC that the Project Manager shall direct and supervise all aspects of the Services and that such individual is authorized to represent and act for Contractor with regard to all matters pertaining to this Agreement or arising in connection with the Services. The Project Manager shall be dedicated exclusively to the Services required by this Agreement. The Project Manager shall communicate with HFC staff on a regular basis regarding the Services and other operational matters.

2.2 Operating Managers. Contractor shall engage [TBD] Operating Managers, each with at least 5 years' experience in facility operations and maintenance, who shall support the Project Manager and perform other Services as directed by Contractor.

2.3 Direct Contact. Contractor represents and warrants that the Project Manager or, in the event his or her unavailability for any reason, a pre-designated Operating Manager, shall be available immediately by phone, email, and text message Monday through Friday from at least 8:00 a.m. to 5:00 p.m. (excluding holidays). Outside of such times, Contractor guarantees a specific, personal response within 30 minutes, with a direct and immediate contact made available to HFC for use in the event of an emergency at all times.

2.4 Personnel. Contractor shall schedule, engage, supervise, train, direct and control fully-trained, highly-qualified tradespersons, mechanics, technicians and other personnel necessary to fulfill the requirements of the Agreement and perform the Services, including, but not limited to, the ability of one or more Contractor employees to apply for and obtain permits for the Services throughout the Term without engaging a subcontractor or consultant (including, by way of example and not limitation, a master electrician and a master plumber). Contractor personnel shall arrive for work no more than 30 minutes before their shifts begin and shall leave the premises within 15 minutes after their shifts end, unless an early arrival or late departure is necessary due to unforeseen Equipment failure or emergency conditions. Contractor shall arrange for and provide parking to its employees and contractors of any tier at its sole cost and expense or direct that such employees any contractors



2.5 Scheduling. Contractor shall prepare a monthly staffing and Service schedule for each Facility to meet demand, maximize efficiency and ensure that the requirements of this Agreement are met, save and except emergency repairs. Contractor shall submit each such schedule to the assigned HFC General Manager for review, comment and approval at least 15 calendar days prior to the first day of the proposed schedule. Contractor shall anticipate all conventions, performances, concerts, sporting events, banquets, and other events likely to affect use of the Facilities and Service requirements.

2.6 Phones, Radios and Computers. Contractor shall procure and maintain, as a Reimbursable Expense (subject to the requirements of Section 3.5 of the Agreement), smart phones and radios in sufficient quantity to ensure uninterrupted lines of communication with HFC and Contractor personnel who perform Services full-time at the Facility. Contractor shall ensure, at its sole cost and expense, that the Project Manager and other essential personnel are provided with or have access to a desktop or laptop computer able to access the internet and with standard office software programs installed and operable.

2.7 Uniforms and Appearance. Contractor shall procure and maintain, as a Reimbursable Expense (subject to the requirements of Section 3.5 of the Agreement), a standardized uniform for personnel who perform Services full-time at the Facility, including appropriate summer, winter and all-weather outdoor clothing, such as raingear. Contractor shall ensure its personnel have good personal hygiene, a well-groomed and neat appearance (e.g., shirt tucked in, appropriate pants and shoes, etc.), and provide friendly service to Facility guests.

2.8 Identification. All Contractor personnel, including subcontractors, shall be required to carry and have clearly displayed on their person a photo identification badge at all times when performing Services at the Facilities. Contractor shall issue such identification badges at its sole cost and expense. Each badge shall include, at a minimum, the company name, first and last name of the individual, and a recent photographic image of the individual.

2.9 Ingress and Egress. HFC reserves the right to require Contractor personnel to enter and exit through secure Facility ingress and egress points, and Contractor's employees may be required to have their arrival and departure times recorded by the security at the Facilities.

2.10 Training. Prior to the commencement of the Term, Contractor shall, at its sole cost and expense, undertake and complete pre-assignment training for all Contractor personnel using best industry practices, including, at a minimum, all essential and ancillary duties and responsibilities; Facility orientation; equipment and systems operation; evacuation procedures; responding to an emergency; providing courteous assistance in a respectful manner; preparing reports; and other similar training. Contractor shall provide the same level of pre-assignment training to all new employees and contractors, and shall conduct continuing training courses for all personnel on an annual basis, all at Contractor's sole cost and expense. All training shall be documented, and such documentation shall be available promptly upon request from HFC.

2.11 Personnel Changes. If the employment of the Project Manager or an Operating Manager terminates for any reason, then Contractor, as soon as practicable, shall furnish in writing to HFC the name and qualifications of a proposed replacement. HFC may reply within 15 calendar days to Contractor that HFC has reasonable objection to the proposed candidate or, alternatively, that HFC requires more time to review. Failure of HFC to reply to Contractor within such 15-calendar

day period shall constitute notice of no reasonable objection. Contractor shall not employ a proposed Project Manager or Operating Manager to whom HFC has made timely objection. HFC reserves the right to require Contractor to remove from HFC property any persons employed or retained by Contractor who are observed or reasonably believed to have violated the terms of this Agreement, Service standards, applicable law, the Facility Rules and Regulations, or the Office Space Rules and Regulations.

### **Article 3. Essential Services**

3.1 Equipment Operation. Contractor agrees to and shall control, manage, maintain and repair all Equipment at each Facility in accordance with the Agreement, this Scope of Services, and in a manner that serves the best interests of HFC.

