

**CONSTRUCTION CONTRACT**

**(FIXED PRICE)**

between

**Owner**

**HOUSTON FIRST CORPORATION**

1001 Avenida de las Americas  
Houston, Texas 77010

**and**

**Contractor**

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for

**General Construction**

at

**Project**

**ENTERTAINMENT FACILITY**

1836 Polk Street  
Houston, Texas 77003

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**CONSTRUCTION CONTRACT  
(FIXED PRICE)**

This **Construction Contract** (the “**Contract**”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2016 by and between **HOUSTON FIRST CORPORATION**, a Texas local government corporation (“**HFC**”) and \_\_\_\_\_, a \_\_\_\_\_ (the “**Contractor**”) (hereinafter referred to as the “**Party**” or “**Parties**”), in consideration of the mutual covenants contained herein, and with reference to the following facts:

**WHEREAS:**

A. HFC has the right to use and occupy the property located at 1836 Polk, Houston, Texas 77003 (the “**Premises**”).

B. HFC desires to hire a general contractor to construct an approximate \_\_\_\_\_ (\_\_\_) square foot building, stage, surface parking facilities and all related onsite and offsite improvements as more fully described in the Contract Documents (the “**Project**”).

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and conditions herein contained, the Parties agree as follows:

**ARTICLE 1 DEFINITIONS**

Whenever used in any of the Contract Documents, except where the context otherwise requires, the terms defined in this **Article** shall have a uniform meaning as defined therein.

“Activity”	an activity with respect to the Work which requires time and resources (manpower, equipment, and/or material) to complete;
“Allowances”	amounts for material(s) or work to be incorporated into the Work that are described in <b>Exhibit B</b> to this Contract;
“Application for Payment” or “Application”	Contractor’s monthly request for a progress payment, to be in the form of <b>Exhibit L</b> to this Contract;
“Approved” or “Approval”	the use of the terms “approved” or “approval” means written approval by HFC as applicable;
“Architect”	_____, with offices at _____;
“As-Built Drawings”	Record Drawings;
“Building Permit”	the final permit issued by the local building authority after all plan checking has been completed and all other permits such as structural, mechanical, electrical and health department etc. have been issued that authorizes construction of the entire Project;

“Bulletin”	those instructions for identifying changes to the Drawings & Specifications issued by Architect or HFC to Contractor at any time during the progress of the Work;
“Certificate of Insurance”	a certificate issued by the Company or its agent that confirms the existence of the insurance required of Contractor for the Project, the limits of coverage, its expiration date and additional insureds;
“Certificate of Occupancy”	a temporary or permanent certificate issued by the local building authority certifying that the Project or a portion of the Project as the case may be, is sufficiently complete in accordance with the relevant Drawings & Specifications and all applicable Governmental Regulations so HFC (or the Tenant) can occupy or utilize the Work for the purpose for which it was intended;
“Certificate of Substantial Completion”	a written document forwarded to Contractor by Architect or HFC indicating that the Project or a portion of the Project, as the case may be, is Substantially Complete;
“Change Estimate”	Contractor’s detailed and itemized estimate for all Work involved in a given Bulletin or Change Request, including supervision, overhead and profit, and any and all other costs of whatsoever nature in connection therewith for Work in place and accepted or omitted, as the case may be;
“Change Order”	a Change Order in the form of <b>Exhibit M</b> to this Contract, signed by HFC and Contractor, stating that HFC has authorized the extra Work or change described therein; and no claim for additional compensation or credit shall be valid unless included in a Change Order. Change Orders will be issued in numerical sequence and will indicate: <ul style="list-style-type: none"> <li>(1) Nature and extent of Work added or omitted;</li> <li>(2) Value of Work added or omitted;</li> <li>(3) Adjustment of Contract Time, if any;</li> </ul>
“Change Request”	those instructions issued by Architect or HFC to Contractor seeking a Change Estimate at any time during the progress of the Work;
“Changes in the Scope of Work “	are defined as a change in the quality or quantity of Work not anticipated or reasonably inferable as necessary to provide a complete and functional Project or portion of a Project from the Contract Documents;
“City”	the City of Houston, Texas;

“Clarification Drawings”	Bulletins, drawings, supplemental Specifications, etc., prepared by the Architect to clarify or supplement the Drawings & Specifications necessary for the proper execution of the Work;
“Claim”	Contractor’s unsolicited request for an increase in the Contract Amount or an extension of the Contract Time which if not approved by HFC may lead to a Dispute;
“Commissioning”	A quality focused process for enhancing the delivery of a project that focuses upon verifying and documenting that the facility and all of its systems and assemblies are planned, installed, tested, operated, and maintained to meet HFC’s Project requirements;
“Company”	Contractor’s insurance carriers who are qualified to do business in the state in which the Project is being constructed;
“Construction Change Directive”	a written order prepared by Architect and signed by HFC and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Amount or Contract Time, or both;
“Construction Project Manager”	a person with relevant experience designated by Contractor and approved by HFC who will direct all Work under the Contract on behalf of Contractor;
“Construction Schedule” or “Schedule”	the schedule prepared by Contractor which shows the sequence, interdependence and duration of the activities required for the complete performance of the Work of Contractor and which is attached as <b>Exhibit J</b> to this Contract;
“Contract Amount”	\$ _____, which is the total amount payable to the Contractor for the performance of the Work, as adjusted from time to time by the incorporation of Change Orders;
“Contract Documents”	collectively, the Drawings & Specifications, the Contract, and all of the Exhibits and Schedules to the Contract;
“Contract Time”	means _____ (____) days following the date of the Notice to Proceed
“Contractor”	_____, with offices at _____;
“Contractor Parties”	is defined in Section 8.1;
“Critical Path”	the series of activities in the Project Schedule which determines the earliest completion of the Project. If a delay of any activity results in a delay in completion, that activity is on the critical path;

“Development Manager”	means Griffin Partners, Inc., a Texas corporation;
“Dispute”	any Claim, dispute or controversy arising out of or relating to this Contract (including the breach, termination or invalidity thereof, and whether arising out of tort or contract) which cannot be resolved informally by the Parties within fifteen- <b>(15)</b> days after the Claim, dispute or controversy arises;
“Drawings & Specifications”	means the plans, specifications and drawings described in <b>Exhibit D</b> attached hereto, as the same may be adjusted by the incorporation of Change Orders;
“Equal to”	where the term “equal to”, “or other approved”, “proper”, “acceptable” or other general qualifying terms are used in the Specifications, it shall be understood that reference is made to the ruling and judgment of Architect for conditions governing substitutions by Contractor;
“Final Payment”	that specific payment to Contractor that is made when the Work is fully completed and accepted by HFC and the Contract fully performed;
"General Conditions"	the general conditions to this Contract attached hereto as <b>Exhibit A</b> ;
“Governmental Requirements”	all applicable laws, ordinances, rules and regulations and building codes of the municipal, county, state and federal governments and their respective divisions, departments and agencies having jurisdiction over the Property;
“Guarantee” or “Warranty”	is the Guarantee and Warranty in the form of and more fully described in <b>Exhibit S</b> to this Contract;
“Incentive Fee”	the fees that the General Contractor may earn in accordance with, and as provided for, in <b>Exhibit T</b> attached hereto
“Interest Rate”	the per annum interest rate equal to the prime interest rate of as published or utilized by JPMorgan Chase Bank, N.A., plus two-percent ( <b>2%</b> ), not to exceed, however, the maximum non-usurious rate of interest permitted by applicable law;
“Key Personnel”	Contractor’s seasoned and experienced staff filling critical positions managing the Project who shall be assigned to this Project to perform the roles specified on <b>Exhibit F</b> to this Contract;

“Lien”, “Lien Claim” or “Mechanics Lien”	a legal claim to obtain a lien or security interest against real property because of nonpayment for labor, services, or material supplied for a work of improvement upon the property;
“Liquidated Damages”	the amount to be paid to HFC to compensate HFC for damages in the event the Contractor fails to complete the Work within the Contract Time, such amounts being set forth in <b>Exhibit T</b> attached hereto;
“Materialmen”	includes all vendors who furnish materials only and who do not have a direct contract with HFC;
“Notice to Proceed”	a written notice to Contractor to proceed with the Work in the form of <b>Exhibit I</b> to this Contract;
“Project Manager”	means Chris Broussard and Tyler Welborn, or such other person designated as such by the Development Manager;
“Project Site”	the terms “Project Site”, “Job Site”, “Jobsite”, “Site”, “Project”, “Premises” or other words of like import shall designate and refer to the property upon which the Work shall take place including but not limited to the actual buildings, building area, and all structures, appurtenant facilities, site work and landscaping located and to be located thereon;
“Provide” or “Provided”	the use of these terms in connection with any item specified means, unless otherwise noted, that such item shall be furnished, installed and connected where so required;
“Punch List”	a list of defective or incomplete work to be completed following Substantial Completion;
“Quality Assurance”	the process of evaluating overall Project performance on a regular basis to provide confidence that the Project and the constructed or installed systems will satisfy the relevant Quality Standards;
“Quality Control”	the process of monitoring specific Project results to determine if they comply with relevant Quality Standards and identifying ways to eliminate causes of unsatisfactory performance;
“Quality Standards”	those standards identified in the Specifications as Quality Control standards for the Project;



“Record Drawings”	mylar transparencies or digital (CAD) files showing the size, location, arrangement and details for all concealed mechanical, plumbing, electrical power, lighting and elevators, etc. These drawings shall also show the size, location, elevation, arrangement and details of all concealed or underground utilities, such as irrigation lines, water, sewers, steam, gas, oil, electrical power and lighting, etc.;
“Request for Information” or “RFI”	Contractor’s written request to HFC, Architect or Consultant seeking verification that Contractors proposed solution to the issue or mater that is the subject of the request is an acceptable solution, or in the alternative the HFC, Architect or Consultant proposes an alternative solution;
“Schedule of Values”	a listing of the major elements of the Work as defined in the Contract and the value of each broken down in sufficient detail to allow a third party to ascertain the value of the relative portions of the Work, which is attached as <b>Exhibit A.1</b> to this Contract;
“Separate Contractors”	includes all contractors performing any portion of the Work who have a direct contract with HFC or a direct contract with Tenant, but not with Contractor;
“Specifications”	a manual where all allowable and required materials and methods for the Work and the Project are specified in detail;
“Stop Notice”	a charge against construction funds in the hands of a property owner or a construction lender for the value of labor, services or materials incorporated into a construction project; this is a Lien on funds to be paid whereas a Mechanic's Lien is a Lien on real property;
“Subcontractor”	includes all contractors performing any portion of the Work who do not have a direct contract with HFC and it includes one who provides material worked to a special design according to the Drawings & Specifications, but does not include one who merely furnishes materials;
“Submittals”	collectively, all sketches, detail drawings, shop fabricating drawings, shop detail drawings, erection diagrams, setting out or layout drawings, catalog cuts, samples, schedules, calculations, manufacturer’s printed instructions when required, etc., and any other drawings of any kind as may be required by the Drawings & Specifications, good practice or as may be required in amplification of the Contract Documents;

“Submittal Schedule”	A schedule showing the anticipated dates for submission and return of the required Submittals and samples for various types of work, including their related approval times;
“Subordinate Subcontractor”	includes all contractors performing any portion of the Work who do not have a direct contract with Contractor and it includes one who provides material worked to a special design according to the Drawings & Specifications, but does not include one who merely furnishes materials;
“Substantial Completion”	the stage in the progress of the Work were the Work or a designated portion thereof is sufficiently complete in accordance with the Contract Documents so HFC (or Tenant) can occupy or utilize the Work for the purpose for which it is intended and that the only Work remaining to be performed is the completion of Punch List Items that are of a nature and scope that can reasonably be expected to be completed within seven (7) days. In no event shall Substantial Completion be deemed to have occurred until a Certificate of Occupancy has been issued;
“Superintendent”	a person with relevant experience, designated by Contractor and approved by HFC who will be physically present at the Work site and will supervise all Work every day during all business hours (and more often if the job so requires) during the entire term of this Contract;
“Tenant”	means Free Range SB LLC, a Texas limited liability company;
“Weather Days”	an allowance for delays to the Critical Path due to inclement weather as described in <u>Section 5.3</u> hereof;
“the Work” or “Work”	the trade specific labor, materials and equipment furnished and/or installed by Contractor under this Contract or that is necessary to complete the Project in accordance with the Contract Documents;

## ARTICLE 2 SCOPE OF WORK

2.1 **Provide All Labor and Materials.** Contractor agrees to provide at its own cost and expense all services, labor, materials, machinery, tools, scaffolding, hoisting facilities, and any other items necessary to timely and fully complete the Work, including that reasonably inferable from the Contract Documents.

