



THEATER DISTRICT
PARKING ACCESS AND REVENUE CONTROL SYSTEM
REQUEST FOR PROPOSALS (“RFP”)

ISSUE DATE: March 23, 2018

DUE DATE: **2:00 p.m.** on **April 12, 2018** (“Submission Deadline”)

INSTRUCTIONS: Please submit five (5) paper copies and one (1) electronic copy of the proposer’s proposal (“Proposal”) on a flash drive. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write “**PARCS RFP**” 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 RFP must be submitted by e-mail to bids@houstonfirst.com no later than **9:00 a.m.** on **April 6, 2018**. Questions will be answered collectively in the form of one or more letters of clarification (each a “Letter of Clarification”) and made available online for all prospective proposers at www.houstonfirst.com/do-business.

1. OVERVIEW

Houston First Corporation (“HFC”) requests responsive proposals (“Proposals”) from highly-qualified providers capable of providing a comprehensive Parking Access and Revenue Control System (“PARCS”) for control and management of vehicular parking within its Theater District parking garages in downtown Houston, Texas.

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 manages and operates more than 10 city-owned facilities, including the George R. Brown Convention Center, Gus S. Wortham Theater Center, Jones Hall for the Performing Arts, and Miller Outdoor Theatre. HFC is the entity responsible for marketing Houston and increasing awareness of its many attractions and amenities.

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

On August 27, 2017, floodwater resulting from Hurricane Harvey inundated the basement of the Wortham Theater Center and filled the Theater District Underground Parking Garage with millions of gallons of water.

The previously existing system, comprised of T2 Series 1 devices and barrier gates, was extensively damaged by floodwater and will need to be removed.

HFC has engaged an architect, project manager and construction manager-at-risk to assist in the restoration of the affected facilities to their pre-loss condition.

2. PROJECT SCOPE

HFC requires a flexible, integrated solution able to address transient, contract and even parking needs. There are 16 lanes in total, two of which must be reversible. Equipment requirements for a successful configuration are expected to include all of the following PARCS hardware and devices:

- a. Sixteen (16) Gates;
- b. Sixteen (16) Bar Code Scanners;
- c. Sixteen (16) Keypads;
- d. Sixteen (16) AVI Readers (EZ tag readers);
- e. Nine (9) Ticket Dispensers;
- f. Seven (7) Exit Verifiers;
- g. Seven (7) Adam Controllers; and
- h. Six (6) In-Lane Cashier Stations or Pay Stations

Data connectivity will be provided in intermediate distribution frame (IDF) rooms in the Facility; the Contractor selected will be required to install pathway and cable from such rooms to locations needed by the PARCS. Electrical power and infrastructure will be installed by HFC’s contractor.

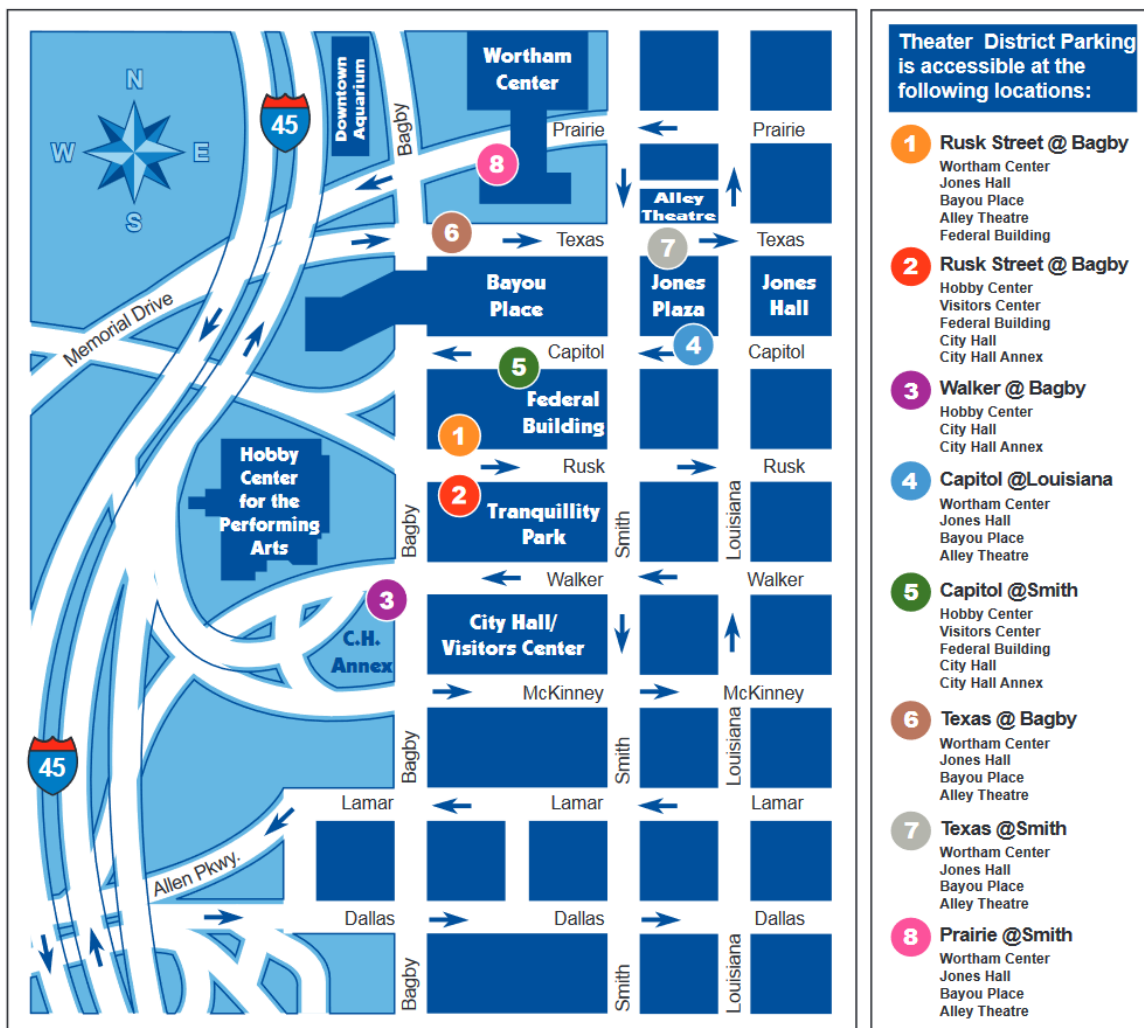


Figure 1. Theater District Parking Entrances

3. MINIMUM REQUIREMENTS

The PARCS proposed by the Proposer must, at a minimum, meet all of the following criteria:

