

## HOTEL RESTAURANT DESIGN SERVICES REQUEST FOR QUALIFICATIONS (“RFQ”)

**ISSUE DATE:** July 26, 2024

**DUE DATE:** **2:00 p.m. on August 22, 2024** (the “Submission Deadline”)

**INSTRUCTIONS:** Respondents are asked to submit five (5) paper copies and one (1) electronic copy (on a flash drive) of their Statement of Qualifications (“SOQ”). One (1) paper copy of the diversity participation information provided by respondent should be delivered with the SOQ in a separately-sealed envelope labelled “Diversity”. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write “**Restaurant RFQ**” clearly on the outside of the sealed envelope. 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 Miszkowski, 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

**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. on August 13, 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 HFH.

### OVERVIEW

Houston First Holdings LLC (“HFH”) requests Statements of Qualifications (“SOQs”) from experienced design teams (including but not limited to architecture, interior architecture, engineering, kitchen design) capable of creating an inspired redesign of a full-service hotel restaurant on the ground floor of the Hilton Americas-Houston Hotel (the “Hotel”), located at 1600 Lamar St., Houston, Texas 77010. An ideal design will transform the current restaurant space into a vibrant, refreshed new concept. Essential design features should include:

- Restaurant and bar service;
- A market/grab-and-go component;
- A flexible, dual or multi-use space area;
- Décor that differentiates the restaurant from the hotel lobby;
- An iconic signage and design package; and
- Adherence to Hilton design standards

The new restaurant must feature breakfast, lunch and dinner operation, as well as buffet and à la carte service. Currently, the majority of customers are overnight hotel guests and convention/event attendees at the George R. Brown Convention Center and Toyota Center; a successful new concept should serve to increase the local customer base. The existing on-site kitchen, also subject to redesign under this project, provides food service for the restaurant, hotel lobby bar and room services.

The present restaurant is approximately 5,107 square feet, though HFH will consider utilizing up to another 2,000 square feet of existing lobby space for a successful design.

A budget for the full project, including design services, has not been developed, though initial services will focus on conceptual design, naming, brand visioning and identity, and related pre-construction services. Construction is not expected to commence until calendar year 2025.

## BACKGROUND

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

The Hilton-Americas Houston Hotel is located in the heart of downtown Houston and is connected to the George R. Brown Convention Center via two indoor skywalks. This premier Houston hotel is located just steps away from Discovery Green Park, Toyota Center, Shell Energy Stadium, and Minute Maid Park.

Houston First Corporation is the sole member of HFH, the entity that owns the hotel.

## 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, and 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:** Identify three relevant hotel-restaurant designs completed primarily by the project team similar in complexity and scope to this project. Provide a current reference for each such project.
- d. **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. 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](#).
- 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 are asked to ensure that their SOQs are clear and concise, and limit the total page number to a maximum of 30 pages.

## EVALUATION

Responses conforming to the requirements of this RFQ timely received in the manner provided herein will be reviewed and ranked based on the following weighted criteria: Profile (20 points); Experience (35 points); Team (35 points); and Diversity (10 points).

HFH reserves the right to schedule interviews, with the top-ranked teams, not to exceed five, prior to making an award. If interviews are scheduled, then up to an additional 20 points may be added to the existing SOQ scores of the respondents interviewed, for a maximum possible total of 120 points, based on their participation and responsiveness to questions during such interviews.

HFH expects to select the top-ranked team on the basis of demonstrated competence and qualification, as measured by the foregoing criteria, 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 services hours. If HFH and such respondent

should fail to agree on such fair and reasonable compensation, then HFH reserves the right to and may conduct negotiations with the next most-qualified respondent. If necessary, HFH will conduct negotiations with successive respondents in descending order until a contract award can be made to a qualified respondent whose price HFH believes is fair and reasonable.

This RFQ does not commit HFH to award a contract, issue a purchase order, or to pay any costs incurred in the preparation of a SOQ in response to this RFQ. HFH reserves the right to select or reject all or part of any submittal, waive minor technicalities, and select one or more service providers in the manner and to the extent that they serve the best interests of HFH. HFH reserves the right to request clarifications and/or additional information from some or all respondents.

#### **NO PRE-SUBMITTAL CONFERENCE**

A pre-submittal conference has not been scheduled for this RFQ and HFH does not anticipate that such a meeting will be held.

