

# ARCHITECTURAL SERVICES REQUEST FOR QUALIFICATIONS (“RFQ”)

**ISSUE DATE:** August 6, 2024

**DUE DATE:** **5:00 p.m. CT** on **August 16, 2024** (the “Submission Deadline”)

**INSTRUCTIONS:** Respondents are asked to submit six (6) paper copies and one (1) electronic copy (on a flash drive) of their Statement of Qualifications (“SOQ”). Submittals received by email, fax, or after the Submission Deadline will be rejected without further review or consideration.

**SUBMIT TO:** Houston First Corporation, Attn: Mitch Miskowski, 701 Avenida de las Americas, Suite 200, Houston, TX 77010. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write “**RFQ**” clearly on the outside of the sealed envelope.

**CONTACT INFO:** Any questions concerning the content or subject matter of this RFQ must be sent by email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than **9:00 a.m. CT** on **August 14, 2024**. Questions will be answered collectively in the form of a Letter of Clarification. Questions may be combined or edited for clarity or length at the discretion of HFC.

**PRE-PROPOSAL CONFERENCE:** A pre-submittal conference will be held for all prospective Respondents at **10:00 a.m. CT** on **August 12, 2024** in **Meeting Room 360** at the **George R. Brown Convention Center**, 1001 Avenida de las Americas, Houston, Texas 77010. Prospective Respondents may attend via telephone through a dial in conference line. If you wish to do so, please submit your request in writing via email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than **9:00 a.m. CT, August 9, 2024** and include a telephone number at which you may be reached. The dial in conference line *will only be provided orally* to proposed Respondents that timely request to participate by telephone.

## OVERVIEW

Houston First Corporation (“HFC”) requests Statements of Qualifications (“SOQs”) from qualified and experienced architectural firms (each a “Respondent” and, collectively “Respondents”) to provide professional architectural services in connection with the construction of a new multi-use, multi-level convention center building containing approximately 800,000 square feet, improvements to Avenida de las Americas, and the transformation of the George R. Brown Convention Center (the “GRB”) in Houston, Texas.

HFC seeks to enhance the destination appeal of GRB and its environs by creating an engaging and vibrant convention district. An integral part of that initiative includes forward-thinking projects to expand or otherwise create opportunities for, and infrastructure for, entertainment venues and mixed-use developments, as well as improving facilities for vehicular and pedestrian traffic.

## 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. The entity is responsible for the operation of the GRB, Avenida Houston, Partnership Tower, Wortham Theater Center, Jones Hall for the Performing Arts, Miller Outdoor Theatre, an array of outdoor venues/properties, and parking facilities that can accommodate nearly 10,000 vehicles. HFC also owns and operates both the Hilton-Americas Houston hotel and Partnership Tower.

The GRB is located on the east edge of downtown Houston, bounded by Rusk, Polk, US Highway 59, and Avenida de las Americas on the north, south, east and west, respectively. Adjacent to Discovery Green and the Hilton-Americas Houston hotel, the convention center is flanked by Partnership Tower and Minute Maid Park to the north and Toyota Center to the south.

## **SCOPE OF SERVICES**

HFC is seeking to engage an architect

- a. to design and permitting of (and to engage such engineers and other design professionals and consultants necessary for the design and permitting of) the following projects: (i) a new multi-use, multi-level convention center building containing approximately 800,000 square feet, including with associated loading docks, ballrooms, conference rooms, display halls, retail spaces, parking structures (which may be underground), plazas, and facilities to serve such facility (the "South Building Project"); (ii) certain improvements to and potentially realign and extend the Avenida de las Americas right of way, including, without limitation, enhancements or changes to lighting, landscaping, hardscape, traffic control, signage and other wayfinding (collectively, the "Avenida Realignment Project"); (iii) the transformation of the existing GRB building by redesigning and reconstructing the existing GRB (the "GRB Transformation Project"; the South Building Project, the Avenida Realignment Project and the GRB Transformation Project being collectively sometimes herein called the "Projects"); and (iv) as necessary for the development and construction of the Projects, the design and construction of, or realignment and reconfiguration as applicable of, water, gas, storm water, sanitary sewer, electric, telecommunication and other utility facilities, conduits, lines and related equipment,

and

- b. to develop construction drawings (and such refinements of the conceptual design) necessary to construct the Projects, including (in each case) coordination with the development of Texas Department of Transportation project for re-routing Interstate 45 and the lowering of US 59/I-69 (the "TXDOT Project"). The scope of work and professional services to be performed by the selected Respondent include (but will not be limited to) all services necessary to design, prepare bidding documents, estimate construction costs, provide value engineering, assist with all bidding and award activities, arrange and conduct meetings, perform construction phase services, provide computer-aided drafting and design (CADD) documentation and assist in the warranty review.

The selected Respondent will be responsible for engaging, as its subcontractors the following (collectively, the "Subcontract Design Professionals"): structural engineers, civil engineers, MEP engineers, and such other design professionals as are necessary to assist the selected architect in the discharge of its duties and obligations to HFC, with each of such subcontractors being subject to approval by HFC.

The Respondent selected will initially provide the services for the South Building Project and Avenida Realignment Project and, subject to HFC's election by written notice, the GRB Transformation Project.

HFC has engaged Hines Southwest, LLC, a Delaware limited liability company (the "Development Manager"), through an earlier request for qualification, to advise and assist HFC with the development of the projects as a development manager.

HFC presently intends to engage a general contractor for each of the projects (which may be the same general contractor) utilizing a construction manager-at-risk method. HFC expects the selected Respondent to work with HFC, Development Manager, the general contractor(s), and any other consultant engaged by HFC to perform services related to the projects.

While a more detailed project schedule is under development currently, Respondents are advised that the South Building Project must be completed by the second quarter of 2028 so that it may be placed into service and ready for use and occupancy by August 2028.

## SOQ FORMAT

To be considered responsive, Respondents are to include all of the following information in their SOQ:

- a. **Submittal Form:** Respondents are required to complete all fields of the Submittal Form provided below. The completed form must be signed by a person authorized to make representations on behalf of Respondent.
- b. **Profile:** Provide a brief profile of the Respondent, including its structure, services, and experience. Be sure to note any prior company names by which the Respondent has been known, the number of years the Respondent has been in business, and the location of the office from which the majority of services would be performed.
- c. **Experience:** Describe the last three convention center projects that (i) contained at least 500,000 square feet of space, (ii) cost at least \$300,000,000, and (iii) are located in an urban setting for which the Respondent provided design service and the role the Respondent performed (e.g., design architect, production architect, etc.), the total cost of such projects (if completed), and the year in which such work was completed. If no convention center projects have been completed by Respondent, please provide references for projects that Respondent believes to be similar or qualify Respondent to perform the services described in this RFQ for the Projects. Describe the Respondent's experience generally in designing facilities and improvements similar in scope in complexity to the projects described in this RFQ, including any experience in central business district settings. For each example given or project referenced, describe the role played by the Key Personnel (as defined below) that participated.
- d. **Design Team:** Introduce the key personnel who would be assigned to provide services for HFC, explain their respective functions, and include a brief summary of their qualifications. Identify the persons that will serve as the following (the "Key Personnel") with a summary of their qualifications and a copy of each of their resumes: the principal in charge, the lead design architect, the project production architect, and the project architect responsible for construction administration. Provide an organizational chart of the team, showing reporting structure of the people proposed to do the work.
- e. **Diversity:** Respondents should indicate how they intend to make good faith efforts to utilize diverse companies to meet the Diversity Goal set forth in this RFQ. Respondents should note in their SOQ if they (or any probable subcontractors) are diversity participants certified by one or more of the identified certification agencies as defined in the [HFC Diversity Program](#).
- f. **Form of Agreement:** Respondents should indicate that they have reviewed and approved the form of Agreement for Design Professional Services attached to this RFQ (the "Services Agreement Form"). If the Respondent takes exception to any portion of the Services Agreement Form, then such Respondent must submit a list of such exceptions as part of its response to this RFQ and an explanation of the changes that Respondent requests to the excepted provisions of the Services Agreement Form; provided, however, that HFC reserves the right to reject responses including substantive objections without further review or consideration.
- g. **Sub-consultants and Subcontractors other than Subcontract Design Professionals:** Please identify any sub-consultants or other subcontractors, if any, that will assist the architect in performing services that *will not be performed within the disciplines of the Subcontract Design Professionals* and provide a brief summary of their experience and qualifications. Note any sub-consultants or subcontractors certified as MWDBEs or HUBs under the HFC Diversity Program.

Respondents are asked to ensure that their SOQs are clear and concise, and limit the total page number to a maximum of 50 pages.

## **EVALUATION**

SOQs timely received by HFC and conforming to the requirements of this RFQ will be reviewed by an evaluation committee designated by HFC. From the pool of qualified Respondents, HFC presently may elect to interview one or more of the Respondents. The initial selection shall be made by HFC based on merit and qualifications, including experience in projects similar to the Project, the organizational and multi-disciplinary strengths of the architectural firm, the Architect's Key Personnel and other relevant factors. When negotiations are completed, the recommendation of the evaluation committee will be submitted to the HFC Board of Directors.

HFC expects to select the top-ranked Respondent on the basis of demonstrated competence and qualification, subject to negotiation of fair and reasonable compensation, which may include a not-to-exceed amount and/or prior-authorization requirement for services in excess of a mutually-agreed estimate of service hours. If HFC and such Respondent should fail to agree on such fair and reasonable compensation, then HFC reserves the right to and may conduct negotiations with the next most-qualified Respondent. If necessary, HFC will conduct negotiations with successive Respondents in descending order until a contract award can be made to a qualified Respondent whose price HFC believes is fair and reasonable.

This RFQ does not commit HFC to award a contract or issue a purchase order. HFC will not pay any cost incurred in the preparation of a SOQ in response to this RFQ. HFC reserves the right to request clarifications and/or additional information from some or all Respondents.

## **LETTERS OF CLARIFICATION**

Responses to all material questions timely submitted by potential Respondents, as well as revisions incorporated into this RFQ by HFC, if any, will be confirmed collectively in a letter posted online at <http://www.houstonfirst.com/do-business> ("Letter of Clarification"). When issued, Letters of Clarification become part of this RFQ and automatically supersede any previous specifications or provisions in conflict therewith. By submitting their SOQ, Respondents shall be deemed to have reviewed all Letters of Clarification on the website and incorporated them into their submittal. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein. It is the responsibility of Respondents to monitor the foregoing link and ensure they receive any such Letters of Clarification and incorporate them in their SOQ.

## **FORM OF AGREEMENT**

By submitting a SOQ in response to this RFQ, Respondent agrees, if selected, to enter into the Services Agreement Form, subject to resolution of any exceptions thereto outlined by Respondent in its SOQ and subject to reaching agreement with HFC on compensation for its services.

## **DIVERSITY PARTICIPATION**

The Respondent 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: **30%** of the total value of the Agreement. Respondents 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.

## **RESTRICTIONS ON COMMUNICATIONS**

Throughout the selection process, commencing with the Issue Date, Respondents are directed not to communicate with any HFC or Development Manager employee, officer or director regarding their SOQ or any matter relating to this RFQ, other than during the Pre-Submittal Conference, through [bids@houstonfirst.com](mailto:bids@houstonfirst.com) or in response to a direct inquiry from the HFC General Counsel Department. Respondents who disregard the Restrictions on Communications provision do so at their peril, as HFC shall have the right to reject any SOQ or subsequent proposal received due to violation of this provision.

## **CONFLICTS OF INTEREST**

Respondents 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 their SOQ, Respondent represents to HFC that they have complied with the requirements of Chapter 176 of the Texas Local Government Code.

### **PROTEST PROCEDURES**

Any protest relating to the form, terms and conditions, selection criteria, specifications, exhibits, or any other material RFQ content must be filed by the actual or potential Respondent with the Purchasing Agent no later than five business days prior to the Submission Deadline. If the protest consists of a dispute regarding the Respondent 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 Respondent after the Submission Deadline, but at least three business days prior to consideration of a contract resulting from this RFQ by HFC.

