



**MILLER OUTDOOR THEATRE
WIRELESS AUDIO UPGRADES
REQUEST FOR PROPOSALS (“RFP”)**

ISSUE DATE: July 11, 2019

DUE DATE: **2:00 P.M.** on **August 27, 2019** (“Submission Deadline”)

INSTRUCTIONS: Please submit five (5) paper copies and one (1) electronic copy of the Request for Proposals (“RFP”) on a USB flash drive. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write “Miller Audio” clearly on the outside of the sealed envelope. 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 or the services required must be submitted by email to bids@houstonfirst.com no later than **10:00 a.m.** on **August 20, 2019**. Questions will be answered collectively in the form of a Letter of Clarification and made available at www.houstonfirst.com/do-business.

OVERVIEW

Houston First Corporation (“HFC”) requests proposals from experienced audio contractors (each a “Proposer”) capable of providing, installing, testing, and certifying audio equipment and upgrades at Miller Outdoor Theatre in Houston, Texas. By furtherance of this project, HFC hopes to replace outdated equipment with current technology, including a wireless microphone system, to provide an enhanced experience for patrons and performers at the theatre.

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 manages and operates more than 10 city-owned facilities, including the George R. Brown Convention Center, Wortham Theater Center, Jones Hall for the Performing Arts, and Miller Outdoor Theatre.

Houston's Miller Outdoor Theatre is unique in the United States, offering an 8-month season of performances that are artistically excellent, culturally diverse and free of charge to the public. Named after mining engineer and cotton broker Jessie Wright Miller (1875-1919), the theatre is located on a prime 7.5-acre tract in Hermann Park, within walking distance of the Museum of Natural Science and Houston Zoo. Use of the site as a performing arts venue dates to May 12, 1922, when Miller Memorial Theatre was dedicated. The original facility consisted of a Doric proscenium structure flanked by twenty limestone columns.

In 1964, Houston voters approved certain capital improvement bonds to replace the outdated venue with a state-of-the-art theatre. Four years later, the new-and-improved Miller Outdoor Theatre debuted with a Labor Day weekend concert by the Houston Symphony. In the ensuing years, the theatre has undergone three major renovations.

The existing theatre structure features a 64' x 41' foot stage, 54 line sets for rigging, curtains and scenery,

an orchestra pit which can be raised and lowered, dressing rooms, offices, a full complement of theatrical equipment, and a 110-ton air conditioning system to cool the performance area.

Seating is available for 1,705 patrons and 20 wheelchair spaces; the hill behind the main seating area can accommodate approximately 4,500 more on blankets or lawn chairs.

PRE-PROPOSAL CONFERENCE

A pre-proposal conference and site tour will be held for the benefit of all potential Proposers at **9:00 a.m.** on **August 7, 2019** at **Miller Outdoor Theatre**, located at 6000 Hermann Park Dr., Houston, Texas 77030. Although attendance at the conference is not mandatory, all prospective Proposers are urged to attend.

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:** Proposers are asked to write a letter communicating effectively why their company should be selected to complete the project. The letter must be signed by a person authorized to make representations on behalf of the Proposer and include their direct phone number and email address. Proposers must make a specific, unambiguous statement accepting and agreeing to comply, if selected, with the Miller Outdoor Theatre Wireless Audio Upgrades Agreement provided below.
- b. **Experience:** Describe the Proposer's history in meeting the needs of its clients. Provide three current references for completed audio-visual projects completed by members of the Project Team at theaters, arenas, stadia, hotels, or other meeting venues. Include the name, phone number and email address for the manager for each such reference. (HFC and the City of Houston may **not** be used as a reference.)
- c. **Project Team:** Identify the essential personnel who would provide the services, such as the project manager, responsible corporate executive and any probable subcontractors (with any diversity certifications noted); include a brief summary of their qualifications.
- d. **Pricing:** Please submit Proposer's pricing for completion of the Project on a turn-key basis.
- 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.
- f. **Value Added Services (Optional):** Proposers may, but are not required to, detail any additional or unique services provided by Proposer, above and beyond the services sought within this RFP. Costs to HFC for such additional services – if any – must be defined clearly

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 review and rank every proposal received in response to this RFP based on the following weighted criteria: Transmittal Letter, including expressed acceptance of the Miller Outdoor Theatre Wireless Audio Upgrades Agreement (15 points); Experience, including references (25 points); Project Team (25 points); Pricing (25 points); and Diversity Commitment (10 points).