- a. Accommodate transient, contract and event parking (including concerts, performing arts performances, movie screenings, and special events);
- b. Feature new equipment and state-of-the-art technology;
- c. Be configured, shipped, installed, tested, and completed as turn-key project;
- d. Fully PCI DSS 3.2 compliant with P2P encryption;
- e. Include a pay lane in all exits and entrances;
- f. Allow for electronic validation of parking tickets;
- g. Interface with Tessitura, Ticketmaster®, and similar event-ticketing systems; and
- h. Include a five-year warranty.

Additionally, HFC would prefer a PARCS capable of processing online payment for proximity cards and hangtags.

The Project is to be complete by September 1, 2018, subject to adjustment under the terms of the Theater District Parking Access and Revenue Control System Agreement.

4. PROPOSAL FORMAT

Although HFC prefers substance over form, to be considered responsive, Proposers are asked to review the following criteria/information requests and respond, in order, to the best of their ability:

- a. **Transmittal Letter:** Write a letter 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 Proposer and include a direct phone number and email address. Proposers must make a specific, unambiguous statement accepting and agreeing to comply with the Theater District Parking Access and Revenue Control System Agreement if selected.
- b. **Experience:** Describe the Proposer's history in meeting the needs of its clients. Provide three current references for completed PARCS configured and installed by Proposed at major parking facilities that have been fully operational for at least three years. Include the name, phone number and email address for the manager for each such reference. (HFC and the City of Houston may **not** be used as a reference.)
- c. **Project Team:** Identify the essential personnel who would will be dedicated to installing the propose PARCS, such as the project manager, responsible corporate executive and any probable subcontractors (with any diversity certifications noted); include a brief summary of their qualifications.
- d. **Pricing Form:** Please submit pricing for implementing the PARCS based on the Project Scope and Minimum Requirements, including itemized fees for equipment, software, services, warranty, and shipping using the as set forth in Attachment "A".
- e. **Suggestions and Optional Features:** HFC welcomes, but does not require, insightful suggestions and recommendations from Proposers to make the PARCS at the Facility more efficient, such as alternative configurations and technological innovations having the effect of reducing labor requirements, materially improving operations, or otherwise reducing costs. Optional features may also be included in this section of the Proposal. Any known additional costs or savings must be defined clearly.
- f. **Proposer Questionnaire:** To meet the needs of HFC for this Project and better understand the benefits

of the Proposer's PARCS, please review and respond to each item in the attached questionnaire. Any costs to HFC for such projects and services must be defined clearly.

- g. **Responsiveness:** All information provided by Proposers to HFC should be organized, clear and concise. Proposers are asked to avoid excessive graphics, title pages, or other extraneous information in their Proposal other than requested by HFC.

5. EVALUATION

HFC will review and rank every proposal received in response to this RFP based on the following weighted criteria: Transmittal Letter, including expressed acceptance of the Theater District Parking Access and Revenue Control System Agreement (15%); Experience, including references (25%); Project Team (15%); Pricing (20%); Proposer Questionnaire responses (20%); and Responsiveness (5%).

HFC intends to award the contract to the Proposer offering the best value to HFC, as measured by HFC utilizing the foregoing evaluation criteria, and reserves the right to award the contract to other than the lowest price proposed.

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

6. PRE-PROPOSAL MEETING AND SITE TOUR

A pre-proposal meeting and site tour will be held at **11:00 a.m. on April 3, 2018**. Proposers should meet at Fish Plaza in front of the Wortham Theater Center main doors, located at 501 Texas Ave., Houston, Texas 77002 (between Bagby and Smith Streets). As restoration work is ongoing, Proposers 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. Though not mandatory, all potential Proposers are urged to be present.

7. LETTERS OF CLARIFICATION

Revisions incorporated into this RFP, if any, will be confirmed in a letter issued by email no later than 48 hours prior to the Submission Deadline at <https://www.houstonfirst.com/do-business/> ("Letter of Clarification"). When issued by HFC, Letters of Clarification become part of this RFP automatically and supersede any previous specifications or provisions in conflict therewith.

8. ANTI-LOBBYING CERTIFICATION

Proposers are required to complete and submit The Anti-Lobbying Certification attached hereto as Attachment "B" with their Proposal.

9. CERTIFICATION REGARDING DEBARMENT/SUSPENSION

Proposers are required to complete and submit the Certification Regarding Disbarment/Suspension attached hereto as Attachment "C" with their Proposal.

10. PROPOSER QUESTIONNAIRE

Proposers are required to complete and submit the Proposer Questionnaire attached hereto as Attachment "D" with their Proposal.

11. FORM OF AGREEMENT

By submitting a response to this RFP, Proposer agrees, upon notice of selection, to enter into the Theater District Parking Access and Revenue Control System Agreement attached hereto as Attachment "E". Any questions or objections to the terms must be raised prior to submission of a Proposal by submitting an email to

bids@houstonfirst.com. Preprinted forms or standard terms submitted by a Proposer shall be disregarded and may result in a Proposal being deemed, in HFC's reasonable discretion, as non-responsive.

