

ARCHITECTURAL PEER REVIEW SERVICES REQUEST FOR QUALIFICATIONS (“RFQ”)

ISSUE DATE: January 24, 2020

DUE DATE: **2:00 p.m. on February 11, 2020** (the “Submission Deadline”)

INSTRUCTIONS: Respondents are asked to submit five (5) paper copies and one (1) electronic copy (on a flash drive) of their Statement of Qualifications (“SOQ”). One (1) paper copy of the diversity participation information provided by Respondent should be delivered with the SOQ in a separately-sealed envelope labelled “Diversity”. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write “**Peer Review RFQ**” clearly on the outside of the sealed envelope. Submittals received by email, fax, or after the Submission Deadline will be rejected.

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

CONTACT INFO: Any questions concerning the content or subject matter of this RFQ must be sent by email to bids@houstonfirst.com no later than **10:00 a.m. on February 6, 2020**. Questions will be answered collectively in the form of a Letter of Clarification. Due to time constraints, HFC strongly encourages Respondents to submit questions as early as possible.

PURPOSE & OVERVIEW

Houston First Corporation (“HFC”) requests Statements of Qualifications (“SOQs”) from experienced firms to provide architectural, structural and MEP peer review services in connection with the development by a third party (the “Hotel Developer”) of an approximate 308 room hotel (“Hotel”) on a pad site atop Partnership Tower, located at located at 701 Avenida de las Americas, Houston, Texas 77010 (the “Hotel Project”). The Hotel is to be owned, financed, constructed and operated by the Hotel Developer at its cost and expense.

HFC has or expects to enter into multiple agreements with the Hotel Developer with regard to development of the Hotel, including, without limitation, a development agreement and an air rights lease. HFC anticipates that such agreements will include rights in favor of HFC to approve design and construction plans, site logistics plans, staging plans, and other matters related to the development of the Hotel, including, in each instance, all due consideration and attention to detail necessary to ensure the continuous operation of the office building and parking garage components of Partnership Tower, as well as the METRO rail service that runs along two sides of, and through, Partnership Tower. HFC also has a keen interest in ensuring that construction of the Hotel by the Hotel Developer proceeds in accordance with approved plans, documents and understandings.

HFC seeks the services of a small, experienced team to provide architectural, structural and MEP peer review services in connection with the Hotel Project and assist HFC staff as needed. Plan review and related support services are to commence immediately upon selection by HFC, and may be required on a limited basis through substantial completion of the Hotel. Construction of the Hotel is expected to commence in late 2020.

BACKGROUND

HFC is a local government corporation created by the City of Houston to facilitate economic growth through the promotion of the greater Houston area and the business of conventions, meetings,

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

Partnership Tower is located at 701 Avenida de las Americas in downtown Houston, Texas and is owned by HFC. The building is occupied by HFC and tenants under leases with HFC, including the Greater Houston Partnership and the Harris County-Houston Sports Authority, among others.

Initial design and construction of Partnership Tower was undertaken in contemplation of development of a hotel atop the building. In furtherance thereof, HFC issued requests for proposals for qualified developers to develop, finance, own and operate a hotel. HFC has identified a Hotel Developer and is in the process of negotiating final legal documentation, including the aforementioned development agreement and air rights lease, among other documents.

SCOPE OF WORK

Due to the obvious impact on Partnership Tower of construction of a hotel on the top of Partnership Tower, HFC seeks the services of a qualified firm to provide architectural, structural and MEP peer review services to review the Hotel Developer's plans/submissions, as well as advise and make recommendations to HFC with regard to the Hotel Developer's proposed plans, specifications, site logistics, modifications to Partnership Tower and all other design aspects (pre-development and during construction) that could affect Partnership Tower, its operations and systems.

The selected Respondent will not be responsible for errors or omissions of the Hotel Developer (nor its design professionals or contractors), nor responsible for the payment of any costs or expenses of development of the Hotel Project. Services are expected to commence upon selection of the successful Respondent by HFC and may be required on a limited basis through substantial completion of the Hotel.