3.2 Predictive and Preventative Maintenance. Contractor agrees to and shall develop and implement a comprehensive program of preventive and predictive maintenance to keep the Equipment in good working condition, including, at a minimum, a fixed schedule and protocols for inspection, monitoring, testing, vibration analysis, calibration, adjustments, lubrication, fluid changes/replacement, cleaning/flushing, resistance testing, component replacement, and other measures commensurate with industry best practices, warranty compliance requirements, and manufacturer recommendations. Contractor shall schedule and ensure timely completion of all required Equipment inspections, tests, certifications, and permits applications/renewals in compliance with all applicable law, regulation, code, and manufacturer's recommendations. Contractor shall immediately report Equipment requiring repairs and remedial maintenance for any reason (e.g., excessively worn, malfunctioning, cracked, damaged, defective, faulty, vandalized, lost, or stolen Equipment or components) to the assigned HFC General Manager in writing and promptly provide an estimate of the timeframe and cost of repairing or replacing any such Equipment, including a priority assessment and repair recommendation based on Contractor's experience. Without limiting the foregoing, the Project Manager shall report in writing to the HFC Chief Operating Officer, or his designee, (a) any Equipment problem creating an unsafe or emergency condition endangering the safety or protection of persons, disrupting or likely to disrupt the continuity of business operations at a Facility, or causing or likely to cause damage to property located near a Facility and (b) any Equipment teardowns or overhauls likely to exceed \$50,000 in cost to HFC that Contractor considers necessary or advisable based on experience and industry best practices, together with a tentative schedule for completing such Services.

3.3 Scheduled and Emergency Repairs. Contractor agrees to and shall regularly and systematically perform repairs and remedial maintenance as needed and work diligently to correct Equipment physical faults (e.g., blocked flow, fractures, cracks, distortion, corrosion), failures/demand faults, leakage, abnormal characteristics (e.g., overheating, off voltage, high/low pressure or chemistry, excessive noise/vibration, false response, improper timing, erratic output), and other out-of-specification conditions to restore any affected Equipment to good working condition as soon as practicable. Repairs and remedial maintenance shall be initiated upon approval by an HFC General Manager of Contractor's report and recommendation under Section 3.2 hereof, immediately upon receiving oral or written notice of Equipment failure from HFC, or (subject to the requirements of this Section) on Contractor's own initiative in the event of an unsafe or emergency condition endangering the safety or protection of persons, disrupting or likely to disrupt the continuity of business operations at a Facility, or causing or likely to cause damage to property located near a Facility. Contractor shall, without prompting, keep the assigned HFC General Manager informed

regarding the status of repairs, including an estimate of when Equipment will be fully operational and returned to service. All non-emergency repairs to Equipment shall be subject to the requirements of Section 3.5 of the Agreement. If an unsafe or emergency condition endangering the safety or protection of persons, disrupting or likely to disrupt the continuity of business operations at a Facility, or causing or likely to cause damage to property located near a Facility should occur, then Contractor shall immediately attempt to notify HFC and proactively take all necessary actions to attempt to prevent or mitigate any such threatened damage, injury or loss; provided, however, that Contractor shall make reasonable efforts to minimize any cost or loss associated with remedial action in case of such an emergency.

3.4 Service Orders and Fulfillment. Contractor shall respond to Service requests from HFC General Managers and other HFC-designated personnel (which may be submitted online, by email or other writing), including repair and general service requests, and work diligently to fulfill all such requests promptly in accordance with the Agreement, this Scope of Services, and in a manner that serves the best interests of HFC. Contractor shall commence Services in response to requests based on priority assigned by the requestor (i.e., low, medium, high, or emergency) on a 24-hour-day, seven-day-a-week basis. Contractor shall respond to emergency requests immediately and high-priority requests within two hours and, in each instance, work diligently to resolve the request fully within four hours. Low- and medium-priority requests shall be resolved promptly without delay based on the availability of personnel scheduled in accordance with Section 2.5 of the Agreement. Contractor is responsible for creating Facility-specific preventive predictive maintenance Service orders (i.e., “scheduled service orders”) grouped by task and fulfilled at fixed intervals to ensure that all Facility equipment and systems function as designed and intended.

3.5 Service Records. Contractor shall create and maintain detailed records of all Services performed at each Facility, including preventive maintenance and repairs, noting, at minimum, the Facility, time and date, specific piece of Equipment, observations, any parts replaced, labor hours/rates, and any other details as HFC may require. Contractor shall provide HFC with electronic access to such records throughout the Term.

3.6 Electrical Systems. As an essential element of its Services, Contractor agrees to and shall provide comprehensive preventative and remedial electrical services at the Facilities, including preventative maintenance, remedial repairs, and other electrical Service requests, save and except high-voltage electrical services (i.e., 600 or more volts). Without limiting the foregoing, Contractor acknowledges and agrees that the scope of electrical Services includes all of the following tasks and responsibilities:

- a. Maintaining and repairing electrical infrastructure equipment and fixtures, including, but not limited to switchgear, generators, motors, transformers, feeders, electrical panels, circuit breakers, power distribution units, ballasts, meters, batteries, relays, switches, controllers, and outlets to ensure their reliability and continuous functionality;
- b. Maintaining, repairing, testing, and ensuring the reliability and connectivity of emergency back-up equipment to critical infrastructure (e.g., alarms, exist signs and other emergency systems and equipment; perishable food storage areas; security systems and equipment, computer main frame and servers; flood doors; etc.), including, but not limited to, uninterruptible power supply and diesel/gas generator distribution systems to ensure their availability and proper operation when activated;

