

## AIRWALL REPLACEMENT INVITATION TO BID

ISSUE DATE: April 21, 2026

DUE DATE: **11:00 A.M.** on **May 13, 2026** (“Submission Deadline”)

INSTRUCTIONS: Bidders must timely submit one paper copy of their bid, using the Bid Form provided below, in a sealed envelope labelled “Airwalls” to the following address:

Houston First Corporation, Attn: David Stephenson, 701  
Avenida de las Americas, Suite 200, Houston, TX 77010

Bids must be delivered by mail, courier, or in person. Submittals received after the Submission Deadline, by email, or unsealed, will be rejected without further review or consideration.

QUESTIONS: Any questions concerning the form or content of this Invitation to Bid must be submitted by email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than **11:00 a.m.** on **May 1, 2026**.

All material questions will be answered collectively, rather than individually, in the form of a Letter of Clarification 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.

BID OPENING: Bids timely received will be opened and publicly announced at 2:00 p.m. on the Submission Deadline at 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

### OVERVIEW AND SCOPE

Houston First Corporation (“HFC”) requests bids from experienced contractors (each a “Bidder” and, collectively, “Bidders”) to procure and install manually operated, paired-panel movable partition panels (i.e., airwalls), including new track systems, in eight (8) meeting rooms at the George R. Brown Convention Center in Houston, Texas. The contractor selected will also be responsible for removing and disposing of all existing tracks and panels.

HFC has or will engage one or more third-party contractors to provide for removal and replacement of sheetrock, ceiling grids, tape and float, supports, wood blocking, and painting.

On site work is expected to commence in the Fall of 2026. The project must be completed no later than December 31, 2026.

**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.

The George R. Brown Convention Center is a nationally prominent convention and trade show facility. Ranked among the nation’s largest convention centers, GRBCC offers over one million square feet of dedicated meeting space, including seven ground-floor exhibit halls with 547,000 square feet of exhibit space, a 3,600 tier-seated amphitheater, a level-three exhibit hall featuring telescopic arena-style seating, meeting rooms, and a 31,500 square-foot ballroom.

**SCOPE AND TECHNICAL SPECIFICATIONS**

The Bidder selected as a result of this Invitation to Bid will be responsible for providing all labor, supervision, materials, supplies, and equipment necessary to installing airwalls meeting the following specifications at the George R. Convention Center:

Room	Qty.	Mfr.	Model	Size	Panel Orientation
350	2	Moderco	842 Paired Panels	43' Long x 22' High	North/South
351	1	Moderco	841 Single Panels	88'-8" Long x 22' High	East/West
	4	Moderco	842 Paired Panels	36'-2" Long x 22' High	North/South
352	2	Moderco	842 Paired Panels	43' Long x 22' High	North/South
360	1	Moderco	841 Single Panels	94'-6" Long x 22' High	East/West
	2	Moderco	842 Paired Panels	35'-1" Long x 22' High	North/South
	2	Moderco	842 Paired Panels	36'-4" Long x 22' High	North/South
361	1	Moderco	841 Single Panels	88'-8" Long x 22' High	East/West
	4	Moderco	842 Paired Panels	38'-4" Long x 22' High	North/South
362	1	Moderco	841 Single Panels	103'-3" Long x 22' High	East/West
	2	Moderco	842 Paired Panels	38'-3" Long x 22' High	North/South
	2	Moderco	842 Paired Panels	35'-2" Long x 22' High	North/South
370	1	Moderco	841 Single Panels	94'-6" Long x 22' High	East/West
	2	Moderco	842 Paired Panels	35'-1" Long x 22' High	North/South
	2	Moderco	842 Paired Panels	36'-4" Long x 22' High	North/South
371	1	Moderco	841 Single Panels	88'-8" Long x 22' High	East/West
	4	Moderco	842 Paired Panels	38'-4" Long x 22' High	North/South

STC (Sound Transmission Classification) Rating	53
Wall Covering	Standard Vinyl, Color TBD
Edge Trim	Protective Trim - Anodized Aluminum - Clear
Top Seals	1" Mechanical Retractable
Bottom Seals	2" Mechanical Retractable
Final Closure	Auto Telescopic Closure
Track	Anodized Aluminum - Clear
Pocket Doors	None
Pass Doors	None
Work Surface	8' High Plastic Laminate AFF
Attic Stock	Not Required
Material Warranty	5 Years Panels, 10 Years Track, Trolleys and Mechanical Parts
Shop Drawings	Contractor to Include
Drilling Holes in Support	Contractor to Field Verify
Panel Size	See Above; Contractor to Field Verify

For the benefit of all potential Bidders, a map of the foregoing rooms and Technical Data Sheets from Moderco 841 and 842 are provided below.

