

Recovery Architectural Services

Request for Qualifications

ISSUE DATE: October 27, 2017

DUE DATE: **11:00 a.m. on November 20, 2017** (“Submission Deadline”)

INSTRUCTIONS: Please submit 7 paper copies and 1 electronic copy of the respondent’s Statement of Qualifications (“SOQ”) on a flash drive. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write “**Recovery Architectural Services RFQ**” clearly on the outside of the sealed envelope. Submittals received by email, fax or after the Submission Deadline will be rejected.

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

CONTACT INFO: Any questions concerning this RFQ must be submitted by e-mail to bids@houstonfirst.com no later than **11:00 a.m. on November 10, 2017**. Questions will be answered collectively in the form of a Letter of Clarification and made available at www.houstonfirst.com/do-business.

PROJECT OVERVIEW. Houston First Corporation (“HFC”) issues this Request for Qualifications (“RFQ”) for experienced architectural firms able to develop and generate design and construction documents pertaining to the restoration of the Wortham Theater Center and the Theater District Parking Garages in Houston, Texas to their pre-loss condition utilizing contemporary materials of like kind and quality (the “Project”). In addition to phased architectural services (schematic design, design development, construction documentation and construction administration), this Project will require structural, mechanical, electrical, plumbing, civil and acoustical engineering services, as well as specialty sub-consultants such as those with expertise with parking systems, wayfinding, and theater design, including soundproofing and spring wood stage design. The scope of services for the design firm selected may further include one or more mitigation projects at the facilities so as to prevent or materially reduce the probability of pervasive damage due to floods or other severe weather events.

On August 27, 2017, floodwater resulting from Hurricane Harvey inundated the basement of the Wortham Theater Center and filled the Theater District Parking Garages with millions of gallons of water. The facilities have remained closed since the disaster.

To prevent further damage and deterioration, and address exigent conditions, HFC retained Gilbane Reconstruction Services, LLC. The work includes pumping out standing water, removing debris, providing temporary ventilation, and performing other emergency mitigation services required to stabilize critical life-safety systems at the facilities.

On October 5, 2017, HFC issued a request for proposals to identify a qualified project manager to act as owner's representative and provide construction management consulting services throughout the course of the Project. Proposals are under review as of the Issue Date of this RFQ.

HFC is prepared to begin addressing the reconstruction work necessary to restore the facilities to their pre-loss condition and make additional improvements as required. The first step entails engaging a team for professional design services, including permit assistance and the creation of construction documents needed to bid and complete the Project.

Substantive construction work required is expected to include but not be limited to electrical, HVAC, building automation/control, wood stage, rough carpentry, masonry, millwork/finish carpentry, waterproofing/caulking, glass/mirrors, painting/wall covering, striping, elevators, drywall, plaster, tilework (ceramic, vinyl, stone and terrazzo), acoustical wall panels, and doors (including frames and hardware). Soundproofing throughout Wortham Theater Center and specialized work to replace the spring wood stage at the facility are also material Project components. HFC has not selected a construction contractor.

The estimated cost of the Project, excluding mitigation measures, is 45-50 million dollars. The preliminary construction-phase estimate is eight months. Design services are expected to commence immediately upon signature of the agreement resulting from this selection process.

Respondents acknowledge that Federal Emergency Management Agency ("FEMA") financial reimbursement assistance will be used to support the agreement resulting from this RFQ. The respondent firm selected as a result of this process shall be required to comply with all applicable Federal laws, regulations, executive orders, and FEMA requirements.

BACKGROUND. HFC is a local government corporation created by the City of Houston to enhance quality of life, advance economic prosperity and promote and position Houston as a premier destination for leisure tourism and major events.

HFC is responsible for management and operation of more than ten city-owned buildings and plazas, including the George R. Brown Convention Center, Jones Hall, Wortham Theater, Miller Outdoor Theatre, Talento Bilingue de Houston, and outdoor facilities such as Jones Plaza, Ray C. Fish Plaza, Root Memorial Square, and several other landscaped properties and parking facilities.