HFC reserves the right to interview the top-ranked Proposers, not to exceed five, prior to making a selection. If interviews are scheduled, then up to 30 additional points may be added to the existing proposal scores of the top-ranked Proposers, for a maximum possible total of 130 points, based on their responsiveness and 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 proposals in the manner and to the extent that they 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 revisions incorporated into this RFP by HFC, if any, will be confirmed in a letter and made available online at <http://www.houstonfirst.com/do-business/> ("Letter of Clarification"). When issued, Letters of Clarification become part of this RFP and automatically supersede any previous specifications or provisions in conflict therewith. By submitting their proposal, Proposers shall be deemed to have received all Letters of Clarification and to have incorporated them into their submittal. Verbal responses will not otherwise alter the specifications, terms and conditions 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.

FORM OF AGREEMENT

By submitting a response to this RFP, Proposer agrees, upon notice of selection, to enter into the Miller Outdoor Theatre Wireless Audio Upgrades Agreement provided below. Pre-printed forms or standard terms submitted by a Proposer shall be disregarded and may result in a Proposal being deemed, in HFC's discretion, as non-responsive.

DIVERSITY COMMITMENT

HFC has elected not to establish a Diversity Goal for this project. Proposers are, however, asked to review HFC's [Diversity Compliance Guidelines and Forms](#) and should include a copy of their diversity certification, if any, with their Proposal.

RESTRICTIONS ON COMMUNICATIONS

Throughout the selection process, commencing with the Issue Date, Proposers are directed not to communicate with any HFC or Miller Theater Advisory Board employee, officer or director regarding their Proposal, or any matter relating to this RFP, other than through bids@houstonfirst.com or during the Pre-proposal Conference. Proposers are solely responsible for observation and compliance with such restrictions, and HFC reserves the right to reject any proposal due to violation of this provision.

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](#). HFC requires that all Proposers be familiar with and abide by the Code of Conduct for Vendors.

CONFLICTS OF INTEREST

Proposers are advised that they have an affirmative obligation to disclose any affiliation or business relationship with an employee, officer, or director of HFC or Miller Outdoor Theatre Advisory Board 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 that they are in compliance 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 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. 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 prior to the Submission Deadline.

**MILLER OUTDOOR THEATRE
WIRELESS AUDIO UPGRADES AGREEMENT**

This Miller Outdoor Theatre Wireless Audio Upgrades Agreement (“Agreement”) is made by and between Houston First Corporation (“HFC”), 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:

1.0 Project Overview

1.1 The name of this project is the **Wireless Audio Upgrades** (“Project”). The location of the Project is the Miller Outdoor Theatre, located at 6000 Hermann Park Dr., Houston, Texas 77030 (the “Project Site”).

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

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

1.4 HFC has retained **Jaffe Holden Acoustics, Inc.** (“Designer”) to perform professional design services relating to the Project.

1.5 Contractor agrees to and shall commence the Work immediately on the Effective Date and complete the Project no later than December 6, 2019 (“Contract Time”). Contractor agrees that time is of the essence.

2.0 Payment

2.1 Subject to the terms of this Agreement, HFC agrees to pay Contractor [TBD] (“Contract Sum”).

2.2 No more than once every calendar month, Contractor may request a work-progress payment from HFC in accordance with this Section. Invoices shall be submitted electronically during the month following each month in which services were performed.

2.3 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.

2.4 In no event shall HFC pay Contractor more than **90%** of the Contract Sum prior to the final completion of the Project, notwithstanding any provision in the Agreement to the contrary.

3.0 Warranties and Representations

3.1 Contractor shall provide HFC with a warranty on materials and workmanship equal to one year, subject to the provisions of this Section 3.0. Warranty periods shall commence the date on which HFC approves final completion of the Project.

3.2 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.

3.2 Warranty work shall be completed at Contractor's sole cost and expense. Contractor shall be responsible for all shipping and/or freight expense from HFC's designated location to Contractor's facility for all warranty repair and/or maintenance and return to HFC's designated location.