### **SITE VISITS**

Although a pre-submittal meeting has not been scheduled, Bidders are encouraged (but not required to) schedule a site visit by submitting their request by email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com), no later than May 1, 2026.

### **MANNER OF SELECTION**

On or about May 21, 2026, HFC expects to enter into a contract with the Bidder providing the lowest responsible bid received; provided, however, that HFC reserves the right to select or reject all or part of any bid, waive minor technicalities, and accept one or more bids in the manner and to the extent that they serve the best interests of HFC. This Invitation to Bid does not commit HFC to award a contract, issue a purchase order, or enter into an agreement. HFC will not pay any costs incurred in the preparation of a bid or in connection with any in-person interview arising out of this Invitation to Bid. HFC reserves the right to request bid clarifications and/or additional information from some or all Bidders.

### **LETTERS OF CLARIFICATION**

Responses to all material questions timely submitted by potential Bidders, as well as any revisions incorporated into this Invitation to Bid, 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 Invitation to Bid and automatically supersede any previous terms, conditions, specifications, or provisions in conflict therewith. By submitting their bid, Bidders shall be

deemed to have reviewed all Letters of Clarification, 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 Bidders to monitor the foregoing link and ensure they review any such Letters of Clarification and incorporate them in their bid.

### **FORM OF AGREEMENT**

By submitting a response to this Invitation to Bid, Bidder agrees, upon notice of selection, to promptly enter into the [Airwall Replacement Agreement](#) set forth below. 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. Bidders are advised that additional or conflicting terms, alternative pricing bids, pre-printed forms, or other objections submitted by a Bidder with their bid shall be disregarded and may result in a bid being deemed, in HFC's discretion, as non-responsive.

### **RESTRICTIONS ON COMMUNICATIONS**

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

### **NO SALES TAX**

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

### **REQUIRED DISCLOSURES**

Bidders must disclose if they have, within the past five (5) years, (a) been party to a service contract terminated for cause, or (b) received material, adverse findings from any governmental authority having regulatory oversight of services similar to those required under this Invitation to Bid.

### **CONFLICTS OF INTEREST**

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

### **PROTEST PROCEDURES**

Any protest relating to the form, terms and conditions, selection criteria, specifications, exhibits, or any other material bid content must be filed by the actual or potential Bidder

with the SVP, Legal Services no later than five (5) business days prior to the Submission Deadline. If the protest consists of a dispute regarding the Bidder recommended by the selection committee, or otherwise relates to the alleged misapplication of selection criteria, then the SVP, Legal Services must receive the protest from an actual Bidder after the Submission Deadline, but at least three business days prior to consideration of a contract resulting from this Invitation to Bid 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: SVP, Legal Services, 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 Bidder, with sufficient information to establish that a bona fide Bidder is the person or entity filing the protest; (b) The full title of the Invitation to Bid; (c) Material grounds for the protest, including the provisions of the Invitation to Bid and the applicable law or regulation that serves as the basis for the protest; (d) A statement of the specific relief requested by the Bidder; (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.

#### **INVITATION TO BID PACKETS**

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

#### **PUBLIC INFORMATION**

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

#### **WITHDRAWAL; ERROR**

Bids 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.

**AIRWALL REPLACEMENT  
INVITATION TO BID**

**BID FORM**

Bidders responding to the foregoing Airwall Replacement Invitation to Bid are required to complete each field of this Bid Form.