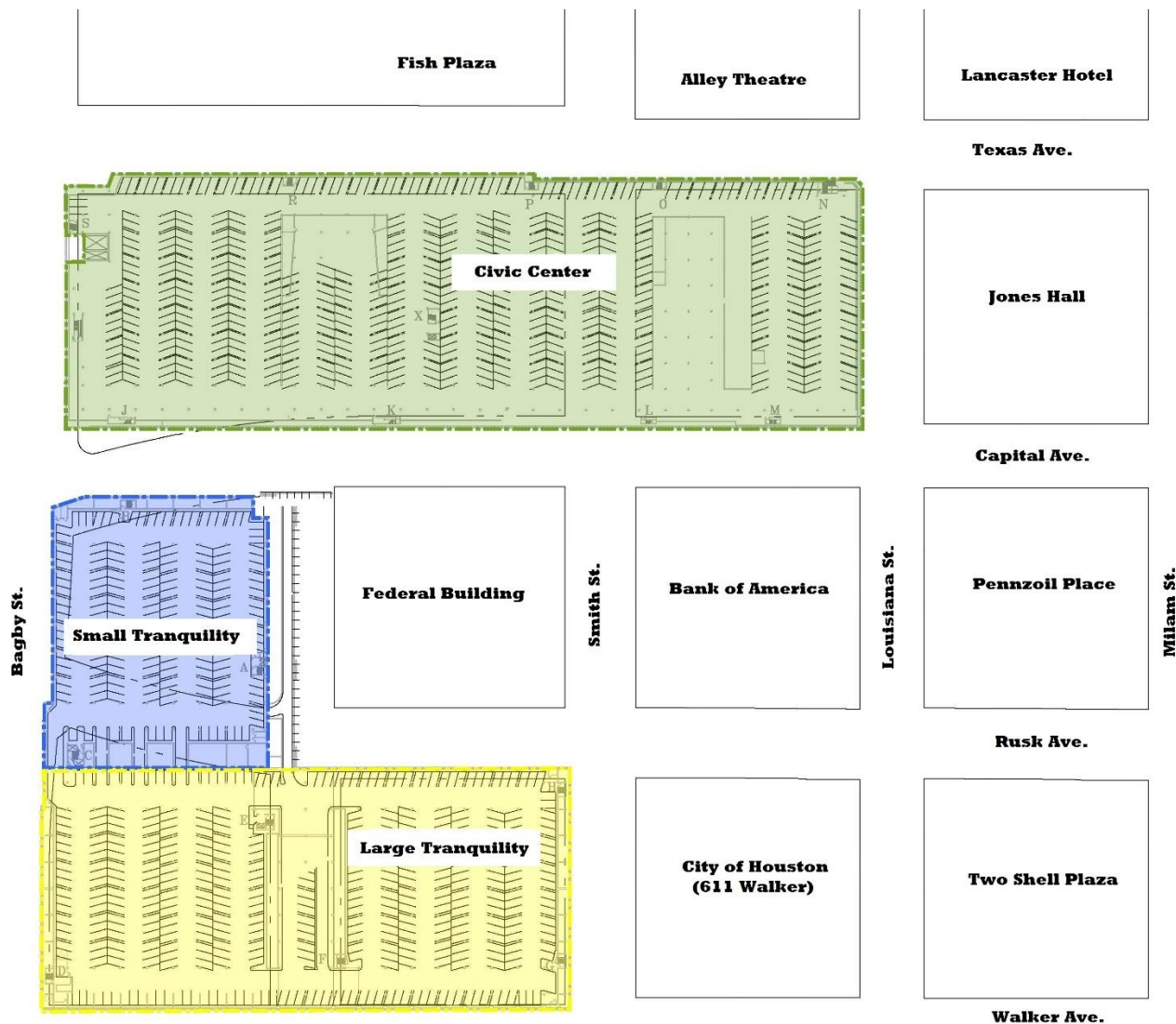


Figure 2. Color-coded Map of Theater District Parking Garages

12. AFFIRMATIVE STEPS – DIVERSITY

If the Proposer intends to subcontract any portion of the services, then the Proposer 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:

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

13. RESTRICTIONS ON COMMUNICATIONS

From the date issued until the Submission Deadline, Proposers are directed not to communicate with any HFC officer, director, employee, agent, or contractor regarding any matter relating to this Proposal, other than through bids@houstonfirst.com, HFC representatives during the Pre-Proposal Meeting and Site Tour, or as authorized in advance by HFC's General Counsel. HFC reserves the right to reject any Proposal due to violation of this provision. Proposers represent that the contents of their Proposals have not been communicated, directly or indirectly, to any potential Proposer, and that their submissions are made in compliance with federal and state antitrust laws without previous understanding, agreement or connection with any competitor or other potential Proposer.



Figure 3. Flooding in Yellow Garage, First Level (August 27, 2017)

14. CONFLICT OF INTEREST

Proposers are required to disclose affiliations or business relationship that might cause a conflict of interest with HFC. The disclosure form, if required, is available online at: <http://www.ethics.state.tx.us/forms/CIQ.pdf>. By submitting a Proposal, Proposers represent that they are in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

15. PUBLIC INFORMATION

HFC is subject to the Texas Public Information Act (“TPIA”). Information submitted by Proposers 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. Proposers 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.



Figure 4. Flooded Garage Entrance on Rusk St. (August 28, 2017)

16. RFP PACKETS

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

17. WITHDRAWAL OF PROPOSAL; ERRORS

To withdraw a Proposal due to an error or any other reason, a written request from the Proposer must be received at bids@houstonfirst.com prior to the Submission Deadline.

ATTACHMENT “A” PRICING FORM

1. PRICING

Based on the Project Scope, Minimum Requirements, and Theater District Parking Access and Revenue Control System Agreement, Proposers are to provide pricing for their proposed PARCS. Pricing should be phased based on the three Project milestones noted: Effective Date; Install Complete; and Date of Completion. Each box **must** be filled with a dollar figure, or as appropriate, “n/a” or “Included”.

Software licenses or any other ongoing costs **must** be stated for a combined total of 5 years to match the warranty period.

In providing pricing, each Proposer **must** assume that all equipment, systems, hardware, and software used as part of the previously system are 100% inoperable and will need to be replaced entirely.