#### **LETTERS OF CLARIFICATION**

Responses to all material questions timely submitted by potential respondents, as well as revisions incorporated into this RFQ by HFH, 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 promptly enter into the Design Services Agreement set forth below. Any requests for clarification or modification to the terms of such agreement must be submitted by email to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than 10 days prior to the Submission Deadline. Responses to material questions and issues will be included in a Letter of Clarification. Respondents are advised that alternative terms, pre-printed forms, or other objections submitted by a respondent shall be disregarded and result in a submittal being deemed as non-responsive.

#### **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](#). HFH has established the following goal for these services: **25%** 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. All diversity-participation information provided by respondents, including required forms, should be delivered with their SOQ in a **separately-sealed envelope** labelled "**Diversity**".

#### **RESTRICTIONS ON COMMUNICATIONS**

Throughout the selection process, commencing with the Issue Date, respondents are directed not to communicate with any HFH, Houston First Corporation, or Hilton-Americas Houston Hotel employee, officer or director regarding their SOQ or any matter relating to this RFQ, other than through [bids@houstonfirst.com](mailto:bids@houstonfirst.com) or in response to a direct inquiry from the Houston First Corporation Purchasing Agent or General Counsel Department. Respondents who disregard the Restrictions on Communications provision do so at their peril, as **HFH 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 HFH or Houston First Corporation employee, officer, or director creating a conflict

of interest (or appearing to a reasonable person to potentially exist). Those who need the disclosure form may find it online at <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>. By submitting a SOQ, respondent represents to HFH 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 HFH.

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 HFH, 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 HFH consider; and (f) An affidavit attached to support any factual allegations stated in the submission.

### **PUBLIC INFORMATION**

Houston First Corporation 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 HFH.

### **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.

# HOTEL RESTAURANT DESIGN SERVICES

## SUBMITTAL FORM

Respondents to the foregoing Hotel Restaurant Design Services Request for Qualifications ("RFQ") are required to complete each field of this Submittal Form and include it as the first page of their Statement of Qualifications ("SOQ"). Any SOQ received that does not include a completed submittal form will be deemed non-responsive.

### **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 Holdings LLC and Houston First Corporation:

a. Respondent has the necessary experience, knowledge, abilities, skills, and resources to perform work required in connection with this RFQ.

b. Respondent accepts the evaluation process set forth in the RFQ, including the weighted criteria, and acknowledges that some subjective judgments must necessarily be made during the effectuation of such process.

c. Respondent accepts the terms and conditions of the Design Services Agreement and agrees to promptly enter into such agreement if selected.

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 Holdings LLC and Houston First Corporation without exception:

\_\_\_\_\_  
By: \_\_\_\_\_ ("Respondent")

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

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

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

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

## **DESIGN SERVICES AGREEMENT**

This Design Services Agreement (“Agreement”) is made by and between Houston First Holdings LLC (“HFH”), whose address is 701 Avenida de las Americas, Suite 200, Houston, Texas 77010 and [TBD] (“Contractor”), whose address is [TBD]. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

### **ARTICLE 1: TERMS AND OVERVIEW**

1.1 The term “Work” means professional design and related services performed by Contractor to assist HFH in the planning, design, renovation, and construction of facilities and appurtenant structures, whether owned, leased or operated by HFH or its sole member, Houston First Corporation, and including all services provided or to be provided by the Contractor to fulfill Contractor’s obligations arising under this Agreement.

1.2 Work performed by Contractor shall be as ordered on an as-needed basis, to be initiated upon issuance by HFH (or its sole member, Houston First Corporation) by one or more written task orders (each a “Task Order” and collectively “Task Orders”). Each Task Order shall include a description of the Work, a specific not-to-exceed amount and, as applicable, a period of performance of services or schedule of deliverables. Contractor agrees to and shall complete each Task Order in accordance with the terms, conditions and restrictions of this Agreement.

1.3 The term of this Agreement shall commence on the Effective Date (defined below) and expire on the fifth calendar anniversary of the Effective Date. HFH may, in its sole discretion, extend the term by up to an additional six calendar months, on the same terms and conditions, by notifying Contractor in writing of such extension.

### **ARTICLE 2: RESPONSIBILITIES OF CONTRACTOR**

2.1 Contractor shall perform the Work in accordance with this Agreement and in a manner consistent with the skill and care ordinarily provided by experienced design professionals practicing in the same or similar locality under the same or similar circumstances. Contractor shall perform the Work expeditiously to ensure the orderly progress of any associated project or specific tasks ordered by HFH.