**1. Contact Information**

a. Company Name (the "Bidder"): \_\_\_\_\_

b. Address: \_\_\_\_\_

c. Contact Name/Title: \_\_\_\_\_

d. Phone: \_\_\_\_\_ e. Email: \_\_\_\_\_

f. Is the Bidder a diversity entity recognized under the [HFC Diversity Program](#)? \_\_\_\_\_

**2. Bid**

Description	Amount
Bidder hereby offers to furnish all labor, supervision, equipment, and materials to install manually operated, paired-panel movable partition panels, including new track systems, in eight (8) meeting rooms at the George R. Brown Convention Center in Houston, Texas and complete such project in accordance with this Invitation to Bid and the GRB Airwall Replacement Agreement.	

**3. Terms and Conditions**

By completing and submitting this Bid Form, Bidder represents all of the following to Houston First Corporation:

a. Bidder has the necessary experience, knowledge, abilities, skills, and resources to perform all services required in connection with this Invitation to Bid.

b. Bidder accepts the terms and conditions of the Airwall Replacement Agreement and agrees, if selected, to promptly enter into such agreement.

c. Bidder has carefully examined the specifications and location of the work described herein and fully understands the nature and extent of the work required.

d. Bidder has not, within the past five years, been party to a service contract terminated for cause, or received material, adverse findings from any governmental authority having regulatory oversight of services similar to those required under this Invitation to Bid.

**4. Acknowledgment**

By signing below, Bidder represents and warrants that all of the foregoing is true, correct and may be relied upon by Houston First Corporation without exception:

\_\_\_\_\_ (“Bidder”)

By:

Signature: \_\_\_\_\_

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

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

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

## AIRWALL REPLACEMENT AGREEMENT

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

### **1.0 Project**

1.1 Contractor agrees to and shall complete the Project in strict accordance with this Agreement, including the Terms and Conditions attached hereto as Exhibit “A” and made a part hereof for all purposes.

1.2 The name of the project is the **GRB Air Wall Replacement** (“Project”). The location of the Project is the George R. Brown Convention Center, located at 1001 Avenida de las Americas, Houston, Texas 77010 (“Facility”).

1.3 Contractor agrees to complete the Project no later than December 31, 2026 (“Contract Time”), subject to adjustments in accordance with the Terms and Conditions.

1.4 HFC represents that the Facility is owned by the City of Houston, Texas and subject to a long-term lease to HFC. **CONTRACTOR AND HFC ACKNOWLEDGE AND AGREE THAT THE PROJECT AND ALL WORK RELATED THERETO CONSTITUTE AND SHALL BE CONSIDERED TO BE A PUBLIC WORKS PROJECT OF A MUNICIPALITY FOR ALL PURPOSES, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE.**

1.5 Contractor shall keep the Facility free and clear of all liens and encumbrances resulting from any action of Contractor or in connection with the Project.

### **2.0 Tasks and Deliverables**

2.1 Contractor agrees to and shall supply all supervision, labor, tools, materials, supplies, vehicles, and equipment necessary to perform and complete to the satisfaction of HFC all of tasks set forth in this Article in accordance with the Contract Documents.

2.2 Contractor shall remove existing tracks and panels and dispose of same in an environmentally-friendly manner at Contractor’s sole cost and expense.

2.3 Contractor shall install new track and panels in strict accordance with the manufacturer’s recommendations, instructions and best industry practices on operable walls.

2.4 Contractor shall replace vinyl closure strips along track to match original installation.

2.5 Contractor shall adhere to the following material specifications:

<b>Room</b>	<b>Qty.</b>	<b>Mfr.</b>	<b>Model</b>	<b>Size</b>	<b>Panel Orientation</b>
350	2	Moderco	842 Paired Panels	43’ Long x 22’ High	North/South

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Edge Trim	Protective Trim - Anodized Aluminum - Clear
Top Seals	1" Mechanical Retractable
Bottom Seals	2" Mechanical Retractable
Final Closure	Auto Telescopic Closure
Track	Anodized Aluminum - Clear
Pocket Doors	None
Pass Doors	None
Work Surface	8' High Plastic Laminate AFF
Attic Stock	Not Required
Material Warranty	5 Years Panels, 10 Years Track, Trolleys and Mechanical Parts
Shop Drawings	Contractor to Include
Drilling Holes in Support	Contractor to Field Verify
Panel Size	See Above; Contractor to Field Verify

### **3.0 Payment**

3.1 Subject to the terms of this Agreement, including but not limited to Sections 1.3(b) and (c), HFC agrees to pay Contractor [TBD] ("Contract Sum").