	Effective Date	Install Complete	Date of Completion	Total
Equipment				
Software				
Labor				
Warranty				
Shipping				
Grand Total:				

2. SUGGESTIONS AND OPTIONAL FEATURES

Proposers who have elected to provide additional suggestion and recommendations to make the PARCS at the Facility more efficient (See section 4(e) of the RFP), such as alternative configurations and technological innovations having the effect of reducing labor requirements, materially improving operations, or otherwise reducing costs are asked to attached additional information to this Pricing Form. Any known additional costs or savings must be defined clearly.

3. SPECIFICATIONS

Provide a current product specification sheet for each proposed PARCS component, as well as software licenses, if any, required to operate the proposed PARCS.

**ATTACHMENT “B”
ANTI-LOBBYING CERTIFICATION**

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

- (1) No Federal appropriated funds 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 proposer 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 proposer certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned proposer understands and agrees that the provisions of 31 USC § 3801 *et seq.*, apply to this certification and disclosure, if any.

Legal Name of Proposer: _____

By:

Signature: _____ Date: _____

Name/Title of Authorized Representative: _____

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

The undersigned proposer (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, proposer is required to verify that none of the proposer , 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 proposer 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.

Proposer 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 Proposer: _____

By:

Signature: _____ Date: _____

Name/Title of Authorized Representative: _____

ATTACHMENT “D” PROPOSER 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 RFP. Accordingly, the proposer 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 proposer (each a “Proposer”) 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 Proposer.

For all of the foregoing reasons, HFC expects each Proposer, to be considered responsive to the requirements of the foregoing RFP, to include a comprehensive document in its Proposal answering all of the following questions fully and truthfully:

1. INTEGRITY

- a. How long has the Proposer been in business?
- b. Is the Proposer in good standing under the laws of its state of incorporation?
- c. Does the Proposer possess the experience, means and resources to perform services in connection with this RFP?
- d. Has the Proposer, or any of its principals, in the past 5 years, knowingly or intentionally committed fraud or a criminal offense in connection with obtaining or attempting to obtain a contract? If so, please explain.
- e. Has the Proposer, or any of its principals, in the past 5 years, knowingly or intentionally violated antitrust statutes? If so, please explain.
- f. Has the Proposer, or any of its principals, in the past 5 years, knowingly or intentionally committed embezzlement, theft, forgery, bribery, falsification or destruction of records, or tax evasion? If so, please explain.
- g. Has the Proposer, or any of its principals, in the past 5 years, knowingly or intentionally made a false statement to a governmental authority? If so, please explain.
- h. Is the Proposer currently delinquent in the payment of Federal, state or local taxes? If so, please explain.
- i. Has the Proposer, in the past 5 years, defaulted under a contract forcing its surety to suffer a loss? If so, please explain.
- j. Is the Proposer currently a party to any litigation that may materially affect its ability to perform services in connection with this solicitation? If so, please explain.

2. COMPLIANCE

- a. Would the Proposer please explain how the PARCS proposed will achieve PCI DSS 3.2 compliance, and the underlying technology behind it?

- b. Can EZtags be used to access the parking garages, and does the proposed PARCS have the potential to interface with license plate readers? If so, please specify which readers can be used.
- c. Will the proposed PARCS be cloud-based? If so, please explain the manner and extent to which software and data and the proposer PARCS will reside and rely on the cloud.
- d. What will be the processing time be for credit card transactions under the proposed PARCS?
- e. What type of validations are available under the proposed PARCS? (e.g., mass, online, code, scanner, internet validation or coupons, etc.)
- f. Would the proposed PARCS allow large group pre-payment?
- g. Is pre-payment by credit card at the entrance for a flat fee possible?
- h. What type of gate entrances will the proposer PARCS include, and what options are available?
- i. How will the proposed PARCS integrate with event-ticket sales?
- j. What is the Proposer's guaranteed response timeframe for service call?
- k. Does the Proposer maintain an office or location in Houston?
- l. Are the Proposer's repair technicians based in Houston?
- m. Does the Proposer maintain an inventory of PARCS replacement parts in Houston?
- n. Will the Proposer please describe the manner and type of service offered during installation?
- o. Would the Proposer please describe its PARCS training program? Is any annual operator training required or offered? Are there any costs to the owner for such training?
- p. Can the proposed PARCS be linked to a central command center? If so, please describe and reference three other projects installed by Proposer featuring a similar configuration.

3. CERTIFICATION

The undersigned Proposer represents and warrants that all of the information provided by Proposer in response to the foregoing Proposer Questionnaire is true, correct, complete, 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 Proposer: _____

By:

Signature: _____

Date: _____

Name/Title of Authorized Representative: _____

ATTACHMENT “E”
THEATER DISTRICT PARKING ACCESS AND REVENUE CONTROL SYSTEM AGREEMENT

This Theater District Parking Access and Revenue Control System Agreement (“Agreement”) is made by and between Houston First Corporation (“HFC”), whose address is 701 Avenida de las Americas, Ste. 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:

1.0 Project Overview and Defined Terms

1.1 The name of this project, located in downtown Houston, Texas, is the **Theater District PARCS** (“Project”). The Project site consists of the Theater District Underground Parking Garage, a multi-story level facility comprised of three interconnected garages, having a street address of 511 Rusk St., Houston, Texas 77002, and featuring approximately 3,369 parking spaces (“Facility”).

1.2 The term “Manufacturer” means [TBD], the PARCS equipment and software manufacturer, its successors and assigns.

1.3 The term “PARCS” means the comprehensive parking access revenue control system comprised of Manufacturer parking management equipment and software to be designed, procured, configured, delivered, installed, tested and certified as fully operational by Contractor in strict accordance with the terms and conditions of this Agreement, Manufacturer’s specifications, and best industry practices.

1.4 The term “Work” means all equipment, materials, software, supplies, labor, supervision, tools, transportation, fuel, insurance, and other facilities and services provided or performed by Contractor necessary to design, procure, configure, deliver, install, test, certify and (for the duration of each warranty period) maintain a united PARCS in strict accordance with the terms and conditions of this Agreement.