2.2 Contractor shall supervise the Work, using Contractor’s best skill and attention.

2.3 Contractor shall be solely responsible for, and have control over, means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement.

2.4 Contractor shall comply and perform all Work in accordance with applicable federal, state and local statutes, regulations, standards, codes, and ordinances.

2.5 Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation to perform the Work. Contractor shall immediately notify HFH of any suspension, revocation, or other detrimental action against any such license.

2.6 All payments shall be made by electronic funds transfer or check payable to Contractor, at the option of HFH. Neither partial payments made hereunder nor approval of invoices or services by HFH shall be construed as final acceptance or approval of that part of Contractor’s Work to which such partial payment or approval relates, nor shall such payments be construed as relieving Contractor of any of its obligations hereunder with respect thereto.

2.7 Contractor is solely responsible for providing all equipment, labor, supervision, and transportation necessary to complete the Work.

2.8 Contractor shall identify a representative authorized to act on behalf of and bind Contractor with respect to the Work.

2.9 Contractor shall manage and coordinate the Work with those services provided by HFH, its contractors and agents, and any third party managing or performing work on the same project.

### **ARTICLE 3: COMPENSATION**

3.1 Payment to Contractor for services performed shall be based on the hourly rates set forth in Exhibit “[**TBD**]”; provided, however, that the parties may agree to a fixed-fee or not-to-exceed amount for specific tasks, reports or other deliverables, as detailed in one or more Task Orders.

3.2 Subject to the limitation set forth in Section 3.1, reasonable expenses incurred by Contractor directly in the performance of its services will be reimbursed at cost; provided such expenses are approved in advance and in writing by HFH, and further provided that HFH reserves the right to cap expenses at a reasonable level it deems appropriate in each Task Order.

3.3 Contractor will be paid on the basis of invoices submitted by Contractor, and approved by HFH, detailing the services provided by Contractor, the attendant fee and reimbursable expenses, if any, including subcontractor invoices, expense receipts, prior-written approvals, and all other supporting documentation pertaining to amounts chargeable under this Agreement, as HFH may require.

3.4 If any item in any invoice submitted by Contractor is disputed by HFH for any reason, including lack of supporting documentation, then HFH shall temporarily delete the disputed item and pay the remaining amount of the invoice; provided, however, that HFH shall promptly notify Contractor of the dispute and request clarification and/or remedial action. After any dispute shall have been settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on an invoice for the disputed item only.

3.5 All payments shall be made by check payable to Contractor or electronic funds transfer, at the option of HFH. Neither partial payments made hereunder nor approval of invoices or services by HFH shall be construed as final acceptance or approval of that part of Contractor’s Work to which such partial payment or approval relates nor shall such payments be construed as relieving Contractor of any of its obligations hereunder with respect thereto.

### **ARTICLE 4: RESPONSIBILITIES OF HFH**

4.1 HFH agrees to respond to inquiries from Contractor within a reasonable time and provide information in a timely manner regarding requirements for and limitations on the Work, including HFH’s objectives, constraints, space requirements, flexibility, expandability and site requirements.

4.2 HFH will identify a representative authorized to act on HFH’s behalf with respect to the Work. HFH will render decisions and approve Contractor’s submittals, if any, in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Contractor’s services. HFH will coordinate the services of its own contractors with those services provided by Contractor.

### **ARTICLE 5: INSURANCE AND INDEMNIFICATION**

5.1 With no intent to limit Contractor's liability under the indemnification provisions, Contractor shall provide and maintain, and shall require its contractors and subcontractors to maintain, for the duration of the performance of services on connection with this Agreement, the following insurance and available limits of liability:

- |                                 |  |
|---------------------------------|--|
| a. Commercial General Liability | Including contractual liability, bodily injury/death, property damage, and personal and advertising injury with limits of at least \$1,000,000 each occurrence and \$2,000,000 aggregate |
| b. Automobile Liability         | Combined single limit of \$1,000,000   |
| c. Professional Liability       | Limits of \$1,000,000 per claim and \$2,000,000 aggregate  |
| c. Workers' Compensation        | Statutory limits for Workers' Compensation   |
| d. Employer's Liability         | Limits of \$1,000,000 for each accident, disease limits of \$1,000,000 per policy and \$1,000,000 per employee   |

5.2 Contractor's Commercial General Liability Insurance policy must include an additional insured endorsement in favor of HFH and Houston First Corporation (collectively, as used in this Agreement, the "Additional Insured Parties").