- c. Coordinating any necessary building outages with Facility users, in cooperation with the HFC General Managers, and ensuring that no controllable interruptions impact business operations, events or performances where electrical back-up systems are in place;
- d. Undertaking and completing conduit runs and wire pulls;
- e. Performing thermal imaging surveys on electrical switchgear and panels and submitting a detailed written report for each Facility to HFC at least annually (surveys shall be performed at mutually-agreed times when the Facility systems are at peak load);
- f. Installing and operating lighting control technologies (e.g., computerized controls, motion sensors, dimmers, high efficiency products, etc.) in a manner that maximizes their capabilities and conserve energy;
- g. Providing prompt replacement of failed or faulty bulbs, ballasts, switches, outlets, and fixtures, whether interior or exterior;
- h. Maintaining and repairing floor ports (excluding exhibit hall electrical and telecommunication within floor ports at the George R. Brown Convention Center);
- i. Ensuring that lighting and other electrical Equipment servicing the Fountains and artwork displays (whether temporary or permanent) and other Facility locations are installed, maintained and replaced as needed to ensure that the aesthetic and design intent, as determined by HFC, is not compromised;
- j. Providing all assistance requested by HFC event managers to ensure accurate and timely provision of utilities (e.g., lighting, temperature, access control, etc.) required by Facility users, including creating and adjusting event-specific lighting sectors;
- k. On an ongoing basis, track and report on primary infrastructure system loads relative to system capacities, identify current and projected deficiencies, develop and present recommendations on systems modifications, expansions, or replacements which will mitigate any anticipated infrastructure capacity limitations; and
- l. Recommending improvements to electrical Equipment, including infrastructure, emergency back-up equipment/systems, fixtures and emerging technology, to ensure potential problems are addressed prior to failure and positioning HFC to meet future needs and challenges.

3.7 Fire/Life Safety/Environmental Compliance. As an essential element of its Services, Contractor agrees to and shall provide comprehensive preventative and remedial fire, life safety system, and environmental compliance services at the Facilities, including preventative maintenance, remedial repairs, and other Service requests. Without limiting the foregoing, Contractor acknowledges and agrees that the scope of fire, life safety and environmental compliance Services includes all of the following tasks and responsibilities:

- a. Maintaining and repairing fire, life safety and environmental infrastructure equipment, including, but not limited to, fire panels, alarm notification systems, smoke and heat detectors, sprinklers and sprinkler systems, kitchen fire suppression systems, strobe lights, automated external defibrillators, fire command rooms, emergency lights, fire hatches, exit and directional/informational signs, fire extinguishers, fire hoses/cabinets, and exterior lights to ensure their reliability and continuous functionality;
- b. Responding immediately to all fire alarms consistent and working with HFC, its contractors and local fire department officials to find the source of any alarm and make necessary adjustments and repairs as per local, state and national codes and regulations;
- c. Developing and implementing alarm response procedures to address critical alarm conditions that occur during normal business and non-business day periods, including a comprehensive off-hour response protocol to address all conditions where a Facility problem may result in an interruption to business operations, have major financial consequences or cause damage to physical assets;
- d. Ensuring that all fire and life safety equipment shall be operable as required during power outages or other emergency conditions by testing the Equipment and emergency generator systems at least monthly;
- e. Maintaining, repairing and installing security-related Equipment, including, but not limited to, cameras, recorders, detection devices, alarms, access controls, magnetic locks, panic bars, biometric time clocks, and other electronic systems and equipment, whether temporary or permanent;
- f. Scheduling, arranging and conducting fire/life safety maintenance, testing and training, such as Facility fire drills, flow tests, alarm tests, inspections, smoke/heat detector tests, live/recorded emergency messages, etc. in strict accordance with requirements and frequencies mandated by per local, state and national codes and regulations (and making all adjustments and remedial Services required);
- g. Ensuring that all fire and life and safety equipment is appropriately labeled and that any regulatory applications and reports are timely submitted;
- h. Performing regular Facility inspections to ensure all aisles, stairwells and egress paths are clear of obstructions;
- i. Conducting environmental evaluations and tests (e.g., indoor air quality, cooling tower/air handler legionella testing, electromagnetic fields, noise levels, lighting analyses, etc.), including baseline tests, whether required by a regulatory authority, made mandatory under applicable law, or requested by HFC, and preparing, in each instance, an accurate report and response that reflects the evaluation findings and proposes recommended remedial actions;
- j. Implementing and monitoring recycling, solid waste disposal, and other environmental initiatives at the Facilities, as directed by HFC;