1.5 The scope of this Project requires that Contractor shall design, procure, configure, and install a turnkey PARCS in strict accordance with the terms and conditions of this Agreement, including all equipment, materials, software, supplies, labor, supervision, transportation, fuel, insurance, bonds, and other goods and services necessary to operate a united system controlled by HFC both remotely and at its main parking office.

1.6 Equipment and other system requirements for the PARCS are as itemized in the attached **Exhibit “[TBD]”** made a part hereof for all purposes.

1.7 Contractor agrees to and shall undertake and complete the Project in accordance with the terms and conditions of this Agreement no later than **September 1, 2018** (“Contract Time”), subject to adjustments in accordance with this Agreement:

1.8 CONTRACTOR AND HFC ACKNOWLEDGE AND AGREE THAT THE PROJECT AND ALL WORK RELATED THERETO 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.

1.9 No employee, contractor or agent of HFC has the authority to authorize Contractor to perform an act or work contrary to this Agreement.

2.0 Responsibilities of Contractor

2.1. Contractor shall employ an experienced project manager and necessary assistants who shall be present at the Project site during performance of the Work. The project manager shall represent Contractor, and communications given to the project manager shall be as binding as if given to Contractor.

2.2 Execution of this Agreement by Contractor is a representation to HFC that Contractor has visited the Facility, become familiar with local conditions under which Contractor’s work is to be performed, and correlated personal observations with requirements of this Agreement.

2.3 Contractor shall perform and direct the Work using Contractor’s best skill and attention. Contractor shall be solely responsible for, and have control over, means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, except to the extent other, specific instructions concerning such matters are set forth in this Agreement.

2.4 Contractor shall ensure that only trained and skilled persons having substantial experience and under Contractor's direct supervision perform any portion of the Work. Contractor shall enforce strict discipline and good order among such persons. Any tradespersons employed by Contractor or its subcontractors shall be licensed by the Texas Department of Licensing and Regulation.

2.6 Contractor shall perform the Work in accordance with applicable safety laws, rules and regulations, such as OSHA standards and directives for setting-up and utilizing platforms, lifts, ladders, scaffolding, safety lines and belts, and operating other, similar equipment. Contractor shall ensure that all persons performing the Work use personal protective equipment, safety harnesses, fall protection equipment, and other equipment in the manner and to the extent required to perform the Work safely.

2.7 Contractor shall, on a daily basis or as requested by HFC, clean the Project site and any adjacent areas affected by the Work and promptly remove and dispose of debris in a safe, environmentally responsible manner. Contractor shall remove waste materials, rubbish, Contractor's tools, equipment, machinery, and surplus materials from and about the Project site.

2.8 Contractor shall, as directed by HFC, remove existing parking equipment to be replaced by the PARCS and dispose of same in an environmentally-friendly manner at Contractor's sole cost and expense.

2.9 Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required under this Agreement.

2.10 Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

2.11 HFC is not responsible for storage of Contractor's tools, equipment or materials and Contractor shall not leave same unattended at the Project site for any duration of time.

2.12 The manner and extent to which Contractor may use common areas of the Facility shall be determined by HFC in its sole, but reasonable discretion.

2.13 All risk of destruction, loss or damage to the equipment or any part thereof from any cause whatsoever shall be the sole responsibility of Contractor until the Date of Final Completion.

2.14 Contractor acknowledges that the Facility shall remain in operation during the Project. The performance of Work by Contractor shall take into account scheduled events and activities at the Facility. Contractor shall take all precautions to minimize dust, noise, and fumes, and to prevent power outages or the disturbance of utilities, fire suppression equipment, plumbing systems, and any other equipment or systems connected to the Facility.

2.15 Contractor shall provide HFC with remote support as needed throughout the Work and warranty periods on a 24-hour, 365-day basis. Contractor shall work diligently to resolve problems remotely within **[TBD]** of contact; if a problem cannot be resolved during such timeframe, then Contractor shall dispatch a Houston-based service technician to the Facility and work diligently to resolve the problem within four hours. Additionally, Contractor represents that it shall maintain an inventory of equipment in the greater Houston area.

2.16 Contractor shall provide, at no cost to HFC, three separate in-person PARCS training sessions in Houston, addressing general maintenance (how to open/close, clean equipment, etc.); cashier/intercom management training (day-to-day operations); and management training (pulling reports, rate adjustments, basic functionality and features). Each training session shall be 2-4 hours in duration, and session dates shall be determined by mutual agreement of the parties. Contractor shall respond to post-training sessions questions submitted by attendees and, upon request from HFC, schedule a follow-up session by conference call at no additional charge to HFC.

2.17 Contractor shall promptly notify HFC in writing once all Work at the Facility is complete. HFC shall inspect the Work with Contractor and confirm in writing within 10 calendar days of inspection that the Work is approved and accepted by HFC (the date of such notice shall be the "Date of Completion"); provided, however, that neither inspection, acceptance, nor payment for any of the Work shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable to HFC in accordance with applicable law for breach of contract and for all damages to HFC caused by Contractor's negligent performance of any of the Work performed or equipment furnished under this Agreement.

2.18 Prior to the Date of Completion, Contractor shall provide HFC with true and correct copies of all maintenance and service manuals for all equipment and systems in print and electronic form.

3.0 Payment

3.1 Subject to the terms of this Agreement, HFC agrees to pay Contractor [TBD] (“Contract Sum”), based on the following dates and Project milestones:

<u>Effective Date</u>	<u>Installation Complete</u>	<u>Date of Completion</u>
[TBD]	[TBD]	[TBD]

3.2 Contractor shall timely submit invoices to HFC as a condition of payment from HFC in accordance with the immediately preceding Section.

3.3 The alternates set forth below may or may not be added to the Project and incorporated into this Agreement at the sole and absolute discretion of HFC. If HFC elects to add one or more of the following alternates to this Agreement, then HFC shall issue a notice to proceed to Contractor signed by HFC’s President & CEO, and Contractor shall design, procure, configure, deliver, install, test and certify such alternates as fully operational in strict accordance with the terms of this Agreement:

[TBD]

3.3 HFC agrees to pay Contractor within 30 calendar days of the receipt and approval by HFC of such invoices by check or direct deposit, at the sole option of HFC. If any item in any invoice 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 a special invoice for the disputed item only.