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 Respondent, with sufficient information to establish that a bona fide Respondent is the person or entity filing the protest; (b) The full title of the RFQ; (c) Material grounds for the protest, including the provisions of the RFQ and the applicable law or regulation that serves as the basis for the protest; (d) A statement of the specific relief requested by the Respondent; (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.

### **PUBLIC INFORMATION**

HFC is subject to the Texas Public Information Act ("TPIA"). Information submitted by Respondents is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such clearly and unambiguously. Respondents will be advised of any request for public information that implicates their materials and will have the opportunity to raise objections to disclosure with the Texas Attorney General at their expense.

### **RFQ PACKETS**

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

### **WITHDRAWAL; ERROR**

SOQs may be withdrawn due to errors or for any other reason by a written request received by [bids@houstonfirst.com](mailto:bids@houstonfirst.com) prior to the Submission Deadline.

### **NO OBLIGATION**

HFC reserves the right, should it deem necessary in HFC's best interest, to do any or all of the following: (1) waive any irregularities in any of the responses; (2) select candidates for oral interviews; (3) accept any submittal or portion of a submittal; (4) reject any or all Respondents submitting responses; or (5) cancel or make alterations to the entire process.

# ARCHITECTURAL SERVICES

## SUBMITTAL FORM

Respondents to the foregoing Architectural Services Request for Qualifications (“RFQ”) are required to complete each field of this Submittal Form and are asked to include it as the first substantive page of their Statement of Qualifications (“SOQ”).

### **1. Contact Information**

- a. Company Name (the “Respondent”): \_\_\_\_\_
- b. Address: \_\_\_\_\_
- c. Contact Name/Title: \_\_\_\_\_
- d. Phone: \_\_\_\_\_
- e. Email: \_\_\_\_\_
- f. Is the Respondent a certified diversity entity under the [HFC Diversity Program](#)? \_\_\_\_\_

### **2. Terms and Conditions**

By completing this form and submitting a SOQ, the Respondent represents all of the following to Houston First Corporation:

- a. Respondent has the necessary experience, knowledge, abilities, skills, and resources to perform the professional services required in connection with this RFQ.
- b. Respondent accepts the evaluation process set forth in the RFQ and acknowledges that some subjective judgments must necessarily be made during the effectuation of such process.
- c. Respondent accepts the Services Agreement Form set forth below in Exhibit “1” of the RFQ, subject only to the following exceptions:

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(if blank, it shall be assumed there are no exceptions; if there are exceptions, please provide revised text addressing Respondent’s exceptions; if additional space is needed to outline exceptions and provide revised text, please place the exceptions and text on an addendum to this form.)

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

### **3. Acknowledgment**

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

\_\_\_\_\_ (“Respondent”)  
By:

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

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

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

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

**EXHIBIT “1”**

**Services Agreement Form**

**(See Following Pages)**

## AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

**THIS AGREEMENT**, the effective date of which is \_\_\_\_\_, 2024 (the “*Effective Date*”), is made by and between Houston First Corporation, a local government corporation created under the Texas Transportation Code (hereinafter referred to as “*Owner*”) and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as “*Firm*”).

### **I. DESCRIPTION OF PROJECTS**

The Owner proposes:

(a) to construct on all or a part of Blocks 286, 287, 309, 310, SSBB (the “*South Building Site*”), in the City of Houston, Texas, an approximate 800,000 square foot multi-use, multi-level convention center building together with associated loading docks, ballrooms, conference rooms, display halls, retail spaces, parking structures (which may be underground), plazas, and facilities to serve such facility (the “*South Building*”; such project being herein called the “*South Building Project*”); and

(b) to make certain improvements to and potentially realign and extend the Avenida de las Americas right of way, including, without limitation, enhancements or changes to lighting, landscaping, hardscape, traffic control, signage and other wayfinding (collectively, the “*Avenida Realignment Project*”); and

(c) to transform the existing George R. Brown Convention Center building (the “*Existing GRB*”) by, potentially, demolishing, redesigning and reconstructing Existing GRB (the “*GRB Transformation Project*”; the South Building Project, the Avenida Realignment Project and the GRB Transformation Project, are each herein called a “*Project*” and collectively called the “*Projects*”); and

(d) as necessary for the development and construction of the South Building, the Avenida Realignment Project and the GRB Transformation Project, the design and construction of, or realignment and reconfiguration as applicable of, water, gas, storm water, sanitary sewer, electric, telecommunication and other utility facilities, conduits, lines and related equipment.

Additional detail with respect to the scope of the South Building Project and Avenida Realignment Project is outlined on **Exhibit A** attached hereto, and supplements the foregoing description of the Projects. Under this Agreement, Firm shall provide for design, consulting and other services for the South Building Project and Avenida Realignment Project and, subject to Owner’s election by written notice to Firm, the GRB Transformation Project. This Agreement is also intended to define and describe the working relationship between the Owner and the Firm with regard to the Projects.

The Owner has retained Hines Southwest, LLC, a Delaware limited liability company (“*Development Manager*”) to assist Owner with the development of the Projects as a development manager, and intends to engage a general contractor for each of the Projects (which may be the same general contractor) as a construction manager at risk (whether one or more, the “*CM*”).

### **II. SCOPE AND DESCRIPTION OF SERVICES**

#### **A. BASIC SERVICES**

##### **1. Generally**

All of the Basic Services (defined below) and Additional Services (defined below; the term “*Services*” as used herein means any or all of the Basic Services or Additional Services performed by Firm [or any Consultants, as defined below] pursuant to this Agreement or with respect to any of the Projects) to be provided by the Firm under this Agreement (including, without limitation, the deliverables

and other services described in **Exhibit H** attached hereto) and all of the obligations, covenants and agreements of the Firm set forth herein shall apply to each of the Projects unless expressly and unequivocally stated to the contrary herein with respect to a particular service, obligation or agreement. Furthermore, while the Services with regard to each Project may be performed independently of one another due to the independent nature of the Projects (and, accordingly, due to separate schedules) Firm shall nonetheless be responsible for the performance of all Services described herein for each of the Projects as well as the overall planning, coordination and integration of the design of each Project with the others (and with existing structures and conditions at the Project site). Furthermore, Firm acknowledges that the schedule for completion of the South Building Project requires that it be completed by the first quarter of 2028 so that the same may be placed into service and be ready for use and occupancy for the Republican National Convention scheduled for August, 2028.

## 2. Design Services

The Firm will participate with and assist the Owner and Development Manager, as required, in developing and refining the general Project concept for each of the Projects. The Firm will develop a detailed program for the Projects based on in-depth interviews with the Owner and other parties designated by the Owner. The Project program for each of the Projects shall set forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special systems and equipment, site requirements and other Owner requirements. The Firm shall review with the Owner, CM and Development Manager, as requested, alternative approaches to design and construction of the Project and will prepare such schematic or conceptual drawings as may be required. For the avoidance of doubt but without limiting the generality of the foregoing, the design Services shall include all architectural design services, mechanical, electrical and plumbing engineering services, civil engineering services, parking/traffic design services, audio/visual/data and telecommunications design services, landscape design, building code analysis, acoustical design, security planning services, building envelope design, programming, and graphics and wayfinding services and any other engineering and design or consulting services required for the proper and complete design of each of the Projects. In performing the Services, the Firm will utilize and provide building information (integration) modeling and other computer aided design programs to provide Owner electronic renderings and related work product with regard to the Projects, as more particularly set forth in Section VI. After the Owner has approved the general Project concept and Project program for a Project, the Firm shall prepare, for review and approval by the Owner, design development drawings and outline specifications adequate for obtaining preliminary cost and price estimates, and a set of construction drawings and specifications, which are adequate for complete pricing and construction of the Project as designed ("*Contract Documents*"). Firm recognizes that Owner may elect to require that Firm issue for construction design documents in one or more design packages for bidding by subcontractors, permitting and construction and in this regard the Firm shall prepare additional drawings and specifications (and issue clarifications, addenda and supplemental instructions) as and when necessary for the coordination and integration of each design package with the other (and with the existing conditions at the Project site) so that each Project as designed by the Firm is properly connected, complete, functional and operational. Upon completion of the construction drawings and specifications, and prior to submitting such documents to the Owner for issuance to contractors for prices and construction, the Firm shall check each such final construction drawing and specification with all other drawings and specifications for completeness and for freedom from conflicts, errors, omissions and ambiguities. The Firm shall assist the Owner and Development Manager, and prepare documentation as may be required, in obtaining approval of governmental authorities having jurisdiction over the Project. The Firm represents and agrees that the Contract Documents shall conform with applicable restrictions, laws, codes, and regulations in effect throughout the period that the Firm is performing services under this Agreement. The Contract Documents shall consist of all necessary drawings, details, plans, elevations, sections, and schedules, dimensioned, noted, and coordinated, as well as specifications, and the Firm shall seal and sign the drawings as the architect of record. The Firm shall assist the Owner, CM and Development Manager in the preparation of any necessary bidding information, and any forms of agreement between the CM and the subcontractors for the Project. At the Owner's direction, the Firm shall prepare detailed area calculations in a form acceptable to Owner.

### 3. Construction Manager at Risk

Firm acknowledges that Owner intends to obtain general contracting services through the CM by a construction manager at risk procurement method. Moreover, Firm is aware that, due to the nature of Owner, such procurement shall require compliance with applicable provisions of Texas law, including by way of example, Subchapter F of Chapter 2267 of the Government Code of the State of Texas. Firm, in agreeing to the compensation set forth herein, has taken into account the effects of such procurement method on the performance of Firm's Services.

### 4. Construction Services

(a) *Consultation and Site Visits.* During construction of the Project, the Firm shall advise and consult with the Owner and Development Manager, as required. The Firm shall participate in construction conferences as required by Owner or Development Manager and shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the construction of the Project ("*Work*") and to determine in general if the Work is proceeding in accordance with the Contract Documents.

(b) *RFI's.* The Firm shall review and respond to CM's requests for information (RFI's) in regards to questions CM or its subcontractors have about the Contract Documents within fourteen (14) calendar days of receipt of such RFI's unless requested by Owner or Development Manager to review and respond at an earlier time as required to achieve the CM's schedule. The Firm shall otherwise adhere to the Owner's policies and procedures concerning RFI's set forth in the CM's construction contract.

(c) *Observations.* The Firm shall make on-site observations to check the quality of the Work and observe tests required by the Contract Documents and authorities having jurisdiction over the Projects. On the basis of such on-site observations, the Firm shall keep the Owner and Development Manager informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the CM and all subcontractors. A written report of each on-site observation will be promptly provided to the Owner, Development Manager and also to the CM when requested by the Owner or Development Manager. However, the Firm shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. The Firm shall not be responsible for the CM's schedule or failure to carry out the Work in accordance with the Contract Documents. The Firm shall not have control over or charge of acts or omissions of the CM, subcontractors, or their agents or employees, or of any other persons performing portions of the Work, but Firm shall notify Owner and Development Manager immediately upon discovering any acts or omissions by such parties that are not in conformance with the Contract Documents or which Firm believes violates any laws, rules, codes, ordinances or other regulations.

(d) *Progress Payments.* Based on the Firm's observations and evaluations of the CM's applications for payment, the Firm shall review and certify to the Owner, all payment requests by the CM and any other consultants, in the form of Application and Certificate for Payment set forth in the contract between the CM and Owner. Based on such observations at the site and on the data comprising the Application and Certificate for Payment, the Firm shall provide to Owner and Development Manager its written opinion of the amount owing to the CM and shall issue Certificates for Payment in such amounts. The issuance of a Certificate for Payment shall constitute a representation by the Firm to the Owner, based on the Firm's observations at the site as provided in this Agreement and the data comprising the Application and Certificate for Payment, that the Work has progressed to the point indicated; that to the best of the Firm's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion [as defined in the Contract Documents], to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents, correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the CM is entitled to payment in the amount certified.