Opened in 1987, the iconic Wortham Theater Center is a 437,500-square foot performing arts facility featuring two theaters, the 2,405-seat Alice and George Brown Theater and the 1,100-seat Lillie and Roy Cullen Theater. Wortham Theater Center is home to Houston Ballet and Houston Grand Opera and has welcomed arts groups and patrons from around the world.

Spanning nearly six city blocks underground, the Theater District Underground Parking Garage consists of three interconnected facilities (Civic Center, Large Tranquility and Small Tranquility) totaling 3,369 parking spaces.

MINIMUM QUALIFICATIONS. Respondents must have significant experience in the provision of professional architectural services, including construction damage assessment and completed disaster-recovery projects. To be considered, firms must timely submit to HFC (i) a complete SOQ, in the order and including the required content in the SOQ Format section of this RFQ; (ii) a completed and signed Anti-Lobbying Certification; (iii) a completed and signed Certification Regarding Debarment/Suspension; and (iv) a completed and signed Respondent Questionnaire.

Respondent firms that fail to submit the required certifications and questionnaire with their SOQ are deemed nonresponsive and will be rejected without further review or consideration

SOQ FORMAT. To be considered responsive, respondent firms are asked to include the following information in their SOQ:

- a. **Transmittal Letter:** Write a letter introducing the respondent firm and communicating effectively why the firm should be selected for this Project. The letter must be signed by a person authorized to make representations on behalf of the firm and include a direct phone number and email address. Respondents must make a specific, unambiguous statement accepting and agreeing to comply with the Recovery Architectural Services Agreement if selected. Respondents may identify any objections within or immediately following the letter; provided, however, that SOQs including material exceptions are deemed non-responsive and will be rejected without consideration.
- b. **Project Team:** Identify the essential personnel who would be assigned to perform work on this Project, such as the project manager, responsible corporate executive and any probable subcontractors; include a brief summary of their qualifications.
- c. **Experience:** Please discuss three projects completed primarily by the Project Team members similar in scope and type to this Project, preferably in the Houston area. Experience with the FEMA reimbursement process, theater soundproofing, and sprung wood stage design are an advantage. Provide current references for each relevant project.
- d. **Diversity Efforts:** Respondents should indicate how they intend to make good faith efforts to utilize diversity companies and identify any probable MWBE and HUB subcontractors or consultants.
- e. **Responsiveness:** All information provided by Respondent to HFC should be organized, clear and concise. Respondents are asked to avoid excessive graphics, title pages, or other extraneous information in their submittal other than requested by HFC.

EVALUATION. HFC will review and rank every SOQ received in response to this RFQ based on the following weighted criteria for a total of as many as 100 points: Transmittal Letter, including acceptance of the agreement terms (15%); Project Team (35%); Experience (35%); Diversity Efforts (10%); and Responsiveness (5%).

HFC reserves the right to schedule interviews with the top-ranked firms, not to exceed five, prior to making a selection. If interviews are scheduled, then up to an additional 20 points may be added to the existing SOQ scores of the top-ranked respondent firms, for a maximum possible total of 120 points, based on their responsiveness and project approach during such interviews.

HFC intends to select the top-ranked firm, on the basis of demonstrated competence and qualification as measured by the foregoing criteria, subject to negotiation of fair and reasonable compensation. If HFC fails to agree on a fair and reasonable price with the most qualified respondent, HFC 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. HFC is not required 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.

PROJECT SITE TOUR. A tour of Wortham Theater Center and the Theater District Parking Garages will be held for the benefit of all prospective respondents at **1:30 p.m.** on **November 7, 2017**. Respondents should meet at Fish Plaza under the tent located at 501 Texas Ave., Houston, Texas 77002 (between Bagby and Smith Streets). As remediation work is ongoing, respondents are directed to wear appropriate apparel for a construction jobsite, including close-toed shoes, and will need to climb stairs. The on-site emergency remediation contractor reserves the right to require signature of a comprehensive release form prior to allowing access. PPE (disposable masks) will be provided.

PRE-SUBMITTAL CONFERENCE. A pre-submittal conference will be held on **November 7, 2017** beginning after the Project site tour at approximately **3:30 p.m.** in the second-floor Partnership Tower Board Room, located at 701 Avenida de las Americas, Houston, Texas 77010. Though not mandatory, all potential respondents are urged to be present.