2.2 **Documents Complimentary.** The Contract Documents are complimentary and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the Work. Work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

2.3 **Priority.** 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 Change Order. The Contract Documents shall not be construed to create a contractual relationship of any kind between Contractor and Architect, between HFC and a Subcontractor or a Sub-subcontractor, between HFC and Architect, or between any persons or entities other than HFC and Contractor. In the event of a conflict between the Contract Documents:

Highest Priority:	This Contract
Second Priority:	Change Orders and Construction Change Directives
Second Priority:	Notes of Clarification and Exclusions
Third Priority:	Addenda with later date having greater priority.
Fourth Priority:	The General Conditions
Fifth Priority:	Drawings, with detailed drawings taking precedence over large scale
Sixth Priority:	Specifications (or Project Manual)

2.4 **Drawings & Specifications.** The Work shall be completed in accordance with the Drawings & Specifications, for the Contract Amount and in accordance with the Construction Schedule, all as specified herein. The Work shall include all of the work reflected in the Drawings & Specifications and that is reasonably inferable therefrom, all of which shall be performed diligently and in compliance with all applicable Governmental Requirements.

2.5 **Construction Project Manager.** Contractor warrants that it will engage a qualified Construction Project Manager and a qualified Superintendent. The Construction Project Manager shall have sufficient onsite competent assistants to execute the Work properly and adequate home office support to properly and expeditiously perform the Work.

2.6 **Contractor's Familiarity.** By executing this Contract, Contractor represents that:

- a. It has examined and fully familiarized itself with the Contract Documents;
- b. It has visited and inspected the Premises, and has fully satisfied itself as to the nature of the Work, the local traffic conditions, the existing adjoining and nearby structures, access to the site for loading and unloading, availability of parking and storage, the general condition of the soil as based on geotechnical reports provided by HFC to Contractor, the general requirements for dewatering, excavation, cutting and grading at the Site, the character of the equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions under which the Work is to be performed, the construction hazards, and all other matters which would, be reasonably apparent to a Contractor exercising due care and which would affect the Work under the Contract Documents, and has correlated its observation with the requirements of the Contract Documents. Contractor shall exercise reasonable care in executing subsurface work in proximity of known subsurface utilities, improvements and easements. Nothing herein, however, shall be understood or interpreted as constituting a warranty or guarantee by Contractor that the Contract Documents depicting the Work are free of error, omissions, conflicts, ambiguities of applicable governing ordinances, laws, rules or regulations pertaining to work depicted herein.

c. It is fully aware of the critical time restrictions for performance of the Work contained in this Contract; and confirms that the time for performance of its obligations in accordance with **Article 5** of the Contract is an adequate period of time for performing the Work.

d. It has access to and has thoroughly examined the complete set of Drawings & Specifications;

e. It possesses expertise in contracting for and constructing the type of building and other improvements being constructed pursuant to this Contract;

f. The Contract Amount includes any and all costs as required by the Contract Documents, or as reasonably inferable therefrom to Contractor as being necessary to perform the Work set forth in the Contract Documents pursuant to the specified quality and compliance with the approved Construction Schedule and necessary for performing the Work under the above mentioned conditions; and

g. Contractor acknowledges and declares that the Contract Documents are adequately complete and sufficient to enable Contractor to enter into this Contract and to agree to the Contract Amount. Contractor further acknowledges that Contractor is not aware of and has no actual knowledge of any errors or conflicts in the Contract Documents which would affect the Contract Amount.

### **ARTICLE 3 CONTRACTOR'S STATUS AND DUTIES**

3.1 **Skill and Experience.** Contractor represents to HFC that (a) it is a reputable contractor in the State of Texas and that it is familiar with all applicable Governmental Requirements, (b) that it is fully experienced as an expert to perform the Work provided for herein and (c) that during the term of this Contract, it shall at all times remain properly equipped, organized and financed to perform such Work. Contractor shall operate as an independent contractor and not as the agent of HFC.

3.2 **Contractor Responsible for Employees.** All matters pertaining to Contractor's employees are the responsibility of Contractor, who is in all respects the employer of Contractor's employees. All employment arrangements are solely in its concern, and HFC shall have no responsibility therefor.

3.3 **Removal of Persons.** If requested by HFC in writing, the Contractor shall remove from the Work any person HFC deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the Work is deemed by HFC to be contrary to their interest.

3.4 **Harmony.** In order to avoid labor disputes, Contractor shall employ only such labor as will, to the satisfaction of HFC, work in harmony with Subcontractors and other contractors (including Separate Contractors) and shall not use materials or means which might cause strikes or other labor troubles by any persons employed. Likewise, HFC acknowledges that should it elect to perform work outside the scope of this Contract with its own forces, such forces will work in harmony with those that are employed by Contractor.

3.5 **Standard of Care.** Although the relationship of Contractor to HFC shall be that of an independent contractor, Contractor recognizes the relationship of trust and confidence established by this Contract, and Contractor covenants with HFC to furnish its best skill and judgment and to cooperate with the Architect and HFC's other Consultants and contractors in forwarding the interests of HFC. Contractor will use every effort and shall do all things necessary to safely perform the Work in the most expeditious

and economical manner, consistent with good workmanship and quality, sound business practice and the best interest of HFC.

3.6 **Adequate Personnel.** Contractor shall provide in addition to the Construction Project Manager and Superintendent, project engineer(s), and a sufficient and competent field organization, including, but not limited to, assistants, foremen, detailers, checkers and inspectors, watchmen, skilled and common laborers, as the Work may require, from the commencement of construction, to final completion and acceptance of the Work. HFC reserves the right to request the removal of any personnel if in the judgment of HFC, any such person is unsatisfactory. Contractor shall supervise the Work, including the Work performed by Subcontractors, and shall prepare Schedules, budgets and reports as required under this Contract.

3.7 **Key Personnel.** Contractor shall provide and be solely responsible for all labor and personnel required in connection with the Work, including, without limitation, the Construction Project Manager, Superintendent and other representatives who shall have the experience and authority to administer and manage this Contract on behalf of Contractor, to furnish information requested by HFC and to agree upon procedures for coordinating Contractor's efforts with those of HFC, HFC's Affiliates, Architect, and Separate Contractors, if any, and who shall be present or duly represented at the Project site at all times when the Work is being performed. Contractor's staff will include the key personnel set forth in **Exhibit F** attached hereto who shall be dedicated to this Project and who shall perform the services, tasks and roles specified. **Exhibit F** also reflects the overall staffing and organization chart of the Contractor's entire staff for the Project. Contractor will not remove or replace any Key Personnel, or make any material change in respective areas of responsibility, without prior written consent of HFC. Contractor acknowledges that HFC has relied upon the designated assignments and roles of such Key Personnel in its decision to enter into this Contract. If at any time during the performance of the Work any of the Key Personnel becomes, for any reason, unacceptable to HFC, then Contractor will replace such unacceptable individual with an individual acceptable to HFC. If at any time during the performance of the Work any of the Key Personnel should no longer be available to perform services in connection with the Work through no fault of Contractor, then Contractor will replace such individual with an individual acceptable to HFC. Any costs associated with the addition, replacement or removal of Key Personnel will be borne by Contractor, at no cost to HFC.

3.8 **Temporary Facilities.** Contractor shall provide and maintain sufficient temporary buildings for the operation of the field organization of Contractor and for storage of materials and housing of machinery and tools, and whatever other temporary construction is required and mutually agreed upon with HFC. Contractor shall use only those locations designated by HFC on the Project Site for locating Contractor's trailers, staging areas, lay down areas, and other construction operations.

3.9 **Equipment and Tools.** Contractor shall provide adequate and efficient machinery, plant, equipment, tools and supplies as necessary in order to perform and complete the Work to the reasonable satisfaction of HFC and in accordance with the Contract Documents.

3.10 **Materials Purchases.** Contractor shall purchase or cause to be purchased all materials and services required for construction of the Project in accordance with this Contract and the Contract Documents.

3.11 **Subcontractors.** Contractor shall select Subcontractors, let subcontracts and supervise Subcontractors in accordance with provisions hereof and of the Contract Documents.

3.12 **Safety Rules.** Contractor shall establish, maintain and enforce reasonable safety standards and practices and comply with all Governmental Requirements relating thereto.

3.13 **Insurance.** Contractor shall procure and maintain, with companies acceptable to HFC, such insurance as in HFC's opinion will protect HFC and Contractor under the Worker's Compensation Laws of the State of Texas and general liability insurance (including Automobile Insurance) in accordance with the provisions of **Article 8** hereof. Contractor shall obtain certificates of insurance indicating not less than the levels of coverage required for each Subcontractor and other Contractor Parties who perform work on site, and submit the same to HFC.

3.14 **Taxes.** Contractor shall properly account for and pay all federal state and local payroll taxes and health, welfare, pension, vacation, and other funds as may be required by its labor and union agreements, if any.

3.15 **Permits.** Contractor shall obtain all necessary permits, authorizations, bonds and licenses as required by HFC, Contractor or any municipality and other authorities having jurisdiction over any part of the Work. Contractor shall cooperate with HFC in obtaining all certificates of governmental inspection, use, occupancy, permit and licenses, pay all charges and fees and give all notices necessary for the lawful prosecuting of the Work. Temporary and/or Permanent Certificates of Occupancy shall be delivered to HFC as each floor is completed, final Certificates of inspection, use and occupancy shall be delivered to HFC upon completion of the Work in accordance with the Construction Schedule.

3.16 **Payment to Subcontractors.** Contractor shall receive invoices, audit, approve and make all payments to Subcontractors and others for Work to be performed and materials to be furnished under this Contract, obtain lien releases from each payee in form and substance acceptable to HFC and subsequently submit same to HFC.

3.17 **Employee Parking.** Contractor shall control on and off site temporary parking for employees and all such parking locations shall be in conformance with all applicable Governmental Requirements and otherwise to insure the quiet enjoyment of the surrounding property.

3.18 **Responses to Bulletins.** Contractor shall receive HFC's and Architect's Bulletins, secure appropriate trade pricing, approve and consolidate all pricing by bulletin and submit the same as a Change Estimate to HFC within twenty-one-(21) days of receipt of said Bulletin.

3.19 **Contractor's Schedule and Substantial Schedules.** Contractor shall prepare and update on a regular basis, the Construction Schedule and Submittal Schedule in accordance with the Contract Documents.

3.20 **Prevailing Wage.** Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic providing labor at the Project site. The prevailing wage rates in effect as of the date hereof are reflected in **Exhibit R** attached hereto. 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 agreement, 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. Each month Contractor shall submit to HFC with each Application for Payment certified copies of payrolls showing classifications and wages paid by Contractor, Subcontractors or suppliers for each employee under the Contract Documents for any day included in such month.