3.4. The Contract Sum represents the entire amount due and payable to Contractor. HFC shall not arrange, pay, provide, or reimburse Contractor for airfare, hotel accommodation, or other travel expenses in any manner or to any extent. There are and shall be no reimbursable expenses of any kind or type under this Agreement.

3.5 In no event shall HFC pay Contractor more than **90%** of the Contract Sum prior to the Date of Completion, notwithstanding any provision in the Agreement to the contrary.

4.0 Representations and Warranties

4.1 Contractor shall provide HFC with a **5-year** warranty on all equipment, materials and workmanship. Warranty periods shall commence on the Date of Completion.

4.2 Contractor represents and warrants to HFC that it is (and shall remain for the duration of the Work and warranty periods) validly-formed and in good standing in its state of incorporation and an authorized distributor for the Manufacturer in Texas.

4.3 Contractor represents and warrants to HFC that the PARCS shall be:

- a. PCI DSS 3.2 compliant with P2P encryption;
- b. Configured to allow one-card access at the Facility with soft or hard anti-pass back (at HFC’s sole option and discretion);
- c. Configured to allow desktop and off-line unit validation, bulk coupons, e-validations, and e-validation tables,;
- d. Integrated with Tessitura and capable of reading tickets sold by Ticketmaster;
- e. Project-operational for regular parking access (entry with ticket and payment at exit) and able to switch on-demand to event mode with credit card payment at the entrances; and
- f. Comprised of equipment including built-in bar code readers.

4.4 With respect to any materials and equipment furnished under this Agreement, Contractor represents and warrants to HFC that: (i) All items are free of defects in title, design, material, and workmanship; (ii) Each item meets or exceeds the requirements of this Agreement; (iii) Each replacement item is new, in accordance with original equipment manufacturer’s specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was

new), and will not cause any manufacturer's warranties to lapse or become invalid; and (iv) No item or its use infringes any patent, copyright, or proprietary right. Work, materials, or equipment not conforming to the requirements of this section shall be considered defective. If required by HFC, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.5 Contractor warrants that it shall perform the Work and all services relating to this Project in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Contractor shall perform all such Work and services using trained and skilled persons having substantial experience performing the work required under this Agreement and enforce strict discipline and good order among Contractor's employees and other persons carrying out the work.

4.6 Contractor represents and warrants to HFC that all Work shall be performed and completed in a good and workmanlike manner, meeting or exceeding the standards of quality prevailing in Harris County, Texas for work of this kind, and in strict accordance with all applicable federal, state and local laws, statutes, ordinances, regulations, and lawful orders of public authorities.

4.7 Work, materials, or equipment not conforming to the requirements of this Section shall be deemed defective and, provided written notice is sent to Contractor within the warranty period, corrected to the satisfaction of HFC within 15 calendar days of such notice at Contractor's sole cost and expense.

4.8 In addition to and not limiting the foregoing, Contractor hereby transfers and assigns to HFC all manufacturer's warranties for materials used in connection with this Project and shall complete and execute all forms required to further evidence such transfer and assignment. The parties agree that no warranty made by Contractor hereunder is intended to limit, nor shall it be construed as limiting in any manner or to any extent, any manufacturer's or supplier's warranty. Upon request from HFC, Contractor agrees to provide reasonable assistance in enforcing such warranties against the manufacturer or supplier at no additional cost to HFC.

5.0 Change Orders

5.1 Changes in the Work may be accomplished after the Effective Date of this Agreement by Change Order, subject to the limitations stated in this Section.

5.2 A Change Order is a written instrument signed by HFC and Contractor stating their agreement upon all of the following: (i) the change in the Work; (ii) the amount of the adjustment, if any, in the Contract Sum; and (iii) the extent of the adjustment, if any, in the Contract Time.

5.3 Changes in the work shall be performed under applicable provisions of this Agreement, and Contractor shall proceed promptly, unless otherwise provided in the Change Order.

5.4 In no event shall the aggregate amount of Change Orders under this Agreement exceed **10%** of the Contract Sum.

5.5 If a part of Contractor's Work depends, for proper execution or results in accordance with this Agreement, upon construction by a third-party HFC contractor, then Contractor shall, prior to proceeding with that portion of the Work, promptly notify and report to HFC any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. If Contractor is materially delayed on such account beyond control and without fault or negligence of Contractor, then the Contract Time (but not the Contract Sum) may be extended by Change Order for such reasonable time as HFC may determine in good faith.

6.0 Insurance

6.1 With no intent to limit Contractor's liability hereunder, Contractor shall provide and maintain in full force and effect, for the duration of the work, at least the following insurance and available limits of liability:

- | | |
|-----------------------------------|---|
| a. Commercial General Liability | Combined single limit of \$1,000,000 per occurrence, subject to a general aggregate of \$2,000,000 |
| b. Automobile Liability Insurance | \$1,000,000 combined single limit including Owned, Hired, and Non-Owned and Auto Coverage |
| c. Workers' Compensation | Statutory amounts for Workers' Compensation, Contractor is not allowed to self-insure Workers' Compensation |

d. Employer's Liability

Bodily Injury by accident \$1,000,000 (each accident); Bodily Injury by disease \$1,000,000 (policy limit); and Bodily Injury by disease \$1,000,000 (each employee)

6.2 Insurance may be in one or more policies of insurance, form of which is subject to approval by HFC. It is agreed, however, that nothing HFC does or fails to do with regard to insurance policies relieves Contractor from its duties to provide required coverage and HFC's actions or inactions will never be construed as waiving HFC's rights.

6.3 Each policy, except those for Workers' Compensation, must include an endorsement naming HFC as an additional insured. Each policy except must include an endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against HFC.

6.4 Contractor's insurance shall be primary and non-contributory to any policy of insurance HFC may maintain.

6.5 The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or be an eligible non-admitted insurer in the State of Texas and have an A.M. Best rating of at least A- with a financial size category of Class VI or better.