NO PRE-SUBMITTAL CONFERENCE

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

LETTERS OF CLARIFICATION

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

SOQ FORMAT AND EVALUATION

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

- a. **Transmittal Letter:** Write a brief letter summarizing Respondent's understanding of the work to be done communicating effectively why the Respondent should be selected. Disclose any affiliation or business relationship creating a conflict of interest (or appearing to a reasonable person to potentially exist) with any of the Hotel Developer Entities, defined, for purposes of this RFQ, as Texas Hospitality Partners LLC, Horizon International, Kirksey Architecture, Clark Construction, or any of their respective officers, directors, subsidiaries, parents, or affiliates. The letter must be signed by a person authorized to make representations on behalf of the Respondent and include a direct phone number and email address. Respondents must make a specific, unambiguous statement accepting and agreeing to comply, if selected, with the Architectural Peer Review Services Agreement provided below.

- b. **Experience and References:** Describe Respondent's experience in providing peer review or design services involving existing, occupied space, including any experience in a central business district setting. In each example given, describe the role played by Respondent's key personnel that participated. Provide three references for whom Respondent has provided comparable services as will be required hereunder. For each reference, include a contact name, phone number, and email address for the appropriate contact.
- c. **Key Personnel:** Describe the composition and experience of the team to be assigned to the project. List the names of key personnel who will perform the services and provide resumes.
- d. **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.

Although there is no page limit, Respondents are asked to ensure that their SOQs are clear and concise.

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 Architectural Peer Review Services Agreement (15 points); Experience and References (35 points); Key Personnel (40 points); and Diversity Efforts (10 points).

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

HFC intends to select the top-ranked team, on the basis of demonstrated competence and qualification as measured by the foregoing criteria, subject to negotiation of fair and reasonable compensation. If HFC and such firm should fail to agree on a fair and reasonable price, 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 proposal, waive minor technicalities, and select one or more proposals in the manner and to the extent that they serve the best interests of HFC. HFC reserves the right to request proposal clarifications/additional information from some or all Respondents.

FORM OF AGREEMENT

By submitting a response to this RFQ, Respondent agrees, upon notice of selection, to promptly enter into the Architectural Peer Review Services Agreement provided below. Any requests for clarification or modification to the terms of such agreement 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 shall be disregarded and may result in a SOQ 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: **20%** of the total value of the Agreement. Respondents should note if they are certified as a diversity participant in their submittal; however, such certification shall not lessen or otherwise alter the requirement to use good faith efforts to award subcontracts to diversity participants. All diversity-participation information provided by Respondents, including required forms, should be delivered with the Respondent's SOQ in a

separately-sealed envelope labelled "**Diversity**".

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.

RESTRICTIONS ON COMMUNICATIONS

Throughout the selection process, commencing with the Issue Date, Respondents are directed not to communicate with any HFC employee, officer or director regarding their SOQ or any matter relating to this RFQ, other than through bids@houstonfirst.com. Respondents are solely responsible for observation and compliance with such restrictions, and HFC reserves the right to reject any SOQ or subsequent proposal 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 proposal, 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 RFQ content must be filed by the actual or potential Respondent with the Purchasing Agent no later than five business days prior to the Submission Deadline. If the protest consists of a dispute regarding the Respondent recommended by the selection committee, or otherwise relates to the alleged misapplication of selection criteria, then the Purchasing Agent must receive the protest from an actual Respondent after the Submission Deadline, but at least three business days prior to consideration of a contract resulting from this RFQ by an HFC committee or Board of Directors, whichever is earlier.

All protests must be made in writing and delivered to Houston First Corporation, Attn: Purchasing Agent, 701 Avenida de las Americas, Ste. 200, Houston, TX 77010. To be considered by HFC, protests must be timely received and include, at a minimum, all of the following information: (a) The name, address and contact information of the Respondent, with sufficient information to establish that a bona fide Respondent is the person or entity filing the protest; (b) The full title of the RFQ; (c) Material grounds for the protest, including the provisions of the RFQ and the applicable law or regulation that serves as the basis for the protest; (d) A statement of the specific relief requested by the Respondent ; (e) Reference to and attachment of any pertinent documents or sources relied upon by the protestor that the protesting party wishes to have HFC consider; and (f) An affidavit attached to support any factual allegations stated in the submission. 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 will have the opportunity to raise objections to disclosure with the Texas Attorney General at their expense.