5.3 Each policy, except Professional Liability, must contain an endorsement approved by HFH waiving any claim or right in the nature of subrogation against the Additional Insured Parties.

5.4 Contractor shall be solely responsible for payment of all insurance premiums hereunder. Contractor shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for same against HFH, its officers or employees.

5.5 Each policy hereunder, except Workers' Compensation and Professional Liability insurance, shall be primary and non-contributory with respect to any policy of insurance maintained or made available to the Additional Insured Parties with respect to this Agreement or claims arising hereunder.

5.6 The issuer of any policy shall have a Certificate of Authority to transact insurance business in the State of Texas or have a Best's rating of at least A- and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide, Property-Casualty United States.

**5.7 CONTRACTOR AGREES TO AND HEREBY DOES RELEASE HFH, THE CITY OF HOUSTON, AND THEIR AGENTS, EMPLOYEES, OFFICERS, AND DIRECTORS FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE BY CONTRACTOR UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL ENGAGED BY CONTRACTOR UNDER THIS AGREEMENT.**

**5.8 TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY AND HOLD HFH AND THE CITY OF HOUSTON, INCLUDING THEIR RESPECTIVE, EMPLOYEES, OFFICERS, AND DIRECTORS (COLLECTIVELY "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES**



**FOR INJURY, DEATH, DAMAGE, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO THE ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL ENGAGED BY CONTRACTOR UNDER THIS AGREEMENT.**

**5.9 CONTRACTOR SHALL CAUSE ITS SUBCONTRACTORS TO RELEASE AND INDEMNIFY HFH AND THE CITY OF HOUSTON TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE INDEMNITEES.** Contractor's indemnification obligations hereunder shall survive the completion of the Work or the sooner termination of this Agreement.

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

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

5.12 Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to HFH. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 calendar days after receiving written notice of the indemnification request, Contractor must advise HFH as to whether or not it will defend the claim.

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

## **ARTICLE 6: TERMINATION**

6.1 Termination for Cause. If Contractor is in default under this Agreement, then HFH may, at its option, either terminate this Agreement immediately upon notice to Contractor, or allow Contractor the opportunity to promptly to cure the default as provided herein.

6.2 Default. Contractor shall be deemed to be in default under this Agreement due to the occurrence of any of the following events: (a) Contractor fails to perform or observe any term, condition or requirement under this Agreement; (b) Contractor, or an employee, agent, contractor, or subcontractor of Contractor, violates applicable law; (c) Contractor becomes insolvent; (d) All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; (e) A receiver or trustee is appointed for Contractor; or (f) Contractor assigns this Agreement without the prior written consent of HFH.

6.3 Remedies. If default occurs, then HFH shall have the right to exercise its legal and equitable

remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, HFH shall have the right, but not the obligation, to cure or cause to be cured on behalf of Contractor any such default, and Contractor shall pay HFH on demand all costs and expenses incurred by HFH in effecting such cure, in addition to all damages, losses, costs or expenses incurred by HFH as a result of such default by Contractor.

6.4 Optional Notice of Default. If a default occurs, HFH may, but shall have no obligation to, deliver notice to Contractor describing the default and allowing Contractor at least 10 calendar days to cure the default. If HFH elects to allow the Contractor the opportunity to cure the default, and Contractor does so to the satisfaction of HFH before the termination date, then the termination is ineffective; should Contractor fail to so cure such default prior to the termination date, then this Agreement shall terminate automatically on the termination date without further notice from HFH.

6.5 Termination for Convenience. HFH reserves the right to terminate this Agreement, or one or more Task Orders issued hereunder, for its convenience at any time by giving 30 calendar days' written notice to Contractor. HFH's right to terminate for convenience is cumulative of all rights and remedies that exist now or in the future. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, or corresponding Task Order(s), and cancel all existing orders and subcontracts chargeable thereunder. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed up to the termination date. HFH shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed herein. **TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S EXCLUSIVE REMEDIES FOR HFH'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED HEREIN), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM HFH'S TERMINATION FOR CONVENIENCE.** Upon a determination by a court of competent jurisdiction that termination of Contractor pursuant to Section 6.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 6.5 and Contractor's sole and exclusive remedy for wrongful termination shall be limited to recovery of the payments permitted for termination for convenience as set forth in Section 6.5.