3.2 In no event shall HFC pay Contractor more than **90%** of the Contract Sum prior to the last Date of Final Completion, as defined in the Terms and Condition, notwithstanding any provision in the Contract Documents to the contrary.

3.3 No more than once every 30 calendar days, Contractor may request a work progress payment from HFC in accordance with this Article. Invoices shall be submitted electronically by the fifth calendar day of the month following each month in which services were performed.

3.4 HFC agrees to pay Contractor within 30 calendar days of the receipt and approval by HFC of such invoices by check or direct deposit, at the sole option of HFC. If any item in any invoice is 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 a special invoice for the disputed item only.

3.5. 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.

#### **4.0 Work Conditions and Restrictions**

4.1 All Work performed by the Contractor shall be in accordance with the latest City of Houston Building Codes. Contractor represents that all tradespersons employed by Contractor or its Subcontractors shall be licensed by the Texas Department of Licensing and Regulation.

4.2 Contractor is solely responsible for any necessary permits, licenses and inspections by government agencies necessary for proper execution and completion of the Work.

4.3 Contractor shall on a daily basis or as requested by HFC, clean the Project site and any adjacent areas affected by the Project.

4.4 Contractor shall base its Work schedule on events at the Facility and take all precautions 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 Facility.

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

4.6 Contractor shall protect all areas and equipment when working in the Facility. All carpeted floor areas must be protected with plastic and/or cardboard. Contractor shall be responsible for the cost of repairing any carpet damage caused by the negligence of Contractor, its subcontractors or agents. In addition, the Contractor will be held responsible for damage to elevators, doors, or other Facility finishes, or other equipment caused by the negligence of Contractor, its subcontractors or agents. Damage, as used herein, shall not include normal wear and tear. Repairs and replacements of such items and finishes may be deducted from Contractor's fees.

## **5.0 Safety**

5.1 Contractor represents and warrants that services performed by Contractor shall conform to the standards declared by OSHA, including, but not limited to, compliance with federal and state safety standards/directives for setting-up and utilizing platforms, lifts, ladders, scaffolding, safety lines and belts, and similar equipment used for demolition.

5.2 Contractor's employees, agents, contractors and subcontractors shall use personal protective equipment, safety harnesses, fall protection equipment, hard hats or other equipment required to perform the Work in safe manner. Contractor will hold safety training, safety briefings or other meetings to ensure all staff are fully prepared to perform the Work with safety in mind.

5.3 Contractor shall conduct regular safety and health inspections of the Project site. Contractor shall promptly report any accidents, injuries, spills, or near misses to HFC.

## **6.0 Warranties**

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

6.2 With respect to any materials and equipment furnished under the Contract Documents, Contractor warrants: (1) that all items are free of defects in title, design, material, and workmanship, (2) that each item meets or exceeds the requirements of the Contract Documents, (2) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and will not cause any manufacturer's warranties to lapse or become invalid, and (3) that no item or its use infringes any patent, copyright, or proprietary right.

6.3 Work, materials, or equipment not conforming to the requirements of this Article shall be deemed defective and repaired or replaced at HFC's sole option 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.

6.4 Contractor hereby transfers and assigns to HFC all manufacturer's warranties for materials used in connection with this Project and shall complete and execute all forms required to further evidence such transfer and assignment. The parties agree that no warranty made by Contractor under the Contract Documents 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.

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

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

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

6.8 In addition to Contractor's obligations set forth above, if, within 365 calendar days after the Date of Final Completion, any of the Work is found to be not in accordance with the requirements of the Contract Documents, then Contractor shall correct same within 30 calendar days after receipt of written notice from HFC to do so at no cost to HFC. Such warranty periods shall commence on the date of Final Completion (as set forth under Section 1.3 of the Agreement), subject to adjustment in accordance with the Terms and Conditions.