3.21 **Diversity.** Contractor shall comply with laws and regulations applicable to the Work and special requirements of the Contract Documents regarding equal employment opportunity. Furthermore, Contractor recognizes that HFC has established a goal of thirty-four percent (34%) participation in the performance of the Work by diverse suppliers of goods and services, including first and second tier Subcontractors and suppliers, in accordance with Diversity Program established by HFC (see [houstonfirst.com/DoingBusinesswithHF.aspx](http://houstonfirst.com/DoingBusinesswithHF.aspx) for forms and details, which is incorporated herein by this reference). Contractor shall disclose to HFC the manner and extent to which it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC with each invoice, as directed by HFC. Contractor to maintain records reflecting the amount of participation of diverse suppliers of goods and services, including the aggregate amount of payments made to each of them and with each Application for Payment shall submit to HFC records with respect thereto.

3.22 **Covenant Not to Hire.** Contractor hereby agrees that, at no time while the Contract Documents remains in effect or during the one (1) year period thereafter, Contractor shall not employ, solicit for employment or otherwise encourage the employment of any of the following persons employed by HFC (or holding the office positions within HFC herein described), whether directly or indirectly, or through any Affiliate of Contractor: President, General Counsel, Chief Operating Officer, Treasurer or any other individual who has negotiated the terms and provisions of the Construction Agreement with Contractor or has had substantial and personal involvement (as hereinbelow defined) with respect to the Contract Documents. For purposes of this provision, the term “has had substantial and personal involvement” means that a person exercised discretion or decision-making in the handling of any of the terms and provisions of the Contract Documents associated with Contractor’s performance of the Contract Documents. The terms and provisions of this section shall expressly survive the expiration or sooner termination of the Contract Documents and, in the enforcement hereof, HFC shall have all rights and remedies available at law or in equity including, without limitation, the right to seek and obtain injunctive relief.

3.23 **Procurement.** Contractor acknowledges that HFC is a governmental entity and, accordingly, is subject to Chapter 2267 of the Government Code as well as other statutes governing procurement of goods and services (collectively, the “Procurement Statutes”). Contractor agrees to cooperate with HFC in HFC’s efforts to comply with, and Contractor shall comply with, the Procurement Statutes, including, without limitation, in the solicitation of and contracting with Subcontractors.

3.24 **Contractor’s Designated Representatives.** Contractor hereby designates \_\_\_\_\_ as Contractor’s representative (“Contractor’s Designated Representative”) with express authority to bind Contractor with respect to all matters requiring Contractor’s approval or authorization, or with regard to any other or determination under or with respect to the Contract Documents.

#### **ARTICLE 4 DUTIES OF HFC; DEVELOPMENT MANAGER**

4.1 **General Information.** HFC shall furnish Contractor with all information reasonably necessary for Contractor to expeditiously perform the Work. Decisions, reviews and approvals required of HFC shall be performed with reasonable promptness, so as not to delay the Work, subject to Section 4.8 below.

4.2 **Survey.** HFC has provided Contractor with an existing survey showing boundaries of the property, easements and location of underground utilities. Contractor shall be entitled to rely on the accuracy of information furnished by HFC but shall exercise proper precautions relating to the safe performance of the Work.

4.3 **Easements.** HFC shall obtain and pay for all easements for utilities to the Site which are necessary for Contractor to perform the Work.

4.4 **Environmental and Geotechnical Reports.** HFC has provided Contractor with environmental, soil and subsurface reports relating to the Project Site.

4.5 **Taxes.** HFC shall pay or cause to be paid all property taxes and property assessments levied against the Premises, including the improvements.

4.6 **HFC's Designated Representative.** HFC hereby designates Dawn Ullrich as its authorized representative ("HFC's Designated Representative") with express authority to bind HFC with respect to all matters requiring HFC's approval or authorization, or with regard to any other determination under or with respect to the Contract Documents.

4.7 **Payments.** HFC shall make all payments to Contractor in accordance with the Contract.

4.8 **Responses to Request for Information and other Submittals.** HFC shall use its reasonable efforts to cause Architect and its Consultants to:

a. Timely review and approve all Submittals, samples and other submissions of Contractor and its Subcontractors for conformance with the design requirements of the Project and for compliance with the Contract Documents.

b. Timely respond to all Requests for Information properly submitted by Contractor to Architect, HFC or Consultant as appropriate. A properly submitted RFI will include (i) a description of the issue or matter needing clarification or approval, (ii) a list of all relevant Contract Documents where the Architect, HFC or Consultant can locate the issue or matter (including supplying photographs or sketches as necessary), and (iii) the Contractor's proposed solution to the issue or matter at hand. Notwithstanding the foregoing, Contractor shall not be obligated to provide a proposed solution to the issue or matter if in doing so calculations or engineering studies would be required to do so.

c. Interpret the Drawings & Specifications and Specifications, and coordinate the design and engineering of all systems and subsystems to assure that the architectural, structural, mechanical and electrical elements and components will be complete and compatible.

d. Assume responsibility for the design and engineering contained in the Drawings & Specifications and Specifications and for the performance thereof.

e. If requested by HFC, to review and approve Contractor's Applications for Payment, which review shall be made in a timely manner in accordance with the terms hereof.

f. Make certifications as to the Substantial and Final Completion, including issuance of Punch Lists prior to beneficial occupancy of the Work.

Neither HFC's Designated Representative nor Development Manager, acting on behalf of HFC, shall be deemed to have failed to render a decision promptly or furnish information expeditiously unless HFC's representative fails to respond to a request therefor within ten (10) business days following receipt of a written request therefor by HFC's Designated Representative and Development Manager and such failure shall continue for a period of three (3) days following a second request (marked, in bold text, "**SECOND**")



**REQUEST – FAILURE TO RESPOND IN 3 DAYS MAY CONSTITUTE THE BASIS FOR A DELAY CLAIM”) from Contractor to HFC and Development Manager.**

4.9 **Limitations Regarding Review.** Any and all reviews or approvals by HFC, HFC’s Consultants or Architect which are required by, or referenced in, the Contract Documents or are otherwise undertaken in connection with the Project are for the sole purpose of HFC, HFC’s Affiliates or Architect objective review only. Any such reviews, approvals, or related actions of HFC, HFC’s Affiliates or Architect, shall not in any way be, or be deemed to be, an indication of any knowledge or expertise by HFC, HFC’s Affiliates or Architect or their employees, agents, or representatives in any area of the Work or an approval of any construction means, methods, sequences, or procedures, all of which are, and shall remain, the responsibility of Contractor. Neither any action nor inaction by HFC, HFC’s Affiliates, Architect, or their representatives with respect to the plan or performance of the Work shall relieve Contractor of its duties and responsibilities under this Contract or under the Contract Documents except to the extent the failure to act in a timely manner causes a delay in the Critical Path.

4.10 **Separate Contractors.** HFC reserves the right to perform any other work with HFC’s own forces, and to award contracts to Separate Contractors in connection with any other portions of the Project or other work on the Property. HFC specifically reserves the right to have the forces of the Tenant or its Separate Contractors enter upon the Project for the purpose of constructing or installing other improvements, including without limitation, Tenant improvements or the installation of their FF&E, with respect to any portions of the Work that have reached a stage of completion as to safely permit such construction and/or installation. Such use and occupancy by HFC, Separate Contractors, Tenant or others shall not modify any part of the Contract Documents or be construed as constituting Substantial Completion or acceptance of any part of the Work. However, HFC, Tenant, or their respective Separate Contractors, agents, or employees shall be responsible for any damage caused by them to the Work so occupied by them.

4.11 **Development Manager.** Contractor acknowledges that it has been advised by HFC that HFC has engaged Development Manager as a development manager. HFC hereby designates Development Manager as HFC’s authorized representative under the Contract Documents, subject to the provisions and limitations set forth in this paragraph, with the individual representatives of the Development Manager being authorized to act hereunder being any of Fred G. Griffin, Terry Early or Chris Broussard. HFC shall have the right at any time, by written notice to the Contractor, to withdraw, or set forth limits upon, the authority of the Development Manager and the Contractor shall be bound thereby upon receipt of any such notice from HFC.

Subject to the following provisions of this paragraph, the following shall apply with regard to the Development Manager and its role, rights and authority, and Contractor’s obligations to coordinate and communicate with Development Manager: (a) Development Manager shall be the primary point of contact for Contractor in communicating with HFC under or with respect to the Contract Documents, (b) copies of all notices and deliveries by Contractor to HFC under the Contract Documents shall also be provided concurrently to Development Manager, (c) Contractor shall cooperate in good faith with Development Manager so as to enable Development Manager to perform and discharge its duties and obligations to HFC with regard to the Work, and (d) subject to the limitations described in the following paragraph hereof and any revocation or subsequent limitation on authority provided by HFC to Contractor pursuant to the last sentence of the opening paragraph of this Section 4.11, Development Manager shall have the right to make and give all consents, approvals, decisions, elections and determinations which may be made or given by HFC under the Contract Documents.

Notwithstanding the foregoing provisions with respect to the authority of Development Manager, Contractor acknowledges that Development Manager *may not* give or make any consent, approval,

decision, election or determination on behalf of HFC (and none purportedly given or made by HFC on behalf of HFC shall be binding upon HFC nor relied upon by Contractor) with respect to any of the matters described on **Exhibit U** attached hereto (the “Major Decisions”). In all events, Contractor shall obtain, with respect to any Major Decision, the written consent, approval, decision, election or determination, from HFC.

## ARTICLE 5 CONTRACT TIME

5.1 **Time is of the Essence** It is understood and agreed that time is of the essence for the performance of the Work. In executing this Contract, Contractor represents that the time limits specified in the Contract are reasonable taking into consideration, among other things (i) the type of work planned; (ii) the climatic conditions, (iii) congestion due to the urban nature of the Project Site, (iv) labor conditions prevailing in the area of the Project; and (v) the specific conditions and requirements of the Contract Documents.

5.2 **Construction Schedule** Attached hereto as **Exhibit J** is the Construction Schedule for the performance of the Work required hereunder. Failure to comply with said Construction Schedule shall be deemed a material breach of this Contract. Contractor acknowledges that the Notice to Proceed has not been issued by HFC as of the date of execution hereof.

5.3 **Weather Days**. The Contract Time as reflected on the approved Construction Schedule and in **Exhibit J** attached herein provides for thirty (30) calendar days of inclement weather that could delay the Critical Path such that, for the first thirty (30) calendar days of inclement weather that actually delay Critical Path there shall be no extension of the Contract Time.

5.4 **No Delay**. Unless this Contract is terminated as provided in **Article 14** hereof, in the event of a Dispute, controversy or question between HFC and Contractor, HFC and Contractor agree that pending the resolution or settlement of such Dispute, controversy or question, HFC and Contractor shall continue to perform their respective obligations under this Contract without interruption or delay and Contractor expressly agrees not to directly or indirectly stop or delay the proper performance of the Work, including the delivery of materials and equipment to the Job Site provided HFC continues to issue payments to Contractor for all Work properly performed. Any failure of Contractor or HFC to comply with this paragraph shall be deemed a material breach of this Contract.

## ARTICLE 6 CONTRACT AMOUNT

6.1 **Contract Amount**. HFC shall pay Contractor the Contract Amount in current funds for Contractor’s performance of the Contract. The Contract Amount may only be adjusted by Change Orders.

6.2 **Assumptions, Clarifications and Exclusions**. The Contract Amount is based on the assumptions; clarifications and exclusions included in the Notes of Clarification and Exclusions which are described in **Exhibit C** attached hereto and are hereby accepted by HFC.

6.3 **No Adjustments**. HFC and Contractor agree that this Contract is a fixed price, lump sum contract and except for the Change Orders implemented in accordance with **Article 12**, Contractor shall complete the Work in conformance with the Contract Documents and HFC shall in no event be required to pay Contractor any amount in excess of the Contract Amount.

