



MATERIALS TESTING REQUEST FOR QUALIFICATIONS (“RFQ”)

ISSUE DATE: January 19, 2021

SOQS DUE: **2:00 P.M.** on **February 25, 2021** (“Submission Deadline”)

INSTRUCTIONS: Respondents are asked to submit five (5) paper copies and one (1) electronic copy of their SOQ on a flash drive. Diversity participation information provided by Respondent should be enclosed in a separately-sealed envelope (and in a separate folder on the flash drive) labelled “Diversity”. Electronic files should include the name of the company as the first part of the file name. Submittals must be delivered in a sealed package in person, via mail or courier. Any submittal received by email, fax, or after the Submission Deadline will be rejected.

SUBMIT TO: Houston First Corporation, Attn: Mitch Miszkowski, 701 Avenida de las Americas, Suite 200, Houston, TX 77010. Please write “**Construction Materials Testing**” clearly on the outside of the sealed package.

CONTACT INFO: Any questions concerning this RFQ must be submitted by email to bids@houstonfirst.com no later than **10:00 a.m.** on **February 11, 2021**. Material questions received will be answered collectively, rather than individually, in the form of a Letter of Clarification made available online at www.houstonfirst.com/do-business. Questions may be combined or edited for clarity or length at the discretion of HFC.

OVERVIEW

Houston First Corporation (“HFC”) requests statements of qualification (“SOQs”) from experienced firms to provide construction materials testing and inspections, including soil compaction, concrete paving, pre-cast concrete, structural cast-in-place concrete and structural steel framing, as specified in the construction documents in connection with the redevelopment of Lynn Wyatt Square for the Performing Arts, an urban park occupying a full city block in downtown Houston, Texas, formerly known as Jones Plaza.

Construction documents prepared by the project architect, including the [Specifications](#) and [Drawings](#), are linked in this sentence.

BACKGROUND

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

HFC is responsible for the operation and management of the George R. Brown Convention Center, Avenida Houston, Partnership Tower, Wortham Theater Center, Jones Hall for the Performing Arts, Miller Outdoor Theatre, an array of outdoor properties (including Lynn Wyatt

Square for the Performing Arts), and parking facilities that can accommodate nearly 10,000 vehicles.

HFC represents the consolidation of the former City of Houston Convention & Entertainment Facilities Department and the Houston Convention Center Hotel Corporation. The Houston Convention Center Hotel Corporation (now called Houston First Corporation) was organized in 2000. The consolidation with the Convention & Entertainment Facilities Department was effective on July 1, 2011.

Lynn Wyatt Square, formerly known as Jones Plaza, is a 1.5 acre publicly-owned city block strategically located in Houston's Theater District in the heart of Downtown. The 2015 Theater District Master Plan, commissioned by HFC, identified the underutilization of Jones Plaza and the potential of the site to become one of Houston's premier public squares. In late 2017, HFC issued a Request for Qualifications for the Re-Design of Jones Plaza; Rios Clemente Hail Studios was selected to provide design services as a result of that process.

The firm produced an ambitious design inspired by an urban choreography of movements and places around the plaza. As the focal point of the Theater District, Lynn Wyatt Square will offer unique experiences and discovery with its various pathways and physical materials, including performance areas, water features, and a two-story dining facility. The design is intended to welcome and encourage the rhythms of everyday life and transform Lynn Wyatt Square into a thriving social destination.

On November 20, 2020, HFC issued a Request for Competitive Sealed Proposals in connection with the project, as allowed under Chapter 2269.151 of the Texas Government Code for the construction, rehabilitation, alteration, or repair of a facility. The selection process is ongoing.

HFC anticipates that construction will begin in early 2021 and be complete by within 480 calendar days. The estimated construction budget for the project is approximately \$19,000,000.00.

MINIMUM QUALIFICATIONS

The following minimum qualifications for submitting a SOQ in response to this RFQ have been established and shall apply: (i) Respondents shall have at least five years' experience in construction materials testing; (ii) Respondents must demonstrate the ability, means and resources to perform the services required in connection with this solicitation; (iii) Respondents must accept and agree to comply, if selected, with the Materials Testing Services Agreement; and (iv) if the Respondent is a business entity, then the Respondent must be validly-formed and in good standing in its state of formation (and, if such state is not Texas, duly qualified to transact business in the State of Texas).

Any Respondent who does not meet all of the minimum qualifications is deemed nonresponsive and will have their SOQ rejected by HFC without further review or consideration.

SOQ FORMAT

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

- a. **Transmittal Letter:** Provide a brief introductory letter communicating why the Respondent the firm should be selected. The letter must be signed by a person authorized to make representations on behalf of the Respondent and include their direct phone number and email address. Respondents must make a specific, unambiguous statement accepting

and agreeing to comply, if selected, with the Materials Testing Services Agreement set forth below as Attachment “A”.