- k. Fully supporting all Facility LEED application, (re)certification, and other compliance requirements by all available means, including, but not limited to, assistance with completion of forms, provision of comprehensive and accurate documentation/records, implementation of energy management best practices, maintaining sustainable site requirements, and performance of all maintenance, repair, replacement, and other Services in the manner required to ensure LEED compliance;
- l. Collecting, measuring, monitoring, and maintaining LEED and other environmental compliance records, including, by way of example and not limitation, water and energy metering, energy performance, rainwater management, refrigerant use, cooling tower water use, and indoor air quality, and ensuring the continuity of all related Services required to ensure LEED compliance;
- m. Ensuring that all LEED-compliance and other environmental-initiative Services are performed, completed and maintained in strict accordance with requirements and frequencies mandated by per local, state and national codes and regulations (and making all adjustments and remedial Services required);
- n. Verifying any renewable energy purchases/initiatives and conducting occupant comfort surveys every two years, or as directed by HFC;
- o. Assisting HFC with alternative transportation, indoor air quality management, indoor lighting, and other surveys as directed by HFC;
- p. Annually reviewing and confirming any utility right-of-way paths are within acceptable criteria (e.g., clear pathways, rodent protection and accident protection including site primary/secondary exterior switchgear); and
- q. Recommending opportunities to improve fire, life safety and environmental compliance throughout the Facilities and endeavoring to reduce business interruptions by identifying potentially vulnerable areas, equipment or processes.

3.8 Plumbing. As an essential element of its Services, Contractor agrees to and shall provide comprehensive preventative and remedial maintenance servicing of plumbing systems and fixtures at the Facilities, including preventative maintenance, remedial repairs, and other Service requests. Without limiting the foregoing, Contractor acknowledges and agrees that the scope of plumbing Services includes all of the following tasks and responsibilities:

- a. Maintaining and repairing plumbing systems, infrastructure and fixtures, including, but not limited to sinks, toilets, urinals, water heaters, pumps, pipers, pipe supports, meters, municipal water lines, sewer lines, vent pipes/lines, floor port drains, lift stations, sprinklers, back flow preventers, roof drains, storm drains, water filters, grease traps and drains, condensate pumps, and sump pumps to ensure the continuous functionality of such Equipment in accordance with the Service standards;
- b. Ensure all plumbing systems and fixtures are appropriately labeled and updating plumbing riser diagrams with correct and consistent references to new and modified water, drain and vent lines;

- c. Promptly investigating and repairing any burst pipes and all active leaks and proactively implementing corrective measures to reduce the probability of pipe bursts and leaks by any potential cause, including, but not limited to, freezing or other severe weather conditions;
- d. Ensuring the uninterrupted availability of filtered, potable, high-quality drinking water throughout the Facilities;
- e. Appropriately maintaining filter systems connected to municipal water systems, with either a centralized filter system or individual filter systems installed at the water dispensing locations;
- f. Maintaining and repairing the Fountains, drinking fountains, bottle fillers, and spigots as necessary to ensure their reliability and functionality, including but not limited to routine decalcification and chemical treatments to prevent microbial growth;
- g. Ensuring that the Fountains, drinking fountains, bottle fillers, and spigots are clean with free-flowing drains and removing and disposing of any leaves or other debris;
- h. Restricting access and posting proper signage (e.g., “Out of Order”; “Non Potable Water”) at impacted locations for intermittent instances when water is unavailable or not suitable for human consumption;
- i. Developing and implementing a standing preventive maintenance protocol to ensure all filters are changed at the appropriate frequency and the Fountains are drained periodically;
- j. Engaging an independent, professional testing laboratory to sample and analyze hot and cold water systems at the Facilities for microbes, pathogens, metals, and other organic or inorganic contaminants and fully investigating and resolving any water-quality problems (drinking water testing shall be conducted quarterly, or more frequently if required under applicable law);
- k. Maintaining current points-of-contact with municipal water utility providers and establishing procedures to promptly communicate water quality, outages or other service problems; and
- r. Recommending opportunities to improve efficiency and reduce business interruptions by identifying potentially vulnerable areas, equipment or processes.

3.9 Mechanical. As an essential element of its Services, Contractor agrees to and shall provide comprehensive preventative and remedial maintenance servicing of mechanical systems and units at the Facilities, including preventative maintenance, remedial repairs, and other Service requests. Without limiting the foregoing, Contractor acknowledges and agrees that the scope of mechanical Services includes all of the following tasks and responsibilities:

- a. Operating, maintaining and repairing building infrastructure, including, but not limited to, air handler units, fan and evaporator coils, motors, fans, blowers, dampers, dryers, valves, boilers and accessories, chillers, air conditioning units, cooling towers, tanks/vessels,

exhaust systems, fresh- and return-air fan systems, ductwork, pumps, utility meters, roof-top packaged units, split systems, variable air volume boxes, variable frequency drives, disposals, kitchen equipment, ice machines, belts, filters, and thermostats;

- b. Ensuring the continuous operation of mechanical systems with no controllable interruptions that impact business and convention operations or performances;
- c. Developing and implementing a standing preventive maintenance protocol to ensure all exhaust systems are cleaned and all filters are changed at the appropriate frequency;
- d. Ensuring that all essential mechanical equipment shall be operable as required during power outages or other emergency conditions by conducting regular testing and making necessary adjustments;
- e. Programming and operating Facility building automation systems to ensure proper operation and scheduling of connected equipment for the purpose of energy efficiency, environmental control of conditioned spaces, environmental monitoring and air quality;
- f. Developing and implementing standing predictive maintenance protocols for mechanical systems and equipment (e.g., vibration analysis, eddy current testing, oil analysis, megger testing, environmental testing, thermography, and other non-destructive inspections and tests) in accordance with manufacturer specifications and industry best practices;
- g. Recommend opportunities to improve system reliability and prepare for future renewal programs;
- h. Developing and implementing operational protocols to curtail energy consumption as much as possible without interrupting critical businesses, events and performances;
- i. Researching and pursuing utility credits (e.g., evaporation credits) and other opportunities to offset costs by applying for rebates and other programs offered by utility companies and governmental agencies;
- j. Ensuring that all mechanical Equipment is appropriately labeled; and
- k. Recommending opportunities to improve efficiency and reduce business interruptions by identifying potentially vulnerable areas, equipment or processes.