## ARTICLE 7 INCENTIVE FEE AND LIQUIDATED DAMAGES

Subject to the provisions of **Exhibit T**, Contractor may (i) be assessed and responsible to pay HFC Liquidated Damages or (ii) earn, and then shall be paid, the Incentive Fee.

## ARTICLE 8 INDEMNIFICATION & INSURANCE

Contractor shall, at its sole cost and expense, obtain and maintain the insurance described in **Exhibit K** attached hereto and otherwise observe, comply with and perform all of the covenants, obligations, agreements, and requirements set forth in said **Exhibit K**.

## ARTICLE 9 PROGRESS PAYMENTS

9.1 **Applications for Payment.** Based upon Applications for Payment submitted to the Owner by Contractor and, subject to the applicable provisions of the Contract Documents, HFC shall make progress payments on account of the Contract Sum to Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Provided a signed Application for Payment is received by the Architect, Development Manager and HFC not later than the 5th day of a month, HFC shall make payment to Contractor not later than the 5th day of the following month. If a signed Application for Payment is received by the Architect, Development Manager and HFC after the application date fixed above, payment shall be made by HFC not later than thirty (30) days after HFC and Architect receives the signed Application for Payment. Each Application for Payment shall be based upon the Schedule of Values. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Contract Amount properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Amount allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10%);
2. Add that portion of the Contract Amount properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by HFC, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);
3. Subtract the aggregate of previous payments made by HFC; and
4. Subtract amounts, if any, for which the Architect or Owner has withheld or nullified an Application for Payment in accordance with the Contract Documents.

9.2 **Representations.** The submission of an Application for Payment shall constitute a representation and warranty by Contractor that all of the said bills due and payable prior to the time of each such request or are projected to be due and payable by the date of the Application for Payment, have been paid, or alternatively, a covenant that they shall be paid, or caused to be paid immediately upon receipt of payment by Contractor. Prior to the next payment, Contractor shall present proof (satisfactory to HFC) of payment of all bills not previously paid. Should Contractor have dispute with any Subcontractor or Materialmen which would cause Contractor to withhold some or all of any amount requested by Contractor to be funded by HFC, Contractor shall promptly notify HFC of the nature of said dispute, the amount being withheld and a projection as to when the dispute will be resolved and the Subcontractor or Materialmen will be paid. Payments by HFC shall be equivalent to the portion of the total Work which actually has been performed.

9.3 **Accompanying Materials.** Each Application for Payment shall (a) indicate the percentage of Work actually performed and materials installed for each item listed in the Schedule of Values, as for the current month projected through the date of the Application for Payment and (b) be certified by Contractor's authorized representative and notarized. Each Application for Payment shall be accompanied by Contractor's conditional waiver and release, in a form acceptable to HFC (which release is conditioned on receipt of payment from HFC) and each Subcontractor's conditional waiver and release (which shall include all Work performed through the current Application for Payment). In preparing Applications for Payment, any materials delivered to the Site significantly in advance of their installation and preparatory work thereon, may not be included in the Application, except (a) when requested in advance by Contractor to expedite the Work and approved in writing by HFC (which approval will not be unreasonably withheld), and (b) if such materials are fully protected, insured and maintained by Contractor as provided for in the Contract Documents.

9.4 **Contractor's Payments to Others.** Contractor shall faithfully and expeditiously pay for all labor performed (as evidenced by its payrolls) and all materials purchased and subcontracts let (as evidenced by its monthly invoices), but in no event later than five (5) days after receipt of Owners monthly payment to Contractor. Contractor will not withhold more retainage from its Subcontractors than HFC withholds from Contractor.

9.5 **Release of Filed Liens.** If any Subcontractor, Subordinate Subcontractor, or Materialmen or laborer shall file in the County Recorder's Office, or any other place permitted by the applicable statute, a Stop Notice, Mechanic's Lien or other instrument indicating that the said person has claimed a lien on the Premises, then, and in any of such events, before any additional Application shall be payable, Contractor shall furnish to HFC to the extent of payments funded by HFC for such Work, a waiver or release from such person claiming a Lien, releasing HFC from all claims for Work performed or materials furnished, as the case may be, up to the date of the requisition for which payment is requested. Alternatively, Contractor may bond around any such Stop Notice or Lien of record as a Cost of Work.

9.6 **Payment for Accepted Work.** All labor to be performed and materials to be furnished by Contractor shall be performed and furnished to the satisfaction of HFC and payment shall be made only for such Work and materials as are accepted by HFC; provided, however, that HFC shall not arbitrarily withhold acceptance of such Work and materials, and payment thereof, so long as Contractor makes satisfactory progress and performs all of its obligations In accordance with and pursuant to the terms and conditions of this Contract.

9.7 **Joint Checks.** HFC reserves the right to issue joint payee checks for undisputed amounts in the names of Contractor and any unpaid party who has contracted by, through or under Contractor, including Subcontractors and Materialmen, or otherwise withhold funds from progress payments or Final Payment as permitted by **Article 12** or any other provisions of this Contract, to assure payment to proper parties or HFC's receipt of executed lien and claim waivers and releases in accordance with this Contract.

9.8 **No Waiver.** No payment made to Contractor, nor partial or entire use, or occupancy of the Premises by HFC shall be considered an acceptance of any Work or materials which are found to be faulty or defective, or not to be in accordance with requirements of the Contract Documents. Final payment to Contractor shall not preclude HFC from making any Claim that it may have against Contractor.

9.9 **Others Not Benefitted.** This **Article** is intended solely for the benefit of HFC, and no person shall have any claim against HFC by reason of HFC's failure or refusal to withhold monies. This **Article** is not intended to limit or in any way prejudice any other rights of HFC.

## ARTICLE 10 PAYMENT WITHHELD

10.1 **Right to Withhold.** HFC may, upon five (5) days' written notice to Contractor of any of the following events and Contractor's failure to cure such matter within said five (5) day period, withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any Application for Payment to such extent as may be necessary to protect HFC from loss on account of:

- a. Defective work not remedied;
- b. Third party claims filed or reasonable evidence (as determined by HFC in its reasonable judgment) indicating probable filing of such claims for which Contractor has been paid;
- c. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment due pursuant to such Subcontracts;
- d. Reasonable evidence (as determined by HFC in its reasonable judgment) that the Work cannot be completed for the unpaid balance of the Contract Amount;
- e. Damage to HFC or to another contractor caused by Contractor;
- f. Reasonable evidence that the Work will not be completed within the Contract Time; or
- g. Failure to carry out the Work in accordance with the Contract Documents.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

## ARTICLE 11 FINAL PAYMENT

11.1 **Final Payment.** Final Payment shall become due thirty-five (35) days after full completion and acceptance of the Work by HFC and full performance of the Contract by Contractor. Upon the receipt of Contractor's written notice that the Work is ready for final inspection and acceptance, Architect and HFC will make such inspection and when each of Architect and HFC finds the Work fully completed in accordance with the Contract Documents and the Contract fully performed, Architect will issue a final Certificate for Payment stating that the Work provided for in the Contract has been completed and is accepted by Architect under the terms and conditions thereof, and that the entire balance found to be due to Contractor and specified in said final Certificate of Payment is due and payable. However, before issuance of the final Certificate of Payment, Contractor shall submit such Guarantees and Warranties as are required by the terms of the Contract Documents and concurrently with Final Payment Contractor shall deliver to HFC a release of all claims and an affidavit attached thereto in a form to be provided or approved by HFC certifying that all labor, Materialmen and Subcontractors have been fully paid. Such releases, waivers and affidavits may be conditioned upon receipt of Final Payment by Contractor.

11.2 **Compliance with General Conditions.** Before Contractor shall be entitled to receive Final Payment under the Contract, it shall fully comply with all of the terms and provisions of the Contract Documents required to be performed a a condition to Final Payment.

11.3 **Conditions to Final Payment.** Final Payment for the Work shall be conditioned upon Contractor's removing from the Premises any Work rejected by Architect or HFC and replacing or re-executing said Work in accordance with this Contract and the Contract Documents. Final Payment shall be further conditioned upon Contractor's furnishing HFC (in addition to his Application for Payment) a general release and waiver of liens from Contractor (on a form provided or approved by HFC) waivers of lien and an affidavit that all labor and materials have been paid for or shall expeditiously be paid from the proceeds of Final Payment. If Contractor has minor disputes with one or more of its Subcontractors or Materialmen that are unresolved at the time of Final Payment, Contractor will furnish HFC a detailed list of said unresolved disputes which will not be funded by HFC. HFC will withhold two times the amount of said unresolved disputes until such time as Contractor produces a Conditional Waiver and Release for all Subcontractors and Materialmen who had unresolved disputes with Contractor at the time of Final Payment. HFC will fund said withheld amount within seven-(7) days of receipt of all required releases. Such releases, waivers and affidavits will be conditioned only upon receipt of Final Payment by Contractor.

## ARTICLE 12 CHANGES IN THE WORK & CLAIMS

12.1 **Changes in the Work by HFC.** HFC, may, from time to time, by written instructions or drawings issued to Contractor, make changes in the Drawings & Specifications and Specifications included in the Contract Documents, issue additional written instructions, require additional Work or direct the omission of Work previously ordered, and the provisions of this Contract shall apply to all such changes, modifications and additions with the same effect as if they were embodied in the original Specifications and Drawings & Specifications. If Contractor claims that any instructions involving changes to the Drawings & Specifications involve extra costs under the Contract, Contractor shall give Architect and HFC written notice thereof within a reasonable time, but in no event more than fifteen (15) days after the receipt of such instructions, and in any event, before proceeding to execute the Work. Any approved changes which increase to the cost of Work shall increase the Contract Amount in the amount of the approved additional amount.

12.2 **Change Orders – Mandatory.** Notwithstanding anything to the contrary herein, any and all changes which increase or decrease the Contract Amount and/or Contract Time must be evidenced by a written Change Order, on the form attached herein as **Exhibit M**, which must be signed by HFC. No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Amount or a change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealing between the parties, nor express or implied acceptance of alteration or additions to the Work, and no claim that HFC has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or change in the Contract Time. A field directive or field order shall not be recognized as having any impact upon the Contract Amount or the Contract Time, and Contractor shall have no claim therefor unless, prior to complying with same and in no event later than fifteen (15) days from the date such direction or order was given, Contractor shall have submitted same to HFC, Development Manager and Architect in writing and obtained HFC's written approval thereof.

12.3 **Claims.** In the event that Contractor makes a Claim for a Change Order which is not approved by HFC, Contractor shall, without delay or interruption, pending resolution of the Claim, proceed with the Work only if so expressly directed by HFC in writing, and Contractor expressly agrees not to directly or indirectly stop or delay the proper performance of the Work. If HFC, after evaluating Contractor's Claim determines in good faith that Contractor is entitled to an increase in costs, HFC shall

not withhold payment of said sum but shall make payment as otherwise provided herein. Contractor shall then have all rights otherwise provided for in this Contract to pursue any additional compensation for the Claim.

(a) Contractor shall submit no Claims for additional compensation or time unless Contractor certifies that such Claim is a valid Claim that it has reviewed all documentation supporting the Claim, and has confirmed that all costs and expenses in connection with the Claim are valid and reasonable as presented. Contractor will submit with each Claim its recommendation as to the validity of said Claim and its recommendation as to its resolution; no such Claims will be processed without Contractor's recommendations. Contractor shall notify HFC of all Claims within seven-(7) days of the event giving rise to the Claim, even though Contractor has not had time to review said Claim and make a formal recommendation to HFC.

(b) No Claims for additional compensation or time shall be allowed for work, labor, service, equipment or material furnished more than fifteen (15) days prior to receipt by HFC of written notice of such Claim of such Claim shall be deemed waived. It is the intent of the Parties that if Contractor claims additional compensation or time, it shall notify HFC, in writing, before any Work is done, certify the Claim as herein specified, and then proceed with the Work under written instructions from HFC or proceed, if so instructed by HFC, under protest if HFC does not agree that Contractor is entitled to additional compensation or time.