(e) *Shop Drawing Review and Approval.* The Firm shall review and approve, or take such other action as may be appropriate, within ten (10) working days (except as otherwise provided herein) of receipt (unless this time is extended by the Owner), all shop drawings, product data and samples to ascertain whether shop drawings and similar submittals are in accordance with the requirements of the Contract Documents and are consistent with, and adequate to secure execution of, the general design of the Project. The Firm shall participate in an expedited submittal process for the MEP and building controls trades and conduct the submittal meetings associated with such expedited process.

(f) *Commissioning and Closeout Procedures.* The Firm and Consultants shall review and approve, or take such other action as may be appropriate, within ten (10) working days of receipt (unless this time is extended by the Owner), all test reports, certifications and other such deliverables concerning commissioning and closeout of the Project to ascertain whether such deliverables are in accordance with the requirements of the Contract Documents. The Firm and Consultants shall participate in tracking and managing the submission, review and approval of all such deliverables for the Project. Firm and Consultants shall assist Owner in determining what operational issues may occur and how to effectively minimize their impact at initial occupancy if the Project is not fully constructed at that time.

(g) *Final Observation and Review.* The Firm shall review the Work to determine the date or dates of Substantial Completion and the date of Final Completion (as defined in the Contract Documents) and shall receive, review for compliance with the Contract Documents and forward to the Owner and Development Manager for the Owner's and Development Manager's review and records all written warranties and related documents (including maintenance and operating manuals) required by the Contract Documents and assembled by the CM. The Firm shall prepare such punch lists and follow-up observations on the punch lists as may be required, shall conduct a final observation of the Project, and shall, if requested by the Owner or Development Manager, prepare a final report in writing for the Owner. Upon completion of each of the Projects, the Firm shall deliver to the Owner the "*Firm's Statement*" in the form attached hereto as **Exhibit B** with regard to such Project, and Firm shall furnish Owner with up to two (2) sets of final Contract Documents (with electronic copies).

(h) *Tests and Studies.* The Firm shall participate in, conduct and observe such tests as authorities having jurisdiction over the Project may require, provided that Owner shall bear all lab fees and expenses associated with such tests.

(i) *CM's Cost Saving and Alternative Proposals.* The Firm shall review and evaluate cost saving and alternative proposals submitted by the Development Manager, CM, subcontractors and/or manufacturers and shall make such revisions to the Contract Documents as necessary to incorporate those cost saving proposals which are accepted by the Owner.

(j) *Change Orders.* The Firm shall prepare, upon request of the Owner or Development Manager, change orders and change order proposals, for review and approval by the Owner for execution in accordance with the Contract Documents.

(k) *Other Submittals.* The Firm shall also review construction change directives and construction change authorizations submitted by the CM, all in a timely manner so as not to disrupt the orderly prosecution of the Work, delay the performance of the Work, or give rise to a claim by the CM for an extension of time to perform or any impact claims. Firm shall also assist the Owner in the review of claims submitted by the CM. The Firm shall maintain a log for each such submittals, including the date of receipt of the submittal, action taken in regard thereto, and in the case of requests for information, the date of response thereto to the CM. The Firm shall make such log available to Owner and Development Manager during regular business hours upon reasonable prior notice.

(l) *LEED® Certification.* The Firm acknowledges and accepts the Owner's desire to achieve LEED® Silver or Gold rating (as determined by the Owner) from the U.S. Green Building Council with respect to the South Building. The Firm acknowledges and accepts the Owner's desire to achieve the WELL Building Silver or Gold rating (as determined by the Owner) from the International WELL Building Institute with regard to the South Building. The Firm shall support each application with an

appropriate design and prepare all necessary documentation to support each application including making requested revisions to the documentation.

#### 5. Post-construction Services

(a) The Firm shall consult with the Owner and Development Manager (but excluding the preparation of new architectural drawings) as necessary throughout the first year of the warranty period established under the general contractor's contract for construction ("*Warranty Period*").

(b) The Firm shall coordinate with the Owner and Development Manager in conducting all remedial work during the Warranty Period.

(c) The Firm shall attend warranty inspections with the Owner and monitor follow-up warranty work or services by the CM during the Warranty Period provided, however, to the extent that such warranty inspections or follow-up work relates to services provided solely by Consultants, then Firm shall require each Consultant (hereinafter defined) to perform the obligations set forth in this subparagraph 5 and will not be required to do so itself.

#### 6. General

(a) *Lender's Certificates.* The Firm agrees to issue, upon the request of the Owner, all such certificates as may reasonably be required by any lenders in connection with the construction or permanent financing for the Project. The Firm further agrees to consent to Owner's assignment of this Agreement as security for any construction financing for the Project, and to consent to any modifications to this Agreement which are reasonably requested by any lender, provided such modifications do not materially alter the rights and obligations of the Firm.

(b) *Other Certificates.* The Firm agrees to issue, upon the request of the Owner, all such certificates and reports regarding the design or construction of any component of the Project as may be required to satisfy the Owner's obligations to third parties and any governmental authorities having jurisdiction over the Project.

(c) *Drawings to Owner.* Firm shall distribute all revised drawings on printed sheets (not electronically) to Owner and Development Manager in reasonable quantities prior to each design meeting during the design phase of the Project.

(d) *Embodied Carbon.* Firm and the Consultants shall provide an analysis to include Owner designated material quantities and embodied carbon estimates of each designated material at the Schematic Design, Design Development and Construction Documents phases of the Project. Firm shall submit such Owner designated material quantities and embodied carbon estimates to Owner and Development Manager in a form acceptable to Owner. The Firm and the Consultants shall prepare Specifications requiring CM to submit Type III Environmental Declarations for Owner designated materials. When requested, assist the Owner, Development Manager and CM in reconciliation of CM-provided material take-offs as compared to Firm and Consultant prepared summaries of the quantities of designated materials.

(e) *Basis of Design (BOD).* Working with the Owner and Development Manager, assist in developing the basis of design ("BOD") documents to describe how the design of the various building systems and materials meet the Owner's requirements including but not limited to embodied carbon reduction. Firm with the assistance of the Consultants shall update the BOD to reflect the decisions made by Owner at the Schematic Design, Design Development and Construction Document phases of the Project.

All of the foregoing services described in this Article II and in **Exhibit H** attached hereto, including those performed by Consultants, are sometimes hereafter called the "*Basic Services*".

## B. CONSULTANTS

Subject to the terms and provisions of Article V, the Firm shall retain from time to time design, structural, mechanical / electrical / plumbing, civil, acoustical, lighting, building controls, graphics, landscaping, geotechnical, glass and glazing, security and such other consultants (all collectively referred to hereinafter as “*Consultants*” or “*Speciality Consultants*”) as may be necessary to accomplish the design and administration of the Project. The Firm shall be responsible for all work or services provided by the Consultants and for coordinating and administering such work or services as necessary to facilitate the timely and proper performance of the Services required by this Agreement. The costs of Basic Services performed by any of the Firm’s Consultants are included in the compensation for Basic Services established by this Agreement, and shall be paid as set forth in Section V B.

## C. ADDITIONAL SERVICES

The Firm shall provide services in addition to those required by this Agreement (“*Additional Services*”) as the Owner may reasonably request, including any services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural and other design professional practices. The Firm shall obtain the Owner’s prior written approval before performing any Additional Services. The Firm specifically agrees to cooperate and assist the Owner in any litigation brought against or by the Owner, against any parties other than the Firm or its Consultants, including the furnishing of documentation, expert testimony and the participation in pretrial discovery. Litigation assistance services of the Firm shall be furnished and compensated as Additional Services, except insofar as the Firm is required by legal process or subpoena to appear and give testimony.

## D. QUALIFICATIONS AND STAFFING

The Firm represents and acknowledges that it is knowledgeable of all codes, standards, rules and regulations applicable in Houston, Texas, including, but not limited to, all health, safety, environmental, building and zoning codes, rules and regulations, and by this representation agrees to comply with these codes, standards, rules and regulations in the performance of the Services. Should the Firm fail to comply with these applicable codes, standards, rules and regulations in accordance with the standard of care as described in Section II. E below, the Firm hereby agrees to bear all additional costs incurred in securing compliance with such codes, standards, rules or regulations. However, in paying such additional costs, the Firm shall not be responsible for any cost or expense that provides betterment, upgrade or enhancement of the Project beyond that necessary to comply with such codes, standards, rules and regulations. The provisions of this paragraph regarding compliance with laws is, with regard to handicap accessibility laws, subject to the provisions of Article XVIII below.

The Firm represents that it is experienced and fully qualified to perform the Services contemplated by this Agreement, and that either it (or, as applicable, the Consultant performing the applicable Services) is properly licensed pursuant to applicable law to perform such Services.

All staff used by the Firm in the performance of the Services shall be qualified by training and experience to perform their assigned tasks. The Firm shall submit, for the Owner’s approval, a team or staffing proposal for the Project, complete with job description, <sup>1</sup>names and previous experience of all design personnel. The Firm has designated the **Principal, Project Firm, and Job Captain for the Project** as stated in **Exhibit C** (collectively the “*Key Personnel*”). None of the Key Personnel will be reassigned without the Owner’s approval and the Owner shall have the right to approve their successors. If, for the benefit of the Project, the Owner believes a change in the Firm’s personnel assigned to the Project to be necessary, the Firm shall assign other employees acceptable to the Owner.

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<sup>1</sup> NTD: To conform to Successful Proponent’s org chart and titles.

## E. PERFORMANCE OF SERVICES

The Firm agrees that the Services rendered with respect to this Project will be in conformity with the standard of care and skill ordinarily employed by competent members of its profession for projects of similar design and complexity, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect. The Firm and Owner agree that the foregoing standard of care shall govern all Services to be provided by the Firm under this Agreement. Upon completion of the Project in accordance with the plans and specifications, the Firm agrees that the Project will be suitable for its intended purpose, as documented in the Project program, and subsequent directives, if any, from the Owner. The Firm accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Firm agrees with the Owner to use its best efforts, skill, judgment, and abilities to assist and work with the Owner, CM and Development Manager to design the Project, to produce the necessary Contract Documents, and to further the interests of the Owner in accordance with the Owner's requirements and procedures, each in accordance with professional standards applicable to the Firm and in compliance with all applicable restrictions, laws, codes, and regulations in effect throughout the period that the Firm is performing services under this Agreement.

## F. TIME OF PERFORMANCE; TERM OF THIS AGREEMENT

1. The Firm shall submit a schedule or schedules for performance of the professional Services herein (and, at Owner's request, a separate schedule for each Project), and upon approval by the Owner, these schedules shall establish the times for performance of the Firm's Basic Services. These times of performance of the Firm's Basic Services shall be extended due to delays caused by the Owner (and then only if Firm provides Owner written notice that Owner is causing a delay and Owner fails to abate or cease the activity causing the delay within five (5) working days following such notice). The Owner may suspend the Firm's Services under this Agreement upon written notice to the Firm and the Firm agrees to resume Firm's Services in accordance with the terms of this Agreement upon receipt of Owner's notice to resume; provided however, that if any such suspension shall exceed one hundred twenty (120) consecutive days, the Owner shall pay to the Firm reasonable compensation for the Firm's actual, increased costs as a result of such suspension.

2. The term of this Agreement shall commence on the Effective Date and end upon the later to occur of (x) the third anniversary of the Effective Date and (y) Final Completion of the last to be completed of the Projects. At Owner's option and for the purposes of enabling Owner to request Additional Services on projects related or unrelated to the Projects, Owner shall have the right to extend the three year period described in clause (x) of the preceding sentence for up to two (2) years by providing written notice to such effect to Firm. No expiration of the Term, or sooner termination of this Agreement, shall affect, impair or abridge Firm's duties and responsibilities, or liabilities with regard to, the Services performed during the Term. Nothing in this paragraph shall affect or impair Owner's right to terminate this Agreement at any time for any or no reason and without cause, as set forth hereinbelow.