6.9 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations Contractor has under the Contract Documents. Establishment of the 365-day period for correction of Work as described hereinabove relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

## **7.0. Insurance**

7.1 Contractor shall provide and maintain in full force and effect from the date of execution of the Agreement until final completion of the Work, including all extensions and amendments thereto, at least the following insurance and available limits of liability:

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

e. Excess Coverage

Bodily Injury by Disease \$1,000,000 (each employee)  
\$1,000,000 each Occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability

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

7.3 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 rating of at least A- with a financial size category of Class VI or better.

7.4 Each policy, except Workers' Compensation, must include an endorsement naming HFC and the City of Houston as additional insureds.

7.5 Each policy must contain endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against HFC and the City of Houston.

7.6 Each policy must contain an endorsement that the policy is primary insurance to any other insurance available to the additional insureds with respect to claims arising hereunder.

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

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

### **8.0 Prevailing Wage**

8.1 For Work performed on this Project, Contractor shall pay its employees the general prevailing wage rates (see <http://www.houstonfirst.com/DoBusiness>) for each craft or type of worker or mechanic so employed. Contractor represents that it has carefully examined the classifications for each craft or type of worker needed to execute the work and determined that such classifications include all necessary categories to perform the Work. If Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform the Work, then Contractor shall make a written request to HFC to use an additional labor classification and specify the proposed new classification. If HFC decides that a new classification is necessary, then it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered. Such determination will be made by HFC in compliance with applicable law. Contractor shall submit, with each application for payment or invoice, certified copies of payrolls showing classifications and wages paid by Contractor or suppliers for each employee performing Work on this Project.

**9.0 Release and Indemnification**

**9.1 CONTRACTOR AGREES TO AND HEREBY DOES 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.**

**9.2 CONTRACTOR AGREES TO AND SHALL, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, DEFEND, INDEMNIFY, AND HOLD HFC, THE CITY OF HOUSTON, THEIR EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COPYRIGHT INFRINGEMENT, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE BY CONTRACTOR UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO: CONTRACTOR AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL OR STATE EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ALL CLAIMS AND CAUSES OF ACTION BROUGHT AGAINST INDEMNITIES BY CONTRACTOR'S PERSONNEL AND/OR GOVERNMENT AGENCIES ARISING FROM, RELATING TO, OR INVOLVING SERVICES OF CONTRACTOR'S PERSONNEL UNDER THIS AGREEMENT.**

**9.3 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE INDEMNITEES HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE INDEMNITEES FOR THEIR SOLE NEGLIGENCE. CONTRACTOR SHALL REQUIRE ALL OF ITS CONTRACTORS AND SUBCONTRACTORS TO RELEASE AND INDEMNIFY THE INDEMNITEES TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE INDEMNITEES.**

**9.4 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.**

### **10.0 Indemnification Procedures**

10.1 If HFC or Contractor receive notice of any claim or circumstances, which 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 the following (1) a description of the indemnification event in reasonable detail, (2) the basis on which indemnification may be due, and (3) the anticipated amount of the indemnified loss.

10.2 This notice does not stop or prevent HFC from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If HFC does not provide this notice within the 30 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.

10.3 Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to HFC. Contractor shall then control the defense and any negotiations to settle the claim, subject to the provisions of this Article. 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, HFC may assume and control the defense, and all defense expenses constitute an indemnification loss.

10.4 If Contractor elects to defend the claim, HFC may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of HFC, unless it 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, would require the Indemnitees to pay amounts that Contractor does not fund in full, would not result in the Indemnitees' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

### **11.0 Termination**

11.1 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.

11.2 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.

11.3 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.**

11.4 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.

## **12.0 Miscellaneous**

12.1 Governing Law and Venue. Contractor shall strictly comply with all applicable laws, ordinances, codes, and regulations that affect performance by Contractor hereunder, and shall pay before delinquent any taxes and assessments levied, assessed, or charged by any lawful authority upon Contractor's proceeds under this Agreement. 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.

12.2 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.

12.2 Notices. Notice 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.

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

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

12.5 Assignment and Severability. Contractor shall not assign this Agreement in whole or in part without the prior written consent of HFC. 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.