6.6 Termination by Contractor. Contractor may terminate this Agreement only if HFH defaults and fails to cure the default after receiving written notice thereof. Default by HFH occurs if HFH fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor seeks to terminate the Agreement, then Contractor must deliver a written notice to HFH describing the default and the proposed termination date. Such date must be at least 30 days after HFH receives notice. If HFH cures the default before the proposed termination date, then the proposed termination is ineffective. If HFH does not cure the default before the proposed termination date, then Contractor may terminate this Agreement upon notice to HFH and may seek any remedy available under applicable law, subject to the provisions and limitation of this Agreement.

6.7 Remedies Cumulative. The rights and remedies of HFH under this Agreement shall be cumulative. HFH shall have and may exercise all other rights and remedies not inconsistent herewith as provided under applicable law, or in equity. No exercise by HFH of one right or remedy shall be deemed an election, and no delay by HFH shall constitute a waiver, election, or acquiescence to any default, breach, violation, or non-performance by Contractor. To the extent not prohibited by applicable law and in addition to any other remedy, HFH reserves the right but not the obligation to offset any amount that Contractor owes HFH against any amounts due Contractor under this Agreement.

## ARTICLE 7: MISCELLANEOUS PROVISIONS

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

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

7.3 Assignment. Contractor shall not assign this Agreement or any of its obligations to perform under this Agreement without the express written consent of HFH. For purposes hereof, any transfer of ownership interests in Contractor, direct or indirect, occurring after the Effective Date shall be deemed an assignment by Contractor requiring prior written consent of HFH. HFH may assign this Agreement in whole or in part, including any enforcement rights granted hereunder, at any time upon written notice to Contractor.

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

7.5 Notices. All notices and other communications required or permitted hereunder shall be in writing and given by registered or certified mail (return receipt requested and postage prepaid), by personal delivery or by a recognized overnight delivery service (such as DHL, Federal Express or UPS), and shall be determined to have been effectively given upon actual receipt or upon refusal of delivery or, if earlier and whether or not actually received, (a) one business day after deposit with a recognized overnight delivery service for next business day delivery, properly addressed to the intended recipient, with delivery charges prepaid by, or billed to, the sender, or (b) three business days after deposit with the United States mail, registered or certified mail, return receipt requested, postage prepaid, properly addressed to the intended recipient. Notice must be addressed to the party to whom the notice is given at its address set out in this Agreement, or such other address the receiving party has designated previously by proper notice to the sending party.

7.6 Independent Contractor. The relationship of Contractor to HFH shall be that of an independent contractor. Contractor has the authority to select the means, methods and manner of providing services subject to the terms, conditions, and specifications in this Agreement. No principal/agent, partnership, joint venture, joint employer, or other relationship, other than an independent contractor relationship, is created or intended by this Agreement. Services provided by Contractor under this Agreement are non-exclusive and may be supplemented or augmented by HFH at any time, without notice to Contractor, in the sole and absolute discretion of HFH.

7.7 Survival. Contractor shall remain obligated to HFH under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of the term of this Agreement.

7.8 Governing Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, notwithstanding any choice-of-law or conflicts-of-law rules to the contrary. Any action to enforce this Agreement, or any litigation or claims otherwise regarding this Agreement, must be brought in a court of competent jurisdiction in Harris County, Texas. Contractor and consents to the exclusive jurisdiction of such courts and hereby waives any defenses or objections based on venue, inconvenient forum, or lack of personal jurisdiction.

7.9 Severability. Each and every agreement contained in this Agreement is, and shall be construed as, a separate and independent agreement. If any provision of this Agreement should be held to be invalid or unenforceable, then the validity and enforceability of the remaining provisions of this Agreement to another person or circumstance shall not be affected thereby.

7.10 Extent of Agreement. This Agreement, including the exhibits which are made a part hereof, represents the entire and integrated agreement between HFH and Contractor and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may not be altered or amended except in writing executed on behalf of all of the parties.

The parties hereto have caused this Agreement to be duly executed by their authorized representatives to be effective for all purposes as of the date of countersignature by HFH (the “Effective Date”):

[Signature block to be provided in final version of the Agreement]