

AGREEMENT FOR CONSULTING SERVICES  
BETWEEN OWNER AND TESTING AGENCY

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

Between "Owner": Houston First Corporation

and "Testing Agency": \_\_\_\_\_

For the "Project": GRB Transformation Project – Enabling Works

"Development Manager" Hines Southwest, LLC

"Architect" Populous

"Geotechnical Engineer" Aviles Engineering Corp.

"Civil Engineer" Jacobs Engineering

"Contractor": Gilbane/Flintco Joint Venture

The Owner and the Testing Agency agree as set forth below:

ARTICLE 1

TESTING AGENCY'S SERVICES AND RESPONSIBILITIES  
BASIC SERVICES AND ADDITIONAL SERVICES

The Testing Agency shall, as an independent contractor, perform and/or provide staff, labor, equipment, timely reporting and documentation and all other services as required herein to include all materials testing, personnel, equipment and staff to provide inspection services and reporting as required by Engineer's Statement of Special Inspections as depicted in IBC Section 1704 and as described below in Paragraphs [1.1 through 1.29] ("Basic Services").

1.1 Perform Basic Services as expeditiously as is consistent with professional skill and care and the orderly progress of the work in order to accomplish the schedule outlined in Exhibit D ("Project Schedule") and in coordination with the Contractor's site utilization plan set out in Exhibit E ("Site Utilization Plan").

1.2 Coordinate all Basic Services through the Owner and Development Manager.

1.3 Provide input to and assist other consultants as needed.

1.4 Attend a pre-construction conference.

1.5 Assist Owner and Development Manager in matters related to the City of Houston ("City") Building Department and other public agencies.

1.6 Attend Project meetings with Owner, Development Manager and Project Team as needed to complete the Project. It is anticipated that the Project meetings will occur no less frequently than weekly.

1.7 Review the construction drawings and specifications set out in Exhibit A (“Contract Documents”) and incorporated herein by this reference, and revisions thereto, and applicable shop drawings as they are received and as required to provide Basic Services in accordance with the Contract Documents.

1.8 Perform all of the Basic Services in connection with the Project and comply with the terms and conditions hereinafter set forth. Basic Services shall be performed in a diligent manner in accordance with the highest standards and engineering practice.

1.9 Provide Owner , Development Manager and Contractor with any required information and provide Owner , Development Manager and Contractor with same day notice of any non-compliant work and/or testing results so as not to delay the Project. Testing Agency shall continue reporting on deficient work until such time as the deficient work is compliant, noting all corrective action and Testing Agency’s approval thereof.

1.10 Perform all Basic Services under the general direction of a registered professional engineer (employed by Testing Agency) and in substantial accordance with the basic requirements of the appropriate Standards of the American Society for Testing and Materials, where applicable, or other standards designated by Owner and Development Manager.

1.11 Promptly (but in no event later than five (5) days) submit formal reports of all tests, inspections and services performed indicating, where applicable, compliance with the Contract Documents. Such reports shall be complete and factual and legible, citing the tests performed, methods employed, values obtained and parts of the structure or Project area involved. All reports shall be submitted to Owner, Development Manager, Contractor, Architect, Geotechnical Engineer and Structural Engineer and in addition, uploaded to a shared internet-based site maintained by the Testing Agency.

1.12 Employ testing machines which have been calibrated within a period not exceeding twelve (12) months, from the time of use for all Project-specific testing, by devices of accuracy traceable to the National Bureau of Standards of the United States Department of Commerce. Submit to Owner and Development Manager documentation of such calibration. It is anticipated that such calibration will be required numerous times over the course of the Project.

1.13 Retain all pertinent records relating to the Basic Services performed for a period of five (5) years following submission of the report, during which period the records will be made available to Owner and Development Manager at all reasonable times.

1.14 Periodically inspect and perform material testing on asphalt and/or concrete drives, aprons, sidewalks, streets; steel pipe, compaction tests and proof rolling and concrete and rebar placement;. Testing Agency shall maintain daily records and provide non-compliance reports and/or their subsequent resolutions.

1.15 Perform without expense to Owner such Basic Services as may be required to correct or remedy any negligent error, omission or act of Testing Agency.

1.16 Prepare and assist Owner, Development Manager and Contractor in the filing and presenting to all governmental authorities having jurisdiction all necessary and required materials, plans and documents in order to secure each and every approval from such authorities (including, but not limited to zoning, variances, utilities, permits and inspections) in order that the Project may be used by Owner for the purposes which Owner intends. Owner and Development Manager will cooperate with Testing Agency in the preparation and presentation thereof.

1.17 Make regular visits to the Project to inspect construction activities as requested by the Owner , Development Manager or Contractor and as required to maintain Project Schedule. On the basis of its observations, Testing Agency shall guard Owner and Development Manager against defects and deficiencies in the work and review the general quality of construction for conformance with the Contract Documents. Testing Agency shall submit written reports as required by the progress of construction.

1.18 Attend meetings in the field, such as regular Project or job meetings, as required.

1.19 Assist Owner in obtaining temporary and permanent certificates of occupancy for the Project.

1.20 Perform all required testing, inspection and review required by the Contract Documents whether at the Project, at any point of fabrication or manufacturing, or in any shop or field yard of Contractor or any of its subcontractors, wherever located, inside or outside the United States, including all related costs and expenses associated therewith, including without limitation, transportation, lodging, food and personal personnel expenses and for however long such testing, inspection and review is required by the Owner.