3.3 Work performed by the Contractor shall be in accordance with the latest City of Houston codes. Contractor represents that all electricians, plumbers and other tradespersons employed by Contractor or its Subcontractors shall be licensed by the Texas Department of Licensing and Regulation.

3.4 Contractor shall protect all areas and equipment when working at the Project Site. Caution warning signs shall be placed near any slippery or wet surfaces.

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

3.6 Contractor shall on a daily basis or as requested by HFC, clean the Project Site and any adjacent areas affected by the Project. Contractor shall promptly remove and dispose of old equipment, wiring, and other debris from the Project Site in a safe, environmentally responsible manner at its sole cost and expense.

3.7 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 construction.

3.8 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 a 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.

3.9 Contractor shall conduct daily safety and health inspections of the Project Site. Contractor shall promptly report any accidents, injuries, spills, or near misses to HFC.

4.0 Insurance

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

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

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

4.3 Each policy, except Workers' Compensation and Employer's Liability, must include an endorsement naming HFC; the City of Houston, Texas and Miller Theatre Advisory Board, Inc. (collectively, as used throughout this Agreement, the "Additional Insured Parties") as additional insureds.

4.4 Each policy must include an endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against the Additional Insured Parties.

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

5.0 Release

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

6.0 Indemnification

6.1 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE ADDITIONAL INSURED PARTIES, INCLUDING THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, TICKETS, CITATIONS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR OTHER LOSS TO PERSONS OR PROPERTY

SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT BY CONTRACTOR, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO CONTRACTOR AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL AND/OR EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ALL CLAIMS AND CAUSES OF ACTION BROUGHT AGAINST INDEMNITEES BY CONTRACTOR'S PERSONNEL AND/OR GOVERNMENT AGENCIES ARISING FROM, RELATING TO, OR INVOLVING SERVICES OF CONTRACTOR'S PERSONNEL UNDER THIS AGREEMENT.

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

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

7.0 Indemnification Procedures

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

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

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

7.4 If Contractor elects to defend the claim, HFC may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of HFC, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnitees to comply with restrictions or limitations that adversely affect the Indemnitees, (ii) would require the Indemnitees to pay amounts that Contractor

does not fund in full, (iii) would not result in the Indemnitees' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

8.0 [Intentionally omitted.]

9.0 Prevailing Wage Requirement

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

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

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

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

10.0 Force Majeure

10.1 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, explosions, war, terrorism, riots, and the acts of superior governmental or military authority. This relief is not applicable unless the affected party uses due diligence to remove the Force Majeure as quickly as possible and provides the other party with written notice describing the actual delay or non-performance incurred within 10 calendar days after the Force Majeure ceases.

11.0 Termination

11.1 Either party may terminate this Agreement for cause if the other party defaults and fails to cure the default after receiving notice thereof. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, then the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The date must be at least 30 calendar days after receipt of the notice. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, then the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, then the injured party may terminate this Agreement on the termination date.

11.2 HFC may terminate this Agreement for its convenience at any time by giving 30 calendar days' written notice to Contractor. HFC's right to terminate this Agreement for convenience is cumulative of all rights and remedies that exist now or in the future. On receiving such notice, Contractor shall, unless the

notice directs otherwise, immediately discontinue all services under this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice to HFC showing in detail the services performed under this Agreement up to the termination date. HFC shall then pay the amount due Contractor for services actually performed, but not paid previously, in the same manner as prescribed herein.

11.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S EXCLUSIVE REMEDIES 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 FOR SERVICES PERFORMED), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM HFC'S TERMINATION FOR CONVENIENCE.

12.0 Miscellaneous

12.1 Inspections and Audits. Upon reasonable notice, either party shall have the right to examine and review the other party's books, records and billing documents that are directly related to performance or payment under this Agreement. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations.

12.2 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.

12.3 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.**

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.

12.5 Independent Contractors. 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.

12.6 Terms & Conditions. The Terms & Conditions are attached hereto as Exhibit "A" and made a part hereof for all purposes by this reference.

12.7 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.

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

12.9 Severability. 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.

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

12.11 Entire Agreement. This Agreement represents the entire and integrated agreement between HFC and Contractor and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may not be altered or amended except in writing executed on behalf of all of the parties.