ANTI-LOBBYING CERTIFICATION. Respondents are required to complete and submit The Anti-Lobbying Certification attached hereto as Attachment “A” with their SOQ.

CERTIFICATION REGARDING DEBARMENT/SUSPENSION. Respondents are required to complete and submit the Certification Regarding Disbarment/Suspension attached hereto as Attachment “B” with their SOQ.

RESPONDENT QUESTIONNAIRE. Respondents are required to complete and submit the Respondent Questionnaire attached hereto as Attachment “C” with their SOQ.

FORM OF AGREEMENT. The forms of agreement for this Project, the Recovery Architectural Services Agreement, is attached hereto as Attachment “D”. Respondent firms that have not agreed to enter into the agreement if selected are nonresponsive and will be rejected without further review or consideration.

LETTERS OF CLARIFICATION. Any revisions to be incorporated into this Invitation to RFQ will be confirmed in a written letter to all potential respondents (“Letter of Clarification”) prior to the Submission Deadline. When issued by Houston First Corporation, Letters of Clarification automatically become part of this RFQ and shall supersede any previous specifications or provisions in conflict therewith. By submitting a SOQ, respondents shall be deemed to have received all Letters of Clarification and to have incorporated them into their SOQ. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein. It is the responsibility of each respondent to monitor www.houstonfirst.com/do-business to ensure they receive any such Letters of Clarification.

GOOD FAITH DIVERSITY EFFORTS. 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 (see www.houstonfirst.com/do-business) equivalent to 30% of the total value of the agreement. Respondents should note if they are certified as a diversity participant in their SOQ; however, such certification shall not lessen or otherwise alter the requirement to use good faith efforts to award subcontracts to diversity participants.

If the respondent intends to subcontract any portion of the services, then the respondent must take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

These affirmative steps must be taken by all respondents in addition to the "good faith efforts" required by the HFC Diversity Program. The respondent selected as a result of this RFQ shall take these affirmative steps whenever subcontractors are solicited, regardless of whether it has achieved the aforementioned 30% of the total value of the agreement.

PUBLIC INFORMATION. As HFC is subject to the Texas Public Information Act ("TPIA"), all 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 cost and expense.

CONFLICTS OF INTEREST. Respondents are advised that they have an obligation to disclose any affiliation or business relationship that might cause a conflict of interest with HFC. Those who need the disclosure form may find it online at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. By submitting a SOQ, respondents represent that they are in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

RESTRICTIONS ON COMMUNICATIONS. From the Issue Date until the Submission Deadline, respondents are directed not to communicate with any HFC or City of Houston employee, officer or director regarding any matter relating to this RFQ, other than through bids@houstonfirst.com. HFC reserves the right to reject any SOQ due to violation of this provision.

RFQ Packets. A complete copy of this RFQ, including attachments, necessary forms and other relevant information is available on-line at www.houstonfirst.com/do-business. The RFQ provides the information necessary to prepare and submit SOQs for consideration and ranking by HFC.

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

ATTACHMENT "A"
ANTI-LOBBYING CERTIFICATION

The undersigned respondent certifies, to the best of his or her knowledge, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any City agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned respondent shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 31 USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned respondent certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned respondent understands and agrees that the provisions of 31 USC § 3801 *et seq.*, apply to this certification and disclosure, if any.

Legal Name of Respondent: _____

By:

Signature: _____ Date: _____

Name/Title of Authorized Representative: _____

**ATTACHMENT “B”
CERTIFICATION REGARDING DEBARMENT/SUSPENSION**

The undersigned respondent (also referred to herein as the “prospective lower tier participant”) acknowledges that this Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, respondent is required to verify that none of the respondent, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

This certification is a material representation of fact that may be relied upon by Houston First Corporation, the City of Houston, the State of Texas, and the Federal Government (including any department, agency or division thereof). If it is later determined that respondent did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then, in addition to remedies available to such parties, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

Respondent agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of the Agreement and further agrees to include a provision requiring such compliance in its lower tier covered transactions, including but not limited to offers from bidders or proposers, to require their agreement to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while their offer is valid and throughout the period of any contract that may arise from their offer or proposal.