1.21 Perform all special inspections as depicted in IBC Section 1704 and incorporated herein by this reference.

1.22 Submit to the City all paperwork required by the City in a timely manner as required by the City. Any documentation to be submitted to the City shall first be reviewed with Owner and Development Manager.

1.23 Review mix designs in the lab, in advance of commencement of concrete work, for conformance with Contract Documents. Check mill certificates as reinforcing is delivered to the job-site.

1.24 Inspect soils and foundation bearing surfaces for compliance with Contract Documents. Scope of Basic Services includes, but is not limited to, the following:

- (a) Perform field density and moisture content tests;
- (b) Perform compaction tests on utility lines and fill areas;
- (c) Perform laboratory testing of proposed fill soils to determine their suitability and moisture content versus dry density relationship;
- (d) and
- (e) Inspect the reinforcing steel to ensure compliance with the requirements of the Contract Documents. Document all findings and provide recommendations for remedial work as needed.

1.25 Inspect pavement areas for compliance with Contract Documents. Scope of Basic Services includes, but is not limited to, the following:

- (a) Observe proofrolling of the soil subgrade prior to graded aggregate base placement;
- (b) Perform a modified Proctor test on the graded aggregate base stone;
- (c) Perform compaction tests on the graded aggregate base stone; and
- (d) Obtain core samples of the placed concrete paving to determine in-place thickness and density.

1.26 Inspect reinforcing and formwork for compliance with Contract Documents. Scope of Basic Services includes, but is not limited to, the following:

- (a) Bar size and grade;
- (b) Laps, ties and splices;
- (c) Conformance to Contract Documents;
- (d) Clearances; and
- (e) Cleanliness of forms and bars.

1.27 Conduct site and field inspection and quality inspection program including, but not limited to, the following responsibilities:

- (a) Visually inspect all welds for size, length, contour and appearance;
- (b) Inspect secant shoring, shoring piles, and tie-backs for quality and installation.
- (c) High strength bolting inspection at a rate of 25% of bolts in each shear connection tightening, not

- less than 2 bolts per connection, using calibrated manual torque wrenches;
- (d) Ultrasonically test all complete and/or partial penetration welds at 100%. (This does not include magnetic particle or dye penetrant tested fillet welds.);
- (e) Supplement reports by graphs indicating piece marks and location of test areas;
- (f)
- (i) Inspection of the site drainage;
- (j) Sampling concrete during operations (includes casting cylinders and slump check);
- (k)
- (l) Inspection of concrete placement and vibration;
- (m) Day after panel pours, visually inspect for structural cracks etc.;
- (n) In General, concrete cylinder tests shall be required as needed to support the construction schedule. Test concrete cylinders and report results for elevated pours at 24 hrs. (2), 7 days (2), 28 days (2), an additional for high early (1), and hold 2 cylinders if discrepancies occur. Test concrete cylinders and report results for non-elevated pours at 7 days (2), 28 days (2), 56 days (2), an additional for high early (1), and hold 2 cylinders if discrepancies occur.
- (o) At a minimum once a week perform an inspection of a randomly selected concrete batch.

1.28 Control and maintain all samples and specimens per ASTM standards.

1.29 Supplemental terms and conditions indicated in attached Exhibit B ("Supplemental Terms and Conditions to the Agreement for Consulting Services Between Owner and Testing Agency").

Any services in addition to the Basic Services specified in Paragraphs [1.1 to 1.29] shall be requested and approved in writing by Owner and shall be deemed "Additional Services" and shall be a part of this Agreement.

## ARTICLE 2

### ADDITIONAL SERVICES

The Testing Agency shall provide services in addition to those Basic Services required by this Agreement as the Owner may reasonably request, including any services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted practice ("Additional Services"). The Testing Agency shall obtain the Owner's prior written approval before performing any Additional Services. Upon such approval, Testing Agency shall perform all Additional Services in accordance with the terms and conditions set out in this Agreement for Basic Services. Hereinafter, Basic Services and Additional Services are referred to collectively as "Services".

## ARTICLE 3

### OWNER'S RESPONSIBILITIES

Owner's responsibilities consist of the items described in Paragraphs 3.1 through 3.7. Owner shall:

3.1 Provide Testing Agency with Contract Documents, and revisions thereto and applicable shop drawings and other information for the proper performance of Services by Testing Agency.

3.2 Issue authorizations in writing giving Testing Agency free access to the Project site (the "Project Site").

3.3 Designate in writing a person or firm to act as Owner's representative on behalf of the Project; such person or firm shall have complete authority to transmit instructions, receive information and data, examine the documents submitted by Testing Agency, interpret and define Owner's policies and decisions with respect to the Project, render decisions pertaining thereto promptly so as to avoid delay in the progress of Testing Agency's Services.

3.4 Designate in writing those persons or firms who are authorized to receive copies of Testing Agency's inspection and test reports. Owner hereby designates Development Manager as a firm authorized to receive copies of the Testing Agency's inspection and test reports.