3.10 Interior/Exterior Surfaces and Finishes. As an essential element of its Services, Contractor agrees to and shall provide comprehensive preventative and remedial servicing of interior and exterior surfaces and finishes at the Facilities, including preventative maintenance, remedial repairs, and other Service requests. Without limiting the foregoing, Contractor acknowledges and agrees that the scope of plumbing Services includes all of the following tasks and responsibilities:

- a. Maintaining and repairing Facility surfaces and architectural finishes of any kind or type (e.g., paint, wall covering, carpet, tile, ceiling panels and tiles, vinyl, etc.), whether affixed to or associated with a wall, ceiling, hard/soft floor, door, or other surface, by providing painting, floor/carpet laying, tile setting, drywall, and other services required to ensure the



integrity and aesthetic appeal of all such surfaces and finishes, as well as to that the safety of Facility users is not compromised;

- b. Maintaining and repairing all roofing systems and exterior building surfaces, including all vents, roof doors, fire hatches, drains, grates, gutters, basins, and other equipment;
- c. Promptly investigating and repairing all roofing, piping, condensation or other water leakage/dripping/pooling problems, and proactively implementing corrective measures to weatherproof the Facilities and prevent water damage within any Facility by any potential cause;
- d. Completion of all cutting, fitting, and patching work necessary to ensure Facility weatherproofing, aesthetic integrity or compliance with applicable law or regulation;
- e. Developing and implementing a standing preventive maintenance protocol to inspect, lubricate and maintain all hydraulic and non-hydraulic dock levelers;
- f. Providing locksmith services to replace locking mechanisms as needed and to maintain and repair door hardware, overhead doors, sliding doors, door cylinders and closers, access controlled doors, and ADA accessible doors;
- g. Developing and implementing a standing preventive maintenance protocol to inspect, lubricate and maintain all room dividers, moveable wall panels and curtains;
- h. Maintaining, repairing, and replacing doors, windows, blinds, shutters, office furniture, decorative glass, and all millwork/casework;
- i. Programming, manually changing, installing, securing, maintaining, repairing, and replacing marquees, display boards and signage of any kind or type;
- j. Maintaining, repairing, and replacing fences, gates, tree grates, trench grates, drain covers, floor port covers, bollards, manhole covers, building buttons, benches, and other similar items;
- k. Painting and repainting curbs, columns, lane stripes, and other Facility surfaces of any kind or type on an as-needed basis, including surface preparation (e.g., detergent, solvent and chemical cleaning; substrate repair; paint and rust removal), paint application, surface/area protection, and post-painting clean-up;
- l. Maintaining, repairing, and replacing all Facility pavers, bricks and stone;
- m. Repairing curbs, columns, lane stripes, and other Facility surfaces of any kind or type on an as needed basis by performing slab concrete repairs; overhead and vertical concrete repairs; waterproofing membrane installation; expansion joint repairs; façade repairs: sealing of cracks and construction joints; cove joint repairs; epoxy injection of cracks; tee joint sealant replacement; steel connectors; replacement of drainage piping; asphalt repairs; and other, miscellaneous repairs;

- n. Maintaining, repairing, installing and removing Facility seating as needed, due to events or otherwise;
- o. Preparing surfaces, installing shelves and brackets/mounts of any kind or type, and securely hanging/affixing pictures, artwork (including temporary and permanent exhibitions), monitors, televisions, and other items; and
- p. Recommending opportunities to improve efficiency and reduce business interruptions by identifying potentially vulnerable areas, equipment or processes.

3.11 Exclusions. As HFC has or expects to engage third-party contractors to provide specific equipment services, the parties agree that Contractor is generally not responsible for maintaining or repairing elevators, escalators, telecommunications systems, high-voltage electrical equipment (i.e., over 600 volts), temporary (i.e., not Facility-affixed) equipment, exhibit hall electrical and telecommunication within floor ports at the George R. Brown Convention Center, stage and backstage theatrical lighting and equipment, vehicle counters, trams, shuttles, or parking access and revenue control equipment (i.e., the gate arms, ticket dispensers, and pay-on-foot stations located in the Parking Facilities); provided, however, that in the event of a dispute involving the scope of work of Contractor, HFC reserves to and shall have the right to clarify the Contractor scope of work, as well as any third-party contractor scope(s) of work, in its sole, but reasonable discretion. For the avoidance of doubt, in each instance, Contractor shall be responsible for troubleshooting and ensuring the connectivity of all of the foregoing equipment to Facility utilities (e.g., electrical systems/feeders, water and drainage, etc.).

#### **Article 4. Inventory and Personal Property**

4.1 Inventory. Contractor shall procure and maintain throughout the Term, as a Reimbursable Expense (subject to the requirements of Section 3.5 of the Agreement), a commercially reasonable inventory of bulbs, filters, belts, switches, relays, controls, and other essential Equipment components to ensure the continuity of Facility operations.