3. As used in this Agreement, the term "day" shall mean any calendar day and "working days" or "business days" shall mean any day other than a Saturday, Sunday or legal holiday recognized by national banking associations.

## G. AUTHORITY

Firm shall have the authority to act on behalf of Owner only to the extent provided in this Agreement unless otherwise modified by a subsequent written instrument. Under no circumstances shall Firm contract, negotiate or make commitments with any governmental authorities with respect to the Project without the prior written consent of the Owner. Firm shall not order any corrective work to the Project without the Owner's prior written approval.

### III. COMPENSATION

#### A. BASIC SERVICES

The Firm shall receive as compensation for all Basic Services described in Section II with regard to the South Building Project and the Avenida Realignment Project, the **fixed price sum of [insert written amount] Dollars (\$[insert sum])**, payable in response to monthly invoices based upon the amount of Basic Services and Additional Services actually performed and Reimbursable Expenses (as defined in III C of this Agreement) actually incurred during each phase of the Firm's work and in accordance with the following percentages:

up to [insert %]% of the total fixed price amount (excluding Reimbursable Expenses and Additional Services) shall be paid based upon the services performed during the Concept Design phase;

up to [insert %]% of the total fixed price amount (excluding Reimbursable Expenses and Additional Services) shall be paid based upon the services performed during the Schematic Design phase;

up to [insert %]% of the total fixed price amount (excluding Reimbursable Expenses and Additional Services) shall be paid based upon the services performed during the Design Development phase;

up to [insert %]% of the total fixed price amount (excluding Reimbursable Expenses and Additional Services) shall be paid based upon the services performed during the Construction Documents phase;

up to [insert %]% of the total fixed price amount (excluding Reimbursable Expenses and Additional Services) shall be paid based upon the services performed during the Construction Administration phase.

The Firm recognizes that the completion of the Design Services through the commencement of construction of the South Building Project as set forth in Section II.A.1 of this Agreement normally entails reasonable changes in the Contract Document drawings and/or specifications commensurate with the size and complexity of such Project (including utility relocation), and that such reasonable changes or additions to the drawings and/or specifications are likely to occur during the course of construction services as set forth in Section II.A.3. The Firm therefore represents that its firm fixed price for Basic Services includes such reasonable changes or additions to such drawings and specifications during the course of both design and construction, and that such changes or additions shall entitle them to no additional compensation pursuant to subsection B of this Section III.

#### B. ADDITIONAL SERVICES

The Firm shall receive compensation for Additional Services, if any, at a fixed hourly rate for the Firm's personnel as stated in **Exhibit C-1** plus agreed expenses incurred specifically as a result of such Additional Services. Such rates shall include the direct salaries of corresponding Firm's personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

If the Owner or Development Manager requests, the Firm shall, prior to engaging in any Additional Services, submit a proposal in a form acceptable to the Owner for performance of such specific Additional Services on a lump-sum, fixed-price basis. When the Firm and Owner agree to such proposal, then such Additional Services shall be performed on a fixed-price basis under this paragraph, notwithstanding any other provisions of this Section III.

In connection with invoices for such Additional Services, which are furnished on an hourly rate plus agreed expense basis, the Firm agrees to keep, on the basis of generally accepted accounting principles, financial records which shall be made available for review by the Owner and Development Manager within ten (10) working days of the receipt of a written request from the Owner or Development Manager.

#### C. REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to the compensation for Basic and Additional Services and include actual expenditures with appropriate back-up documentation made by the Firm and the Firm's employees and Consultants in the interest of the Project for the expenses listed in the following subparagraphs:

1. Expense of transportation in connection with the Project outside a fifty-mile radius of the Existing GRB; reasonable airfare and living expenses (exclusive of entertainment) in connection with out-of-town travel as previously approved for the Project by Owner, and long-distance communications.

2. Expense of reproductions, postage, express delivery and handling of drawings, specifications, and other documents, excluding reproductions made in-house for the office use of the Firm.

3. Expense of data processing and photographic production techniques when used in connection with Additional Services.

4. If authorized in advance by the Owner, expense of overtime work for Additional Services or Owner's request to accelerate the schedule requiring higher than regular rates.

5. Expense of renderings, models and mock-ups requested by the Owner, other than study models and graphic representations necessary for Firm to design the Project and to present the design to Owner.

6. Firm agrees that there will be no markup or other fee added to any Reimbursable Expense, and all Reimbursable Expenses shall be documented to the reasonable satisfaction of the Owner.

#### D. PAYMENTS

The Firm shall submit to the Owner on or before the tenth (10<sup>th</sup>) day of each calendar month a detailed monthly invoice in the form attached hereto as **Exhibit D** and supported by such documents as the Owner or Development Manager may reasonably require. After timely receipt and approval by the Owner of the Firm's request for payment as herein required, the Owner will make payment to the Firm by the tenth (10<sup>th</sup>) day of the following calendar month.

#### IV. **OWNER'S, CM'S AND DEVELOPMENT MANAGER'S PARTICIPATION**

The Firm understands and agrees that the Owner, CM and Development Manager will, through their designated representative or representatives, actively participate both in the evolution of the design for the Projects, in interaction and consultation with Consultants and in construction administration of the Projects. The Firm expressly acknowledges that it is an independent contractor, that it is not the representative or agent of the Owner, and that the Owner's, CM's and Development Manager's participation, through their representatives shall in no way relieve the Firm of its professional duties and responsibilities under applicable law and this Agreement.

The Owner and Development Manager will assist the Firm in developing the Projects concept and the Projects program.

The Owner will designate, when necessary, a representative authorized to act on the Owner's behalf with respect to the Project. The Owner, or such representative as may be authorized, shall examine the documents submitted by the Firm and will render decisions pertaining thereto as promptly as reasonably possible to avoid unreasonable delay in the progress of the Firm's services. The Development Manager will designate, when necessary, a representative authorized to act on the Development Manager's behalf with respect to the Projects.

**V. CONSULTANTS**

**A. SELECTION AND RETENTION OF CONSULTANT**

The process by which Firm procures each Consultant shall be subject to approval by Owner for, among other reasons, the purposes of confirming that such process satisfies the requirements of any procurement laws that may be applicable to Owner with regard thereto. Prior to the award of any Consultant subcontract, the Firm shall consult with the Owner and Development Manager and shall submit the name of the proposed Consultant and proposed subcontract form to the Owner and Development Manager for review and approval (which approval may be granted or withheld in Owner's sole discretion). Copies of executed Consultant subcontracts shall be provided to Owner and Development Manager.

The Firm shall bind each and every Consultant to the terms stated herein applicable to performance by such Consultant (and including the release, insurance and indemnification provisions contained herein) and shall require that all persons rendering Services under this Agreement are properly licensed to provide such Services in the State of Texas.

The Firm hereby agrees to include a provision in all subcontracts issued for Services hereunder allowing the Firm to assign said subcontract to the Owner or Owner's designee without the Consultant's consent. The Firm shall require all Consultants to include a similar assignment provision in each and every subcontract Consultant issues for Services hereunder. Furthermore, each subcontract with a Consultant shall expressly provide that the Owner is an intended and direct third party beneficiary of the professional liabilities and obligations of the Consultant and of any indemnification provisions contained in such subcontract.

The Firm hereby affirms that it is fully responsible for the performance of its Consultants (including, for the avoidance of doubt, any sub-consultants to the Consultants retained by the Firm) and any errors or omissions of the Consultants in the performance of their services and shall fully indemnify and save harmless the Owner and Development Manager and their respective shareholders, directors, officers, agents, employees, and assigns from any and all claims, liabilities, suits, damages and losses to the extent caused by negligent errors or omissions in the performance of services rendered (or from any failure to perform services) by the Firm's Consultants. The provisions of this paragraph are a fundamental inducement to Owner to execute and enter into this Agreement with Firm and shall control over any and all conflicting provisions hereof, and shall remain in full force and effect notwithstanding Owner's election to pay such Consultants directly as provided hereinbelow.

The Firm shall coordinate its Services with the Work of CM and of all other consultants and with the Owner and Development Manager.

**B. COMPENSATION OF CONSULTANTS**

The Firm shall be responsible for and has included in its fixed price for professional services set forth in the first paragraph of Section III A, the cost of the services of all Consultants retained by the Firm, other than those listed in paragraphs 1 through 21 below and other than any other Consultants that Firm may retain at the direction of Owner). The compensation for the Services to be provided by the following Consultants listed in paragraphs 1 through 21 below (and any other Consultants so directed by Owner) shall be added to this Agreement by addendum to this Agreement and shall be paid directly by Owner to such Consultants (but not to any sub-consultants retained by such Consultants, which payment

shall remain the responsibility of the applicable Consultant). Notwithstanding such direct payment, the compensation to be paid to such Consultants, once retained pursuant to the provisions of this Agreement, shall be included in the fee charged for professional services by the Firm under Article III by addendum to this Agreement, but separately identified in the invoices submitted by the Firm for the purposes of such direct payment, and the Firm shall nonetheless remain responsible for the performance, or failure to perform, of each of all Consultants, including all sub-consultants to such Consultants). Compensation for the professional services (including compensation for Additional Services and Reimbursable Expenses) rendered by each of the Consultants set forth in paragraphs 1 through 21 below (and any other Consultants retained by the Firm at the direction of Owner) shall be established as each such Consultant enters into a subcontract with Firm and shall be confirmed by addendum to this Agreement executed between Owner and Firm. The compensation to each of the below listed Consultants shall be paid directly to such Consultant by the Owner upon receipt and approval by Owner and Development Manager of invoices submitted to the Owner and Development Manager and approved by Firm (without any mark-up or other fee added thereto). Amounts due to any sub-consultants retained by such Consultants shall be included in such invoices but payment of such amounts shall be the responsibility of the applicable Consultant.

1. the Design Firm.
2. the Structural Engineer.
3. the Mechanical/Electrical/Plumbing Consultant.
4. the Civil Engineer.
5. the Interiors Firm.
6. the Lighting Consultant.
7. the Building Controls Consultant.
8. the Graphics and Way-finding Consultant.
9. the Landscaping Consultant.
10. the Security Consultant.
11. the Elevator Consultant.
12. the Parking Consultant.
13. the Telecommunications Consultant.
14. the Curtain Wall Consultant
15. the Building Acoustics Consultant.
16. the Window Washing and Building Maintenance Consultant.
17. the Code Consultant.
18. the Geotechnical Engineer.
19. the Commissioning Consultant.
20. the Traffic Consultant.

21. Other Consultants, as Consultant, Firm and Owner shall reasonably agree, shall be compensated for their services in accordance with the terms of agreements approved by Owner pursuant to Section V. A.

Compensation for the professional services (including compensation for Additional Services and Reimbursable Expenses) rendered by each of the Consultants set forth in paragraphs 1 through 21 above (and any other Consultants so directed by Owner) shall be paid directly to each Consultant by the Owner as set forth in this Section V above in accordance with the invoicing and support documentation requirements and timeframes of Section III. D above relating to payments to the Firm and following approval by the Firm of such Consultant's request for payment. No such Consultant shall be a third-party beneficiary of this Agreement.

#### **VI. BUILDING INFORMATION MODELING (BIM) AND COMPUTER AIDED DESIGN (CAD)**

Firm will work with Owner and Design Team to establish the technology standard including a BIM implementation plan for the Project and produce all work product using the latest version of CAD and BIM software in accordance with **Exhibit E** ("Project BIM Implementation Requirements"). Prior to and during construction CAD and BIM files shall be made available to the Contractor(s) at no cost for the Contractor's coordination drawings and will be provided to Owner at no cost at the completion of construction.