12.12 Authority to Sign. The signer of this Agreement hereby represents and warrants that he or she has full authority to execute this Agreement and bind Contractor.

[signature page to follow in final agreement]

Exhibit “A”

Terms & Conditions

ARTICLE 1: GENERAL PROVISIONS

1.1 The Contract Documents form the contract. The term “Contract Documents” consists of the Miller Outdoor Theatre Wireless Audio Upgrades Agreement, these Terms & Conditions, the Drawings, and the Specifications.

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 shall not be construed to create a contractual relationship of any kind between any persons or entities other than HFC and Contractor.

1.3 In the event of a conflict, the following order shall control: (i) Miller Outdoor Theatre Wireless Audio Upgrades Agreement; (ii) these Terms & Conditions; (iii) the Drawings; and (iv) the Specifications.

1.4 The term “Work” means the equipment and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, supervision, materials, personnel lifts, transportation, and services provided or to be provided by Contractor to fulfill Contractor’s obligations. The Work may constitute the whole or a part of the Project.

1.5 The term “Drawings” means the detailed Project drawings and specification documents prepared by the Designer and made a part of the Contract Documents for all purposes by this reference.

1.6 The term “Specifications” means the Project document prepared by the Designer and made a part of the Contract Documents for all purposes by this reference detailing the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.7 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 upon Contractor as if required by all.

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 Documents.

2.2 Except to the limited extent provided in Article 4, the Designer does not have authority to represent or bind HFC with respect to any matter requiring HFC’s approval or authorization.

2.3 HFC shall furnish information or services required of HFC under 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 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.

3.2 Contractor shall perform the Work in strict accordance with the Contract Documents.

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

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

3.5 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 and Designer any errors, inconsistencies or omissions discovered by or made known to Contractor as a request for information in such form as HFC may require.

3.6 Contractor shall promptly report to HFC and Designer 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.

3.7 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, Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

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

3.9 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.

3.10 Contractor shall provide and pay for labor, materials, equipment (including but not limited to personnel lifts), tools, machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.11 Contractor may make substitutions only with the consent of HFC, after evaluation by Designer and in accordance with a Change Order.

3.12 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.

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

3.14 With respect to any materials and equipment furnished under the Contract Documents, Contractor warrants: (i) that all items are free of defects in title, design, material, and workmanship, (ii) that each item meets or exceeds the requirements of the Contract Documents, (iii) 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 (iv) that no item or its use infringes any patent, copyright, or proprietary right.

3.15 Work, materials, or equipment not conforming to the requirements of this Article shall be considered defective. If required by HFC, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

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

3.18 Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are legally required at the time bids are received or negotiations concluded.

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

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

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

3.22 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.

3.23 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 days to Contractor in writing stating whether HFC has reasonable objection to the proposed superintendent or that HFC requires additional time to review. Failure of HFC to reply within the seven-day period shall constitute notice of no reasonable objection.

3.24 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.

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

3.26 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.

3.27 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.

3.28 Contractor acknowledges and agrees that (i) the Project Site will be occupied throughout the course of the Work, (ii) the Work shall be subject to suspension, delay or interruption by HFC in its sole, but reasonable discretion due to concerts, events and activities at the Project Site; and (ii) Contractor has anticipated the probability of such suspension, delay and interruption as part of the bid amount heretofore submitted by Contractor, upon which the Contract Sum is based.

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

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

3.31 Contractor shall provide HFC and Designer access to the Work in preparation and progress wherever located.

ARTICLE 4: DESIGNER

4.1 The duties, responsibilities and limitations of authority of Designer, as set forth in the Contract Documents, shall not be restricted, modified or extended without written consent of HFC, Contractor and Designer.

4.2 If Designer is terminated by HFC, then HFC shall engage a successor whose status under the Contract Documents shall be that of Designer immediately upon notice to Contractor.

4.3 Designer will provide administration of the Contract Documents and will act as an HFC representative during performance of the Work by Contractor until Designer issues the final Certificate for Payment. Designer has authority to act on behalf of HFC to the extent provided in the Contract Documents.