7.0 Limitation of Liability

7.1 CONTRACTOR AGREES TO AND SHALL RELEASE HFC, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CONCURRENT OF HFC AND CONTRACTOR, AND INCLUDING ALL LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY CONTRACTOR UNDER THIS AGREEMENT.

7.2 CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HFC, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR OTHER LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT AND INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO CONTRACTOR AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "CONTRACTOR'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL AND/OR EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ALL CLAIMS AND CAUSES OF ACTION BROUGHT AGAINST INDEMNITEES BY CONTRACTOR'S PERSONNEL AND/OR GOVERNMENT AGENCIES ARISING FROM, RELATING TO, OR INVOLVING SERVICES OF CONTRACTOR'S PERSONNEL UNDER THIS AGREEMENT.

7.3 CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD INDEMNITEES HARMLESS FROM THE EFFECTIVE DATE THROUGH AND INCLUDING THE FOURTH ANNIVERSARY OF THE LAST DATE OF COMPLETION ACHIEVED HEREUNDER. CONTRACTOR SHALL NOT INDEMNIFY THE INDEMNITEES FOR THEIR SOLE NEGLIGENCE.

7.4 CONTRACTOR SHALL REQUIRE ALL OF ITS CONTRACTORS AND SUBCONTRACTORS TO RELEASE AND INDEMNIFY THE INDEMNITEES TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE INDEMNITEES.

7.5 HFC SHALL NOT BE LIABLE TO CONTRACTOR 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.

7.6 If HFC or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 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.

7.7 This notice does not stop or 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.

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

7.9 If Contractor elects to defend the claim, 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 would result in injunctive relief or other equitable remedies or otherwise require the Indemnitees to comply with restrictions or limitations that adversely affect the Indemnitees; require the Indemnitees to pay amounts that Contractor does not fund in full; or not result in the Indemnitees' full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

8.0 Default and Termination

8.1 HFC shall have the right to terminate this Agreement upon written notice to Contractor if any of the events listed in this Section occur. HFC may thereafter proceed with the Work at any time. Such termination shall be effective in the manner specified in said notice and shall be without prejudice to any claims which HFC may have against Contractor. On receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue Work, and the placing of orders for equipment, materials and supplies in connection with the performance of the Work and shall, if requested, make every reasonable effort to procure cancellation of existing orders and subcontracts upon terms satisfactory to HFC, and shall thereafter do only such Work as may be necessary to preserve and protect the Work already in progress and to protect material, plant or equipment on the site or in transit thereto.

8.2 Should Contractor make a general assignment for the benefit of its creditors, or should a receiver of any property of Contractor be appointed, or should a petition be filed, either by or against Contractor, in any Bankruptcy or insolvency proceedings, or should Contractor become insolvent, HFC whether or not it terminates this Agreement, may immediately enter the Project site(s) and take possession of all tools, machinery, equipment and appliances which may be owned by or be in the possession of Contractor and which are at the Project site(s) and required for the completion of the Work, and may exercise all options, privileges and rights with respect thereto, and may complete, or employ any other person or persons to complete the Work, at Contractor's sole cost and expense.

8.3 Should Contractor, at any time, refuse to replace defective materials or Work, fail to prosecute Work with diligence or in accordance with the Agreement, fail to pay for labor and material incurred on the Project, fail to prosecute the Work as necessary to accomplish the Project completion in accordance with the Contract Time, or violate any covenant or condition herein contained (each, a "Contractor Default"), and should Contractor not cure said failure or make arrangements satisfactory to HFC to cure the Contractor Default within 7 calendar days after receipt of written notice from HFC, then HFC may (a) terminate this Agreement and (b) whether HFC terminates this Agreement or not and without waiving any of its other rights at law or in equity, enter the Project Site(s) and take possession of all of the tools, machinery, equipment and appliances which may be owned by or be in the possession of Contractor and which are at the Project Site(s) and required for the completion of the Work, and (c) may exercise all options, privileges and rights with respect thereto, and may complete, or employ any other person or persons to complete the Work, at Contractor's sole cost and expense.

8.4 In the event of termination of this Agreement by HFC, Contractor shall upon demand immediately execute and deliver all necessary documents in form and substance satisfactory to HFC and take such steps, including further evidence of assignment of contractual rights, as HFC may require, to fully vest Contractor's rights and benefits above mentioned in HFC; provided, however, that Contractor may reserve any rights and claims it may have against any supplier or otherwise with respect to prior periods. To the extent of any such assignment to HFC, HFC shall not prejudice, release, interfere, resolve or adversely affect any such rights, claims, actions or remedies of Contractor.

8.5 If, in the event of a Contractor Default, HFC does not terminate this Agreement or elect to take possession of the Project Site(s) and complete the Work as aforementioned, then Contractor shall diligently continue the Work and shall pay to HFC any damages caused by delay in completion to the extent the delay was caused by Contractor. Failure of HFC to take such action shall not be construed as a waiver by HFC of any default. Failure of HFC to terminate this Agreement for cause shall not be construed as a waiver of HFC's right to terminate this Agreement in the event that cause exists at some future date.

8.6 In the event of the termination of this Agreement by HFC under this Section or, without terminating this Agreement, the election by HFC to take possession of the Project sites(s) and complete the Work, should the expense incurred by HFC in completing the Work exceed the difference between the unpaid balance of the Contract Sum as of the date of termination or such election by HFC to take possession and complete the Work, Contractor shall upon demand, immediately pay such excess to HFC in good funds.

8.7 In the event of a Contractor Default, Contractor shall also pay such expenses as may be incurred by HFC in enforcing the terms of this Agreement or in curing the Contractor Default, including reasonable attorneys' fees and costs, regardless of whether any litigation is commenced.