There shall be a collaborative effort by the Design Team managed by the Firm to create a coordinated Building Information Model (BIM) utilizing REVIT or mutually agreed upon equivalent software.

At the conclusion of the Project, all Products of Service shall be delivered to Owner in REVIT (or equivalent) based software files and configured in compliance with the Standard, as well as CAD files.

Firm will provide copies of its REVIT or other BIM models to CM at no charge on a "for information" basis.

#### **VII. COPYRIGHT ASSIGNMENT AND OWNERSHIP OF DOCUMENTS**

The parties acknowledge and agree that Firm shall retain ownership of the copyright in and to all preexisting materials, proprietary methodologies and other creative tangible forms of expression created or owned by Firm prior to commencement of the work hereunder and used in connection with the Project and/or incorporated into the products of service ("*Preexisting Materials*").

Firm hereby acknowledges and confirms the intention of Firm to convey all right, title and interest it may have in and to all drawings, specifications, sketches, models, renderings and work product, excluding the Preexisting Materials, prepared in connection with the Project ("*Products of Service*"), including, without limitation, the copyrights and any copyright registrations issued therefore, to Owner. Firm does hereby sell, assign and transfer to Owner, its successors, assigns and legal representatives, for the United States of America and throughout the world, all right, title and interest it may have in and to the Products of Service, including the copyrights and any copyright registrations issued therefore, the rights to prepare derivative works, the right to apply for copyright registration and future renewals or extensions of copyright terms, and the right to sue for copyright infringement, whether occurring in the past, present or future. Firm hereby grants to Owner, its successors and assigns and to any independent contractor(s) retained by Owner a perpetual, royalty-free, non-exclusive and non-transferable right and license to use the Preexisting Materials as part of or in connection with the Work.

At the request of Owner, its successors or assigns, Firm shall execute a separate deed of assignment in a form not inconsistent with the terms of this agreement for recording in the Copyright Office. Firm waives all right of attribution and integrity conveyed to authors pursuant to 17 U.S.C. 106A and similar foreign copyright laws regarding all uses of the Work. Firm will cause any and all Consultants or third parties retained in any manner to perform services in connection with the Project to execute an agreement

containing similar provisions such that they agree to assign and assign to Owner any and all copyright rights they may have in and to the Work and comply fully with all other obligations set forth in this article.

Upon termination of this Agreement by the Owner pursuant to Section X or, in any event upon payment by Owner to the Firm of all undisputed sums due hereunder, all drawings, specifications, models, renderings and work product prepared in connection with the Project shall become the property of the Owner and each contract with each of the Consultants shall reflect such disposition to Owner of drawings and other materials prepared by the Consultants. The Firm shall deliver all such drawings, specifications, models, renderings and work product to the Owner if requested and the Firm agrees to make no further use thereof, except for Preexisting Materials, or such drawings, specifications, and products of service which are proprietary to the Firm or its Consultants or which are general in nature and in the public domain. Nevertheless, it is understood by the Owner that all such drawings, specifications, models, renderings and work product may be inappropriate for use in the construction of any other project. Therefore, the Firm shall not be responsible for the use or workability of such drawings, specifications, models, renderings and work product in connection with any project other than the project for which they were specifically prepared.

### **VIII. INDEMNIFICATION**

#### **A. GENERALLY**

**FIRM AGREES TO AND SHALL DEFEND (SUBJECT, HOWEVER, TO THE FOLLOWING PARAGRAPH HEREOF), INDEMNIFY, AND HOLD OWNER, THE CITY OF HOUSTON, THE DEVELOPMENT MANAGER, THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY “INDEMNITEES”) HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, BY REASON OF INTELLECTUAL PROPERTY INFRINGEMENT) TO THE EXTENT CAUSED BY OR RESULTING FROM (A) THE NEGLIGENT ACTS OR OMISSIONS OF FIRM (OR ANY OF THE CONSULTANTS) IN THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT OR WHILE WITHIN OR ABOUT THE SITES OR THE GRB, (B) ANY INTENTIONAL TORT OF THE FIRM (OR ANY OF THE CONSULTANTS), OR (C) THE FAILURE OF THE FIRM TO PAY ANY CONSULTANT (UNLESS SUCH FAILURE IS DUE TO A FAILURE OF OWNER TO PAY FIRM HEREUNDER);, AND (D) ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL OR STATE EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ANY CLAIMS AND CAUSES OF ACTION BROUGHT AGAINST INDEMNITEES BY FIRM’S PERSONNEL AND/OR GOVERNMENT AGENCIES ARISING FROM, RELATING TO, OR INVOLVING SERVICES OF FIRM’S PERSONNEL UNDER THIS AGREEMENT, PROVIDED, THAT IN NO EVENT SHALL FIRM BE OBLIGATED TO INDEMNIFY ANY OF THE INDEMNITEES FOR CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES TO THE EXTENT CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF AN INDEMNITEE.**

**Notwithstanding the foregoing, the Firm’s duty to defend the Indemnitees shall not extend to the portion(s) of any claim or cause of action based on negligent errors or omissions of the Firm or any Consultant in the performance of their professional services. For the avoidance of doubt, the Firm shall have a duty to defend with regard to all other claims or causes of action.**

#### **B. PROCEDURES**

1. If Owner or Firm 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 ten (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 Owner from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If Owner does not provide this notice

within the 10-day period, it does not waive any right to indemnification except to the extent that Firm is prejudiced, suffers loss, or incurs expense because of the delay.

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

3. If Firm elects to defend the claim, Owner may retain separate counsel to participate in, but not control, the defense and to participate in, but not control, any settlement negotiations. Firm may settle the claim without the consent or agreement of Owner, unless it: (1) would result in injunctive relief or other equitable remedies or otherwise require Owner to comply with restrictions or limitations that adversely affect Owner; (2) would require Owner to pay amounts that Firm does not fund in full; or (3) would not result in Owner's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

#### C. RELEASE

1. FIRM AGREES TO AND DOES HEREBY RELEASE THE INDEMNITEES FROM ALL LIABILITY TO FIRM (X) FOR DAMAGE TO OR LOSS OF THE PROPERTY OF FIRM SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT AND (Y) FOR OR FROM ANY AND ALL CLAIMS, CAUSES OF ACTION WHATSOEVER WITH THE FIRM AND/OR CONSULTANTS MAY NOW OR OTHERWISE HEREAFTER POSSESS RESULTING IN OR FROM OR IN ANY WAY CONNECTED WITH ANY LOSS COVERED BY INSURANCE, WHETHER REQUIRED HEREIN OR NOT, OR WHICH SHOULD HAVE BEEN COVERED BY THE INSURANCE REQUIRED HEREIN, INCLUDING THE DEDUCTIBLE AND/OR UNINSURED PORTION THEREOF, MAINTAINED AND/OR REQUIRED TO BE MAINTAINED BY THE FIRM AND/OR THE CONSULTANTS PURSUANT TO THIS AGREEMENT, EVEN IF DAMAGE, OR LOSS IS CAUSED BY THE INDEMNITEES' SOLE OR CONCURRENT NEGLIGENCE AND/OR THE INDEMNITEES' STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY; PROVIDED, THAT THE RELEASE IN THIS PARAGRAPH SHALL NOT EXTEND TO CLAIMS OF FIRM FOR BREACH OF THIS AGREEMENT BY OWNER.

#### D. SURVIVAL

1. The terms and provisions of this Article VIII shall survive the expiration or sooner termination of this Agreement.

### IX. INSURANCE

#### A. FIRM'S INSURANCE

1. With no intent to limit, and without limiting, Firm's liability under indemnification provisions set forth herein, the Firm, at Firm's sole cost and expense, shall obtain and maintain (and, as applicable, cause each Consultant to obtain and maintain) the insurance described in **Exhibit F** attached hereto.

Prior to the commencement of work relative to this Agreement and prior to the renewal of any of the insurance policies required hereunder, the Firm shall furnish certificates of insurance to Owner and Development Manager as evidence of the insurance and conditions required in this Agreement.

Without limiting the foregoing, the Firm shall also require that all Consultants maintain minimum professional liability insurance in the amounts set forth in Schedule 1 to **Exhibit F** or as otherwise agreed to by Owner, and that all Consultants comply with all other provisions of this Section IX.

B. PROTECTION OF DRAWINGS INSURANCE

Firm hereby assumes all risk and loss arising out of any destruction, loss or damage to the drawings, plans, instruments of service, valuable papers and records produced under this Agreement (collectively the "Drawings"), and shall procure and maintain through, with respect to each Project, Substantial Completion of such Project valuable papers, electronic data loss and cyber security insurance covering the replacement of the Drawings.

X. **TERMINATION**

The Owner may, upon seven (7) days' written notice, terminate this Agreement without cause, in which case the Firm shall be entitled to that compensation earned under Section II of this Agreement for (i) Basic Services performed, (ii) Additional Services performed with prior approval by Owner in accordance with the schedules of fees and expenses for such Additional Services and (iii) Reimbursable Expenses incurred. Payments for such Basic Services, Additional Services and Reimbursable Expenses shall be made in accordance with the provisions of Section III. D above following the Owner's and Development Manager's receipt of all drawings, specifications, models, renderings and all other work product pursuant to Section VII above. In the event of such termination, Firm will not be entitled to any lost profits, damages, termination expenses, or any other compensation except as specifically provided above in this Section. Such termination by Owner without cause shall be with the same force and effect as if the term of this Agreement had expired by the passage of time (such that, by way of example, such termination shall not affect Firm's obligations, or Owner's rights, with regarding to Services performed prior to the date of termination). In the event the Owner terminates this Agreement due to default of the Firm hereunder, then Owner shall have all rights and remedies available at law or in equity. In the event Owner terminates this Agreement due to the default by Firm hereunder but it is finally determined by a court of competent jurisdiction that Firm was not in default and that Owner had no right to terminate Firm based on default, then such termination by Owner shall nonetheless be effective as and when made and shall be deemed an election by Owner to have terminated this Agreement without cause.

XI. **ASSIGNMENT**

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 Firm, so long as (a) the rights and obligations of the Owner under this Agreement are assigned in connection therewith, (b) all payments due Firm under Section III have been paid current, and (c) the proposed transferee of Owner is the City of Houston, Texas or is a person or entity of good reputation and has adequate financial resources. The Firm may not assign or otherwise transfer or dispose of all or any portion of this Agreement or any of its obligations to perform under this Agreement without the express written consent of the Owner, which consent may be granted or withheld in Owner's sole and absolute discretion. "Owner" shall mean the entity named herein as "Owner" and any successors or assigns of rights and interest of the Owner hereunder. Any assignment, transfer or delegation taken in violation of this Section XI shall be void and of no force and effect.

XII. **DIVERISTY COMPLIANCE**

Firm shall, in the performance of the Services, comply with Owner's Diversity Program (a copy of which is attached hereto as **Exhibit G**) and make good faith efforts to award subcontracts or supply agreements to certified, diverse suppliers of goods and services equal to at least thirty percent (30%) of the sums to be paid hereunder to Firm and the Consultants. Monthly throughout the term of this Agreement, Firm shall provide Owner a written report, in a form to be provided by Owner, describing the manner and extent to which Firm has made good faith efforts to achieve such goal.

**XIII. NO WAIVER**

No failure or delay of a party in the exercise of any right given to such party hereunder or by law shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other further exercise thereof or of any other right. The waiver by a party of any breach of any provision hereof shall not be deemed to be a waiver of any subsequent breach thereof or of any breach of any other provision hereof.

Any acceptance or approval by Owner, Development Manager or any of their respective agents or employees, of any document or instrument submitted by Firm shall not constitute nor be deemed to be a release of the responsibility and liability of Firm, its employees, agents, subcontractors or suppliers for the accuracy, competency and completeness of any documents prepared or Services performed pursuant to the terms and conditions of this Agreement, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by Owner, Development Manager for any defect, error or omission in any documents prepared or Services performed by Firm or any of the Consultants.