4.2 HFC Personal Property. HFC may agree to allow Contractor reasonable use of HFC personal property necessary to support performance of the Services, such as tools, computers, monitors, printers, office furniture, or other equipment. HFC shall have no obligation to repair or replace any such personal property. HFC makes no warranty or representation to Contractor of any kind, express or implied, regarding the suitability of any HFC personal property for aspect of Contractor's actual or expected use thereof. Contractor acknowledges and agrees that use of HFC personal property hereunder is on an "AS IS" basis in its current condition. Contractor shall keep HFC personal property in good repair and condition, replace or compensate HFC for (at the option of HFC) lost or stolen personal property at its sole cost and expense, and surrender same to HFC immediately upon demand or on the expiration or earlier termination of this Agreement.

4.3 Labeling and Identification. Contractor shall label its personal property in a durable manner so as to ensure clear identification of ownership. Upon request from HFC, Contractor shall promptly provide a then-current list of all Contractor personal property stored at the Facilities.

4.4 Operations Management Software. HFC shall hold the licenses for operations management software of its choice throughout the Term at its expense. Contractor shall use such software to

track, direct, follow-up, reconcile, resolve, and close-out all Service requests and shall utilize the system as necessary to support performance of the Services in the manner required by HFC. For the avoidance of doubt, Contractor acknowledges that the obligation to use the operations management software shall not restrict or lessen the obligation of Contractor to fulfill Service requests submitted online, by email or other writing.

## **Article 5. Reporting Requirements**

5.1 Capital Improvement Plan. Contractor shall prepare, develop, maintain, and submit a comprehensive five-year rolling capital improvement plan identifying, documenting and explaining short and long term infrastructure renewal, enhancement, upgrade and replacement needs for each Facility, with a specific emphasis on the reliability of critical systems, continuity of business operations, and the probability of infrastructure capacities (e.g., electrical, mechanical) being exceeded by future operational demand. Contractor shall submit such plan to HFC by March 1st of each year during the Term (or as directed by the HFC Chief Operating Officer). Throughout the Term, Contractor agrees to promptly provide HFC with additional detail requested and actively participate in all planning, progress, construction administration, and other meetings regarding any facet of the capital improvement plan or other replacement or improvement projects at any Facility, including, but not limited to, infrastructure system capacities and usage, known deficiencies, recommendations on system or component modifications, Facility expansion plans or replacements, and summaries of services and related costs (including downtime and impacted availability) of Equipment HFC is considering replacing, overhauling or removing.

5.2 Annual Budget. Contractor shall prepare and submit to HFC a proposed annual budget for the succeeding calendar year, established on a monthly basis, per Facility, and including such other detail as HFC may require. The proposed annual budget shall also set forth, in detail acceptable to HFC, (a) anticipated operations, repairs and capital improvements, (b) maintenance and teardown/overhaul schedules, (c) Reimbursable Expenses, (d) Labor Costs, (e) Management Fees, and (f) Task Orders or other work proposed to be undertaken by Contractor, together with an itemized estimate of all cost to be incurred. The initial budget (for calendar year 2020) will be established prior to commencement of the Term by HFC, based in part on the recommendations of Contractor and good faith discussions between the parties. Thereafter, each annual budget shall be prepared and submitted by Contractor at least 120 calendar days before the beginning of each calendar year during the Term (or as directed by the HFC Chief Financial Officer). HFC reserves the right to request or direct that Contractor make changes, additions or deletions to each proposed Budget. Upon approval by HFC, Contractor agrees to and shall abide by the approved budget, unless the HFC Chief Financial Officer approves a budget modification or waiver. On a monthly basis (or as directed by the HFC Chief Financial Officer), Contractor shall provide HFC with a budget-versus-actual report with an explanation of any variances and such other detail as HFC may require.

5.3 Operation and Maintenance Archive. Contractor shall prepare, develop, maintain, and provide HFC with a comprehensive digital archive of Facility and Equipment operation and maintenance manuals, drawings, wiring control diagrams, warranties, licenses, permits, and other technical documents relating to the Services. Contractor shall notify HFC when the initial digital archive has been completed, which Contractor represents shall occur no later than September 1st of the initial Term year; thereafter, Contractor shall continuously update such digital archive throughout

the Term to reflect manufacturer's updates, industry best practices, and Equipment and Facility modification, replacement or improvement of any kind or type.

5.4 Safety Data Sheet Archive. Contractor shall prepare, develop, maintain, and provide HFC with a comprehensive digital Safety Data Sheet archive in accordance with applicable law on all chemicals stored in the Facilities, including the properties of each chemical; physical, health, and environmental health hazards; protective measures; and safety precautions for handling, storing, and transporting each chemical. To assist Contractor, HFC agrees to direct its contractors and tenants to provide all relevant information promptly to Contractor. Contractor shall notify HFC when the initial digital Safety Data Sheet archive has been completed, which Contractor represents shall occur no later than July 1st of the initial Term year; thereafter, Contractor shall continuously update such archive thereafter throughout the Term to ensure that it is complete and accurate.