Certification

The prospective lower tier participant certifies, by submission of its bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation with its bid or proposal. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The prospective lower tier participant agrees by submitting this bid or proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person or entity who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

Legal Name of Respondent: _____

By:

Signature: _____

Date: _____

Name/Title of Authorized Representative: _____

**ATTACHMENT “C”
RESPONDENT QUESTIONNAIRE**

Houston First Corporation (“HFC”) intends to seek financial reimbursement assistance from the Federal Emergency Management Agency (“FEMA”) to support the agreement resulting from the foregoing Recovery Architectural Services RFQ. Accordingly, the respondent firm selected as a result of this process shall be required to comply with all applicable Federal laws, regulations, executive orders, and FEMA requirements.

HFC is required to carefully evaluate the ability of every respondent firm (each a “Firm”) to perform successfully under the terms of the resulting agreement, giving due consideration to matters such as compliance with public policy, record of past performance, financial and technical resources, and other material items pertaining to the responsibility and integrity of each Firm.

For all of the foregoing reasons, HFC expects each Firm, to be considered responsive to the requirements of the foregoing RFQ, to answer all of the following questions fully and truthfully:

Question 1: How long has the Firm been in business? _____

Question 2: Is the Firm in good standing under the laws of its state of incorporation? _____

Question 3: Does the Firm possess the experience, means and resources to perform services in connection with this solicitation? _____

Question 4: Has the Firm, or any of its principals, in the past 5 years, knowingly or intentionally:

a. Committed fraud or a criminal offense in connection with obtaining or attempting to obtain a contract? _____

b. Violated antitrust statutes? _____

c. Committed embezzlement, theft, forgery, bribery, falsification or destruction of records, or tax evasion? _____

d. Violated nondiscrimination statutes? _____

e. Made a false statement to a governmental authority? _____

f. Violated criminal tax laws? _____

g. Received stolen property? _____

h. Committed any other offense indicating a lack of business integrity or honesty that seriously and directly affects the present responsibility of the Firm? _____

If so, please explain (attach additional pages if necessary): _____

Question 5: Has the Firm, in the past 5 years, been indicted for any of the offenses described in Question 4, items (a) through (h)? _____

If so, please explain (attach additional pages if necessary): _____

Question 6: Is the Firm, or any of its principals, currently delinquent in the payment of Federal, state or local taxes? _____

If so, please explain (attach additional pages if necessary): _____

Question 7: Has the Firm, in the past 5 years, defaulted under a contract forcing its surety to suffer a loss? _____

If so, please explain (attach additional pages if necessary): _____

Question 8: Has the Firm, in the past 5 years, been a party to a contract for services that was terminated for cause? _____

If so, please explain (attach additional pages if necessary): _____

Question 9: Has the Firm, in the past 5 years, undergone a material change in ownership interest? _____

If so, please explain (attach additional pages if necessary): _____

Question 10: Has the Firm, in the past 10 years, filed for bankruptcy, defaulted on a loan, or been in receivership? _____

If so, please explain (attach additional pages if necessary): _____

Question 11: Is the Firm currently a party to any litigation that may materially affect its ability to perform services in connection with this solicitation? _____

If so, please explain (attach additional pages if necessary): _____

Certification

The undersigned Firm represents and warrants that all of the information provided by Firm in response to the foregoing Respondent Questionnaire is true and correct to the best of the Firm's knowledge and belief and may be relied upon by Houston First Corporation, the City of Houston, the State of Texas, and the Federal Government (including any department, agency or division thereof).

Legal Name of Firm: _____
By: _____

Signature: _____ Date: _____

Name/Title of Authorized Representative: _____

ATTACHMENT “D”
RECOVERY ARCHITECTURAL SERVICES AGREEMENT

This Recovery Architectural Services Agreement (“Agreement”) is made by and between Houston First Corporation, a Texas local government corporation (“HFC”) whose address is 701 Avenida de las Americas, Ste. 200, Houston, TX 77010, and [TBD] (“Firm”), whose address [TBD]. In consideration of the mutual promises contained herein, the parties hereby agree as follows:

ARTICLE 1: RESPONSIBILITIES OF FIRM

1.1 Firm understands that this project involves of repairs and improvements to the Theater District Underground Parking Garage, Wortham Theater Center, and related areas of the Theater District in downtown Houston, Texas affected by Hurricane Harvey to their pre-loss or mitigation-improved condition utilizing contemporary materials of like kind and quality in accordance with this Agreement, including the Scope of Services attached hereto as **Exhibit “[TBD]”** and made a part hereof for all purposes.

