



**GRB PANEL WASH AND SEAL
INVITATION TO BID**

ISSUE DATE: February 23, 2022

DUE DATE: **2:00 P.M.** on **April 5, 2022** (“Submission Deadline”)

INSTRUCTIONS: Bidders are to submit one fully-completed and signed Bid Form and Diversity participation information in a sealed envelope by mail, in person, or via courier. Please write “**Wash & Seal Bid**” clearly on the outside of the sealed package. Submittals received by email, fax, or after the Submission Deadline will be rejected.

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

CONTACT INFO: Any questions concerning this Invitation to Bid must be submitted by email to bids@houstonfirst.com no later than **10:00 a.m.** on **March 25, 2022**. Material questions will be answered collectively in one or more Letter(s) of Clarification to be made available at www.houstonfirst.com/do-business. Questions received may be edited or combined for clarity or length at the discretion of HFC.

BID OPENING: Bids will be opened and publicly announced at 2:30 p.m. on the Submission Deadline at 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

OVERVIEW

Houston First Corporation (“HFC”) requests bids from qualified and experienced commercial exterior building cleaning services contractors capable of timely and cost-effective cleaning and sealing of approximately 300,000 square feet of exterior metal panels at the George R. Brown Convention Center in downtown Houston, Texas. Work is to begin on the effective date of the resulting agreement and must be complete in 60 calendar days.

The contractor selected shall supply all necessary equipment and materials, including, by way of example and not limitation, bosun chairs, window-cleaning gondolas, a washing agent safe for baked enamel paint, and GEM Formula AT-5 sealant (or other, comparable five-year sealant safe for baked enamel paint, subject to prior approval by HFC). Bidders are further advised that all surfaces must be hand hashed. Pressure washing is **not** allowed.

BACKGROUND

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

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

MINIMUM QUALIFICATIONS

To be considered responsive to this Invitation to Bid, potential bidders must (a) have at least five years of experience providing wash-and-seal services at commercial facilities comparable in size and scope to this Invitation to Bid; (b) complete and submit a signed Bid Form with no omissions; and (c) if the bidder is a business entity, be validly-formed and in good standing. Bidders not meeting the minimum qualifications will have their bids rejected without further review or consideration.

PRE-BID MEETING

A Pre-Bid Meeting will be held for the benefit of all prospective Bidders by video teleconference call at **10:00 a.m.** on **March 23, 2022**. Bidders who expect to attend must register in advance by clicking [here](#); further instructions for joining the meeting will be sent to each registrant. The possibility of in-person site tours will be discussed during the Pre-Bid Meeting. While attendance is not mandatory, all interested bidders are encouraged to attend.

MANNER OF SELECTION

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

LETTERS OF CLARIFICATION

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

DIVERSITY PARTICIPATION

The Bidder selected will be required to use good-faith efforts to award subcontracts to diversity participants certified by any of the identified certification agencies as defined in the [HFC Diversity Program](#). HFC has established the following goal for these services: **25%** of the total value of the Agreement. Bidders should note if they are certified as a diversity participant in their submittal; however, such certification shall not lessen or otherwise alter the requirement to use good faith efforts to award subcontracts to diversity participants. Diversity participation

information provided by Bidders should be delivered with the bid in a **separately-sealed envelope** labelled "**Diversity**".

FORM OF AGREEMENT

By submitting a response to this Invitation to Bid, Bidder agrees, upon notice of selection, to promptly enter into the **GRB Panel Wash & Seal Agreement** provided below. Any requests for clarification or modification to the terms thereof must be timely submitted by email to bids@houstonfirst.com, and responses to material questions and issues will be included in a Letter of Clarification. Bidders are advised that additional or conflicting terms, alternative pricing bids, pre-printed forms, or other objections submitted by a Bidder with their bid shall be disregarded and may result in a bid being deemed, in HFC's discretion, as non-responsive.

NO SALES TAX

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

RESTRICTIONS ON COMMUNICATIONS

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

CONFLICTS OF INTEREST

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

VENDOR CODE OF CONDUCT

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

PROTEST PROCEDURES

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

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

BID PACKETS

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

PUBLIC INFORMATION

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

WITHDRAWAL; ERROR

Bids may be withdrawn due to errors or for any other reason by a written request received by bids@houstonfirst.com prior to the Submission Deadline.

GRB PANEL WASH & SEAL BID FORM

DUE DATE: **2:00 P.M. on April 5, 2022** (“Submission Deadline”)

INSTRUCTIONS: Bidders are to submit one fully-completed and signed Bid Form and Diversity participation information in a sealed envelope by mail, in person, or via courier. Please write “**Wash & Seal Bid**” clearly on the outside of the sealed package. Submittals received by email, fax, or after the Submission Deadline will be rejected.

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

BID AMOUNT

In exchange for the following amount, Bidder offers to furnish all labor, supervision, materials, supplies, equipment, tools, permits, and insurance necessary to complete the GRB Panel Wash & Seal Project, all of such work to be done as set out in full in the GRB Panel Wash & Seal Agreement.