12.6 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.

12.7 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.

12.8 Defined and Capitalized Terms. Terms defined in this Agreement shall have the same meaning in the Terms and Conditions and other Contract Documents. Any terms capitalized herein, but not defined herein, shall have the meaning assigned to such terms in the Terms and Conditions or other Contract Documents.

12.9 Entire Agreement. This Agreement, including the exhibits, represents the entire, integrated agreement between HFC and Contractor and supersedes all prior negotiations, representations or agreements, written or oral. Neither party shall require a credit application from the other. This Agreement shall not be amended except by written amendment signed by HFC and Contractor.

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

[signature block to follow in final Agreement]

## TERMS AND CONDITIONS

### ARTICLE 1: GENERAL PROVISIONS

§1.1 The term “Contract Documents” consists of the Agreement, these Terms and Conditions, and any Modifications issued after execution of the original Agreement. The term “Modification” is a written amendment to the Contract Documents or a Change Order.

§1.2 The Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than HFC and Contractor. In the event of a conflict between the Agreement, these Terms and Conditions, and a Modification, the following order shall control: (1) The Modification; (2) The Agreement; (3) these Terms and Conditions.

§1.3 The term “Work” means the equipment and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Contractor or its Subcontractors to fulfill Contractor’s obligations.

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

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

§1.6 Terms capitalized herein include those that are specifically defined or the titles of numbered articles.

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

### ARTICLE 2: HFC

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

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

control and relevant to Contractor's performance of the Work with reasonable promptness after receiving Contractor's written request for such information or services.

### ARTICLE 3: CONTRACTOR

#### §3.1 GENERAL

§3.1.1 Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. Contractor shall designate a representative who shall have express authority to bind Contractor with respect to all matters under the Contract Documents. The term "Contractor" means Contractor or Contractor's authorized representative.

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

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

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

#### §3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

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

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

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

#### §3.3 SUPERVISION AND REPLACEMENT PROCEDURES

§3.3.1 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for, and have control over, means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning means, methods, techniques, sequences or procedures, then Contractor shall evaluate the Project site safety thereof

and shall be fully and solely responsible for the Project site safety of such means, methods, techniques, sequences or procedures.

§3.3.2 Contractor shall be liable to HFC for acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, Contractor or any of its Subcontractors.

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

#### §3.4 LABOR AND MATERIALS

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

§3.4.2 Contractor may make substitutions only with the consent of HFC, after evaluation within a reasonable time and in accordance with a Change Order.

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

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

#### §3.5 CONCEALED OR UNKNOWN CONDITIONS

§3.5.1 If Contractor encounters conditions at the site that are subsurface or otherwise concealed physical conditions that differ materially and substantially from those indicated in the Contract Documents or unknown physical conditions of an unusual nature, and Contractor reasonably believes that same differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in the Contract Documents, then Contractor shall immediately provide written notice to HFC before conditions are disturbed and in no event later than 48 hours after first observance of the conditions.

§3.5.2 Upon receipt of such notice, HFC will promptly investigate such conditions and may engage an architect or engineer to make a specific written recommendation. If the concealed or unknown condition reported by Contractor is found to differ materially and substantially from those indicated in the Contract Documents, then HFC may agree to increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If HFC determines that the conditions at the site are not materially and substantially different from those indicated in the Contract Documents and that no change in the terms are justified, then HFC shall promptly notify Contractor in writing, stating the reasons and Contractor shall resume Work promptly.

### §3.6 SUPERINTENDENT

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

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

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

### §3.7 CONTRACTOR'S SCHEDULES

§3.7.1 Contractor, promptly after execution of the Agreement, shall prepare and submit for HFC's information Contractor's schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project (including, by way of example and not limitation, licensed events and activities at the Facility), shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

§3.7.3 Contractor shall perform the Work in general accordance with the most recent schedules submitted to HFC.

§3.8 USE OF SITE. Contractor shall confine operations at the Facility to areas designated by HFC and as permitted under applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the Facility with materials or equipment.