RFQ PACKETS

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

ARCHITECTURAL PEER REVIEW SERVICES AGREEMENT

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

ARTICLE 1: RESPONSIBILITIES OF FIRM

1.1 Firm understands that the professional services required by HFC under this Agreement have arisen in connection with the development by a third party (the “Hotel Developer”) of an approximate 308 room hotel on a pad site atop Partnership Tower (the “Hotel Project”). As the hotel is designed, constructed and operated by the Hotel Developer at its cost and expense, HFC requires professional services of Firm to consult and advise HFC with regard to the Hotel Project, such as architectural, structural and MEP peer review of the Hotel Developer’s proposed plans, specifications, site logistics, modifications to Partnership Tower and all other design aspects (both pre-development and throughout construction). Throughout the performance of such services, the Firm is tasked to prepare and position HFC for resulting implications, known and unknown, for the operation of Partnership Tower, including tenant, vehicular and pedestrian access to the building and adjacent garage during and following construction of the Hotel Project.

1.2 Services to be performed by Firm under this Agreement in connection with the anticipated effect of the Hotel Project on HFC assets and interests include, but shall not be limited to, architectural, structural, MEP, and related services.

1.3 Firm shall provide professional services in furtherance of HFC’s best interests in light of the Hotel Project based on and in response to individual requests for services from HFC, on an as-needed basis, in the form of written task orders (each a “Task Order” and collectively “Task Orders”) substantially similar to the template attached hereto as **Exhibit “1”** and made a part hereof for all purposes. Each Task Order shall include a specific not-to-exceed amount and, as applicable, the following information: A description of the project or service component; the date of issuance; period of performance/project milestones; a description of the services to be performed, including phased services, any specifications and/or drawings; and any deliverables. Firm agrees to and shall complete each Task Order in accordance with the terms, conditions and restrictions of this Agreement.

1.4 Firm has identified [TBD], an individual (the “Project Manager”) as its duly-authorized representative to act on behalf of Firm with respect to the services to be performed under this Agreement. Notices and communications given to the Project Manager shall be as binding as if given to Firm. Firm shall not change the Project Manager without the written consent of HFC, which shall not unreasonably be withheld or delayed. Firm shall provide the name and qualifications of any proposed candidate to replace the individual serving in the capacity as Project Manager, and HFC may reply in writing to Firm within 15 calendar days stating that HFC objects to the proposed superintendent or requires additional time to review. Failure of HFC to reply within such period shall constitute notice of no reasonable objection. Firm shall not employ, retain the services of, or appoint any individual to serve in the capacity of Project Manager to whom HFC has made any timely objection.

1.5 Firm has engaged the following subcontractor to provide and perform services in connection with this Agreement, as may be amended and supplemented from time to time pursuant to one or more Task Orders: [TBD]

1.6 Firm agrees to and shall comply with all applicable federal, state and local laws, statutes, codes,

ordinances, rules, regulations, and lawful orders of any governmental agency, authority, court, board, bureau, instrumentality, regulatory body, or other government entity (collectively, “Applicable Law”).

1.7 Firm shall obtain, maintain, and pay for all licenses, permits, and certificates required to perform services in connection with this Agreement, including all professional licenses required by any statute, ordinance, rule, or regulation. Firm shall immediately notify HFC of any suspension, revocation, or other detrimental action against any such license, permit or certificate.

1.8 Firm represents and warrants to HFC that its services shall be performed (a) consistent with the professional skill and care ordinarily provided by persons practicing in the same or similar services; (b) expeditiously so as to ensure the orderly progress and completion of the projects; and (c) in full compliance with Applicable Law. Firm further represents and warrants to HFC that Firm (a) possesses the ability to perform successfully under the terms and conditions of this Agreement, including by way of example and not limitation, experience, compliance history, financial means, and technical resources; (b) is validly formed and in good standing in its state of incorporation; (c) has established and shall maintain written standards of conduct covering conflicts of interest (including organizational conflicts of interest) and governing the performance of employees engaged in the selection, award, and administration of contracts of any tier in connection with this Agreement; and (d) shall comply with Applicable Law in the selection of any subcontractor or specialty consultant in connection with this Agreement.