5.5 Equipment Inventory and Report. Contractor shall conduct a Facility-wide audit and prepare, develop, maintain, and provide HFC with a comprehensive digital inventory and report listing, detailing and describing the Equipment, the full content of the component inventory (see Section 4.1 hereof), and all HFC personal property (see Section 4.2 hereof) in a form and including such detail as HFC may require. Contractor shall notify HFC when the initial digital inventory has been completed, which Contractor represents shall occur no later than September 1st of the initial Term year (Contractor shall further submit the initial report to the HFC Chief Financial Officer by such date). Without limiting the foregoing, Contractor shall provide an updated report to the HFC Chief Financial Officer no later than September 1st of each year of the Term (save and except the initial Term year) redlined to clearly and accurately indicate all additions, changes or other modifications occurring since the prior report.

5.6 Incident Reports. Contractor shall immediately report to the assigned HFC General Manager any accident, injury, near miss, criminal activity observed or occurring during the performance of the Services and provide all reasonable assistance to HFC and its security contractor in the preparation of a written incident report.

5.7 Contractor Personnel Damage. Damage caused in whole or in part by Contractor, its employees, agents, contractors or subcontractors during the performance of the Services shall be reported promptly by Contractor immediately to the assigned HFC General Manager.

5.8 Personnel Reports. Contractor shall create and maintain a complete and accurate daily list of the names and positions of all personnel performing Services in the Facilities. Upon request from HFC, at any time during the Term, Contractor shall provide a complete and accurate list of the names and positions of all Contractor's employees who are performing services in the Facilities, or were performing Services at the Facilities on one or more specific dates during the Term. HFC may direct that Contractor provide and update such list on an ongoing basis, in its discretion.

5.9 Site Inspections. HFC shall have the right to conduct both scheduled and unscheduled inspections within each Facility for the purpose of assessing performance of the Services by Contractor. HFC may present any observed deficiencies or non-compliance in writing to Contractor and, in each such instance, Contractor shall respond to each item of concern in writing within five calendar days and promptly take corrective remedial measures.

5.10 Disaster Readiness and Recovery Plan. Contractor shall prepare, develop, maintain, and submit a Disaster Readiness and Recovery Plan to HFC addressing all aspects of disaster and emergency condition preparedness and mitigation, such as staffing, shelter-in-place procedures, securing Equipment, and using all means available to protect the Facilities. Contractor shall submit such plan to HFC by March 1st of each year during the Term.

5.11 Disaster Mitigation. In the event of an actual or impending disaster or emergency, Contractor shall proactively take all appropriate actions under the circumstances to protect the health, safety and welfare of all persons, as well as to prevent, limit or otherwise mitigate damage to the Facilities, Equipment and other property. As an essential part of the Services under this Agreement, Contractor shall direct its employees to assist HFC with the deployment of flood gates, barriers and all other mitigation efforts on an as-needed basis and include employees in periodic training and simulation exercises held by HFC.

## **Article 6. Contractor Offices**

6.1 Premises License. HFC grants to Contractor a license to use and occupy a limited portion of one or more Facilities designated by HFC in its sole but reasonable discretion for office use and storage purposes (the “Premises”). Such Premises shall be used by Contractor exclusively for the purposes of the provision of the Services, including storage of equipment and supplies. Contractor represents and warrants to HFC that equipment and supplies stored in the Premises shall be for the exclusive benefit of HFC in the performance of the Services by Contractor.

6.2 Disclaimer of Warranties. HFC makes no warranty or representation to Contractor of any kind, express or implied, regarding the suitability of the Premises, or any portion of the Facilities, as built, for any aspect of Contractor’s use or expected use of the Premises. The Premises is offered by HFC and accepted by Contractor in its current condition, on an “AS IS” basis. Commencement of the use of the Premises shall be conclusive that the Premises were in good repair and in satisfactory condition, fitness and order when such use commenced.

6.3 Surrender of Premises. At the end of the Term, Contractor shall vacate and surrender the Premises to HFC in the same condition found before the commencement of the Term, excepting minor damage due to ordinary wear and tear. Should Contractor fail to vacate and surrender the Premises in such manner, then HFC may enter the Premises, remove and store all property therein at the sole expense of Contractor and dispose of same if, after the expiration of 30 calendar days, Contractor has failed to remove the property from the possession of HFC.

6.4 Personal Property and Services. Contractor shall arrange for, at its sole cost and expense, any furniture, furnishings, computers, copiers, printers, scanners, and any other equipment and supplies necessary to ensure the orderly performance of the Services; provided, however, that Contractor shall be obliged to order and pay for, as may be applicable, any exclusive in-house services that Contractor may require, whether offered currently or subsequent to the Effective Date, including, by way of example and not limitation, telecommunications and food-and-beverage services. Additionally, Contractor acknowledges that HFC has or may have contractual sponsorship obligations requiring exclusivity with respect to certain products or brands and Contractor shall not take any action that might in any manner or to any extent conflict with or challenge such commitments or obligations to such sponsors, as determined by HFC.

6.5 Fixtures. At Contractor's sole cost and expense, Contractor may construct or install fixtures or permanent improvements in the Facility, including the Premises; provided, however, that all such fixtures and improvements shall have the prior written approval of HFC and shall in all respects conform to and comply with all applicable statutes and ordinances. Title to all such fixtures and improvements shall vest in HFC upon the termination or expiration of this Agreement and shall not be removed by Contractor.