3.5 Advise Testing Agency sufficiently in advance of any operations so as to allow for assignment of personnel by Testing Agency for completion of the required Services. Such advance notice shall be in accordance with procedures established by mutual agreement of the parties.

3.6 Direct the Contractor either by the Construction Contract or direct written order to:

3.6.1 Secure and deliver to Testing Agency, without cost, preliminary representative samples of those materials it proposes to use which require testing, together with any relevant data of the materials.

3.6.2 Furnish such casual labor and all facilities needed by Testing Agency to obtain and handle samples at the Project and to facilitate the specified inspections and tests.

3.6.3 Provide and maintain for the use of Testing Agency adequate space at the Project site for safe storage and proper curing of test specimens which must remain on the Project site prior to testing.

3.7 Reserve the right to employ other architects, engineers and consultants in connection with the Project.

#### ARTICLE 4

##### SCHEDULE

4.1 Testing Agency shall perform Services as expeditiously as is consistent with professional skill and care and the orderly progress of the work in order to accomplish the Project Schedule. Upon request of Owner and Development Manager, Testing Agency shall submit for Owner and Development Manager approval a schedule for the performance of Testing Agency's Services which shall be adjusted, as required so as not to delay the Project and, as the Project proceeds and shall include allowances for periods of time required for Owner and Development Manager review and approval of submissions and for approvals of authorities having jurisdiction over the Project.

#### ARTICLE 5

##### PAYMENTS TO TESTING AGENCY

5.1 Payments for Services shall be made monthly and shall be in accordance with the compensation schedule set forth in Article 6.

5.2 Testing Agency acknowledges that the work may be financed by one or more lenders (collectively herein called "Lender"). Testing Agency shall execute any certificates, lien waivers, releases, receipts and other documents as may be required by Lender.

5.3 On or before the 20th of each month, Testing Agency shall submit to Owner and Development Manager for approval an application for payment ("Application for Payment") in a form acceptable to Owner Development Manager and, if requested by Owner, Lender.. Each Application for Payment shall set forth the amount for Services performed by Testing Agency during the preceding month in accordance with the compensation schedule set forth in Article 6. After approval of each Application for Payment by Owner and Development Manager, such Application for Payment may, if requested by Owner, be submitted to Lender and Testing Agency shall cooperate

with Owner in such submittals including providing such additional, related information is required by Lender.

5.4 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment to Testing Agency hereunder, and may withhold its approval of any Application for Payment or nullify the whole or a part of any Application for Payment (to such extent as may be reasonably necessary to protect the Owner from loss), if any one or more of the following conditions exist

- 5.4.1 Testing Agency fails to commence or perform any of its obligations hereunder or is otherwise in default under this Agreement;
- 5.4.2 Claims are filed against Owner or the Project arising out of Testing Agency's Services or there is reasonable probability of the filing of claims;
- 5.4.3 Testing Agency performs defective Services which is not in accordance with Contract Documents or damages work of Contractor or another subcontractor or consultant;
- 5.4.4 Testing Agency fails to make payments timely to its consultants or subcontractors or for material or labor used in the Services for which Testing Agency has received payment from Owner;
- 5.4.5 Testing Agency erroneously estimates the value of the Services performed and the compensation to which it is entitled;
- 5.4.6 Testing Agency makes unauthorized deviations from the Contract Documents; and/or
- 5.4.7 Testing Agency fails to maintain the schedule.

When the above conditions are remedied or removed by Testing Agency, all payment withheld by Owner under this Paragraph 5.4 shall be then paid to Testing Agency.

5.5 Testing Agency promptly shall pay all bills for labor performed and materials furnished in connection with the performance of the Services and at the request of Owner and Development Manager shall deliver to Owner and Development Manager copies of all invoices, receipts, affidavits and other evidence of payment. Prior to each disbursement hereunder, and at any other time or from time to time, as Owner and Development Manager may request, Testing Agency shall furnish to Owner and Development Manager appropriate releases and satisfactions from all subcontractors, materialmen and other parties furnishing labor, materials, or both in the performance of the work.

5.6 Prior to final payment and before issuance of the final certificate therefor, the following papers shall be filed by Testing Agency with the Owner and Development Manager:

- 5.6.1 A notarized affidavit stating that all monetary obligations to suppliers of materials, services and labor and all subcontractors have been paid or will be paid upon receipt of final payment.
- 5.6.2 The complete release of all liens pertaining to the Services performed by Testing Agency and of all items performed by Testing Agency required by Lender or Lender's title insurance company as necessary for issuance of a lien-free endorsement to Lender's title insurance policy.
- 5.6.3 Any and all certifications that may be required by the City or other jurisdictions having authority.

## ARTICLE 6

## BASIS OF COMPENSATION

6.1 In full consideration for the full and complete performance of the Basic Services and all obligations of Testing Agency hereunder, Owner shall pay to Testing Agency a sum of money equal to \_\_\_\_\_ dollars (\$\_\_\_\_\_), ("Lump Sum"), subject to adjustment to the Lump Sum in accordance with the terms and conditions set out herein. The itemization of the Lump Sum is as follows:

a.	Earthwork and Backfilling	_____
b.	Steel Piping	_____
c.		_____
d.		_____
e.	Concrete & Asphalt Paving Work	_____
f.		_____
g.		_____
h.		_____
i.		_____
j.		_____
k.		_____
l.		_____
m.		_____
n.		_____
o.		_____
p.		_____
q.		_____
r.		_____
s.		_____
t.		_____
u.	Special Inspection Testing	_____
v.	Other	_____

6.2 The Lump Sum includes all overtime required to meet the Project Schedule.

6.3 The itemization of personnel and laboratory services are indicated in attached Exhibit C ("Personnel and Laboratory Services List").