**XIV. EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be amended by written instrument signed by both parties hereto. Each of the Chairman of the Board of Directors of and President of the Owner is authorized to enter into such amendments hereto from time to time to incorporate herein references to Consultants hereafter engaged by Firm in accordance herewith (including the compensation to be paid to them) as well as any other amendments which are necessary or desirable in connection with the development of the Projects. This Agreement is binding upon the successors and assigns of Owner and, subject to the provisions of Section XI, Firm.

**XV. APPLICABLE LAW**

This Agreement shall be construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles. The district courts of the State of Texas and the federal district court of the United States of America, Southern District of Texas, located in Harris County, Texas shall be the exclusive places of venue for all legal proceedings arising out of or related to the Agreement. If any provision of this Agreement is unenforceable under applicable law the same shall be modified, if possible, to make the same enforceable and preserve the intention thereof, but no such unenforceability shall impair, affect or abridge the other provisions of this Agreement nor render this Agreement void or voidable.

**XVI. NOTICES**

All notices provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; by delivering the same in person to such party; by prepaid telegram or telex; or by facsimile copy transmission. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Owner, to:

Houston First Corporation  
701 Avenida de las Americas  
Houston, Texas 77010  
Attention: President

with copy to:

Houston First Corporation  
701 Avenida de las Americas  
Houston, Texas 77010  
Attention: General Counsel

Locke Lord LLP  
600 Travis Street, Suite 3800  
Houston, Texas 77002  
Attention: Stephen C. Jacobs

If to Firm, to: [insert architect name]  
[insert street address]  
[insert city, state, zip code]  
Attention: [insert name]

If to Development Manager, to:

Hines Southwest, LLC  
845 Texas Avenue, Suite 3300  
Houston, Texas 77002  
Attention: Mr. John Mooz and Mr. Frem Regge

Either party hereto may change its address for notice by giving three (3) days prior written notice thereof to the other party.

**XVII. AUDIT**

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 Agreement and for a period not to exceed two (2) years after any amount is billed. Within thirty (30) days of receiving a request, Firm will furnish to Owner and Development Manager original invoices to support all charges and complete payroll records to support labor charges. Firm hereby authorizes Owner and its designated representatives to communicate directly with Firm's agents, Consultants and subcontractors, if any, and to obtain sworn statements from any such subcontractors. If requested by Owner or Development Manager, Firm will provide supporting records in a computer readable format as well as a hard copy. 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 Firm's compliance with any of its other representations, warranties and obligations pursuant to this Agreement.

If an audit reveals overcharges, the Firm 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 five percent (5%) above the rate announced from time to time by JPMorgan Chase Bank, National Association for such period as its "Prime Rate".

**XVIII. ADA COMPLIANCE**

The Firm agrees that the design of all improvements shall be in accordance with the current understanding and interpretation of the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 through 12213 (including the current understanding and interpretation of the 2010 ADA Standards for

Accessible Design) and with adherence to any governing bodies having jurisdiction regarding access to the Projects by the physically handicapped, including the Texas Architectural Barriers Act.

#### **XIX. CONFIDENTIALITY**

Firm shall not use or disclose and shall not permit others to use or disclose Confidential Information without Owner's and Development Manager's prior written approval. Firm may disclose the Confidential Information only to those employees that have a need to know the Confidential Information for the Project and only upon the following conditions: (1) the employees have each agreed in writing to Firm's obligations under this Article XIX and (2) Firm has provided the original written agreement to Owner and Development Manager.

"Confidential Information" means all Owner and Development Manager knowledge, information, data, materials, and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by Firm and its agents, employees, contractors and consultants with respect to the Project. "Confidential Information" shall not include any information (1) that is or becomes publicly available without a breach of this Agreement or (2) that Firm can show (by contemporaneous written records) Firm had in its possession before beginning the Project and before disclosure by Owner or Development Manager.

Firm and its employees, agents, contractors and consultants shall not make or otherwise disseminate any public announcement or press release with respect to the Project without the Owner's and Development Manager's prior written approval.

Firm agrees that the Confidential Information constitutes valuable trade secrets of Owner or Development Manager and that money damages cannot fully remedy any breach of this Article XIX. Firm agrees that each of Owner and Development Manager may obtain an injunction to prevent or enjoin any breach of the obligations of this Article XIX.

#### **XX. OFFICE OF FOREIGN ASSETS CONTROL (OFAC)**

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. Firm 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. Firm further acknowledges its obligation to remain in compliance with existing and future regulations promulgated by OFAC throughout the term of this Agreement.

#### **XXI. ANTI-CORRUPTION**

A. In addition to Firm's obligations pursuant to this Agreement, Firm hereby represents, warrants and covenants that:

1. Firm and its affiliates and each of their respective officers, directors, employees and agents (collectively, the "*Firm 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 Firm Representative with respect to applicable anti-corruption laws is pending, or to Firm's knowledge, threatened.

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

3. Firm and the Firm Representatives shall comply with all applicable Anti-Corruption Laws in connection with the performance of all duties and obligations relating to this Agreement. Firm shall use commercially reasonable efforts to cause its Consultants and their subconsultants and any other design professional firms retained by the Firm to comply with all applicable Anti-Corruption Laws in connection with the performance of any services with respect to the Project.

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

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

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

B. The breach by Firm of any of its representations, warranties and/or covenants contained in this Section XXI 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 Section XXI has occurred or will occur, Owner may withhold further payments to Firm until such time as it is satisfied that no breach has occurred or will occur. Owner shall not be liable to Firm for any claim, losses or damages whatsoever related to its decision to withhold payments under this Section XXI.

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

D. As used herein:

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;

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,

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.

## **XXII. CONFLICTS OF INTEREST**

Firm hereby warrants that it does not now and will not during its performance hereof have any direct or indirect proprietary, or other interest in any patent, system, equipment, products, method, plan or design or in any procedures that will be recommended or used in the Drawings and Specifications or any other documents for the Project, nor in any sales, distribution, manufacture or fabrication of any materials to be recommended or specified for use in the Project, which if used, would involve the payment of royalties, fees, commissions, or honorarium. Firm further agrees, for itself, its shareholders (in the case of closely-held entities), officers, directors, employees, owners, subsidiaries, affiliates, successors, and assigns that none of them now have or will hereafter acquire any interest in any consultant, material supplier, contractor or other entity which is awarded a contract or subcontract for work on the Project until this Agreement is terminated.

*No further text on this page.*

*Signature Page to Agreement for  
Design Professional Services*

**HOUSTON FIRST CORPORATION**

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

Approved as to Form

\_\_\_\_\_  
Counsel to Houston First Corporation

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

## Exhibits

A	-	Project Details
B	-	Architect Statement
C	-	Key Persons
C-1	-	Hourly Rates
D	-	Monthly Invoice Form
E	-	BIM Information
F	-	Firm's Insurance
G	-	Diversity
H	-	Deliverables and Other Basic Services

**EXHIBIT A**

ADDITIONAL DETAIL REGARDING THE PROJECTS

**EXHIBIT B**

**FIRM'S STATEMENT  
(Letterhead of Firm)**

Owner Name \_\_\_\_\_  
Owner Address \_\_\_\_\_  
Re: \_\_\_\_\_  
Gentlemen:

The undersigned does hereby state to you as follows:

1. The undersigned is the Firm who prepared or supervised the preparation of the final plans and specifications for the "Project" described in the "Firm's Agreement" referred to above.
2. Copies of all such final plans and specifications, including all addenda thereto, have been delivered to you.
3. The Project, to the best of our knowledge, information and belief, has been constructed in accordance with the plans and specifications delivered to you and also in accordance with all applicable laws, ordinances, rules, regulations and requirements (including, without limitation, those with respect to discrimination) of all governmental authorities and in compliance with any and all covenants, conditions and restrictions affecting the real property upon which the Project has been constructed (the "Property").
4. The Project, to the best of our knowledge, information and belief, is ready for occupancy, and all certificates necessary to permit the occupancy of the Project, including certificates of occupancy, have been obtained from the appropriate governmental authorities.
5. The Project, to the best of our knowledge, information and belief, has been constructed in accordance with the plans and specifications and drawings approved by you, and complies with all applicable zoning, environmental, air quality, planning, subdivision, building, use and all similar type laws, rules, regulations and requirements imposed by all governmental authorities.
6. To the best of our knowledge, information and belief, all utility services necessary for the orderly operation of the Project in accordance with the plans, specifications and drawings approved by you are available to the Property at the boundaries thereof. All connections have been made to abutting public water, sewer, gas and electrical facilities and all fees in connection therewith have been paid.
7. To the best knowledge, information and belief of the undersigned, but without investigation, there is no action or proceeding pending before any court, agency or official with respect to the validity of any statutes, ordinances, regulations or restrictions or any permits or approvals thereunder relating to the Project.
8. The number of striped, on-site parking spaces is \_\_\_\_\_. Such total number of parking spaces complies, in all respects, with the minimum parking requirements in accordance with the actual use thereof and with the requirements of the program provided by Owner.

Very truly yours,

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

**EXHIBIT C**  
**KEY PERSONS**

**EXHIBIT C-1**

**FIRM'S STAFF AND RATES**

**EXHIBIT D**

**MONTHLY INVOICE FORM**

(See Following Pages)

**TO**  
 [Project Ownership]  
 [Project Contact]  
 Hines  
 [Address]  
 [Address]  
 [Address]  
 [Address]  
 [Telephone]

**VENDOR**  
 [Vendor Name]  
 [Address]  
 [Address]  
 [Address]  
 [Telephone]

**DATA**  
 Project:  
 Date:  
 Invoice No.: 1  
 Period: to

<b>SCHEDULE OF VALUES</b>	<b>APPROVED CONTRACT AMOUNT</b>	<b>AMOUNT PREVIOUSLY INVOICED</b>	<b>CURRENT AMOUNT INVOICED</b>	<b>TOTAL INVOICED TO DATE</b>	<b>TOTAL AMOUNT REMAINING</b>
<b>Professional Fee</b>					
Master Plan / Concept	0.00	\$0.00	\$0.00	\$0.00	\$0.00
Schematic Design	0.00	\$0.00	\$0.00	\$0.00	\$0.00
Design Development	0.00	\$0.00	\$0.00	\$0.00	\$0.00
Construction Documents	0.00	\$0.00	\$0.00	\$0.00	\$0.00
Construction Administration	0.00	\$0.00	\$0.00	\$0.00	\$0.00
Testing/Commissioning/Closeout	0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Approved Additional Services</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Subtotal Professional Services</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Reimbursable Expenses</b>					
Travel & Business	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Blueprints/Reproduction	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other Reimbursables	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Subtotal Reimbursables</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>TOTAL AMOUNT DUE</b>					

<b>Hines Use Only</b>			
<b>Date:</b>			
<b>CORP#</b>	<b>JOB#</b>	<b>ACCOUNT</b>	<b>Amount</b>
			\$
			\$
			\$
<b>Approved:</b>			