6.6 Shared Use. Contractor acknowledges that, in order for the Facilities to be operated efficiently as practicable, it may be necessary to schedule or share certain services and equipment including, but not limited to, entrances, exits, ramps, loading docks, receiving areas, marshaling areas, freight elevators, and parking areas. Contractor agrees to work cooperatively with other contractors and users of the Facilities; in the event of a conflict, HFC shall have final authority to establish the reasonable schedules for the use and availability of such services and equipment and to determine when, and the extent to which, the sharing of any such services and equipment is necessary or desirable.

6.7 Relocation. HFC may elect to modify the Premises or relocate Contractor from the Premises to another space that is owned, operated or controlled by HFC, without the consent of Contractor, by giving Contractor at least 30 calendar days' prior notice. Such relocation notice shall specify the effective date of the relocation from the Premises Contractor is then occupying and the space to which Contractor is being relocated, and Contractor shall surrender the Premises Contractor is then occupying in accordance with the provisions of this Section on or before the stated effective date. In accomplishing such relocation, HFC and Contractor shall reasonably cooperate with one another, and consult with one another in good faith, so as to reduce or limit, insofar as reasonably practical, the effects of the necessary disturbance or disruption of the Services.

6.8 Office Space Rules and Regulations. Contractor shall abide by the Office Space Rules and Regulations attached hereto as **Exhibit "B"** and made a part hereof by this reference. HFC, in its sole discretion, shall have the right to establish additional, equitable rules and regulations applicable to all office space occupants and to adopt amendments to the same from time to time for the proper and efficient operation and/or maintenance of common areas of the Facilities, or any portion thereof.

**Exhibit "B"**  
**OFFICE SPACE**  
**RULES AND REGULATIONS**

Contractor agrees to and shall abide by these Office Space Rules and Regulations for the duration of the Term, including any extension thereof. Terms capitalized herein, but not defined herein, shall have the meaning ascribed to them in the foregoing Agreement. In the event of a conflict between such Agreement and any provision of these Office Space Rules and Regulations, the Agreement shall control and prevail.

1. Contractor shall take all reasonable measures to protect the carpet at HFC facilities and shall use Masonite® or Visqueen® when moving equipment or supplies in carpeted areas.
2. Golf carts, Cushman® utility vehicles, Segway® vehicles, bicycles and similar transportation devices are prohibited in carpeted areas of HFC facilities.
3. Sidewalks, halls, passages, exits, entrances, elevators, loading docks, sky bridges, and stairways at HFC facilities shall not be blocked or obstructed by Contractor.
4. Deliveries and the movement of freight/equipment shall be through loading docks, freight doors and freight elevators designated by HFC; the main lobbies, sky bridges, escalators, and passenger elevators shall not be used for such purposes. Additionally, HFC reserves the right to limits or restrict the hours during which such activities may occur.
5. Contractor shall maintain the Premises in a clean and orderly fashion.
6. The Premises shall not be used for lodging. No cooking or meal preparation shall be permitted in the Premises, except for approved microwave ovens and equipment for brewing coffee, tea and hot beverages.
7. No sign, logo, placard, picture, name, advertisement, or notice visible from the exterior of the Premises shall be inscribed, painted, affixed or otherwise displayed by Contractor without the prior written consent of HFC.
8. Contractor shall not use any method of heating or air conditioning in the Premises other than that supplied by HFC.
9. Contractor shall use utilities in the Premises sparingly and efficiently (e.g., turn lights and power off when not in use).
10. Contractor shall ensure that the doors of the Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Contractor personnel leave the Premises.
11. Restrooms, toilets, urinals, wash bowls, and other apparatus shall not be used for any purpose other than that for which they were constructed. No foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne exclusively by Contractor.

12. Contractor shall not offer, sell or permit the sale of newspapers, magazines, periodicals, drinks, snacks, sundries, theatre/travel tickets, or similar merchandise to the general public in the Premises or HFC facilities.
13. Unless otherwise explicitly provided in the Agreement, Contractor shall not install any radio, television or other data transmission antenna, satellite dish, loudspeaker or other device on the roof or exterior walls of HFC facilities.
14. Contractor shall not use occupy or permit any portion of the Premises to be used or occupied for the storage, manufacture, or sale of alcohol or tobacco.
15. Contractor shall not store any hazardous materials, including biohazards, in the Premises. Contractor shall not store gasoline, propane, kerosene, or other flammable or combustible fluids in the Premises.
16. Contractor agrees to pay HFC a reasonable charge for any keys Contractor may need to access HFC facilities, including the Premises, and shall be liable for the cost of re-keying appropriate locks in the event any such key is lost or stolen.
17. Contractor's personnel shall enter and exit HFC facilities through access locations approved by HFC, except during an emergency.
18. HFC shall have the right, excusable without notice and without liability to any Contractor, to change the name or street address of an HFC facility or any portion thereof.
19. Smoking is prohibited inside HFC facilities, including the Premises, and within 15 feet of any entry/exit door. Contractor shall comply with all City of Houston workplace smoking ordinances and regulations, as may be amended from time to time.
20. Contractor shall not request any HFC employee to perform any work or do anything outside of their regular duties, except as necessary during an emergency, without the prior written consent of HFC.
21. Contractor shall comply with the Parking Facility Rules and Regulations and other restrictions and regulations concerning the use of HFC facilities as HFC may impose from time to time.
22. These Office Space Rules and Regulations are in addition to and shall not be constructed to in any way modify or amend, in whole or in part, the agreements, covenants, conditions and provision of any lease, sublease, or license to use and occupy any portion of HFC facilities.