Bid Amount: \$ _____

BIDDER CONTACT INFORMATION

Bidder Name: _____

Address: _____

Contact Name/Title: _____

Phone: _____ Email: _____

Is the Bidder a certified diversity entity under the HFC [Diversity Program](#)? _____

BID TERMS AND REPRESENTATIONS

- a. Submission of a bid represents an offer to contract with Houston First Corporation.
- b. Bid is intended to and shall remain valid for 90 days from the Submission Deadline.
- c. Bidder is prepared to complete the project within 60 calendar days.

ACKNOWLEDGMENT AND SIGNATURE

By signing below, Bidder represents and warrants to HFC that all of the information provided by Bidder in this Bid Form is true, correct and may be relied upon by Houston First Corporation without exception.

Signature: _____

Date: _____

Name/Title: _____

GRB Panel Wash & Seal Agreement

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

1.0 Project and Work

1.1 The name of this project is the **GRB Panel Wash & Seal Project** (“Project”). The location of the Project is the George R. Brown Convention Center, located at 1001 Avenida de las Americas, Houston, Texas 77010 (the “Project Site”).

1.2 Contractor agrees to and shall furnish all labor, supervision, materials, supplies, equipment, tools, permits, and insurance necessary to hand wash, clean, rinse and seal all exterior metal panels at the Project Site in strict accordance with the terms and conditions of this Agreement. Without limiting the foregoing Contractor shall furnish supply and use a washing agent safe for baked enamel paint, and GEM Formula AT-5 sealant (or other, comparable five-year sealant safe for baked enamel paint, subject to prior approval by HFC).

1.3 Contractor agrees to and shall commence the work on the Project immediately on the Effective Date and shall complete the Project within **60** calendar days (“Contract Time”). Contractor agrees that time is of the essence.

1.4 The area designated in this Project includes approximately 300,000 square feet of panels; however, Contractor shall be solely responsible for verifying actual dimensions. Joints and moldings between the panels must be thoroughly cleaned and sealed. Panels must be protected from damage when using scaffolding or rigging equipment.

1.5 HFC reserves the right to require Contractor to perform a preliminary 10’ x 20’ wash down and sealant test section to demonstrate the quality of their washing and sealant techniques prior to proceeding with work on the Project Site.

1.6 Rigging from the roof with a swing-stage must be performed with special care to protect the light-weight roof and roof surface membrane. Contractor shall cover the roof surface membrane with carpet and plywood to distribute the weight of any equipment staged from the roof.

1.7 Panels shall be hand washed to remove all stains and streaks. Washing shall be performed with care using approved product to protect the baked enamel finish of the panels. Pressure washing is strictly prohibited.

1.8 In addition to thoroughly cleaning and removing all soil, stains and oxidation on the panels, Contractor shall apply sealant to repel water, resist stains, and reduce dirt particles from embedding in the surface of the panels on sections B, C and D both front and back of the Project Site.

1.9 Contractor shall on a daily basis, or as requested by HFC, clean the Project Site and any adjacent areas affected by the work. Contractor shall promptly dispose of any trash or debris generated by the work in a safe, environmentally responsible manner at its sole cost and expense.

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

1.11 If any work performed by Contractor does not meet the standards of this Agreement, as determined by HFC in its reasonable discretion, then Contractor shall correct or modify the work promptly upon demand from, and at no additional cost to, HFC. If Contractor performs work knowing it to be contrary to applicable laws, statutes, ordinances, rules and regulations, and/or lawful orders of public authorities, then Contractor shall be liable for such violation and shall bear the costs attributable to correction.

2.0 Payment

2.1 Subject to the terms and conditions of this Agreement, HFC agrees to pay Contractor **\$(TBD)** ("Contract Sum") for performance of work on the Project.

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

2.3 HFC agrees to pay Contractor within 30 calendar days of the receipt and approval by HFC of such invoices by check or direct deposit, at the sole option of HFC. If any item in any invoice is disputed by HFC for any reason, including lack of supporting documentation, then HFC shall temporarily delete the disputed item and pay the remaining amount of the invoice; provided, however, that HFC shall promptly notify Contractor of the dispute and request clarification and/or remedial action. After any dispute shall have been settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

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

2.5 Contractor shall make true, correct and timely payments in strict accordance with federal and state law to its employees, subcontractors, and all other persons and entities supplying labor, materials or equipment to Contractor for the performance of services under this Agreement

3.0 Standard of Care

3.1 Contractor represents and warrants that all work on the Project shall be performed in compliance with applicable federal, state and local laws, statutes, ordinances, rules and regulations, and/or lawful orders of public authorities, as may be amended from time to time, and in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Without limiting the foregoing, or the liability of Contractor under the insurance and indemnification provisions set forth herein, Contractor represents and warrants that it shall abide by (a) the Texas Water Code, (b) the City of Houston Code of Ordinances, Chapter 47 provisions concerning discharges not composed entirely of storm waters, and (c) the Cosmetic Water Wash Guidelines issued by the Director of Public Works and Engineering of the City of Houston, as each may be amended from time to time.