### §3.9 CUTTING AND PATCHING

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

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

#### §3.10 CLEANING UP

§3.10.1 Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract Documents. At completion of the Work, Contractor shall remove waste materials, rubbish, Contractor's tools, equipment, machinery and surplus materials from and about the Facility.

§3.10.2 If Contractor fails to clean up as provided in the Contract Documents, then HFC may do so and HFC shall be entitled to reimbursement from Contractor of its actual cost incurred.

### ARTICLE 4: CONSTRUCTION BY SEPARATE CONTRACTORS

§4.1 HFC reserves the right to perform construction or operations related to the Project with HFC's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations at the Facility.

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

§4.3 Contractor shall afford HFC and any separate contractor reasonable opportunity for performance of their work and related activities, and shall connect and coordinate Contractor's construction and operations with theirs as required by the Contract Documents.

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

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

## ARTICLE 5: CHANGES IN THE WORK

§5.1 Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Contract Documents, by an amendment to the Agreement or a Change Order, subject to the limitations stated in this Article and elsewhere in the Contract Documents.

§5.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order.

§5.3 In no event shall the aggregate amount of Change Orders under this Agreement exceed **ten percent (10%)** of the Contract Sum.

§5.4 A Change Order is a written instrument prepared by HFC and signed by Contractor and HFC stating their agreement upon all of the following: (1) The change in the Work; (2) The amount of the adjustment, if any, in the Contract Sum; and (3) the extent of the adjustment, if any, in the Contract Time.

## ARTICLE 6: TIME

§6.1 Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for completion of the Work.

§6.2 The date of commencement of the Work is the Effective Date established in the Agreement.

§6.3 The Date of Completion is the date each phase of the Work (as set forth in Section 1.3 of the Agreement) is certified as complete in accordance with these Terms and Conditions.

§6.4 Time limits stated in the Contract Documents are of the essence. By executing the Agreement, Contractor acknowledges and agrees that the Contract Time is a reasonable period for undertaking and completing the Work in accordance with the Contract Documents.

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

§6.6 Contractor represents that it shall proceed expeditiously with adequate forces and shall achieve completion of the Work within the Contract Time.

§6.7 If Contractor is delayed at any time in the commencement or progress of the Work by acts of God or of the public enemy, acts of government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, unusually severe weather, or other causes of like nature beyond control and without fault or negligence of Contractor, then the Contract Time may be extended by Change Order for such reasonable time as HFC may determine, which shall not be unreasonably delayed, conditioned or withheld.

## ARTICLE 7: BONDS

7.1 Contractor shall provide statutory performance and payment bonds for 100% of the Contract Sum on forms approved by HFC covering faithful performance of the Work and payment of obligations arising thereunder as required in the Contract Documents pursuant to Chapter 2253 of the Texas Government Code.

7.2 A bond that is given or tendered to HFC pursuant to the Contract Documents must be executed by a surety company that is authorized and admitted to write surety bonds in the State of Texas.

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

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

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

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

7.7 Contractor shall furnish information to a payment bond beneficiary as required by Chapter 2253 of the Texas Government Code.

7.8 Contractor shall deliver required bonds to HFC prior to commencing Work

## ARTICLE 8: COMPLETION

§8.1 Contractor shall notify HFC when Contractor reasonably believes each phase of the Work is complete and ready for inspection.

§8.2 Upon receipt of Contractor's written notice that a phase of the Work is ready for final inspection and acceptance, HFC will promptly make such inspection and, when the Work is found to be complete and acceptable under the Contract Documents, promptly confirm in writing to Contractor that the Work has been completed in accordance with terms and conditions of the

Contract Documents and that the established portion of the Contract Sum is due and payable in accordance with the Agreement.

§8.3 Neither final payment nor any remaining retained percentage shall become due until Contractor submits (1) three true and correct copies of operation and maintenance manuals for all equipment and systems; (2) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which HFC or HFC's property might be responsible or encumbered (less amounts withheld by HFC) have been paid or otherwise satisfied; (3) if required by HFC, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by HFC.

§8.4 Acceptance of final payment by Contractor shall constitute a waiver of claims by such payee except those previously made in writing and identified by such payee as unsettled prior to such acceptance.