(c) With respect to any extension of the Contract Time resulting from a Claim, the increase in the Contract Amount for general conditions costs (including, by way of example and not limitation, Contractor's overhead and personnel costs) shall be \$ \_\_\_\_\_ per day for each day the Contract Time is extended.

(d) Any Claim that remains unresolved after fifteen (15) days following receipt by HFC of the items described in Section 12.3, may, at the option of either Party, be resolved through the Dispute Resolution procedures outlined in **Article 19** of this Contract.

## **ARTICLE 13 INSPECTIONS & RECORDS**

13.1 **Inspections**. Contractor shall permit HFC (including HFC's designated auditors, agents and representatives) to have access at all reasonable times, at Contractor's main or field office, to review and make copies of all records, correspondence, account books, invoices, canceled checks, payrolls and other records relating to this Contract and to the Premises and the Work, for checking the cost, progress and character of the Work. HFC may check and approve all of Contractor's payrolls. Contractor shall preserve at Contractor's main office, yard or storage facility, at Contractor's expense, all records (relating to the Work) for a period of at least three-(3) years after Final Payment, or longer if required by law.

13.2 **Records**. The records to be made available by Contractor pursuant hereto shall include, but are not limited to, all bonds, records, computer data, e-mails, minutes, correspondence, job logs, daily reports, job diaries, Submittals, schedules, payment records, payrolls, invoices, subcontracts, billings, purchase orders, field orders, field memorandums, inter-office memorandums, telephone logs, telephone memorandums, faxes, photographs, videos, charts, graphs, accident reports, incident reports, estimates, bid sheets, and any and all other material of any kind, nature or description, written, maintained, prepared, received or sent connection with the Project.

## ARTICLE 14 TERMINATION; SUSPENSION

14.1 **Termination by HFC for Cause.** HFC may terminate this Contract upon written notice to Contractor if any of the events listed in this Section 14.1 occur. HFC may thereafter proceed with the Work at any time. Such termination shall be effective in the manner specified in said notice and shall be without prejudice to any claims which HFC may have against Contractor. On receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue Work, and the placing of orders for materials, facilities and supplies in connection with the performance of the Work and shall, if requested, make every reasonable effort to procure cancellation of existing orders and subcontracts upon terms satisfactory to HFC, and shall thereafter do only such Work as may be necessary to preserve and protect the Work already in progress and to protect material, plant or equipment on the site or in transit thereto.

(a) Should Contractor make a general assignment for the benefit of its creditors, or should a receiver of any property of Contractor be appointed, or should a petition be filed, either by or against Contractor, in any Bankruptcy or insolvency proceedings, or should Contractor become insolvent, HFC whether or not it terminates this Contract, may immediately enter the Premises and take possession of all tools, machinery, equipment and appliances which may be owned by or be in the possession of Contractor and which are at the site and required for the completion of the Work, and may exercise all options, privileges and rights with respect thereto, and may complete, or employ any other person or persons to complete the Work, at Contractor's expense.

(b) Should Contractor, at any time, refuse to replace defective materials or Work, fail to prosecute Work with diligence or in accordance with the Contract Documents, fail to pay for labor and material incurred on the Project, fail to prosecute the Work as necessary to accomplish the Project completion in accordance with the approved Construction Schedule, or violate any covenant or condition herein contained (each, a "**Contractor Default**"), and should Contractor not cure said failure or make arrangements satisfactory to HFC to cure the Contractor Default within seven (7) days after receipt of written notice from HFC, then HFC may (1) terminate this Contract and (2) whether or not HFC terminates this Contract and without waiving any of its other rights at law or in equity, enter the Premises and take possession of all of the tools, machinery, equipment and appliances which may be owned by or be in the possession of Contractor and which are at the Site and required for the completion of the Work, and (3) may exercise all options, privileges and rights with respect thereto, and may complete, or employ any other person or persons to complete the Work, at Contractor's expense.

14.2 **Contractor's Deliveries.** In the event of termination of this Contract by HFC, Contractor shall upon demand immediately execute and deliver all necessary documents in form and substance satisfactory to HFC and take such steps, including further evidence of assignment of contractual rights, as HFC may require, to fully vest Contractor's rights and benefits above mentioned, in HFC provided Contractor may reserve any rights and claims it may have against any supplier or otherwise with respect to prior periods. To the extent of any such assignment to HFC, HFC shall not prejudice, release, interfere, resolve or adversely affect any such rights, claims, actions or remedies of Contractor.

14.3 **If HFC Does Not Terminate; No Waiver.** If Contractor defaults under this Contract but HFC does not terminate this Contract or elect to take possession of the Site and complete the Work as aforementioned, Contractor shall diligently continue the Work and shall pay to HFC any damages caused by delay in completion to the extent the delay was caused by Contractor. Failure of HFC to take such action shall not be construed as a waiver by HFC of any default. Failure of HFC to terminate this Contract for cause shall not be construed as a waiver of HFC's right to terminate this Contract in the event that cause exists at some future date.



14.4 **Costs to Complete.** In the event of the termination of this Contract by HFC under Section 14.1 or, without terminating this Contract, the election by HFC to take possession of the Site and complete the Work, should the expense incurred by HFC in completing the Work exceed the difference between the unpaid balance of the Contract Amount as of the date of termination or such election by HFC to take possession and complete the Work, Contractor shall upon demand, immediately pay such excess to HFC.

14.5 **Cumulative Rights.** HFC shall have all rights and remedies available at law or in equity in the event of a breach of the Contract by Contractor, each such right shall be cumulative of all other rights and no exercise of any of such rights shall preclude or constitute a waiver of any other rights or remedies.

14.6 **Termination for Convenience.** HFC may also terminate this Contract at any time, for its convenience with or without cause upon written notice in accordance with this Contract to Contractor. HFC may thereafter proceed with the Work at any time and shall not be bound by the provisions of this Contract. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue Work and the placing of orders for materials, facilities and supplies in connection with the performance of the Work, and shall, if requested, make every reasonable effort to procure cancellation of existing orders and Subcontracts upon terms satisfactory to HFC, and shall thereafter do only such Work as may be authorized by HFC as necessary to preserve and protect Work already in progress, and to protect materials, tools, machinery and equipment on the Project Site or in transit thereto. Upon such termination by HFC, HFC shall pay to Contractor a portion of the Contract Amount equal to the percentage of the Work completed (less any payments previously made to Contractor), which payment shall be the sole payment due to Contractor. In no event shall Contractor be entitled to any compensation for Work not performed, lost profits on Work not performed, or lost opportunity to perform other construction projects.

14.7 **Assignment of Subcontracts.** In the event of termination by HFC, Contractor shall assign to HFC, if requested by HFC, all of Contractor's right, title and interest in and to any or all subcontracts or purchase orders existing between Contractor and any of its Subcontractors or material suppliers. Contractor shall, in its subcontracts and purchase orders, require its Subcontractors and material suppliers consent to such an assignment. Prior to release of all claims which may have arisen hereunder, Contractor shall execute and deliver all necessary documents and take such steps, in form and substance satisfactory to HFC, including further evidence of assignment of contractual rights, as HFC may reasonably require consistent with this Contract to fully vest Contractor's rights and benefits above mentioned in HFC or HFC's nominee.

14.8 **Suspension.** If the Work is suspended for a period of one hundred and eighty (180) consecutive days-through no act or fault of Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with Contractor (other than by reason of war, civil disorder, labor unrest, material shortages or any other cause beyond the reasonable control of HFC), then Contractor may, upon seven (7) additional days' written notice to HFC, terminate this Contract and recover from HFC payment for all Work executed, which payment shall be the portion of the Contract Sum equal to the percentage of the Work completed (less any payments previously made by HFC to Contractor, which payment shall be the sole payment due to Contractor. In no event shall Contractor be entitled to any compensation for Work not performed, lost profits on Work not performed, or lost opportunity to perform other construction projects.

14.9 **Expenses.** In case of Contractor Default, a Contractor shall also pay such expenses as may be incurred by HFC in enforcing the terms of this Contract or in curing the Contractor Default, including reasonable attorneys' fees and costs, regardless of whether any litigation is commenced.

## **ARTICLE 15 BANKRUPTCY**

It is recognized that if an order for relief is entered on behalf of Contractor pursuant to Title 11 of the United States Code, if any other similar order is entered under any other debtor relief laws, if Contractor makes a general assignment for the benefit of its creditors, if a receiver is pointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency (collectively, an “**Insolvency Event**”), any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of an Insolvency Event, HFC shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten-(**10**) days of delivery of the request shall entitle HFC to terminate the Contract. In all events, pending receipt of adequate assurance of performance and actual performance in accordance herewith, HFC shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Amount. If adequate assurances are provided and Contractor continues to perform his obligations under the Contract and HFC is not economically impacted by the Insolvency Event, HFC agrees to not terminate the Contract under this **Article 19**. If the Contract is terminated under this **Article 19**, Contractor will reimburse HFC to the extent that HFC's expense, including attorney's fees, and expenses, in completing the Work and proceeding under this **Article 19**, exceeds the balance which would have become due to Contractor under this Contract had Contractor completed the Work, after deducting amounts previously paid to Contractor. If HFC's expense is less than such amount, then HFC shall pay the difference to Contractor. Regardless of whether HFC elects to terminate Contractor or pursue its other rights, it is agreed that upon the happening of any Insolvency Event, HFC may withhold payments from Contractor in amounts sufficient to reimburse HFC for sums which Contractor owes or will owe HFC under this Contract.

## **ARTICLE 16 ASSIGNMENT**

HFC may assign or otherwise transfer all or any part of its rights and obligations under this Contract without the prior consent of Contractor. If HFC does assign this Contract or any part thereof, they shall require that its assignee be bound to Contractor and to assume toward them all of the obligations and responsibilities that they had assumed toward Contractor. Notwithstanding anything to the contrary in this Contract, Contractor shall not assign, transfer, convey, or otherwise dispose of this Contract or any part thereof, or its right, title or interest herein, or its power to execute the same.

## **ARTICLE 17 NO LIENS**

In the event that any Mechanic's Liens or Stop Notices, covered by this Contract, are filed against the Premises or any portion thereof, to the extent Contractor has been paid for work under such Lien or Notice, then Contractor shall bear the cost of and agrees to immediately take all actions necessary to cause such Mechanic's Liens or Stop Notices to be removed, or bonded around irrespective of the merits of said Claims, and Contractor's failure to cause such notices or liens to be removed, or bonded around, shall constitute a breach under this Contract, entitling HFC to remove or bond such Lien or Notice at Contractor's expense. Contractor will be given a reasonable time (not to exceed thirty-(**30**) days) to resolve said Stop Notice or Mechanic's Lien prior to being required to post said bond. The Parties agree that the bond shall be for the benefit of HFC and not for the benefit of third parties except to the extent necessary to protect HFC.

## ARTICLE 18 OSHA COMPLIANCE

Contractor shall comply, and shall bind any Subcontractor who enters the Premises, to comply with all applicable Occupational Safety and Health Acts, and all standards and regulations issued pursuant thereto.

## ARTICLE 19 DISPUTE RESOLUTION

19.1 In the event that any Dispute arises, either Party may give written notice to the other Party requesting that a representative of HFC's senior management and Contractor's senior management meet in an attempt to resolve the Dispute. Each management representative shall have full authority to resolve the Dispute and shall meet at a mutually agreeable time and place within thirty-(30) days (or such longer time, if agreed in writing by the Parties) after receipt by the non-notifying Party of such notice. In the event that the management representatives are unable to resolve the Dispute within thirty-(30) days (or such longer time, if agreed in writing by the Parties) of receipt of notice given pursuant to this **Article**, then either Party may initiate legal proceedings.