1.2 As used herein, the term “Theater District Parking Garages” means the interconnected underground parking garages, totaling 3,369 spaces, spanning nearly six city block in the Houston Theater District known as Civic Center, Tranquility and Small Tranquility, color-coded respectively as green, yellow and blue, and the term “Wortham Theater Center” shall mean the 437,500 square-foot performing arts facility having a street address of 500 Texas Ave., Houston, Texas 77002 and featuring two theaters, the 2,405-seat Alice and George Brown Theater and the 1,100-seat Lillie and Roy Cullen Theater.

1.3 Services to be performed by Firm under this Agreement in connection with the project includes phased architectural services (schematic design, design development, construction documentation and construction administration), engineering services (structural, mechanical, electrical, plumbing, civil and acoustical), and specialty sub-consultants require to achieve the project, such as those with expertise with theater lighting/staging, parking systems and wayfinding.

1.4 Firm has identified _____ as its duly-authorized representative to act on behalf of Firm with respect to the services to be performed under this Agreement.

1.5 Firm shall comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules, regulations, and lawful orders of any governmental agency, authority, court, board, bureau, instrumentality, regulatory body, or other government entity, including without limitation executive orders and FEMA policies, procedures and directives and the City of Houston Code of Ordinances (collectively, “Applicable Law”).

1.6 Firm shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Firm shall immediately notify HFC of any suspension, revocation, or other detrimental action against any such license, permit or certificate.

1.7 Firm represents and warrants to HFC that its services shall be performed (a) in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for comparable services; (b) expeditiously so as to ensure the orderly progress and completion of the projects; and (c) in full compliance with Applicable Law. Firm further represents and warrants to HFC that Firm (a) possesses the ability to perform successfully under the terms and conditions of this Agreement, including by way of example and not limitation, experience, compliance history, financial means, and technical resources; (b) is validly formed and in good standing in its state of incorporation; (c) neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal-assistance programs; and (d) Firm shall comply with Applicable Law in the selection of any subcontractor or specialty consultant in connection with this Agreement.

1.8 Firm represents that has established and shall maintain written standards of conduct covering conflicts of interest (including organizational conflicts of interest) and governing the performance of employees engaged in the selection, award, and administration of contracts of any tier in connection with this Agreement.

1.9 Firm shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise Firm's professional judgment with respect to this Agreement or its services hereunder, nor shall Firm take for itself or divert to a third party any corporate opportunity arising out of this Agreement or discovered otherwise through the use of HFC property or information.

1.10 Firm agrees that all materials to be prepared under this Agreement and all HFC data received by Firm shall be kept in strictest confidence and used only to achieve the ends of this Agreement. Firm shall not divulge such information to any person who cannot promote the interests of HFC, except to the extent required by law or prior approved in writing by HFC

1.11 Firm agrees that the design of all improvements shall be in accordance with all applicable building and electrical codes, including without limitation the current understanding and interpretation of the *Americans with Disabilities Act Guidelines*, Appendix A to the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101 through 12213 and with adherence to any governing bodies having jurisdiction regarding access to the Project by the physically handicapped including the Texas Architectural Barriers Act.

ARTICLE 2: PAYMENT AND TERM

2.1 Payment. Subject to all terms and conditions of this Agreement, HFC agrees to pay Firm for services performed based on the hourly fees set forth in **Exhibit "[TBD]"** (attached hereto and made a part hereof for all purposes); provided, however, that the parties have determined in good faith, and Firm agrees to be subject to, specific not-to-exceed amounts, inclusive of all fees and expenses, for the following identifiable, economically-feasible tasks and deliverables:

[TBD]

Without limiting the foregoing, the total amount due and payable to Firm under this Agreement shall be further subject to the following overall not-to-exceed amount, having been determined in good faith in the manner set forth herein: [**TBD at the inception of the Agreement**].