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

4.5 Designer will keep HFC reasonably informed about the progress and quality of the portion of the Work completed, and report to HFC deviations from the Contract Documents and from the most recent work schedule submitted by Contractor, and defects and deficiencies observed in the Work.

4.6 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, HFC and Contractor shall endeavor to communicate with each other through Designer regarding matters arising out of or relating to the Contract Documents. Communications by and with Designer shall be through Designer. Communications by and with Subcontractors and material suppliers shall be through Contractor. Communications by and with separate contractors shall be through HFC.

4.7 Designer has authority to reject Work that does not conform to the Contract Documents.

4.8 Designer will review and approve, or take other appropriate action upon, Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

4.9 Designer will conduct inspections to determine the date of final completion of the Work and issue a certificate of completion and receive and forward to HFC written warranties and related documents required by the Contract Documents and assembled by Contractor.

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

4.11 Interpretations and decisions of Designer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, Designer will endeavor to secure faithful performance by both HFC and

Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

4.12 Designer will review and respond to requests for information about the Contract Documents from Contractor. Designer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, Designer will prepare and issue supplemental drawings or specifications to Contractor and HFC in response to the requests for information from Contractor.

ARTICLE 5: SUBCONTRACTORS

5.1 A Subcontractor is a person or entity who has a direct agreement with Contractor to perform a portion of the Work at the Project Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.2 Contractor shall, as soon as practicable after execution of the Agreement, furnish in writing to HFC and Designer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. Designer may reply within 10 calendar days' to Contractor in writing stating whether HFC or Designer has reasonable objection to any such proposed person or entity or that Designer requires additional time for review. Failure of HFC or Designer to reply to Contractor within such period is deemed and shall constitute notice of no reasonable objection.

5.3 Contractor shall not contract with a proposed person or entity to whom HFC or Designer has made reasonable and timely objection. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable objection.

5.4 If HFC or Designer have reasonable objection to a person or entity proposed by Contractor, then Contractor shall propose another to whom HFC or Designer have no reasonable objection.

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

5.6 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which Contractor, by these Contract Documents, assumes toward HFC and Designer.

5.7 Each subcontract agreement shall preserve and protect the rights of HFC and Designer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against HFC.

ARTICLE 6: CHANGE ORDERS

6.1 Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Contract Documents, by Change Order, subject to the limitations stated in this Article 6 and elsewhere in the Contract Documents.

6.2 A Change Order is a written instrument prepared by HFC and signed by HFC and Contractor stating their agreement upon all of the following: (i) the change in the Work; (ii) the amount of the adjustment, if any, in the Contract Sum; and (iii) the extent of the adjustment, if any, in the Contract Time.

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

6.4 In no event shall the aggregate amount of Change Orders under this Agreement exceed 25% of the Contract Sum.

6.5 Designer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be affected by written order signed by Designer and shall be binding on Contractor.

ARTICLE 7: PROTECTION OF PERSONS AND PROPERTY

7.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract Documents.

7.2 Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (i) Employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Contractor or Subcontractors; and (iii) other property at the Project Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

7.6 Contractor shall designate a responsible member of Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated by Contractor in writing to HFC.

ARTICLE 8: BONDS

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

8.2 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.

8.3 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.

8.4 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 the Federal Register covering the date on which bond was executed.

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

8.6 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.

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

8.8 Contractor shall deliver required bonds to HFC prior to commencing Work.

ARTICLE 9: UNCOVERING AND CORRECTION OF WORK

9.1 If a portion of the Work is covered contrary to Designer's request or to requirements specifically expressed in the Contract Documents, then it shall, if requested in writing by HFC, be uncovered by Contractor for examination by Designer and replaced promptly thereafter at Contractor's sole cost and expense.

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

9.3 In addition to Contractor's obligations under Article 3, if, within one year after the date of Completion of the Work, any of the Work is found to be not in accordance with the requirements of the Contract Documents, then Contractor shall correct it within 30 calendar days after receipt of written notice from HFC to do so at no cost to HFC; provided, however, that the warranty period for goods, materials and equipment shall be equal to one year after the date of Completion of the Work or the manufacturer's warranty, whichever is greater.

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

9.5 The one-year period for correction of Work shall not be extended by corrective Work performed by Contractor pursuant to this Article 9.

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

9.7 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.

9.8 Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described herein 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.

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

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