8.8 HFC may also terminate this Agreement at any time, for its convenience with or without cause upon written notice to Contractor. HFC may thereafter proceed with the Work at any time and shall not be bound by the provisions of this Agreement. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue Work and the placing of orders for equipment, materials, facilities and supplies in connection with the performance of the Work, and shall, if requested, make every reasonable effort to procure cancellation of existing orders and subcontracts upon terms satisfactory to HFC, and shall thereafter do only such Work as may be authorized by HFC as necessary to preserve and protect Work already in progress, and to protect equipment, materials, tools, machinery and supplies on the Project Site or in transit thereto. Upon such termination by HFC, HFC shall pay to Contractor a portion of the Contract Sum equal to the percentage of the Work completed (less any payments made previously to Contractor), which payment shall be the sole payment due to Contractor. In no event shall Contractor be entitled to any compensation for Work not performed, lost profits on Work not performed, or lost opportunity to perform other construction projects.

8.9 In the event of termination by HFC, Contractor shall assign to HFC, if requested by HFC, all of Contractor's right, title and interest in and to any or all subcontracts or purchase orders existing between Contractor and any of its subcontractors or material suppliers, including but not limited to the Manufacturer. Contractor shall, in its subcontracts and purchase orders, require its subcontractors and material suppliers consent to such an assignment. Prior to release of all claims which may have arisen hereunder, Contractor shall execute and deliver all necessary documents and take such steps, in form and substance satisfactory to HFC, including further evidence of assignment of contractual rights, as HFC may reasonably require consistent with this Agreement to fully vest Contractor's rights and benefits above mentioned in HFC.

8.10 HFC reserves and shall have all rights and remedies available at law or in equity in the event of a Contractor Default of other breach of this Agreement by Contractor, and each such right shall be cumulative of all other rights, and no exercise of any of such rights shall preclude or constitute a waiver of any other rights or remedies.

9.0 Prevailing Wage Requirement

9.1 Contractor shall comply with governing statutes providing for labor classification of wage scales for each craft or type of laborer, worker, or mechanic.

9.2 Prevailing wage rates applicable to the Work may be one or a combination of the following wage rates identified at <https://www.houstonfirst.com/do-business/>, which is incorporated herein for all purposes by this reference.

9.3 Contractor warrants and represents that it has carefully examined the classifications for each craft or type of worker needed to execute the Work and determined that such classifications include all necessary categories to perform the Work. If Contractor believes that an additional classification for a particular craft or type of worker is necessary to perform Work under the Contract, it must submit such request to HFC to use an additional labor classification not listed therein and specify the proposed new classification. If HFC decides that a new classification is necessary, it will determine the appropriate prevailing wage rate for any resurveyed, amended, new, or additional craft or type of worker not covered. Such determination will be made by HFC in compliance with applicable law.

9.4 Each week, Contractor shall submit to the HFC certified copies of payrolls showing classifications and wages paid by Contractor, subcontractors, and suppliers for each employee under the Contract, for any day included in the Agreement.

10.0 Required Contract Clauses

10.1. Equal Employment Opportunity. During the performance of this Agreement, Contractor agrees as follows:

- (1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor 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. Contractor 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) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractor 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 Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Contractor 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) Contractor 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 Contractor'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 Contractor 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) Contractor 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. Contractor 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.

10.2. Contract Work Hours and Safety Standards Act. Contractor 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, Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor 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 Contractor 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. Contractor 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. Contractor, as prime contractor, shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

10.3. Clean Air Act. Contractor 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. Contractor 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. Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

10.4. Federal Water Pollution Control Act. Contractor 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. Contractor 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. Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

10.5 Suspension and Debarment. Contractor 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, Contractor 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). Contractor 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 Contractor 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. Contractor 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. Contractor 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.

10.6 Byrd Anti-Lobbying Amendment. Contractor 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. Contractor shall promptly forward each such disclosure from tier to tier up to HFC.

10.7 Certification Regarding Lobbying. Contractor 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 Contractor 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

10.8. Procurement of Recovered Materials. In the performance of this Agreement, Contractor 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>.

10.9 Changes. This Agreement may not be changed or altered except in the form of a written amendment signed by authorized representatives of Contractor 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 Contractor 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.

10.10 Access to Records. Contractor 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 Contractor's books, documents, papers, and records that are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Contractor shall maintain such books, records, and billing documents for 3 years after the cessation of Contractor'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. Contractor 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.

10.11 DHS Seal, Logo, and Flags. Contractor 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.

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

10.13 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, Contractor, or any other party pertaining to any matter resulting from the Agreement.

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

10.15 Affirmative Steps. Prior to subcontracting any portion of the work covered by this Agreement, Contractor agrees to and shall 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.

11.0 Miscellaneous

11.1 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 an occurrence of Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean fires, floods, explosions, war, terrorism, riots, and the acts of superior governmental or military authority. This relief is not applicable unless the affected party uses due diligence to remove the Force Majeure as quickly as possible and provides the other party with written notice describing the actual delay or non-performance incurred within 15 calendar days after the Force Majeure ceases.

11.2 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 payment under this Agreement. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations.

11.3 Notices. Notices to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt (or electronic return receipt) requested, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

11.4 Independent Contractors. HFC and Contractor agree that they do not intend to form, and this Agreement shall not be construed as creating, a partnership or joint venture under any circumstances. Neither party hereto shall have any authority, in any manner or to any extent, to bind the other party. With respect to each other, the parties shall be independent contractors for all purposes.

11.5 Venue and Laws. Contractor shall strictly comply with all applicable federal, state and local laws, statutes, ordinances, regulations, and lawful orders of public authorities that affect performance by Contractor hereunder. This Agreement shall be construed in accordance with the laws of the State of Texas without regard to conflict of law principles. Any litigation in connection with this Agreement shall be in a court of competent jurisdiction in Harris County, Texas.

11.6 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.

11.7 Severability and Survival. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party. The parties shall remain obligated to each other under all clauses of this Agreement that expressly or by their nature extend beyond the completion of the Project or termination of the Agreement.

11.8 Entire Agreement. This Agreement 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 a writing executed on behalf of all of the parties.

11.9 Authority to Sign. The signer of this Agreement hereby represents and warrants that he or she has full authority to execute this Agreement and bind Contractor. The parties hereto have caused this Agreement to be signed by their authorized representatives, to be effective for all purposes as of the date of signature by HFC ("Effective Date"):

[signature block to follow in final agreement]