2.2 Expenses. Reasonable expenses incurred by Firm directly in the performance of its services will be reimbursed at cost; provided such expenses are approved in advance and in writing by HFC. Subcontracts for estimators, schedulers, payment-application reviewers, document controllers or other project consultants constitute at-cost reimbursable expenses, provided that the selection process is approved in advance by HFC. For the avoidance of doubt, the parties agree that reimbursable expenses shall not include first-class travel or accommodation, overhead or general administrative costs.

2.3 Invoice Procedures. Firm will be paid on the basis of invoices submitted by Firm no more than once per month, and approved by HFC, detailing the services provided by Firm during the previous month, 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 HFC may require. Hourly rates must be billed in no more than fifteen minute increments. To the maximum extent practicable, time spent must be listed in invoices by individual task. Block billing (i.e., aggregating multiple smaller tasks into a single 'block' entry for which a single time value is assigned) is prohibited. HFC will make payment to Firm within 30 calendar days of the receipt and approval by HFC of such invoices.

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

2.5 Term. The term of this Agreement shall begin on the Effective Date and, unless sooner terminated pursuant to the terms of this Agreement, expire on the five-year anniversary of the Effective Date (the "Term").

ARTICLE 3: INSURANCE

3.1 With no intent to limit Firm's liability under the indemnification provisions, Firm shall provide and maintain, and shall require its contractors and subcontractors to maintain, from the Effective Date, until final completion of all work related hereto, the following insurance and available limits of liability:

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
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Automobile Liability	Combined single limit of \$1,000,000
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Professional Liability	Limits of \$1,000,000 per claim and \$2,000,000 aggregate
Workers' Compensation	Statutory limits for Workers' Compensation
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

3.2 Each policy, except those for Workers' Compensation and Professional Liability, must include an additional insured endorsement in favor of HFC and the City of Houston (collectively, as used in this Agreement, the "Additional Insured Parties").

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

3.4 Firm shall be solely responsible for payment of all insurance premiums hereunder. Firm 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 HFC, its officers or employees.

3.5 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.

3.6 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.

ARTICLE 4: LIMITATION OF LIABILITY

4.1 EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE ADDITIONAL INSURED PARTIES, FIRM AGREES TO AND SHALL RELEASE THE ADDITIONAL INSURED PARTIES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT.

4.2 FIRM AGREES TO AND SHALL, TO THE MAXIMUM EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, INDEMNIFY, AND HOLD THE ADDITIONAL INSURED PARTIES HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY ARISING AS A RESULT OF FIRM'S AND/OR ITS

AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH PERFORMANCE UNDER THIS AGREEMENT, WHETHER FIRM IS IMMUNE FROM LIABILITY OR NOT. FIRM SHALL INDEMNIFY AND HOLD THE ADDITIONAL INSURED PARTIES HARMLESS THROUGHOUT THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE EXPIRATION OF SUCH TERM.

4.3 FIRM SHALL CAUSE ITS CONTRACTORS AND SUBCONTRACTORS TO RELEASE AND INDEMNIFY THE ADDITIONAL INSURED PARTIES TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE ADDITIONAL INSURED PARTIES.

4.4 If HFC or Firm 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.

4.5 This notice does not prevent HFC from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If HFC does not provide this notice within the 30-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.

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

4.7 If Firm elects to defend the claim, then HFC may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Firm may settle the claim without the consent or agreement of HFC, unless it (i) 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, (ii) would require the Additional Insured Parties to pay amounts that Firm does not fund in full, (iii) 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 5: DEFAULT AND TERMINATION

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

5.2 Default. Firm shall be deemed to be in default under this Agreement due to the occurrence of any of the following events:

- (1) Firm fails to perform or observe any term, condition or requirement under this Agreement;
- (2) Firm, or an employee, agent, contractor, or subcontractor of Firm, violates Applicable Law;
- (3) Firm becomes insolvent;
- (4) All or a substantial part of Firm's assets are assigned for the benefit of its creditors;
- (5) A receiver or trustee is appointed for Firm; or
- (6) Firm assigns this Agreement without the prior written consent of HFC.