19.2 The Parties agree that any Dispute not resolved pursuant to **Article 25** shall be decided by litigation pursuant to this **Article**. Litigation of any Dispute shall be brought exclusively in a federal or state court within Harris County, Texas. Each Party hereby consents to personal jurisdiction in any legal action, suit or proceeding brought in any court, federal or state, within Harris County, Texas, having subject matter jurisdiction. Each Party further consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such Party at its address specified herein for the giving of notices, or by such other notice given in accordance with the rules and procedures of such courts.

19.3 Under no circumstances shall a Dispute entitle Contractor to slow or stop performance of the Work. Pending resolution of any Dispute, Contractor shall diligently proceed with the performance of all of the Work in a good and workmanlike manner and in conformity with this Contract. Failure to promptly proceed with performance of this Contract pending resolution of a Dispute is a material breach hereof.

## ARTICLE 20 GENERAL PROVISIONS

20.1 **Notices.** Any written notices required or given hereunder shall be personally delivered by receipted messenger service, Federal Express or by certified or registered mail, postage-prepaid, return receipt requested, deposited in the United States Post Office or a depository for the receipt of mail regularly maintained by the Post Office. Such notice shall be deemed given on the day received, if notice is given by personal delivery, and upon actual receipt if notice is given by Federal Express, or by U.S. mail, addressed as set forth below:

### As to HFC:

Houston First Corporation  
1001 Avenida de las Americas  
Houston, Texas 77010  
Attention: Ms. Dawn Ullrich and Ms. Lisa Hargrove  
Email: dawn.ullrich@houstonfirst.com  
lisa.hargrove@houstonfirst.com

**With a copy to:**

Locke Lord LLP  
600 Travis Street, Suite 2800  
Houston, Texas 77002  
Attention: Mr. Stephen C. Jacobs  
Email: sjacobs@lockelord.com

**As to Contractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each Party shall notify the other, in writing, of any change of address within thirty-(30) days of such change.

20.2 **No Waiver.** No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing and signed by the Parties hereto, and specifying with particularity, the nature and extent of such waiver, modification or amendment. The signing of such writing or writings in any instance or instances, shall in no event, be construed to be a general waiver, abandonment, modification or amendment of any of the terms, conditions or provision of this Contract, but, the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

20.3 **No Third Party Rights.** Except as provided in Section 21 and except for the provisions hereof that inure to the benefit of the Development Manager (including the indemnification obligations of the Contractor), this Contract is intended solely for the benefit of HFC and Contractor and is not intended for the use or benefit of any other party. Nothing contained in this Contract is intended to make any person or entity who is not a signatory to this Contract a third party beneficiary of any right created by this Contract or by operation of law

20.4 **Severability.** If any one or more of the provisions contained in this Contract, for any reason, are held to be invalid, illegal, or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

20.5 **Miscellaneous.**

a. All agreements, covenants, representations and warranties, express and implied, oral and written, of the Parties hereto concerning the subject matter hereof are contained in this Contract and the other Contract Documents. No other agreements, covenants, representations or warranties, express or implied, oral or written have been made by any Party hereto to any other party concerning the subject matter hereof. All prior and contemporaneous conversations,

negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereto are merged herein. This is an integrated Contract.

b. Throughout this Contract and other Contract Documents, words in the singular shall include the plural, and vice-versa, and personal pronouns shall include the neuter gender, whenever the context so indicates.

c. Any law, usage or custom to the contrary notwithstanding, HFC shall have the right, at all times, to enforce all terms, conditions and covenants, hereof in strict accordance herewith, notwithstanding any conduct or custom on the part of HFC in refraining from so doing at any time or times.

d. The remedies and rights of HFC and Contractor in the event of any breach or default by the other, are cumulative and in addition to those given by law or equity and the expression herein of any specific right or remedy shall not be construed as limiting HFC or Contractor from exercising any other right or remedy it may have at law or in equity.

e. Each Party and counsel for each Party has reviewed and revised this Contract, and the normal rule of construction to the effect that any ambiguities in this Contract are to be resolved against the drafting Party shall not be employed in the interpretation of this Contract.

f. The Parties hereto, and each of them, represent and declare that in executing this Contract they relied solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matter made by any other Parties hereto or by any person representing any of such other Parties hereto.

g. Arbitration shall not be considered as a remedy under the provisions of this Contract.

h. This Contract shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

i. Article headings are for convenience and referral only, and in no way waive or limit the scope and contents of this Contract or in any way affect its provisions.

j. All periods described in this Contract are Calendar Days unless expressly designated as Business Days.

## **ARTICLE 21 SPECIAL PROVISIONS REGARDING TENANT**

Contractor acknowledges that HFC has entered into a lease of the Site, as landlord, with Tenant and that HFC is obligated thereunder to construct the Work and deliver the Work to Tenant. Contractor agrees that all of the obligations of the Contractor under the Contract Documents with respect to warranties and obligations to correct non-conforming Work shall inure to the benefit of Tenant and any be enforced directly by Tenant.

**ARTICLE 22 GOVERNING LAW**

This Contract shall be governed by, and construed in accordance with, the laws of the State of Texas. Exclusive venue for purposes of any dispute, claim or lawsuit resulting from or arising out of this Contract shall be in Harris County, Texas.

*[Signature Page Follows]*

DRAFT

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be signed by their duly authorized officers as of the day and year first above written.

**HFC**

**HOUSTON FIRST CORPORATION**

By: \_\_\_\_\_  
Dawn Ullrich, President

Approved as to Form:

\_\_\_\_\_  
Counsel to HFC

**Contractor**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

General Conditions to Construction Contract



**EXHIBIT A.1**

Schedule of Values

**EXHIBIT B**

Allowances

(See Following Page(s))

**EXHIBIT C**

Notes of Clarification & Exclusions

(See Following Page(s))

**EXHIBIT D**

Drawings and Specifications

(See Following Page(s))

**EXHIBIT E**

[Intentionally Omitted]

**EXHIBIT F**

Key Personnel and Responsibilities  
and Project Staffing Organizational Chart

(See Following Page(s))

**EXHIBIT G**

[Intentionally Omitted]

**EXHIBIT H**

[Intentionally Omitted]



**EXHIBIT I**

Notice Proceed (form)

**NOTICE TO PROCEED**

\_\_\_\_\_, 2016

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

RE: **ENTERTAINMENT FACILITY**  
1836 Polk Street  
Houston, Texas 77003  
**NOTICE TO PROCEED**

Gentlemen:

This letter shall serve as your Authorization to Proceed with the Work on the above referenced Project on **June \_\_\_\_\_, 2016**.

All Work undertaken based on this Notice to Proceed shall be governed by the Contract dated **May \_\_\_\_\_, 2016** between \_\_\_\_\_ and Houston First Corporation.

Please contact the writer should you have any questions relative to this Notice.

Very truly yours,

**HOUSTON FIRST CORPORATION**

Dawn Ullrich,  
President

**EXHIBIT J**

Construction Schedule

(See Following Page(s))

**EXHIBIT K**

Insurance Requirements; Contractor's Indemnity

(See Following Page(s))

**1. Specific Insurance Requirements**

The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of the Contract Documents and thereafter as required:

Insurance	Coverage/Limits	Other Requirements
Commercial General Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$2,000,000 Per Occurrence</li> <li>▪ \$4,000,000 General Aggregate</li> <li>▪ \$2,000,000 Personal and Advertising Injury</li> <li>▪ Designated Construction Project(s) General Aggregate Limit</li> <li>▪ \$1,000,000 Electronic Data Liability if performing any underground work</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CG 00 01</li> <li>▪ The personal injury contractual liability exclusion shall be deleted.</li> <li>▪ Additional insured status shall be provided in favor of HFC Parties (as defined below) on a combination of ISO forms CG 20 10 10 01 and CG 20 37 10 01.</li> <li>▪ This coverage shall be endorsed to provide primary and non-contributing liability coverage. It is the intent of the parties to this Agreement that all insurance coverage required herein shall be primary to and will not seek contribution from any other insurance held by HFC Parties, with HFC Parties' insurance being excess, secondary and non-contributing.</li> <li>▪ The following exclusions/limitations (or their equivalent(s), are prohibited:               <ul style="list-style-type: none"> <li>○ Contractual Liability Limitation CG 21 39</li> <li>○ Amendment of Insured Contract Definition CG 24 26</li> <li>○ Limitation of Coverage to Designated Premises or Project, CG 21 44</li> <li>○ Exclusion-Damage to Work Performed by Subcontractors On Your Behalf, CG 22 94 or CG 22 95</li> <li>○ Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43</li> <li>○ Any Classification limitation</li> <li>○ Any Construction Defect Completed Operations exclusion</li> <li>○ Any endorsement modifying the Employer's Liability exclusion or deleting the exception to it</li> <li>○ Any endorsement modifying or deleting Explosion, Collapse or Underground coverage</li> <li>○ Any Habitational or Residential exclusion</li> <li>○ Any "Insured vs. Insured" exclusion</li> </ul> </li> </ul>

		<p>except Named Insured vs. Named Insured</p> <ul style="list-style-type: none"> <li>○ Any Punitive, Exemplary or Multiplied Damages exclusion</li> <li>○ Any Subsidence exclusion</li> </ul>
Business Auto Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Accident</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CA 00 01 Arising out of any auto (Symbol 1), including owned, hired and no-owned</li> </ul>
Workers' Compensation and Employer's Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ Statutory Limits</li> <li>▪ \$1,000,000 Each Accident and Disease</li> </ul>	<ul style="list-style-type: none"> <li>▪ The State in which work is to be performed must be listed under Item 3.A. on the Information Page</li> <li>▪ Such insurance shall cover liability arising out of Contractor's employment of workers and anyone for whom Contractor may be liable for workers' compensation claims. Workers' compensation insurance is required, and no "alternative" forms of insurance shall be permitted.</li> <li>▪ Where a Professional Employer Organization (PEO) or "leased employees" are utilized, Contractor shall require its leasing company to provide Workers' Compensation insurance for said workers and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Contractor and HFC.</li> <li>▪ Where Contractor uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Contractor is strictly prohibited from subletting any of its Work without the express written agreement of HFC.</li> </ul>
Excess Liability (Occurrence Basis)	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$5,000,000 Each Occurrence</li> <li>▪ \$20,000,000 Annual Aggregate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Such insurance shall be excess over and be no less broad than all coverages described above.</li> <li>▪ Drop-down coverage shall be provided for reduction and/or exhaustion of underlying aggregate limits and shall include a duty to defend any insured.</li> </ul>
Professional Liability	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Each Occurrence</li> <li>▪ \$2,000,000 Annual Aggregate</li> <li>▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be</li> </ul>	<ul style="list-style-type: none"> <li>▪ Such insurance shall cover all services rendered by the Contractor and its subcontractors under the Agreement.</li> <li>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> <li>○ bodily injury or property damage</li> </ul> </li> </ul>