6.4 Testing Agency has closely reviewed the Contract Documents and accepts the scope of Basic Services insofar as the capability of being performed for the Lump Sum. Any modification to the Basic Services requested by Testing Agency, with the exception of Additional Services as set out in Article 5, shall not increase the Lump Sum.

## ARTICLE 7

### TESTING AGENCY'S ACCOUNTING RECORDS

7.1 Owner reserves the right to request supporting documentation for all amounts charged to Owner. Records will be subject to audit at any time during the term of this contract and for a period not to exceed two (2) years after any amount is billed. Within thirty (30) days of receiving a request, Testing Agency will furnish to Owner original invoices to support all charges and complete payroll records to support labor charges. Testing Agency hereby authorizes Owner and its designated representatives to communicate directly with Testing Agency's agents, consultants and subcontractors, if any, and to obtain sworn statements from any such subcontractors. Owner reserves the right to audit any other supporting evidence necessary to: (1) substantiate charges related to this Agreement, both direct and indirect costs, including overhead allocations as they may apply to costs associated with this Agreement,

or (2) confirm Testing Agency's compliance with any of its other representations, warranties and obligations pursuant to this Agreement.

7.2 If an audit reveals overcharges, the Testing Agency will reimburse Owner upon demand for the cost of the audit and the amount of such overcharges plus interest thereon from the date paid by the Owner through the date of reimbursement at a rate equal to \_\_\_\_\_% above the rate announced from time to time by \_\_\_\_\_ for such period as its "Prime Rate".

## ARTICLE 8

### INSURANCE

8.1 Before proceeding with any work, Testing Agency shall furnish to Owner and Development Manager and Lender certificates of insurance in acceptable form executed in duplicate by insurance companies approved by Owner to evidence coverage by Testing Agency as set forth in Paragraph 8.3 below. Certificates which deviate from the acceptable form or which in Owner's or Lender's opinion are incomplete will be returned for resubmission by Testing Agency. Testing Agency shall keep said insurance in full force until completion of the Services and acceptance of the work by Owner. Such insurance shall be modifiable or cancelable only on written notice to Owner and Lender from such insurance companies, mailed thirty (30) days in advance of material modification or cancellation notice, via certified mail. In the event of such cancellation notice, Testing Agency shall obtain similar insurance coverage from other acceptable insurance companies prior to the cancellation of the original insurance coverage.

8.2 If Testing Agency does not provide required insurance coverage, Owner shall have the right to secure same on account of Testing Agency in which event Testing Agency shall pay the cost thereof and shall furnish all information required to obtain those policies. Said policies afforded under Testing Agency's requirements shall be primary insurance as to Owner and all other insurance maintained by Owner in excess thereof shall be non-contributing with the insurance required hereunder, except for professional errors and omissions.

#### 8.3

<b><u>Required Insurance Coverage</u></b>	<b><u>Minimum Limits of Liability</u></b>
(a) Workers' Compensation and Occupational Diseases Insurance	Statutory
(b) Employer's Liability Insurance	\$1,000,000 each accident
(c) Commercial General Liability Insurance Including but not limited to: <ul style="list-style-type: none"><li>• Occurrence Form</li><li>• Personal Injury Coverage with Contractual and employee exclusions Deleted.</li><li>• Broad form property damage</li><li>• Explosion, Collapse &amp; Underground Hazard exclusions deleted</li><li>• Contractual Liability</li><li>• Protective Liability</li></ul>	\$2,000,000 combined single limit each occurrence
(d) Comprehensive Automobile Liability Insurance on all owned, non-owned and hired vehicles	\$2,000,000 each occurrence combined single limit



(e) Professional Liability Insurance \$5,000,000 each claim

The insurance required in (a), (c), and (d) shall contain waivers of subrogation in favor of the Owner, Development Manager and Lender. The insurance required in (c) and (d) above shall name Owner, Development Manager and Lender as additional insured. If the insurance required in (e) proves not to be available for any reasons, Testing Agency shall obtain approval from Owner for a revised amount as appropriate.

8.4 INSURANCE ON OWNED OR RENTED EQUIPMENT: Testing Agency shall secure, pay for and maintain whatever Insurance it may deem necessary to protect itself against loss of owned or rented capital equipment and tools, including any tools owned by mechanics, and any tools and equipment owned or rented by Testing Agency. The requirements to secure and maintain such insurance are solely for the benefit of Testing Agency. Failure of Testing Agency to secure such insurance or to maintain adequate levels of coverage shall not obligate Owner or its agents and employees for any losses of owned or rented equipment. If Testing Agency secures such insurance the insurance policy shall include a waiver of subrogation cause as follows:

“It is agreed that in no event shall this insurance company have any right of recovery against the Owner.”