5.3 Remedies. If default occurs, then HFC 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, HFC shall have the right, but not the obligation, to cure or cause to be cured on behalf of Firm any such default, and Firm shall pay HFC on demand all costs and expenses incurred by HFC in effecting such cure, in addition to all damages, losses, costs or expenses incurred by HFC as a result of such default by Firm.

5.4 Optional Notice of Default. If a default occurs, HFC may, but shall have no obligation to, deliver notice to Firm describing the default and allowing Firm at least 10 calendar days to cure the default. If HFC elects to allow the Firm the opportunity to cure the default, and Firm does so to the satisfaction of HFC before the termination date, then the termination is ineffective; should Firm 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 HFC.

5.5 Termination for Convenience. HFC reserves the right to terminate this Agreement for its convenience at any time by giving 30 calendar days' written notice to Firm. HFC's right to terminate this Agreement for convenience is cumulative of all rights and remedies that exist now or in the future. On receiving the notice, Firm shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Firm shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. HFC shall then pay the fees to Firm 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 FIRM'S EXCLUSIVE REMEDIES FOR HFC'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. FIRM 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 HFC'S TERMINATION FOR CONVENIENCE.**

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

5.7 Final Accounting. Upon termination of this Agreement by either party for any reason, Firm shall immediately discontinue all services under this Agreement; promptly cancel all orders or subcontracts chargeable to this Agreement; shall deliver to HFC a final accounting, reflecting the status of the Project and payments made to Firm, Architect, and others; and deliver true and correct copies of all documents that include information relating to the Project. Firm shall furnish all such other information and cooperate with HFC shall reasonably request in order to effectuate an orderly and systematic termination and/or transfer of Firm's duties hereunder.

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

ARTICLE 6: DIVERSITY

6.1 Good Faith Diversity Efforts. Firm shall make good faith efforts to award subcontracts equal to **thirty percent (30%)** of the value of this Agreement to certified, diverse suppliers of goods and services in accordance with the Diversity Program established by HFC, as may amended from time to time, which is made a part hereof for all purposes. Firm shall disclose to HFC the manner and extent to which it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC with each invoice, or as directed by HFC.

6.2 Affirmative Steps. If Firm intends to subcontract any portion of its services, then Firm must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

These affirmative steps must be taken by Firm in addition to the "good faith efforts" required by the Diversity Program established by HFC, and firm represents that it shall take these affirmative steps whenever subcontractors are solicited, regardless of whether Firm has achieved the aforementioned 30% of the total value of this Agreement.

ARTICLE 7: REQUIRED CONTRACT CLAUSES

7.1. Equal Employment Opportunity. During the performance of this Agreement, Firm agrees as follows:

- (1) Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) Firm will, in all solicitations or advertisements for employees placed by or on behalf of Firm, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) Firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) Firm will furnish all information and reports required by Executive Order 11246 of

September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of Firm's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Firm may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) Firm will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Firm will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7.2. Contract Work Hours and Safety Standards Act. Firm shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. sections 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR part 5), including all of the following requirements:

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in this section, Firm and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Firm and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. HFC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Firm or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.
- (4) Subcontracts. Firm and its subcontractors shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Firm, as prime contractor, shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

7.3. Clean Air Act. Firm agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. Firm agrees to report each violation to HFC and understands and agrees that HFC will, in turn, report each violation as required to assure notification to the Texas Division of Emergency Management, FEMA, and the appropriate regional office of the Environmental Protection Agency. Firm agrees to include these requirements in each subcontract exceeding \$150,000.

7.4. Federal Water Pollution Control Act. Firm agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Firm shall report all violations to HFC, and understands and agrees that HFC will, in turn, report each violation as required to assure notification to the Texas Division of Emergency Management, FEMA, and the appropriate regional office of the Environmental Protection Agency. Firm agrees to include these requirements in each subcontract exceeding \$150,000.