**EXHIBIT E**

**PROJECT BIM IMPLEMENTATION REQUIREMENTS**

**EXHIBIT F**

**INSURANCE**

**Owner's Insurance Requirements of Firm**

**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 this Agreement and thereafter as required:

<b>Insurance</b>	<b>Coverage/Limits</b>	<b>Other Requirements</b>
Commercial General Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$1,000,000 Per Occurrence</li> <li>▪ \$5,000,000 General Aggregate</li> <li>▪ \$1,000,000 Personal And Advertising Injury</li> </ul>	<ul style="list-style-type: none"> <li>▪ Current ISO edition of CG 00 01</li> <li>▪ Additional insured status shall be provided in favor of Owner Parties on ISO form CG 20 10 10 01 and CG 20 37 10 01 or equivalent to be approved in advance by Owner.</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 Owner Parties, with Owner 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>○ Any endorsement modifying the Employer's Liability exclusion or deleting the exception to it</li> <li>○ Any "Insured vs. Insured" exclusion except Named Insured vs. Named Insured</li> <li>○ Any Punitive, Exemplary or Multiplied Damages exclusion</li> </ul> </li> </ul>
Business Auto Liability	Amount of coverage shall be no less than: <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</li> <li>▪ Arising out of any owned auto, if any, hired and nonowned auto</li> </ul>
Workers' Compensation and Employer's Liability	Amounts of coverage shall be no less than: <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 listed under Item 3.A. on the Information Page</li> <li>▪ Such insurance shall cover liability arising out of the Firm's employment of workers and anyone for whom the Firm 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, Firm shall require its leasing company to provide Workers' Compensation insurance for said workers</li> </ul>

		and such policy shall be endorsed to provide an Alternate Employer endorsement in favor of Firm and Owner. Where Firm uses leased employees with Workers' Compensation insurance provided by a PEO or employee leasing company, Firm is strictly prohibited from subletting any of its Services without the express written agreement of Owner.
Excess Liability (Occurrence Basis)	Amounts of coverage shall be no less than: <ul style="list-style-type: none"> <li>▪ \$10,000,000 Each Occurrence</li> <li>▪ \$10,000,000 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>▪ \$2,000,000 Each Claim</li> <li>▪ \$10,000,000 Annual Aggregate</li> </ul> <p>Structural Engineer, Mechanical/Electrical/ Plumbing, and Civil Engineer Consultant's Professional Liability shall be in an amount of no less than as set forth in Schedule 1 attached to this <b>Exhibit</b></p> <p>Professional Liability of other Consultants (including sub-consultants to any Consultants), unless otherwise required or specified by Owner at the time the subcontract with a Consultant is entered into by Firm, shall be in an amount of no less than as set forth in Schedule 1 attached to this <b>Exhibit</b>:</p>	<ul style="list-style-type: none"> <li>▪ Such insurance shall cover all services rendered by the Firm and its sub-consultants 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> <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> </li> <li>▪ Policies written on a Claims-Made basis shall be maintained for at least two years beyond termination of the Agreement.</li> <li>▪ Any retroactive date must be effective prior to beginning of services for the Owner.</li> <li>▪ Policies written on a Claims-Made basis shall have an extended reporting period of at least two years beyond termination of the Agreement. Vendor shall trigger the extended reporting period if identical coverage is not otherwise maintained with the expiring retroactive date.</li> </ul>

## 2. General Insurance Requirements

### A. Definitions. For purposes of this Exhibit:

- i. "ISO" means Insurance Services Office.
- ii. "Firm" means \_\_\_\_\_ and shall include sub-consultants of any tier.
- iii. "Owner Parties" means (a) Houston First Corporation ("Owner"), (b) the City of Houston, (c) the Development Manager, (d) the Project, (e) their respective shareholders, members, partners, joint venturers, affiliates, subsidiaries, successors and assigns, and (f) any directors, officers, employees, or agents of such persons or entities.
- iv. "Sub-consultants" means and refers to any sub-consultants retained by a Consultant.

### B. Policies.

- i. Firm shall maintain such General Liability, Excess Liability, and Professional Liability insurance in identical coverage, form and amount, including required endorsements, for at least two (2) years

following completion of Services to be performed under this Agreement. Firm shall provide written representation to Owner stating Services 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 Services are to be performed.
  - b. Provide a waiver of subrogation in favor of Owner Parties on all insurance coverage carried by Firm, whether required herein or not.
  - c. Contain an endorsement providing for thirty (30) days prior written notice of cancellation to Owner.
  - d. Be provided to the Owner 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 the Owner.
- iii. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Firm's obligation to maintain such insurance.
- iv. Firm shall provide to the Owner a copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner within 60 days of the expiration of the previous policy.
- v. Commencement of Services 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 Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Firm or any sub-consultant from performing any Services until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

#### **C. Limits**

- i. The limits of liability may be provided by a single policy of insurance or by a combination of primary and excess policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.

#### **D. Forms**

- i. If the forms of policies, endorsements, certificates or evidence of insurance required by this Exhibit are superseded or discontinued, Owner 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 Owner.

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

- i. ACORD Form 25 Certificate of Liability Insurance for liability coverages.
- ii. Evidence shall be provided to Owner prior to commencing Services and prior to the expiration of any required coverage.
- iii. ACORD Forms specify:
  - a. Owner as certificate holder at Owner's 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 Owner Parties;
  - f. Amount of any deductible or self-insured retention in excess of \$100,000;
  - g. Primary and non-contributory status;
  - h. Waivers of subrogation; and
  - i. 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.
- iv. Copies of the following shall also be provided:
  - a. General Liability Additional insured endorsement;

- b. General Liability Schedule of Forms and Endorsements page(s); and
- c. 30 Day Notice of Cancellation endorsement applicable to all required policies.

**F. Firm's Insurance Representations to Owner Parties**

- i. It is expressly understood and agreed that the insurance coverages required herein (a) represent Owner Parties' minimum requirements and are not to be construed to void or limit the Firm's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Firm should or should not maintain for its own protection; and (b) are being, or have been, obtained by the Firm in support of the Firm'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 the Firm, 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 the Firm shall fail to remedy such breach within five (5) business days after notice by the Owner, the Firm will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Firm by the Owner. In the event of any failure by the Firm to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Firm, purchase such insurance, at the Firm's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Firm 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 this Amended and Restated Agreement for Design Professional Services.

**G. Insurance Requirements of Firm's Sub-Consultants**

- i. Insurance similar to that required of the Firm shall be provided by all sub-consultants (or provided by the Firm on behalf of sub-consultants) to cover operations performed under any consultant agreement. The Firm shall be held responsible for any modification in these insurance requirements as they apply to sub-consultants. The Firm shall maintain certificates of insurance from all sub-consultants 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 the Owner upon request.
- ii. The Firm 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 the Firm's or its consultant's property shall be the Firm's and its consultant'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, the Firm shall not be reimbursed for same. Should the Firm or its sub-consultants choose to self-insure this risk, it is expressly agreed that the Firm hereby waives, and shall cause its sub-consultants to waive, any claim for damage or loss to said property in favor of the Owner Parties.

**H. Use of the Owners Equipment**

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

**I. Self-Insurance, Large Deductibles and/or Retentions.**

- i. If Firm elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding \$100,000.00, Owner and Firm shall maintain all rights and obligations between themselves as if Firm maintained the insurance with a commercial insurer including any Additional Insured status, Primary and Non-Contributory Liability, Waivers of Rights of Recovery, Other Insurance

Clauses, and any other extensions of coverage required herein. Firm shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the extent that an insurance company would have been obligated to pay those amounts if Firm had maintained the insurance pursuant to this Exhibit.

- ii. All deductibles, retentions, and/or uninsured amounts shall be paid by, assumed by, for the account of, and at Firm's sole risk. Owner shall not be responsible for payment of any deductible or self-insured retention or uninsured amount.
- iii. All deductibles and self-insured retentions of sub-consultants shall be subject to approval of Owner/

Schedule 1 to Exhibit F

Certain Subconsultants Insurance Limits

<b>CONSULTANT TYPE</b>	<b>RECOMMENDED PL LIMITS</b>
Architect of Record *	\$10M/Each Claim
Design Architect *	\$10M/Each Claim
Interior Architect	\$10M/Each Claim
Landscape Architect	\$1M-\$3M/Each Claim
Structural Engineer	\$5M-\$10M/Each Claim
Mechanical/Electrical Engineer	\$5M/Each Claim
Plumbing Engineer	\$5M/Each Claim
Fire Protection Engineer	\$5M/Each Claim
Mechanical Controls Consultant	\$5M/Each Claim
Commissioning Consultant	\$1M-\$3M/Each Claim
Geotechnical Engineer	\$3-\$5M/Each Claim
Building - Civil Engineer	\$5M/Each Claim
Surveyor	\$1M-\$3M/Each Claim
Off Site Infrastructure - Civil Engineer	\$5M/Each Claim
Off Site Drainage - Civil Engineer	\$5M/Each Claim
Exterior Building Enclosure Consultant	\$1M-\$3M/Each Claim
Wind Effects Consultant	\$1M-\$3M/Each Claim
Life Safety/Code Consultant	\$1M-\$3M/Each Claim
Food Service Consultant	\$1M-\$3M/Each Claim
Acoustical Consultant	\$1M-\$3M/Each Claim
Vertical Transportation Consultant	\$1M-\$3M/Each Claim
Lighting Design Consultant	\$1M-\$3M/Each Claim
Solar Reflection Consultant	\$1M-\$3M/Each Claim
Traffic Consultant	\$1M-\$3M/Each Claim
Graphics/Wayfinding Consultant	\$1M-\$3M/Each Claim
Parking Consultant	\$1M-\$3M/Each Claim
Exterior Building Maintenance Consultant	\$1M-\$3M/Each Claim
Sustainability Consultant	\$1M-\$3M/Each Claim
Energy Model Consultant	\$1M-\$3M/Each Claim
Environmental Consultant	\$1M-\$3M/Each Claim
Environmental	\$1M-\$3M/Each Claim
Technology Consultant (AV, IT, Security)	\$1M-\$3M/Each Claim
Estimating Consultant	\$1M-\$3M/Each Claim
Accessibility Consultant	\$1M-\$3M/Each Claim

\*Note - To be conformed based upon role of selected Respondent.

## EXHIBIT G



### Diversity Program

#### Instructions to Bidders/Proposers

##### **A. Overview of Policy**

Houston First Corporation (“OWNER”) is dedicated to promoting the growth and development of minority, women, and small and historically underutilized businesses by providing robust opportunities to participate in its procurement and service contracts. In support of this commitment, OWNER has established a Diversity Program to ensure the maximum practicable inclusion of certified, diverse contractors and suppliers who can provide quality goods and services at competitive rates in all areas of its operations. It is the policy of Houston First Corporation to prohibit discrimination based on race, sex, religion, national or ethnic origin, age, or disability.

OWNER’s policy is to strive for competitive pricing, qualifications and demonstrated competencies in the selection of all contractors. The Program is designed to create opportunities, while requiring competitiveness and quality of work. The Program allows OWNER to target more effectively and continuously improve the participation of minorities, women and small and historically underutilized businesses in contracting and procurement activities.

As a local government corporation created by the City of Houston, OWNER recognizes the City of Houston’s efforts to stimulate the growth of local small, minority, women and historically underutilized business enterprises by encouraging full participation of these businesses in various areas of city contracting. OWNER has a contractual commitment to make good faith efforts to award contracts to certified minority and women-owned business enterprises and has adopted this commitment as part of this Program.

Nothing in the Program shall be construed to give a bidder or proposer (“CM”) any right or interest prior to the award and full execution of a contract. Compliance with all statutory and legal requirements is expected of all CMs.

CMs should also be sure that the MWBE subcontractor is certified as of the date that OWNER receives the bid/offers and should provide verification by attaching certification certificates of all MWBEs identified to respond to meeting the Contract Goal.

To ensure that the CMs are meeting participation goals for the project, the following enclosures are attached to these instructions:

- CM Utilization Plan
- Letter of Intent
- MWBE/HUB Unavailability Certification Form

**CMs are required to submit the appropriate enclosures along with complete documentation of Good Faith Efforts accomplished to meet the goal. Failure to provide complete documentation of good faith efforts may result in your bid/proposal being deemed non-responsive.**

**B. Contract Goal**

An MWBE/HUB contract goal has been established as part of this solicitation. Accordingly, CMs are required to use good-faith efforts to utilize certified businesses to meet the goal.