## SECTION 9

### PERMITS AND LICENSES

9.1 Testing Agency shall obtain, as part of the Lump Sum, all necessary licenses, all building and occupancy permits and similar authorization from governmental or other authorities required in order to perform the work and give such notices required by and otherwise comply with all applicable laws, ordinances, rules, regulations and restrictions. Testing Agency shall notify Owner and Development Manager of all conflicts between the Contract Documents and any such applicable laws, ordinances, rules, regulations, and restrictions.

9.2 Testing Agency shall pay all taxes and all contributions imposed or required by any law for any employment insurance, pensions, old age retirement funds or similar purposes.

9.3 Testing Agency accepts liability for all taxes and contributions required of it and its subcontractors by the Federal Social Security Act and the unemployment compensation law or any similar law of any state.

9.4 Testing Agency represents to Owner and Development Manager that it is permitted by law to perform as a Testing and Inspection Agency in the State of Texas and that it is familiar with all applicable laws and ordinances, that it is fully experienced and properly qualified to perform the work provided for herein and that it is properly equipped, organized and financed to perform such work. Testing Agency shall operate as an independent contractor and not as the agent of Owner, and shall indemnify and hold harmless Owner and Development Manager from all liabilities, costs and charges by reason of any negligent act, omission or representation of Testing Agency or its agents or employees (which shall be in addition to the indemnities contained in Article 13 hereof).

9.5 All matters pertaining to Testing Agency’s employees are the responsibility of Testing Agency, which is in all respects the employer of Testing Agency’s employees. All employment arrangements are solely its concern, and Owner and Development Manager shall have no responsibility therefor.

## ARTICLE 10

### COMPLIANCE WITH LAWS

10.1 Testing Agency shall observe and abide by and perform all of its obligations hereunder in accordance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction.

10.2 Testing Agency shall comply with, and shall bind any subcontractor who enters upon the Project site, to comply with the Occupational Safety and Health Act of 1970, as the same may be amended and supplemented, any other applicable federal or state acts and all standards and regulations issued pursuant thereto. Testing Agency agrees, and shall bind any subcontractor to agree, to indemnify and hold harmless Owner, Development Manager and Lender for any loss, damage, fine, penalty or expense whatsoever that Owner, Development Manager and Lender may suffer as a result of the failure of Testing Agency or its subcontractors to comply with the requirements of such acts or any regulations and standards issued pursuant thereto. This indemnification obligation shall be in addition to any requirements set forth in this Agreement, and shall survive any termination or expiration of this Agreement.

## ARTICLE 11

### SUSPENSION AND TERMINATION OF AGREEMENT

11.1 Owner may at any time, and for any reason, direct Testing Agency to stop its Services under this Agreement for a period of time. Such direction shall be in writing and shall specify the period during which the Services are to be stopped. Testing Agency shall resume Services upon the date specified in such direction, or upon such other date as Owner may thereafter specify in writing. The period during which Services shall have been stopped shall be deemed added to the time fixed for performance. Stoppage of Services under this Article 11 shall not give rise to any claim against Owner.

11.2 Owner may at any time, with or without cause, terminate this Agreement by written notice to Testing Agency specifying the termination date, which shall be not less than seven (7) days from the date such notice is given. In the event of such termination, Testing Agency shall be paid such reasonable amount as shall compensate it for the portion of the Services actually and satisfactorily performed prior to the termination date and Owner approved termination costs. Termination under this Article 11 shall not give rise to any claim against Owner.

11.3 In the event that:

11.3.1 Testing Agency shall for any reason or any cause not have completed performance within the time fixed for performance hereunder; or

11.3.2 Grounds for withholding payment under Article 5 of this Agreement shall arise; or

11.3.3 Testing Agency shall otherwise be in default hereunder; or

11.3.4 Owner shall give Testing Agency written notice that, in Owner's opinion, the conduct of the Testing Agency is such that the interests of the Owner are likely to be impaired or prejudiced, stating the facts upon which such opinion is based;

then Owner may, upon written notice to Testing Agency immediately terminate this Agreement for cause.

11.4 Upon such termination Testing Agency shall be entitled to payment of such reasonable amount to be determined by Owner, as shall fairly compensate Testing Agency for the Services actually and satisfactorily performed prior to the termination date, provided, however, that:

11.4.1 Nothing in this Paragraph 11.4 is to be construed to relieve Testing Agency from any liability and/or damages sustained by Owner and Development Manager as a result of any breach by Testing Agency of this Agreement; and

11.4.2 No amount shall be paid to Testing Agency under this Paragraph until the Services required to be performed to the agreed point of suspension or termination have been satisfactorily completed and Testing Agency has delivered to Owner all drawings, plans, specifications, reports, test results and other work product pursuant to Paragraph 11.6 below.

11.5 Payment by Owner to Testing Agency of any monies pursuant to this Article 11 shall not bar Owner

from any and all remedies it may otherwise have against Testing Agency for any failure of Testing Agency to perform its services in accordance with this Agreement.