7.5 Suspension and Debarment. Firm acknowledges that this Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Firm is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Firm must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into so as to verify that none of any such contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Such certifications are a material representation of fact relied upon by HFC. If it is later determined that Firm did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to HFC, the City of Houston, and the State of Texas, and the Federal Government (including any department, agency or division thereof) may pursue available remedies, including but not limited to suspension and/or debarment. Firm agrees to comply with the requirements of 2 C.F.R. pt. 180,

subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of the Agreement. Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions, including but not limited to offers from bidders or proposers, to require their agreement to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while their offer is valid and throughout the period of any contract that may arise from their offer or proposal.

7.6 Byrd Anti-Lobbying Amendment. Firm and its contractors of any tier who apply or bid for an award of \$100,000 or more shall file the required certification in accordance with 31 U.S.C. §1352 (as amended). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Firm shall promptly forward each such disclosure from tier to tier up to HFC.

7.7 Certification Regarding Lobbying. Firm shall cause each of its contractors of any tier to complete and submit the following certification regarding lobbying (See Appendix A, 44 C.F.R. Part 18) with each bid or offer exceeding \$100,000:

[Name of contractor], the undersigned, certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of this agreement or any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement or any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required

certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Name of contractor] certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Firm understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Authorized Official

Date

Name/Title of Authorized Official

7.8. Procurement of Recovered Materials. In the performance of this Agreement, Firm shall make maximum use of products containing recovered materials that are Environmental Protection Agency (“EPA”)-designated items, unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price. Information about this requirement, along with the list of EPA-designate items, is available online at the EPA’s Comprehensive Procurement Guidelines site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

7.9 Changes. This Agreement may not be changed or altered except in the form of a written amendment signed by authorized representatives of Firm and HFC. Any such amendment requiring payment of additional fees shall include a defined scope of services and a detailed description of the specific methodology used to determine the additional fees, which Firm agrees shall be reasonable and calculated in good faith in a manner substantially similar to the method used to determine the fee under this Agreement.

7.10 Access to Records. Firm grants HFC, FEMA, the Texas Department of Emergency Management, and the Comptroller General of the United States, including any of their authorized representatives, access and the right to examine and review Firm’s books, documents, papers, and records that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Firm agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Firm shall maintain such books, records, and billing documents for 3 years after the cessation of Firm’s services under this Agreement. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations. Firm agrees to provide HFC, FEMA, the Texas Department of Emergency Management, and the Comptroller General of the United States, including any of their authorized representatives, access to construction or other work sites pertaining to the work being completed under this Agreement.

7.11 DHS Seal, Logo, and Flags. Firm shall not use the Department of Homeland Security (“DHS”) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

7.12 Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund the Agreement only. Firm will comply will Applicable Law, including but not limited to federal law, regulations, executive orders, FEMA policies, procedures, and directives.

7.13 No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to HFC, Firm, or any other party pertaining to any matter resulting from the Agreement.

7.14 Program Fraud and False or Fraudulent Statements or Related Acts. Firm acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Firm's actions pertaining to this Agreement.

ARTICLE 9: MISCELLANEOUS PROVISIONS

9.1 Force Majeure. Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. For purposes of this Agreement, Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders and the acts of superior governmental or military authority. This relief is not applicable unless the affected party does the following: uses due diligence to remove the Force Majeure as quickly as possible; provides the other party with prompt written notice of the cause and its anticipated effect; and provides the other party with written notice describing the actual delay or non-performance incurred within 7 calendar days' after the Force Majeure ceases. If the Force Majeure continues for more than 30 calendar days, then either party may terminate this Agreement by giving 15 calendar days' written notice to the other party; such termination is not a default or breach of this Agreement.

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

9.3 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.

9.4 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed received when actually received or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the other party at the address prescribed in the preamble hereof or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

9.5 Independent Contractor. The relationship of Firm to HFC shall be that of an independent contractor. Firm 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.

9.6 Governing Law/Venue. To the extent not preempted by federal law or regulation, 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.

9.7 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.

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

9.9 Extent of Agreement. This Agreement, including the exhibits made a part hereof, represents the entire and integrated agreement between HFC and Firm and supersedes all prior negotiations, representations or agreements either written or oral.

[signature block and exhibits to follow in final agreement]