3.2 Contractor shall supervise and direct work on the Project using Contractor's best skill and attention. Contractor shall be solely responsible for, and have control over, means, methods, techniques, sequences and procedures and for coordinating all portions of such work, except to the extent that other, specific instructions concerning such matters are set forth in this Agreement.

3.3 Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out work on the Project. Contractor shall perform all Project work using trained and skilled persons having substantial experience performing the work required under the Agreement. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

3.4 Contractor shall be liable to HFC for the negligent and intentional acts and omissions of Contractor's

employees, agents, contractors, subcontractors, and other persons or entities performing portions of work for, or on behalf of, Contractor. Contractor shall promptly remedy such damages and restore any property thereby affected to the condition existing prior to such damage, to the satisfaction of HFC, at its sole cost and expense.

3.5 Contractor shall be solely responsible for conforming to the standards declared by OSHA, including, but not limited to, compliance with federal and state safety standards/directives for use of personal protective equipment and operation of equipment.

4.0 Warranties and Representations

4.1 Contractor shall provide HFC with a warranty on materials and workmanship equal to one year, subject to the provisions of this Section 4.0. Warranty periods shall commence the date on which HFC approves final completion of the Project.

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

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

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

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

4.6 Execution of the Agreement by Contractor is a representation that Contractor has visited the Project Site, become familiar with local conditions under which the work on the Project is to be performed and correlated personal observations with requirements of this Agreement.

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

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

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

5.0 Insurance

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

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

5.2 Each policy, except those for Workers' Compensation, must include an endorsement naming HFC and the City of Houston as additional insureds, and Contractor's insurance shall be primary and non-contributory to any policies of insurance HFC may maintain.

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

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

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

6.0 Release and Indemnification

6.1 TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, CONTRACTOR AGREES TO AND SHALL RELEASE HFC AND THE CITY OF HOUSTON, INCLUDING THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED IN PART BY THE NEGLIGENCE OF HFC OR THE CITY OF HOUSTON.

6.2 TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HFC AND THE CITY OF HOUSTON, INCLUDING THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, DAMAGE, CITATIONS, TICKETS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, FINE, LIABILITY, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO CONTRACTOR AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "CONTRACTOR'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; INDEMNITEES' AND CONTRACTOR'S

ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL AND/OR EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ALL CLAIMS AND CAUSES OF ACTION BROUGHT AGAINST INDEMNITEES BY CONTRACTOR'S PERSONNEL AND/OR GOVERNMENTAL OR REGULATORY AGENCIES ARISING FROM, RELATING TO, OR INVOLVING THE SERVICES OR PERSONNEL EMPLOYED OR USED BY CONTRACTOR UNDER THIS AGREEMENT.

7.0 Indemnification Procedures

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

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

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

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

8.0 Diversity Commitment

8.1 Contractor shall make good faith efforts to award subcontracts equal to **25%** of the Contract Sum to certified, diverse suppliers of goods and services in accordance with the Diversity Program established by HFC, which is incorporated herein by this reference. Contractor shall, on a periodic basis, as directed by HFC, disclose to HFC the manner and extent it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC.

10.0 Force Majeure

10.1 Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by an occurrence of Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean fires, floods, hurricanes, tornadoes, explosions, war, terrorism, and the acts of a superior governmental or military authority. The term does not include changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Relief is not applicable unless the affected party uses due diligence to remove the Force Majeure as quickly as possible and provides the notice describing the actual delay or non-performance incurred within ten calendar days after the Force Majeure ceases.

11.0 Termination

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

11.2 HFC may terminate this Agreement for its convenience at any time by giving 30 calendar days' written notice to Contractor. HFC's right to terminate this Agreement for convenience is cumulative of all rights and remedies that exist now or in the future. On receiving such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice to HFC showing in detail the services performed under this Agreement up to the termination date. HFC shall then pay the amount due Contractor for services actually performed, but not paid previously, in the same manner as prescribed herein.

11.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S EXCLUSIVE REMEDIES FOR TERMINATION FOR CONVENIENCE BY HFC, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT FOR SERVICES PERFORMED), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM HFC'S TERMINATION FOR CONVENIENCE.

12.0 Miscellaneous

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

12.2 Notices. Notices to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt (or electronic return receipt) requested, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

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

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

12.5 Venue and Laws. Contractor shall strictly comply with all applicable laws, ordinances, codes, and regulations that affect performance by Contractor hereunder. This Agreement shall be construed in

accordance with the laws of the State of Texas without regard to conflict of law principles. Any litigation in connection with this Agreement shall be in a court of competent jurisdiction in Harris County, Texas.

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

12.7 Assignment and Severability. Contractor shall not assign this Agreement in whole or in part without the prior written consent of HFC. If any part of this Agreement is for any reason found to be unenforceable, then all other parts remain enforceable unless the result materially prejudices either party.

12.8 Survival. The parties shall remain obligated to each other under all clauses of this Agreement that expressly or by their nature extend beyond the completion of the Project or termination of the Agreement, including, by way of example and not limitation, the Release and Indemnification provisions.

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

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

[signature page to follow in final agreement]