11.6 In the event of termination of this Agreement for any reason, Testing Agency, upon payment to Testing Agency pursuant to this Article 11 shall deliver to Owner the complete set of all original drawings, plans, specifications, reports, test results and other work product prepared to the date of termination. Owner shall have the right to use the ideas and designs therein contained for the completion of the Project, in the event of termination of this Agreement or upon completion of the Project, without liability to Testing Agency. Owner may, at all times, retain the originals of all such drawings, plans, specifications, reports, test results and other work product. All drawings, plans, specifications, reports, test results and other work product are the property of Owner. They are not to be used by any person other than Owner on other projects unless expressly authorized by Owner. Owner agrees that Testing Agency shall not be responsible for any work which has not been completed as of the date of termination hereunder. Any unauthorized use or distribution of the Testing Agency's work shall be at Owner's and recipient's sole risk and without liability to Testing Agency.

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

12.1 Although the relationship of Testing Agency to Owner shall be that of an independent contractor, Testing Agency recognizes the relationship of trust and confidence established by this Agreement, and Testing Agency covenants to Owner to furnish its best skill and judgment and to cooperate with Owner's other consultants and contractors in forwarding the interests of Owner. Testing Agency will use every effort and shall do all things necessary to perform the work in the most expeditious and economical manner consistent with good professional services and quality, sound business practice and the best interests of Owner.

12.2 The parties agree that timely performance of Services by Testing Agency, and work by subcontractors and Owner's contractors on the Project site is a primary obligation of each. Testing Agency agrees that it will not directly or indirectly cause, or induce others to cause any interference with the work of any contractor or subcontractor on the Project site. In the event any lawful or unlawful strike, picketing or handbilling at the Project site is directed at Testing Agency or any subcontractor by any person(s) or organizations(s) which causes or induces any interference with the work of any contractor or subcontractor on the Project site, Testing Agency shall immediately take all reasonable and necessary steps to terminate such strike, picketing or handbilling at the Project site.

12.4 Testing Agency shall not delegate to those outside Testing Agency's organization the duties required to be performed hereunder, except that Testing Agency shall have the right to engage other qualified consultants, architects, engineers, and draftspersons to assist in the preparation of the work required hereunder, provided such other personnel satisfy credentials specified herein and in the Contract Documents and are acceptable to and approved in writing by Owner and Development Manager. Testing Agency represents that at least one principal member of the firm shall be a professional engineer, licensed in the State of Texas for the entire term of this Agreement. References in this Agreement to "subcontractors" shall mean and refer only to those persons or entities that are engaged by Testing Agency in accordance with this paragraph and Section 22.2 below.

12.5 All documents prepared by Testing Agency in connection with the Project are prepared as "work for hire," and all title, ownership and copy right privileges are and shall at all times be vested in Owner.

12.6 Owner shall have the right to place on the Project Site such signs as it may elect. Testing Agency shall not place any signs on the Project Site without Owner's prior written permission.

12.7 Testing Agency shall not divulge or allow to be divulged, information concerning the Project to anyone (including, for example, information in applications for permit, variances, etc.) without Owner's prior written consent. Testing Agency shall obtain similar assurances from all those persons or firms as may be retained by Testing Agency pursuant to this Agreement. Owner reserves the right to release all information relative to the Project,

including but not limited to the time of release and the form and content of the same. This requirement shall survive the termination or expiration of this Agreement.

## ARTICLE 13

### INDEMNIFICATION

13.1 The Testing Agency shall be responsible for and shall indemnify the Owner, Development Manager, its directors, officers, agents, employees, and assigns against suits, actions, claims, costs, damages, expenses, or losses (including reasonable attorney fees), to the full extent arising out of any willful misconduct or negligent acts, errors or omissions of Testing Agency or those of its agents, employees, or consultants, in connection with the performance of the Services under this Agreement.

13.2 In addition, the Testing Agency shall indemnify and save harmless the Owner, Development Manager, its directors, officers, agents, employees, and assigns and all of their representatives, partners, and lenders from suits, actions, claims, costs, damages, expenses, or losses (including reasonable attorney fees) attributable to bodily injury to, or sickness, disease or death sustained by persons (including but not limited to the employees, agents and representatives of Testing Agency or any of its consultants) or damage to any property, to the full extent caused by any acts of the Testing Agency or its consultants or their employees, agents, or representatives not arising from professional services. In this regard, the Testing Agency agrees that the indemnification obligations under this Article 13 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Testing Agency or any consultant under workers' compensation acts, disability benefit acts or other employee benefit acts.

C. The Testing Agency shall require each consultant to include the same indemnification provisions as are set forth in this Article 13 in their contracts with the Testing Agency. The terms and provisions of this Article 13 shall survive the expiration or termination of this Agreement.

## ARTICLE 14

### MECHANICS LIENS - SECURITY INTEREST

14.1 Testing Agency shall not voluntarily permit any laborer's, materialmen's, mechanic's or other similar liens to be filed or otherwise imposed on any part at the work, the Project or the property on which the Services are performed. If any laborer's, materialmen's, mechanic's or other similar liens or claims are filed and if Testing Agency does not cause such liens to be released or discharged (by payment, bonding or otherwise as promptly as possible), Owner shall have the right to pay all sums necessary to obtain such release or discharge and deduct all amounts so paid from the Lump Sum. Testing Agency indemnifies and holds harmless Owner from all claims, damages, injuries (including deaths), losses, liabilities, causes of action or suits, costs and expenses of whatever nature arising out of such lien or that part of the work covered for payment thereby, unless such lien is a result of Owner's failure to make timely payments.