- b. **Firm Profile:** Provide a brief profile of the Respondent, noting its history, structure, strengths, and abilities. Be sure to note any prior company names by which the firm has been known, the number of years the firm has been in business, and the location of the office from which the majority of work will be performed. Provide Respondent’s testing facility certifications, equipment, and testing capabilities. Respondents must disclose if their firm has, within the past five years, (i) been party to a service contract terminated for cause, or (ii) received material, adverse findings from any governmental authority having regulatory oversight of services similar to those required under this RFQ.
- c. **Essential Personnel:** Introduce the key personnel who would be assigned to provide services under any resulting agreement, explain their respective functions, and include a brief summary of their qualifications.
- d. **Experience:** Provide three references for ongoing or recently-completed construction materials testing services performed by Respondent and describe the extent to which the essential personnel named in the SOQ were involved. For each such reference, include a brief description of the project and a contact name, phone number, and email address. (HFC may not be used as a reference.)
- e. **Diversity Efforts:** Indicate how the Respondent intends 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 18 pages (excluding forms responsive to the Diversity Efforts item).

EVALUATION

Each SOQ received in response to this RFQ will be reviewed and ranked based on the following weighted criteria: Transmittal Letter, including acceptance of the Materials Testing Services Agreement (10 points); Firm Profile (20 points); Essential Personnel (30 points); Experience (30 points); and Diversity Efforts (10 points).

HFC reserves the right to schedule and conduct interviews by video conference call with the top-ranked Respondents, not to exceed five. 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.

Pursuant to and in accordance with the requirements of Chapter 2254 of the Texas Government Code and the HFC Procurement Manual, HFC will 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 HFC and such firm should fail to agree on such fair and reasonable compensation, then HFC reserves the right to and may conduct negotiations with the next most-qualified Respondent. If necessary, HFC will conduct negotiations with successive Respondents in descending order until a contract award can be made to a qualified Respondent whose price HFC believes is fair and reasonable.

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

LETTERS OF CLARIFICATION

Responses to all material questions timely submitted by potential Respondents, as well as revisions incorporated into this solicitation by HFC, if any, will be confirmed collectively in one or more letters posted online at www.houstonfirst.com/do-business (each a "Letter of Clarification"). When issued, each Letter of Clarification will become part of this solicitation 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 website and ensure they review 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 Materials Testing Services Agreement set forth below as Attachment "A". Any requests for clarification or modification to the terms of such agreement by potential Respondents must be timely submitted by email to bids@houstonfirst.com. 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 may be disregarded and result in a submittal being deemed, in HFC's discretion, 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](#). HFC has established the following goal for these services: **24%** of the total value of the resulting 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.

VENDOR CODE OF CONDUCT

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

NO PRE-SUBMITTAL MEETING

A pre-submittal meeting has not been scheduled in connection with this solicitation, and HFC does not anticipate that such a meeting will be held.

RESTRICTIONS ON COMMUNICATIONS

Throughout the selection process, commencing with the Issue Date, potential Respondents are directed not to communicate, directly or indirectly, with any HFC employee, officer, director, or selection committee member regarding their SOQ, or any matter relating to this solicitation, other than through bids@houstonfirst.com or during the Pre-Submittal Meeting. Respondents are solely

responsible for observation and compliance with such restrictions, and HFC reserves the right to reject any submittal due to violation of this provision.

CONFLICTS OF INTEREST

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

PROTEST PROCEDURES

Any protest relating to the form, terms and conditions, selection criteria, specifications, exhibits, or any other material solicitation 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 approval of a contract resulting from this solicitation by HFC.

All protests must be made in writing and delivered to Houston First Corporation, Attn: Purchasing Agent, 701 Avenida de las Americas, Ste. 200, Houston, TX 77010. To be considered by HFC, protests must be timely received and include, at a minimum, all of the following information: (a) The name, address and contact information of the Respondent, with sufficient information to establish that a bona fide Respondent is the person or entity filing the protest; (b) The full title of the solicitation; (c) Material grounds for the protest, including the provisions of the solicitation 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 protestor wishes to have HFC consider; and (f) An affidavit attached to support any factual allegations stated in the submission. The Purchasing Agent will notify the Respondent promptly to acknowledge receipt of a protest.

PUBLIC INFORMATION

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

SOLICITATION PACKETS

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

WITHDRAWAL; ERROR

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

**Attachment “A”
MATERIALS TESTING SERVICES AGREEMENT**

This Materials Testing Services Agreement (“Agreement”) is made by and between Houston First Corporation (“HFC”), 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 “Project” means the planned construction improvements on Block 65 in downtown Houston, Texas, known as Lynn Wyatt Square, bounded by Louisiana St., Capitol St., Smith, St., and Texas Ave., including a two-story dining facility, water features, performance areas, lighting, and various pathways.