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

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

ARTICLE 2: PAYMENT AND TERM

2.1 Payment. Subject to all terms and conditions of this Agreement, HFC agrees to pay Firm for services performed based on the hourly rates set forth in **Exhibit “[TBD]”** (attached hereto and made a part hereof for all purposes); 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 Firm agrees to be subject to, a specific not-to-exceed amount of [TBD], inclusive of all fees, expenses, tasks and deliverables for the preliminary service period extending from the Effective Date through and including [TBD]. Firm acknowledges that HFC has not and shall not guarantee any minimum payment, profit, or quantity/frequency of services.

2.2 Expenses. Subject to the limitation set forth in Section 2.1, reasonable expenses incurred by Firm directly in the performance of its services will be reimbursed at cost; provided such expenses are approved in advance and in writing by HFC, and further provided that HFC reserves the right to cap expenses at a reasonable level it deems appropriate in each Task Order. Subcontracts for surveyors, estimators, schedulers, payment-application reviewers, document controllers, and other project consultants shall be reimbursed at-cost to Firm, and the selection process for each such consultant must be in accordance with Applicable Law and prior-approved by HFC. For the avoidance of doubt, the parties agree that reimbursable expenses shall not include first-class travel or accommodation, overhead or general administrative costs.

2.3 Invoice Procedures. Firm will be paid on the basis of invoices submitted by Firm no more than once per month, and approved by HFC, detailing the services provided by Firm during the previous month, the attendant fee and reimbursable expenses, if any, including subcontractor invoices, expense receipts, prior-written approvals, and all other supporting documentation pertaining to amounts chargeable under this Agreement, as HFC may require. Hourly rates must be billed in no more than fifteen-minute increments. To the maximum extent practicable, time spent must be listed in invoices by individual task. Block billing (i.e., aggregating multiple smaller tasks into a single ‘block’ entry for which a single time value is assigned) is prohibited. HFC will make payment to Firm within 30 calendar days of the receipt and approval by HFC of such invoices.

2.4 Invoice Disputes. If any item in any invoice submitted by Firm 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 Firm of the dispute and request clarification and/or remedial action. After any dispute shall have been settled, Firm shall include the disputed amount on a subsequent regularly scheduled invoice or on an invoice for the disputed item only.

2.5 Term and Renewal. The initial term of this Agreement shall begin on the date of countersignature by HFC (the “Effective Date”) and, unless renewed or sooner terminated pursuant to the terms of this Agreement, expire on March 31, 2022 (the “Term”). HFC may, in its discretion, renew the Term for up to three additional one-year terms (each a “Renewal Term” and collectively, “Renewal Terms”) on the same terms and conditions as set forth in this Agreement. HFC may exercise such option by notifying Firm in writing prior to the expiration of the Term or applicable Renewal Term. No expiration of the Term, or sooner termination of this Agreement, shall affect, impair or abridge Firm’s duties and responsibilities, or liabilities with regard to, the services performed during the Term.

ARTICLE 3: INSURANCE

3.1 With no intent to limit Firm’s liability under the indemnification provisions, Firm shall provide and maintain, and shall require its contractors and subcontractors to maintain, for the duration of the Term, including any Renewal Terms, the following insurance and available limits of liability:

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

3.2 Firm’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”).

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

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

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

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

ARTICLE 4: LIMITATION OF LIABILITY

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

4.2 FIRM AGREES TO AND SHALL, TO THE MAXIMUM EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, INDEMNIFY, AND HOLD THE ADDITIONAL INSURED PARTIES HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY ARISING AS A RESULT OF FIRM'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH PERFORMANCE UNDER THIS AGREEMENT, WHETHER FIRM IS IMMUNE FROM LIABILITY OR NOT. FIRM SHALL INDEMNIFY AND HOLD THE ADDITIONAL INSURED PARTIES HARMLESS THROUGHOUT THE TERM OF THIS AGREEMENT, INCLUDING ANY RENEWAL TERMS, AND FOR FOUR YEARS AFTER THE EXPIRATION THEREOF.