14.2 Testing Agency hereby subordinates all contractor's, laborer's, mechanic's, materialmen's and similar liens that it may have or acquire hereunder as to the work to the liens securing payment of sums now or hereafter borrowed by Owner. At the request of Owner, Testing Agency shall execute such additional documents as may be requested from time to time by Owner, Development Manager or Lender to give effect to the provisions hereof, and shall cause Subcontractor and parties furnishing labor or materials for the work to subordinate their liens to such aforesaid sums.

14.3 Testing Agency shall not enter into any contract for the supply of materials or services to the Project which purports to grant a security interest or right of repossession to any person or entity respecting the work or the Project site, or any portions thereof or chattels placed thereon.

## ARTICLE 15

### ENTIRE AGREEMENT

15.1 This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby. All prior negotiations, representations and agreements with respect hereto not incorporated herein are cancelled. This Agreement can be modified or amended only by a document duly executed on behalf of the parties hereto.

## ARTICLE 16

### NOTICES

16.1 All notices to be given hereunder shall be in writing and all payments to be made hereunder shall be by check, and may be given, served or made by depositing the same in the United States mail addressed to the party to be notified postpaid and certified with return receipt requested or by delivering the same in person to such person. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in such notice or in this Agreement from and after the second day next following the date postmarked on the envelope containing such notice. Notice given in any other manner shall be effective only if and when received by the party to be noticed.

All notices given to Testing Agency shall be sent to or made at:

All notices to be given to Owner shall be sent to or made at:

Houston First Corporation  
701 Avenida de las Americas, Suite 200 Houston, Texas 77010  
Attention: President and General Counsel

All notices to be given to Development Manager shall be sent to or made at:

Frem Reggie  
Managing Director  
Hines  
845 Texas Avenue | Suite 3300 | Houston, TX 77002  
Frem.Reggie@hines.com

By giving the other party at least fifteen (15) days written notice thereof the parties hereto shall have the right to change their respective addresses or to whom notices are to be sent.

## ARTICLE 17

### SEVERABILITY

17.1 If any term or provision of this Agreement or the application thereof to any person or circumstance, the deletion of which shall not adversely affect the receipt of any material benefit by Owner, shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

## ARTICLE 18

### WAIVER

18.1 The waiver by Owner of any agreement, condition, covenant or provision in this Agreement shall not be a waiver of any subsequent breach of the same or any other agreement, condition, covenant or provision, nor shall any custom or practice which may develop between the parties in the administration of the terms of this Agreement be construed to waive or to lessen the right of Owner to insist upon the performance by Testing Agency in strict accordance with all such terms.

## ARTICLE 19

### CHOICE OF LAW

19.1 This Agreement is made and delivered within the State of Texas and shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to conflicts of laws principles. The courts located in Harris County, Texas shall be the exclusive place of venue for any legal proceedings between Owner and Testing Agency in regard to this Agreement.

## ARTICLE 20

### CONFLICTS

20.1 Should any conflicts occur within the Contract Documents, the most stringent provision shall take precedence over the other conflicting provisions.

## ARTICLE 21

### OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

21.1 Pursuant to United States Presidential Executive Order 13224 ("Executive Order") and related regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, U.S. persons and entities are prohibited from transacting business with persons or entities who, from time to time are determined to have committed, or to pose a risk of committing or supporting, terrorist acts, narcotics trafficking, money laundering and related crimes. Those persons and entities are identified on a list of Specially Designated Nationals and Blocked Persons (the "List"), published and regulated by OFAC. The names, including aliases, of these persons or entities ("Blocked Persons") are updated frequently. In addition, OFAC enforces other Executive Orders which, from time to time, impose restrictions on transactions with, or involving certain countries. Testing Agency hereby certifies and represents that neither it, nor any of its owners, members of its governing body, management, employees or agents is on the List or is acting for, or on behalf any person or entity on the List. Testing Agency further acknowledges its obligation to remain in compliance with existing and future regulations promulgated by OFAC throughout the term of this Agreement.

## ARTICLE 22

### ASSIGNMENT

22.1 The Owner Manager and the Testing Agency each binds itself, its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

22.2 Notwithstanding the provisions of Section 22.1, the Testing Agency shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner. The Testing Agency shall not subcontract the performance of any of the services to be provided under this Agreement without the written approval of the Development Manager. This Agreement having been made in reliance upon the Testing Agency personal qualifications and responsibility, the Development Manager reserves the right to withhold approval of any proposed subcontract which the Development Manager deems would not be in the best interest of the Development Manager.

22.3 The Owner reserves the right to assign both the benefits and/or obligations of the Owner under this Agreement in whole or in part either as security or absolutely to any party reasonably capable of performing the Owner's executory obligations under this Agreement, at any time and, upon such assignment (except in the case of an assignment as security), Owner shall have no further responsibility for the obligations so assigned hereunder provided that such party assumes such obligations.