**1. Meeting the Contract Goal:**

CMs may meet the MWBE/HUB contract goals by subcontracting portions of the work to currently certified businesses that perform a “Commercially Useful Function,” which means a discrete task or group of tasks performed by a business by using its own forces or by actively supervising on-site the work by another business for whose work the certified business is responsible. An MWBE/HUB will not be considered to be performing a Commercially Useful Function if it subcontracts more than seventy five percent (75%) of a contract being counted toward the applicable participation goal. CM may count toward its MWBE/HUB contract goal its expenditures for materials and supplies required under the contract and obtained from a certified business, provided that the business assumes actual responsibility for the provision of materials and supplies.

**2. The Responsive CM:**

To be considered a responsive CM as related to the MWBE/HUB contract goal, a CM must meet the goal referred to in the solicitation or make a documented good faith effort to attain the goal.

**3. The Responsible CM:**

The responsible CM must submit with a bid or proposal a CM Utilization Plan with the following to comply with the Program:

- a. Names and addresses of certified MWBE/HUB participating subcontractors and the work they are to perform,\*
- b. The dollar value of each proposed certified MWBE/HUB contract,
- c. Project work start and completion dates, and
- d. Documentation of good faith efforts, if applicable.

**\* NOTE: No changes will be allowed to the MWBE/HUB names listed after the response is submitted without prior written approval from the OWNER President.**

**4. Enclosures 1 – 3:**

Requirements for the Program are addressed in Enclosures 1-3. CMs must complete and return applicable enclosures.

**Enclosure 1 - CM Utilization Plan Form**

This document must be submitted by the CM for every MWBE/HUB subcontractor/consultant CM used to meet the goal. It must contain the information specified and must be signed by the CM. No changes may be made to the MWBE subcontractors listed and no additional MWBE/HUB subcontractors can be provided after responses have been submitted without prior written approval from the OWNER President. **A copy of the current MWBE/HUB certificate for each listed entity must be attached in order for the MWBE/HUB subcontractor/consultant to be counted toward the assigned MWBE/HUB goal.**

**Enclosure 2 - Letter of Intent**

This document must be submitted by the CM for all the listed MWBE/HUB subcontractors/consultants listed on the **CM Utilization Plan Form**. This document verifies the intent of the CM

to enter into a contract with the MWBE/HUB if awarded the contract. The Letter of Intent should be signed by both the MWBE and the non-MWBE/HUB CM.

**Enclosure 3 – MWBE/HUB Unavailability Certification Form**

This document must be submitted if the CM is unable to locate or contract with MWBE/HUB firms to meet the applicable goal. CM must document its Good Faith Effort to offer portions of the work to MWBEs/HUBs, advertise and provide information to the MWBE/HUB community regarding contract opportunities on the project.

**C. Compliance/MWBE Certification:**

The following are acceptable certification sources:

- City of Houston
- Houston Minority Supplier Development Council
- METRO’s Small Business Certification Program
- Women’s Business Enterprise Alliance
- Texas Department of Transportation’s Unified Certification Program
- Texas Small Business Association

**D. Responsibilities of CMs**

CMs are required to make Good Faith Efforts to achieve their Contract Goal. The term “Good Faith Efforts” shall mean all commercially reasonable efforts necessary and practicable to increase the opportunities available to certified businesses in order to meet the applicable Contract Goal. Specific examples of Good Faith Efforts include, but are not limited to, the following:

1. Delivering of written notice of subcontracting opportunities on eligible contracts to the appropriate and industry-specific certified businesses;
2. Utilizing local or targeted newspapers, periodicals and local small business and minority and women-focused associations and websites for notice purposes regarding subcontracting opportunities;
3. Responding to requests for information from certified businesses regarding the eligible contract;
4. Ensuring that written notices contain the following:
  - a. adequate information about the plans, specifications, and relevant terms and conditions of the contract and about the work to be subcontracted to, or the goods to be obtained from, subcontractors and suppliers;
  - b. a contact person with the proposer’s office to answer questions;
  - c. information regarding the proposer’s bonding and insurance requirements; and
  - d. the last date for receipt by the proposer of certified business price quotations.
5. Attending any special pre-proposal meeting called to inform businesses of subcontracting or supply opportunities, if set forth in the proposal documents;
6. Dividing tasks within the eligible contract, in accordance with normal industry practice, into small, economically-feasible segments that can be performed by certified businesses;

7. Developing internal policies and procedures and designating an employee to monitor compliance with the Program;
8. Documenting and maintaining accurate and accessible records of such Good Faith Efforts to utilize women-owned, minority-owned and small-business programs;
9. Attending compliance meetings as requested by OWNER;
10. Negotiating written contracts with certified businesses in good faith to provide goods or services related directly to the eligible contract; and
11. Submitting completed reports required by contract or requested by OWNER completely and in a timely manner.

**E. Termination of MWBE/HUB Subcontract:**

CM shall not terminate a MWBE/HUB subcontractor for convenience and then perform that work with its own forces or its affiliate without the OWNER President's prior written approval.

**F. Defaulting MWBE Subcontractors:**

CM must make a good faith effort to replace a defaulting MWBE/HUB with another certified MWBE/HUB. CM must notify OWNER immediately of the MWBE's/HUB's inability to perform and of the intent to obtain a substitute certified MWBE/HUB. CM must provide OWNER with reasonable documentation of the defaulting subcontractor's inability to perform, as well as CM's good faith efforts to come to terms with the MWBE/HUB subcontractor. The substitute MWBE/HUB must receive prior written approval by OWNER's President. When CM obtains a substitute MWBE/HUB, CM will notify OWNER and provide copies or descriptions of the new or amended subcontracts and a certification for each new MWBE/HUB.

**G. Failure to Comply:**

If OWNER finds that CM has failed to comply with the requirements of this Program, then OWNER will notify CM in writing. CM shall immediately take corrective action. If CM fails or refuses to comply in the time specified, OWNER may issue an order to delay all or part of payment until satisfactory action has been taken. If CM continues non-compliance, OWNER may recommend an issue of termination for default of contract.

**H. Records and Documents:**

It is CM's responsibility to maintain records and documents that indicate compliance with the Program for three (3) years following the performance of the contract. Those records shall be made available at reasonable times and places for inspection upon request by OWNER, with any other compliance information that OWNER may require. This reporting requirement is also extended to any certified MWBE/HUB subcontractor.

**I. Reporting:**

To ensure that the MWBE/HUB contract goal is met by CM, CM must provide the following documentation each month as a requirement for processing all invoices for payment.

**1. Progress Assessment Report of Work Subcontracted**

This form must be submitted by CM and will be used to provide a cumulative account of CM's participation level in various work categories. The form should also be signed by CM and submitted with each monthly invoice as a requirement for payment processing.

**2. Subcontractor/CM Partial Release of Liens Payment Certification**

This document must be submitted for each MWBE/HUB subcontractor/supplier on the project and submitted with each invoice. It will be required documentation for payment processing. It will be used to verify that MWBEs/HUBs are being paid and to verify the progress of their contracts.

**3. Subcontractor/Consultant Payment Certification**

This document must be submitted for each MWBE/HUB subcontractor/consultant on the project and submitted with each invoice. It will be required documentation for payment processing. It will be used to verify that each MWBE/HUB is being paid and to verify the progress of their contracts.

**Additionally, the following documents are required as indicated.**

**1. Affidavit of MWBE/HUB CM Change**

This document is used by the CM to request approval for changing a MWBE/HUB subcontractor presently working on the project. The document should include the name of the subcontractor removed from the project, the scope of work performed by the subcontractor, the existing contract value, and the reason for the change.

**2.** Each CM shall, upon request, provide a copy of the MWBE/HUB firm's scope of work and subcontract agreement or letter of intent that describes the anticipated services the MWBE/HUB firm will provide.

**3.** When the contract expires or is terminated, an "End-of-Contract Report" must be submitted to OWNER. The "End-of-Contract Report" must include all information noted on the Progress Assessment Report. This report will list final payments to all MWBE/HUB subcontractors to ensure that the actual amount paid to the MWBE/HUB subcontractors equals or exceeds the dollar amounts stated in the Enclosure. All discrepancies must be noted and explained.

**J. Payments:**

CM must pay MWBEs/HUBs for satisfactory performance of their contracts by contract or no later than ten business days from the receipt of payment made to CM by OWNER. Prompt return of retainage payments from CM to the MWBE/HUB shall be made by contract or within ten business days after the subcontractor's work is satisfactorily completed. Failure to comply with the above may be considered to be a breach of contract.



**CONTRACTOR UTILIZATION PLAN**

Respondents' Total Bid Value: \_\_\_\_\_

	<b>BUSINESS TYPE (Prime, Subcontractor, Supplier, Consultant)</b>	<b>BUSINESS STATUS (MWBE, HUB)</b>	<b>TYPE OF MEANINGFUL WORK TO BE PERFORMED</b>	<b>START DATE</b>	<b>END DATE</b>	<b>APPROX. DOLLAR VALUE</b>	<b>% OF PRIME BID VALUE</b>
<b>Business Name:</b>							
<b>Business Address:</b>							
<b>Telephone #:</b>							
<b>Contact Person:</b>							
<b>Business Name:</b>							
<b>Business Address:</b>							
<b>Telephone #:</b>							
<b>Contact Person:</b>							
<b>Business Name:</b>							
<b>Business Address:</b>							
<b>Telephone #:</b>							
<b>Contact Person:</b>							
<b>TOTAL CONSULTANT</b>							
<b>TOTAL SUB-CONTRACTOR</b>							
<b>TOTAL SUPPLIER</b>							
<b>GRAND TOTAL</b>							

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

\_\_\_\_\_  
 (Signature) (Title) (Date)



**LETTER OF INTENT**

The undersigned contractor and MWBE/HUB subcontractor will enter into a formal agreement for the work listed on the CM / Consultant / Supplier Utilization Plan form conditioned upon the contractor's execution of a contract with Houston First Corporation (OWNER).

MWBE/HUB Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone #: \_\_\_\_\_

Scope of Work: \_\_\_\_\_

\_\_\_\_\_

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

Projected Completion  
Date: \_\_\_\_\_

Estimated Contract  
Value: \_\_\_\_\_

MWBE/HUB Subcontractor Company Name: \_\_\_\_\_

\_\_\_\_\_  
[signature] [title] [date]

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

\_\_\_\_\_  
[signature] [title] [date]

**NOTICE**  
\_\_\_\_\_% of the dollar value of this MWBE/HUB subcontract will be sublet and/or awarded to a non-MWBE contractor and/or non-MWBE supplier/consultant



**MWBE/HUB UNAVAILABILITY CERTIFICATION**

I, \_\_\_\_\_ of \_\_\_\_\_,  
[name] [title]

\_\_\_\_\_, certify that the following efforts were made to meet the  
MWBE Goal on  
[company]

Bid/RFP # \_\_\_\_\_.

***[please attach any additional efforts that do not fit on this form]***

- Did a CM representative attend the pre-bid/proposal meeting? Yes \_\_\_\_\_ No \_\_\_\_\_
- Newspaper Advertisement Log: (attach copies of ads):

Newspaper/Publication	Type of Publication Minority/General/Trade	Dates of Advertisement

- Selected portions of the work to be performed by MWDBEs:

Work Categories	Type of Bid (Subcontractor or Supplier)	CM's Estimated Budget	Additional Comments


- Made efforts to assist interested MWDBEs/HUBs in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies, materials, etc.:

[list any specific offers made by Firm]

--

- Solicited the following MWBEs/HUBs:

<b>Date Contacted</b>	<b>Name of MWBE/HUB Firm</b>	<b>Contact Person</b>	<b>Phone #</b>	<b>Work Category</b>

- Followed up with initial contacts:

<b>Date</b>	<b>Name of MWBE/HUB</b>	<b>Phone #</b>	<b>Bidding (Yes or No)</b>	<b>Additional Comments</b>

- Contacted the following other agencies, organizations in recruitment of MWBEs/HUBs:

<b>Date</b>	<b>Organization</b>	<b>Phone #</b>

As shown by the documentation provided to OWNER, we feel that we have made good faith efforts to attain the MWBE/HUB Goal.

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

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