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

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

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

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

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

ARTICLE 5: DEFAULT AND TERMINATION

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

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

5.3 Remedies. If default occurs, then HFC shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, HFC shall have the right, but not the obligation, to cure or cause to be cured on behalf of Firm any such default, and Firm shall pay HFC on demand all costs and expenses incurred by HFC in effecting such cure, in addition to all damages, losses, costs or expenses incurred by HFC as a result of such default by Firm.

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

5.5 Termination for Convenience. HFC reserves the right to terminate this Agreement for its convenience at any time by giving 30 calendar days' written notice to Firm. HFC's right to terminate this Agreement for convenience is cumulative of all rights and remedies that exist now or in the future. On receiving the notice, Firm shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Firm shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. HFC shall then pay the fees to Firm for services actually performed, but not already paid for, in the same manner as prescribed herein. **TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE FIRM'S EXCLUSIVE REMEDIES FOR**

HFC'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. FIRM WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED HEREIN), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM HFC'S TERMINATION FOR CONVENIENCE.

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

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

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

ARTICLE 6: DIVERSITY

6.1 Good Faith Diversity Efforts. Firm shall make good faith efforts to award subcontracts equal to **twenty percent (20%)** of the value of this Agreement to certified, diverse suppliers of goods and services in accordance with the Diversity Program established by HFC, as may amended from time to time, which is made a part hereof for all purposes.

6.2 Diversity Reporting. Firm shall disclose to HFC the manner and extent to which it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC with each invoice, or as directed by HFC.

ARTICLE 7: MISCELLANEOUS PROVISIONS

7.1 Force Majeure. Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. For purposes of this Agreement, Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders and the acts of superior governmental or military authority. This relief is not applicable unless the affected party does the following: uses due diligence to remove the Force Majeure as quickly as possible; provides the other party with prompt written notice of the cause and its anticipated effect;

and provides the other party with written notice describing the actual delay or non-performance incurred within 7 calendar days' after the Force Majeure ceases. If the Force Majeure continues for more than 30 calendar days, then either party may terminate this Agreement by giving 15 calendar days' written notice to the other party; such termination is not a default or breach of this Agreement.

7.2 Access to Records. Firm grants HFC, including its authorized representatives, access and the right to examine and review Firm's books, documents, papers, and records that are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Firm agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Firm shall maintain such books, records, and billing documents for 3 years after the cessation of Firm's services under this Agreement. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations.

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

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

7.6 Independent Contractor. The relationship of Firm to HFC shall be that of an independent contractor. Firm has the authority to select the means, methods and manner of providing services subject to the terms, conditions, and specifications in this Agreement. No principal/agent, partnership, joint venture, joint employer, or other relationship, other than an independent contractor relationship, is created or intended by this Agreement.

7.7 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.

7.8 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.

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

7.10 Extent of Agreement. This Agreement, including the exhibits made a part hereof and any Task Orders issued hereunder, represents the entire and integrated agreement between HFC and Firm and

supersedes all prior negotiations, representations or agreements either written or oral. Save and except for Change Orders issued in the manner established and allowed hereunder, this Agreement may not be amended, changed, modified, or altered except in the form of a written amendment signed by authorized representatives of Firm and HFC.

The parties hereto have caused this Agreement to be duly executed by their authorized representatives to be effective for all purposes as of the first date of the Term:

[signature block and exhibits to follow in final agreement]

**EXHIBIT “1”
TASK ORDER TEMPLATE**

[Date]

Task Order [Number]

§1. This Task Order is made by Houston First Corporation, (“HFC”) and [TBD] (“Firm”) and shall serve as an addendum to that certain Architectural Peer Review Services Agreement between the parties. Firm agrees to and shall complete this Task Order in accordance with the terms, conditions and restrictions of such Agreement.

§2. **Description of Services:**

§3. **Contractors/Consultants:**

§4. **Period of Performance/Milestones:**

§5. **Tasks/Deliverables:**

§6. **Not-to-Exceed Amount:** [Amount]

This Task Order shall be effective for all purposes as of the date of countersignature by HFC.

[signature block to follow in final task order]