22.4 The Owner may sell, assign, hypothecate, pledge or otherwise transfer or dispose of all or a portion of the Project or its rights under this Agreement in its sole discretion, without the consent of the Testing Agency, so long as (a) the rights and obligations of the Owner under this Agreement are assigned in connection therewith, (b) all payments due Testing Agency under Article 5 have been paid current, and (c) the proposed transferee of Owner is of good reputation and has adequate financial resources. Furthermore, the Owner may assign its rights under this Agreement to the City at any time and without complying with the provisions of the preceding sentence. The Testing Agency may not assign this Agreement or any of its obligations to perform under this Agreement without the express written consent of the Owner. "Owner" shall mean the entity named herein as "Owner" and any successors or assigns of rights and interest of the Owner pursuant to the agreement between Owner and Testing Agency referred to herein.

22.5 Any assignment, transfer or delegation taken in violation of this Article 22 shall be void and of no force and effect.

## ARTICLE 23

### ANTI-CORRUPTION

23.1 In addition to Testing Agency's obligations pursuant to this Agreement, Testing Agency hereby represents, warrants and covenants that:

23.1.1 Testing Agency and its affiliates and each of their respective officers, directors, employees and agents (collectively, the "Testing Agency Representatives"), are now in compliance with Anti-Corruption Laws. No action, suit or proceeding by or before any court, or government agency, authority or body, or any arbitrator or nongovernmental authority involving any Testing Agency Representative with respect to applicable anti-corruption laws is pending, or to Testing Agency's knowledge, threatened.

23.1.2 No government is investigating or has in the past five (5) years conducted, initiated or threatened any investigation of Testing Agency or any Testing Agency Representative for alleged violation of Anti-Corruption Laws.

23.1.3 Testing Agency and the Testing Agency Representatives shall comply with all applicable Anti-Corruption Laws in connection with the performance of all duties and obligations relating to this Agreement.

Testing Agency shall use commercially reasonable efforts to cause its Consultants and their subconsultants and any other design professional firms retained by the Testing Agency to comply with all applicable Anti-Corruption Laws in connection with the performance of any services with respect to the Project.

23.1.4 Without limiting the foregoing, Testing Agency shall not cause or knowingly permit any Testing Agency Representative or any of its Consultants, subconsultants or any other design professional firms retained by the Testing Agency to, either directly or indirectly, pay, offer, promise or authorize a Prohibited Payment.

23.1.5 In carrying out its responsibilities under this Agreement, Testing Agency will not provide any meals, gifts, gratuities, entertainment, or travel to any Government Official without the prior written consent of Owner.

23.1.6 Testing Agency shall immediately notify Owner in writing if Testing Agency becomes aware of facts or information which suggest a breach of the foregoing Anti-Corruption covenants or the Anti-Corruption Laws.

23.2 The breach by Testing Agency of any of its representations, warranties and/or covenants contained in this Article 23 shall constitute a material breach of this Agreement. In the event Owner has reason to believe that a breach of any of the representations, warranties or covenants in this Article 23 has occurred or will occur, Owner may withhold further payments to Testing Agency until such time as it is satisfied that no breach has occurred or will occur. Owner shall not be liable to Testing Agency for any claim, losses or damages whatsoever related to its decision to withhold payments under this Article 23.

23.3 In addition to its indemnification obligations pursuant to Article 13, Testing Agency shall be responsible for and shall indemnify and defend the Owner against any and all losses arising out of any breaches of this Article 23 by the Testing Agency and will be responsible for all costs, losses, or expenses (including attorney fees) arising out of such losses. The provisions of this Article 23 shall survive any termination or expiration of this Agreement.

23.4 As used herein:

23.4.1 “Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the relevant party concerning or related to bribery or corruption, including laws governing the bribery or corruption of domestic U.S. federal, state, or local Government Officials, non-U.S. Government Officials, and commercial bribery;

23.4.2 “Government Official” means any (i) official or employee of a U.S. or non-U.S. government body, department, agency, instrumentality, or government-controlled entity, or a public international organization; (ii) political party or official thereof, or candidate for political office; or (iii) person acting in an official capacity for or on behalf of any of the foregoing; and,

23.4.3 “Prohibited Payment” means any direct or indirect payment, offer, promise or authorization of money or anything of value, to a Government Official or to any other person (i) for the purpose of influencing any act by or decision of such Government Official or such person in order to obtain or retain business or to direct business to any person, or securing any improper advantage, or (ii) when such offer, payment, promise or authorization would be unlawful under applicable laws, including commercial bribery laws.

*No further text on this page.*



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

TESTING AGENCY:

OWNER:

\_\_\_\_\_

HOUSTON FIRST CORPORATION

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

By: \_\_\_\_\_  
Michael Heckman, President

**EXHIBIT A**

**CONTRACT DOCUMENTS**

Drawings (list drawings)

Specifications (list specifications)

Soils Report (list documents)

For Information Documents (list documents)

Other (provide list of other documents)

**EXHIBIT B**

**SUPPLEMENTAL TERMS AND CONDITIONS TO THE AGREEMENT  
FOR CONSULTING SERVICES BETWEEN OWNER AND TESTING AGENCY**

**EXHIBIT C**

**PERSONNEL AND LABORATORY SERVICES LIST**

**EXHIBIT D**  
**PROJECT SCHEDULE**

**EXHIBIT E**  
**SITE UTILIZATION PLAN**