	<p>\$3,000,000 Each Loss and Aggregate.</p> <ul style="list-style-type: none"> <li>▪ Such insurance shall cover all services rendered by the Contractor and its consultants under the Agreement, including but not limited to design or design/build services.</li> </ul>	<p>where coverage is provided in behalf of design professionals or design/build contractors</p> <ul style="list-style-type: none"> <li>○ habitational or residential operations</li> <li>○ mold and/or microbial matter and/or fungus and/or biological substance</li> <li>○ punitive, exemplary or multiplied damages.</li> </ul> <ul style="list-style-type: none"> <li>▪ Any retroactive date must be effective prior to beginning of services for the HFC.</li> <li>▪ Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement.</li> <li>▪ The purchase of an extended discovery period or an extended reporting period on a Claims-Made policy will not be sufficient to meet the terms of this provision.</li> </ul>
<p>Contractors Pollution Liability</p>	<p>Amounts of coverage shall be no less than:</p> <ul style="list-style-type: none"> <li>▪ \$1,000,000 Each Loss</li> <li>▪ \$2,000,000 Annual Aggregate</li> <li>▪ If a combined Contractor's Pollution Liability and Professional Liability policy is utilized, the limits shall be \$3,000,000 Each Loss and Aggregate.</li> <li>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li>○ the full scope of the named insured's operations (on-going and completed) as described within the scope of work for this Agreement</li> <li>○ loss arising from pollutants including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall</li> <li>○ third party liability for bodily injury, property damage, clean up expenses, and defense arising from the operations;</li> <li>○ diminution of value and Natural Resources</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: <ul style="list-style-type: none"> <li>○ Insured vs. insured actions. However exclusion for claims made between insured within the same economic family are acceptable.</li> <li>○ impaired property that has not been physically injured</li> <li>○ materials supplied or handled by the named insured. However, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval.</li> <li>○ property damage to the work performed by the contractor</li> <li>○ faulty workmanship as it relates to clean up costs</li> <li>○ punitive, exemplary or multiplied damages</li> <li>○ work performed by subcontractors</li> </ul> </li> <li>▪ If coverage is provided on a Claims Made basis, coverage will at least be retroactive to the earlier of the date of this Agreement or the commencement of contractor services relation to the Work.</li> <li>▪ Completed Operations coverage shall</li> </ul>

	<p>damages</p> <ul style="list-style-type: none"> <li>o contractual liability</li> <li>o claims arising from owned and non-owned disposal sites utilized in the performance of this Agreement.</li> </ul> <ul style="list-style-type: none"> <li>▪ The policy must insure contractual liability, name HFC Parties as an Additional Insured, and be primary and noncontributory to all coverage available to the Additional Insured.</li> </ul>	<p>be maintained through the purchase of renewal policies to protect the insured and additional insured for at least ten (10) years after the property owner accepts the project or this contract is terminated</p> <ul style="list-style-type: none"> <li>▪ The purchase of an extended discovery period or an extended reporting period on a Claims Made policy or the purchase of occurrence based Contractors Environmental Insurance will not be sufficient to meet the terms of this provision.</li> </ul>
<p>Builders Risk</p>	<ul style="list-style-type: none"> <li>▪ Coverage shall be provided in an amount equal at all times to the full contract value, including change orders, and cost of debris removal for any single occurrence.</li> <li>▪ Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other insurance coverage available to the named insured parties, with that other insurance being excess, secondary and non-contributing.</li> <li>▪ The policy must provide coverage for: <ul style="list-style-type: none"> <li>o Additional expenses due to delay in completion of project, (per endorsement) in an amount approved by HFC</li> <li>o Agreed Value (Included)</li> <li>o Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse (Included)</li> <li>o Debris removal additional limit (\$1,000,000)</li> <li>o Earthquake and Earthquake Sprinkler Leakage (Included)</li> <li>o Flood [\$TBD]</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Insureds shall include HFC, Contractor General, all Loss Payees and Mortgagees, and subcontractors of all tiers in the Work as Insureds.</li> <li>▪ Such insurance shall cover: <ul style="list-style-type: none"> <li>o all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling;</li> <li>o all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;</li> <li>o all property including materials and supplies on site for installation;</li> <li>o all property including materials and supplies at other locations but intended for use at the site;</li> <li>o all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and</li> <li>o other Work at the site identified in the Agreement to which this Exhibit is attached.</li> </ul> </li> <li>• No protective safeguard warranty shall be permitted.</li> <li>• The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed This insurance shall be</li> </ul>

	<ul style="list-style-type: none"> <li>○ Freezing (Included)</li> <li>○ Mechanical breakdown including hot &amp; cold testing (Included)</li> <li>○ Ordinance or law (Included)</li> <li>○ Pollutant clean-up and removal (\$1,000,000)</li> <li>○ Preservation of property (Included)</li> <li>○ Theft (Included)</li> <li>● Deductibles shall not exceed <ul style="list-style-type: none"> <li>○ All Risks of Direct Damage, Per Occurrence, except \$10,000</li> <li>○ Named Storm: 1%, subject to a minimum not to exceed \$50,000</li> <li>○ Delayed Opening Waiting Period (5 Days)</li> <li>○ Earthquake and Earthquake Sprinkler Leakage, \$25,000 Per Occurrence</li> <li>○ Flood, \$25,000 Per Occurrence or excess of NFIP if in Flood Zone A or V</li> </ul> </li> </ul>	<p>maintained in effect, unless otherwise provided for the Agreement Documents, until the earliest of:</p> <ul style="list-style-type: none"> <li>○ the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;</li> <li>○ the date on which release of substantial completion is executed; or</li> <li>○ the date on which the insurable interests of Contractor in the Covered Property has ceased.</li> </ul> <p>A waiver of subrogation provision shall be provided in favor of all insureds.</p>
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**2. General Insurance Requirements**

**A. Definitions. For purposes of this Agreement:**

- i. “ISO” means Insurance Services Office.
- ii. “Contractor” means the Contractor, each Subcontractor, Subordinated Subcontractor and every other sub-contractors of any tier.
- iii. “HFC Parties” means (a) Houston First Corporation (“HFC”), (b) the City of Houston, (c) the Development Manager, (d) the Project, (e) the Architect, (f) the Architect, and (g) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, and (h) any directors, officers, employees, or agents of such persons or entities;
- iv. “Construction Contract” or “Contract” means the Contract to which this Exhibit is affixed.

**B. Policies.**

- i. Contractor shall maintain such General Liability, Excess Liability, Professional and Pollution insurance in identical coverage, form and amount, including required endorsements, for at least 10 years following Substantial Completion of Work to be performed under this Agreement. Contractor shall provide written representation to HFC stating Work completion date.
- ii. All policies must:
  - a. Be written through insurance companies authorized to do business in the State in which the Services are to be performed and rated no less than A-: VII in the most current edition of A. M. Best’s Key Rating Guide at all times Work is to be performed.



- b. Provide a waiver of subrogation in favor of HFC Parties on all insurance coverage carried by Contractor, whether required herein or not.
  - c. Contain an endorsement providing for 30 days prior written notice of cancellation to HFC.
  - d. Be provided to the HFC Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of HFC.
- iii. Failure of any HFC Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any HFC Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
  - iv. Contractor shall provide to HFC a certified copy of all insurance policies required herein within 10 days of any such request. Renewal policies, if necessary, shall be delivered to Contractor prior to the expiration of the previous policy.
  - v. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any HFC Party of any rights. HFC shall have the right, but not the obligation, of prohibiting Contractor or any sub-contractor from performing any Services until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by HFC.

C. **Limits, Deductibles and Retentions**

- i. No deductible or self-insured retention shall exceed \$25,000 without prior written approval of HFC, except as otherwise specified herein. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at Contractor's sole risk. Contractor shall not be reimbursed for same.

D. **Forms**

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, then HFC will have the right to require other equivalent forms.
- ii. Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by HFC.

E. **Evidence of Insurance.** Insurance must be evidenced as follows:

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. ACORD Form 28 Evidence of Commercial Property Insurance for property coverages
- iii. Evidence shall be provided to HFC prior to commencing Work and prior to the expiration of any required coverage.
- iv. ACORD Forms specify:
  - a. HFC as certificate holder at its mailing address;
  - b. Insured's name, which must match that on this Agreement;
  - c. Insurance companies producing each coverage and the policy number and policy date of each coverage;
  - d. Producer of the certificate with correct address and phone number and have the signature of the authorized representative of the producer;
  - e. Additional Insured status in favor of HFC Parties on General Liability, Excess Liability and Pollution Liability policies;
  - f. Amount of any deductible or self-insured retention in excess of \$25,000;

- g. Designated Construction Project(s) General Aggregate Limit on General Liability and Excess Liability policies;
  - h. Personal Injury Contractual Liability;
  - i. Primary and non-contributory status;
  - j. Waivers of subrogation; and
  - k. All exclusions and limitations added by endorsement to the General Liability coverage. This can be achieved by attachment of the Schedule of Forms and Endorsements page.
- v. Copies of the following shall also be provided:
- a. General Liability Additional insured endorsement(s);
  - b. General Liability Schedule of Forms and Endorsements page(s); and
  - c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

**F. Contractor's Insurance Representations to HFC Parties**

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent HFC Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages Contractor should or should not maintain for its own protection; and (b) are being, or have been, obtained by Contractor in support of Contractor's liability and indemnity obligations under this Agreement. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of Contractor, or the failure of any insurance company to pay claims accruing, shall not be held to affect, negate or waive any of the provisions of this Agreement.
- ii. Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If Contractor shall fail to remedy such breach within 5 business days after notice by HFC, then Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the HFC Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to Contractor by HFC. In the event of any failure by Contractor to comply with the provisions of this Agreement, HFC may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that HFC shall have no obligation to do so and if HFC shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.
- iii. This Exhibit is an independent contract provision and shall survive the termination or expiration of the Agreement.

**G. Insurance Requirements of Contractor's Subcontractors**

- i. Insurance similar to that required of Contractor shall be provided by all subcontractors, except Commercial General Liability shall be at least \$1,000,000 Per Occurrence and \$2,000,000 General Aggregate (or provided by Contractor on behalf of subcontractors) to cover operations performed under any consultant agreement. Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from consultant) enumerating, among other things, the waivers of

subrogation, additional insured status, and primary liability as required herein, and make them available to HFC upon request.

- ii. Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering Contractor's or its subcontractor's property shall be Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, Contractor shall not be reimbursed for same. Should Contractor or its subcontractors choose to self-insure this risk, it is expressly agreed that Contractor hereby waives, and shall cause its subcontractors to waive, any claim for damage or loss to said property in favor of the HFC Parties.

#### H. Use of HFC Equipment

Contractor, its agents, employees, sub-consultants or suppliers shall use HFC's equipment only with express written permission of HFC's designated representative and in accordance with HFC's terms and condition for such use. If Contractor or any of its agents, employees, or sub-consultants utilize any of HFC's equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of HFC, then Contractor shall defend, indemnify and be liable to the HFC Parties for any and all loss or damage which may arise from such use.

### 3. Bond Requirements

Unless waived in writing by HFC, Contractor shall arrange and furnish (the cost thereof shall constitute part of the Cost of the Work) statutory performance and payment bonds, each for the full amount of the construction budget guaranteeing the faithful performance of all of the provisions of the construction contract as well as payment to all persons for labor and materials used in the performance of the construction contract. The bonds shall be executed on a form acceptable to HFC and shall become a part of the construction contract. HFC may withhold payments on account until such time as said bonds have been furnished and accepted. No change, alteration or modification in the terms and conditions of the construction contract, or in the terms or manner of payment shall in any way exonerate or release, in whole or in part, any surety on any bond furnished on behalf of Contractor. The cost of the bonds is included in the amount of the GMP. Any net additive Change Orders that increase the GMP will include any additional bond premiums.

### 4. Indemnity and Related Matters

#### (a) Definitions.

Parties. The "Contractor Parties" are (A) Contractor, (B) Contractor's officers, members, partners, agents, and employees, and (C) all other persons and entities over whom Contractor has control. The "HFC Parties" with respect to the Property are (1) HFC, (2) the City of Houston, (3) the Development Manager, (4) the Architect, (5) the Architect, (6) the respective shareholders, members, partners, affiliates, and subsidiaries, and (7) any officers, directors, employees, agents, independent contractors, and tenants of such persons or entities or entities referred to in clause (1) through (6) of this sentence. A "Beneficiary" is the intended recipient of the benefits of another party's Indemnity, Waiver or obligation to Defend.