1.2 The term “Work” means the construction material testing, including cast-in-place concrete and structural steel testing, and related services performed by Contractor, whether related to the Project or not, and includes all labor, materials, supervision, transportation, tools, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations.

1.3 Work performed by Contractor shall be as ordered by HFC on an as-needed basis in its sole and absolute discretion, to be initiated upon issuance by HFC by one or more written task orders in a form approved by HFC’s General Counsel (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.

1.4 CONTRACTOR AND HFC ACKNOWLEDGE AND AGREE THAT THE WORK AND PROJECT CONSTITUTE AND SHALL BE CONSIDERED TO BE A PUBLIC WORKS PROJECT OF A MUNICIPALITY FOR ALL PURPOSES, INCLUDING CHAPTER 151 OF THE TEXAS INSURANCE CODE.

ARTICLE 2: RESPONSIBILITIES OF CONTRACTOR

2.1 Contractor shall perform the Work in accordance with this Agreement and in a manner consistent with the professional skill and care ordinarily provided by experienced material-testing contractors 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 the Project or specific tasks ordered by HFC.

2.2 Contractor shall supervise the Work, using Contractor’s best skill and attention. All Work shall be performed by, or under the direct supervision of, one or more Texas-registered professional engineers.

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, as well as applicable requirements of the current reference standards of the American Concrete Institute, American Institute of Steel Construction, American Society for Testing and Materials, and American Welding Society.

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 maintain valid certification by the American Association for Laboratory Accreditation for the duration of performance of services on connection with this Agreement and shall provide proof of valid certification upon request from HFC. Contractor shall immediately notify HFC 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 HFC. Neither partial payments made hereunder nor approval of invoices or services by HFC 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 HFC, its contractors and agents, and any third party managing or performing work on the Project.

2.10 Contractor shall make good faith efforts to award subcontracts equal to 24% of the value of this Agreement to certified, diverse suppliers of goods and services in accordance with the Diversity Program established by HFC, which is made a part hereof for all purposes. Contractor 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.

ARTICLE 3: COMPENSATION

3.1 Payment to Contractor for services performed shall be based on the hourly rates set forth in Exhibit "A"; 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. Additionally, the parties have determined in good faith, and Contractor agrees to be subject to, a not-to-exceed amount of **#[TBD]**, inclusive of all fees, expenses, tasks and deliverables for the Work to be performed during the period extending from the Effective Date through and including December 31, 2021.

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 HFC, and further provided that HFC 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 HFC, 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 HFC may require.

3.4 If any item in any invoice submitted by Contractor is disputed by HFC for any reason, including lack of supporting documentation, then HFC shall temporarily delete the disputed item and pay the remaining amount of the invoice; provided, however, that HFC shall promptly notify Contractor of the dispute and request clarification and/or remedial action. After any dispute shall have been settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on 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 HFC. Neither partial payments made hereunder nor approval of invoices or services by HFC 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 HFC

4.1 HFC 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 Project, including HFC's objectives, constraints, space requirements, flexibility, expandability and site requirements.

4.2 HFC will identify a representative authorized to act on HFC's behalf with respect to the Project. HFC 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. HFC 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 HFC and the City of Houston (collectively, as used in this Agreement, the "Additional Insured Parties").

5.3 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.

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 HFC, 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 HFC, 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 HFC 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 HFC AND THE CITY OF HOUSTON TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE ADDITIONAL INSURED PARTIES. Contractor's indemnification obligations hereunder shall survive the completion of the Work or the sooner termination of this Agreement.

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

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

5.13 If Contractor 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. Contractor may settle the claim without the consent or agreement of HFC, 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 HFC 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 HFC.

6.3 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 Contractor any such default, and Contractor 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 Contractor.

6.4 Optional Notice of Default. If a default occurs, HFC 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 HFC elects to allow the Contractor the opportunity to cure the default, and Contractor does so to the satisfaction of HFC 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 HFC.

6.5 Termination for Convenience. HFC 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. HFC'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. HFC 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 HFC'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 HFC'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 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 Contractor 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 Contractor 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.

6.7 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 Contractor. 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 Contractor owes HFC 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. **HFC 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 OF INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF HFC HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.**

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 HFC. 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 HFC. HFC 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 HFC 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 HFC at any time, without notice to Contractor, in the sole and absolute discretion of HFC.

7.7 Survival. Contractor 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.

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

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 HFC (the “Effective Date”):

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