Claims, Injuries. "Claims" means all foreseeable and unforeseeable claims, demands, proceedings, liabilities, damages (including actual, consequential, and punitive), expenses, Legal Costs, judgments, fines and penalties of any nature or description. "Injury" means (i) harm to, impairment or loss of or impairment or loss of use of property, including income, (ii) harm to (including sickness or disease) or death of a person, or (iii) personal and advertising injury. "Legal Costs" means court costs, attorneys' fees, experts' fees or other expenses incurred in investigating preparing, prosecuting or settling any legal action or proceeding or arbitration, mediation, or other method of alternative dispute resolution.

Indemnify, Waive, and Defend. "Indemnify" means to protect a party against a potential Claim and/or to compensate a party for a Claim actually incurred. "Waive" means to knowingly and voluntarily relinquish a right and/or to release another party from liability in connection with a Claim. "Defend" means to provide and pay for the legal defense of a Beneficiary against a Claim in litigation, arbitration, mediation or other proceeding with counsel reasonably acceptable to such Beneficiary and to pay all costs associated with the preparation or prosecution of such Defense. "Arising From" means directly or indirectly, in whole or in part, (z) occurring in connection with or as a result of (ii) causing, (iii) resulting in, or (iv) based upon.

**(b) INDEMNITY AS TO PERFORMANCE. CONTRACTOR AGREES TO INDEMNIFY AND DEFEND THE OWNER PARTIES AGAINST ALL CLAIMS ARISING, OR ALLEGED TO ARISE, FROM ANY CONTRACTOR PARTY'S (I) PERFORMANCE OF SERVICES, (II) BREACH OF THE CONSTRUCTION CONTRACT WHICH DOES NOT CONSTITUTE A CONTRACTOR'S INJURY, OR (III) VIOLATION OF OR FAILURE TO COMPLY WITH APPLICABLE LAW.**

**(C) INDEMNITY AND WAIVER AS TO INJURIES. CONTRACTOR AGREES TO INDEMNIFY AND DEFEND THE OWNER PARTIES AGAINST, AND WAIVES AS TO ALL THE OWNER PARTIES, ALL CLAIMS ARISING, OR ALLEGED TO ARISE, FROM (I) INJURIES ARISING OUT OF CONTRACTOR'S ONGOING OR COMPLETED OPERATIONS ON THE PROPERTY OR (II) ANY INJURY SUFFERED OR CAUSED BY A CONTRACTOR PARTY WHILE ON THE PROPERTY, BUT NOT ARISING FROM CONTRACTOR'S ONGOING OR COMPLETED OPERATIONS.**

(d) Scope of Indemnities and Waivers. The Indemnities, Waivers, and obligations to Defend in this Contract are independent of and will not be limited by each other or any insurance obligations in this Contract (whether or not complied with) or damages or benefits payable under workers compensation or other employee benefit acts, and will survive the contract expiration date until all related Claims against the Beneficiaries are fully and finally barred by applicable law. All applicable law affecting the validity or enforceability of any Indemnity, Waiver or obligation to Defend contained in the contract documents is made a part of such provision and will operate to amend such Indemnity, Waiver or obligation to Defend to the minimum extent necessary to bring the provision into conformity with applicable law and cause the provision, as amended, to continue in full force and effect. Each Beneficiary is an intended, express third party beneficiary of the Indemnities, Waivers and obligations to Defend set forth herein.

**(e) NEGLIGENCE OF HFC PARTIES. CONTRACTOR'S INDEMNITY, WAIVER AND OBLIGATION TO DEFEND AN OWNER PARTY AGAINST A CLAIM WILL BE ENFORCED TO**

THE FULLEST EXTENT PERMITTED BY LAW FOR THE BENEFIT OF THE APPLICABLE BENEFICIARY THEREOF, EVEN IF WE APPLICABLE CLAIM IS CAUSED BY THE ACTIVE OR PASSIVE, JOINT, CONCURRENT, COMPARATIVE, ORDINARY, GROSS OR SOLE NEGLIGENCE OF THE BENEFICIARY, AND REGARDLESS OF WHETHER OR NOT LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED OR SOUGHT TO BE IMPOSED ON THE BENEFICIARY; PROVIDED, THAT IN THE CASE OF ARCHITECT ONLY, ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

(f) Indemnification Procedures. 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 10 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.

This notice does not 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 10-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.

Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably qualified. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise HFC as to whether or not it will defend the claim. If Contractor does not assume the defense, then HFC shall assume and control the defense, and all defense expenses constitute an indemnified loss.

If Contractor elects to defend the claim, then 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: (1) would result in injunctive relief or other equitable remedies or otherwise require HFC to comply with restrictions or limitations that adversely affect HFC; (2) would require HFC to pay amounts that Contractor does not fund in full; or (3) would not result in HFC's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

**EXHIBIT L**

Application for Payment (form)

(See Following Page(s))

# AIA® Document G702™ - 1992

## Application and Certificate for Payment

TO OWNER:	PROJECT:	APPLICATION NO.:	Distribution to:
	Houston First	001	OWNER: <input type="checkbox"/>
FROM CONTRACTOR:	VIA ARCHITECT:	PERIOD TO:	ARCHITECT: <input type="checkbox"/>
		CONTRACT FOR:	CONTRACTOR: <input type="checkbox"/>
		CONTRACT DATE:	FIELD: <input type="checkbox"/>
		PROJECT NOS.:	<input type="checkbox"/>

### CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached:

1. ORIGINAL CONTRACT SUM..... \$0.00
2. NET CHANGE BY CHANGE ORDERS..... \$0.00
3. CONTRACT SUM TO DATE (Line 1 + 2)..... \$0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)..... \$0.00
5. RETAINAGE:
  - a. 0% of Completed Work (Column D + E on G703) = \$0.00
  - b. 0% of Stored Material (Column F on G703) = \$0.00

Total Retainage (Lines 5a + 5b or Total in Column I of G703)..... \$0.00

6. TOTAL EARNED LESS RETAINAGE..... \$0.00

(Line 4 Less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT..... \$0.00

(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE..... \$0.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE..... \$0.00

(Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>

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The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due:

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

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

### ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED..... \$0.00

AMOUNT CERTIFIED..... \$0.00  
*(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)*

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

ARCHITECT:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the

EXHIBIT M

Change Order (form)

CHANGE ORDER

Project Name and Address:

Entertainment Facility

1836 Polk
Houston, TX 77003

Owner:

Houston First Corporation
1001 Avenida de las Americas
Houston, TX 77010

Date of Contract:

June \_\_, 2016

Change Order Number:

\_\_\_\_\_

Date of this Change Order:

\_\_\_\_\_

Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

The Contract between the parties as listed above is changed as follows:

(attach additional documentation if necessary)

\*\*\*\*\*

The original Contract Amount was .....\$ \_\_\_\_\_

Net change by previously authorized Change Orders (#\_\_ through #\_\_) .....\$ \_\_\_\_\_

The Contract Amount prior to this Change Order was .....\$ \_\_\_\_\_

The Contract Amount will be (increased) (decreased) (unchanged) by this

Change Order in the amount of .....\$ \_\_\_\_\_

The new Contract Amount including this Change Order will be .....\$ \_\_\_\_\_

The Contract Time was \_\_\_\_\_ Days after the date of the Notice to Proceed. This Change Order has (increased) (decreased) (unchanged) the Contract Time for Construction by \_\_\_\_\_ Days.

The new Contract Time as of the date of this Change Order therefore is \_\_\_\_\_ (\_\_\_\_) days following the Notice to Proceed (i.e., \_\_\_\_\_, 20\_\_\_\_).

In accordance with the Contract referenced above, the undersigned Contractor does solemnly swear that payment of the amount of this Change Order constitutes compensation in full for all costs, claims, markup, and expenses, direct or indirect, attributable to this or any prior Change Orders, for any delays encountered by Contractor in the performance of the Work of this Change Order, including but not limited to those related to this or any prior Change Orders, and for the performance of this and any prior Change Orders.



Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Contract Documents shall remain in full force and effect.

OWNER:

HOUSTON FIRST CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT N**

Construction Change Directive

**CONSTRUCTION CHANGE DIRECTIVE**

**Project Name and Address:**

**Date of Contract:** June \_\_\_\_\_, 2016

**Entertainment Facility**

**Construction Change Directive Number:**

1836 Polk  
Houston, Texas 77003

**Date of this Construction Change Directive:**

**Owner:**

**Contractor:**

**Architect (if applicable):**

**Houston First Corporation**  
1001 Avenida de las Americas  
Houston, TX 77010

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby directed to make the following change(s) in this Contract (*attach additional documentation if necessary*)

When signed by Owner and received by Contractor, this document becomes effective IMMEDIATELY as a Construction Change Directive, and Contractor shall commence with the performance of the change(s) described above without delay. This Construction Change Directive is signed by Owner's duly authorized representative.

OWNER:

HOUSTON FIRST CORPORATION

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

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

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

**EXHIBIT O**

[Intentionally Omitted]

**EXHIBIT P**

[Intentionally Omitted]

**EXHIBIT Q**

[Intentionally Omitted]

**EXHIBIT R**

Prevailing Wage Rates

(See Following Page(s))

**EXHIBIT S**

Warranty and/or Guarantee (form)

(See Following Page(s))

**WARRANTY AND/OR GUARANTEE**

We, the undersigned, hereby certify, warrant and/or guarantee that the Work which we have furnished and/or installed for the following Project:

**PROJECT** : **ENTERTAINMENT FACILITY**  
**1836 Polk**  
**Houston, Texas 77003**

**OWNER** : **HOUSTON FIRST CORPORATION**

**DATE OF FINAL ACCEPTANCE :**

has been performed in accordance with the Contract Documents as prepared for this Project and that said Work as installed will fulfill and/or exceed all of the **WARRANTY AND/OR GUARANTEE** requirements included in same. We hereby agree to repair or replace any or all of our Work which proves to be defective in workmanship or material, together with any adjacent work which may be displaced or damaged by so doing, within a period of one-(1) year from the date of final acceptance of the Project by Owner. Ordinary wear and tear and unusual abuse or neglect is excepted.

In the event of our failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by Owner, after being notified in writing, we the undersigned, collectively or separately, do hereby authorize Owner to proceed and have said defects repaired and/or replaced and made good, and to refund to Owner upon demand all moneys that the latter may be compelled to pay in discharging said Work, including all costs and reasonable attorney fees and expenses.

Contractor:

\_\_\_\_\_

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

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

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

**EXHIBIT T**

Liquidated Damages and Incentive Fee

PART A – Incentive Fee:

If the Contractor obtains a Temporary Certificate of Occupancy for the Work prior to January 1, 2017, the Contractor shall be entitled to an Incentive Fee equal to the product of (i) \$5,000 multiplied by (ii) the number of days, commencing with the day following the day upon which the Temporary Certificate of Occupancy is issued through and including December 31, 2016.

PART B – Liquidated Damages:

If the Contractor has not obtained a Temporary Certificate of Occupancy for the Work on or prior to the expiration of the Contract Time, then for each day thereafter set forth in Column A below until the day on which the Temporary Certificate of Occupancy is issued Contractor will pay HFC, as Liquidated Damages, the amount set forth in Column B below:

<u>Column A</u>	<u>Column B</u>
Day 1 through Day 5	\$1,500.00 per day
Day 6 through Day 15	\$3,000 per day
Each Day after Day 15	\$7,500 per day



## **EXHIBIT U**

### Major Decisions

1. Waiving, compromising or settling any Claim.
2. Executing any Change Order
3. Issuing any Construction Change Directive that is reasonably likely to result in either (x) an increase in the Contract Amount by more than \$5,000 or (y) an extension of the Contract Time.
4. Accepting any defective work.
5. Exercising any rights of HFC to terminate the Contract Documents.
6. Waiving any “material obligation” of Contractor under the Contract Documents. For purpose of this provision only, a “material obligation” of Contractor means any obligation that, if not performed, would materially or adversely affect the Work, any warranty of the Work, or the appearance, functionality or utility of the Project following its completion.
7. Consenting to any assignment of the Contract Documents by Contractor.