



## Design and Engineering Consultant Services

### Request for Qualifications

ISSUE DATE: April 12, 2018

DUE DATE: **2:00 p.m.** on **May 11, 2018** ("Submission Deadline")

INSTRUCTIONS: Please submit five (5) paper copies and one (1) electronic copy of the respondent's Statement of Qualifications ("SOQ") on a flash drive. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write "**Engineering Services RFQ**" clearly on the outside of the sealed envelope. Submittals received by email, fax or after the Submission Deadline will be rejected.

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

CONTACT INFO: Any questions concerning this RFQ must be submitted by e-mail to [bids@houstonfirst.com](mailto:bids@houstonfirst.com) no later than **11:00 a.m.** on **May 4, 2018**. Questions will be answered collectively in the form of a Letter of Clarification and made available at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business).

**PROJECT OVERVIEW.** Houston First Corporation ("HFC") issues this Request for Qualifications ("RFQ") for an experienced design and engineering team to address and design for the impact of the proposed North Houston Highway Improvement Project ("NHHIP") on George R. Brown Convention Center ("GRBCC") in downtown Houston over the next 5-10 years.

Conceived as a means to provide enhanced mobility and promote economic development, the NHHIP is an ambitious interstate highway project crossing eight states that will eventually extend from Canada to Mexico. The Texas route will be administered by the Texas Department of Transportation ("TxDOT") and includes several existing roads, including U.S. 59/I-69, which is adjacent to the eastern facade of the GRBCC.

The NHHIP presents unique challenges and opportunities to the operation of the GRBCC, including, but not limited to, vehicular and pedestrian access to the facility during and following construction of the NHHIP, back-of-the-house operations, utility configuration, and layout of the loading docks and staging areas along the eastern edge of the facility. TxDOT has announced plans to issue a design-bid solicitation for Segment 3: Downtown Loop System of the NHHIP – the portion of the project including downtown Houston and the GRBCC – in the fourth quarter of 2018.

For additional information regarding NHHIP Segment 3: Downtown Loop System, including related maps and project documents, please visit <http://www.ih45northandmore.com/>. Maps of the GRBCC and Convention District can be found online at [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business).

**QUALIFICATIONS.** HFC seeks and requires an established, multi-disciplinary professional services team with significant, demonstrable experience achieving large-scale civil, structural

(including bridges), mechanical, electrical, plumbing, and traffic engineering projects. Additional disciplines required for the project will include, at a minimum, space planning and design expertise for convention center back-of-the-house areas, surveying, geotechnical, hardscape and exterior finishes, and cost estimating.

The team must be led by an experienced project manager and will be tasked to provide professional services and documents that may include, but not be limited to, the following items:

- Represent HFC in all meetings associated with the NHHIP that impact the GRBCC (including all design, bidding, and construction meetings through the final completion of the NHHIP Segment 3: Downtown Loop System project);
- Coordinate efforts with TxDOT, City of Houston, surrounding management districts, and other entities involved in the NHHIP;
- Review, investigate, analyze, prescribe, and document all GRBCC-related information needed to incorporate into TxDOT's design-bid solicitation and be prepared to submit to TxDOT in an acceptable format by August 15, 2018, including, but not limited to, phasing requirements to ensure uninterrupted operations of GRBCC (i.e., load-in and load-out of conventions/events), potential new entrances and exits to operation areas, loading dock modifications, third level ramps, utilities, and replacing operational staging areas that provide sufficient access to accommodate a minimum of 75 semi-trailers;
- Identify and address all modifications necessary to the GRBCC that will not be included in the NHHIP Segment 3: Downtown Loop System project;
- Complete the designs and prepare construction documents required to make all the identified changes to the GRBCC;
- Identify and report findings associated with the impact of the NHHIP Segment 3: Downtown Loop System project on HFC's 2025 Master Plan for the GRBCC, with special emphasis on the area between Polk and Leeland Streets, south of the existing facility footprint;
- Provide full construction administration services throughout the construction of the NHHIP Segment 3: Downtown Loop System project along the GRBCC, as well as the phased construction of the GRBCC improvements;
- Complete a traffic study and implementation plan to ease the ingress, movement and egress of vehicular and pedestrian traffic in the Convention District for event attendees, hotel guests, tourists, and office workers. The anticipated scope of the study – the area bounded by Franklin, Chartres, Leeland and Caroline – will include GRBCC, Discovery Green, Toyota Center, Minute Maid Park, and Compass Stadium.
- Monitor schedules;
- Monitor budgets;
- Assist in the permitting of the design documents.

**BACKGROUND.** HFC is a local government corporation created by the City of Houston to enhance quality of life, advance economic prosperity and promote and position Houston as a

premier destination for leisure tourism and major events.

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

Opened in 1987, the George R. Brown Convention Center is ranked among the nation's 10 largest such facilities. The convention center features 1.2 million square feet of dedicated meeting space, including seven exhibit halls, a 3,600 tier-seated amphitheater, five 2,880 square foot open-air event balconies, 88 flexible meeting rooms, and a 31,590 square foot ballroom. The facility also includes 39 freight doors, 10 drive-in doors, and 66 loading docks on two levels.

**PRE-SUBMITTAL CONFERENCE & SITE TOUR.** A pre-submittal conference will be held for the benefit of all prospective respondents at **11:00 a.m.** on **May 2, 2018** in **Room 330 AB** at the George R. Brown Convention Center, located at 1001 Avenida de las Americas, Houston, TX 77010. Although attendance at the conference is not mandatory, all prospective respondents are urged to attend. A site tour of the GRBCC loading docks will immediately follow the pre-submittal conference.

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

- a. **Transmittal Letter:** Write a letter introducing the respondent firm and communicating effectively why the team should be selected for this Project. The letter must be signed by a person authorized to make representations on behalf of the team and include a direct phone number and email address. Respondents must make a specific, unambiguous statement accepting and agreeing to comply with the Engineering Services Agreement if selected.
- b. **Project Team:** Identify the Project Manager and other essential personnel who would be assigned to perform work on this Project, such as the responsible corporate executive and any sub-consultants; include a brief summary of their qualifications.
- c. **Experience:** Please discuss three large-scale or long-term projects completed primarily by Project Team members similar in scope and type to this Project. Provide current references for each relevant project.
- d. **Diversity Efforts:** Respondents should indicate how they intend to make good faith efforts to utilize diversity companies and identify any probable MWBE and HUB subcontractors or consultants.

All information provided by respondent to HFC should be organized, clear and concise. Respondents are asked to avoid excessive graphics, title pages, or other extraneous information in their submittal other than requested by HFC.

**EVALUATION.** HFC will review and rank every SOQ received in response to this RFQ based on the following weighted criteria for a total of as many as 100 points: Transmittal Letter, including acceptance of the agreement terms (15%); Project Team (40%); Experience (35%); Diversity Efforts (10%).

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. HFC is not required to award a contract, issue a purchase order, or to pay any costs incurred in the preparation of a SOQ in response to this RFQ.

**FORM OF AGREEMENT.** The form of agreement for this Project, the Engineering Services Agreement, is attached hereto as Attachment "B". Respondents may identify any objections within or immediately following the letter; provided, however, SOQs including material exceptions are deemed non-responsive and will be rejected without consideration

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

**DIVERSITY COMMITMENT.** The respondent selected will be required to use good faith efforts to award subcontracts to diversity participants certified by any of the identified certification agencies as defined in the HFC Diversity Program (see [www.houstonfirst.com/do-business](http://www.houstonfirst.com/do-business)). The specific goal for this solicitation is **35%** of the total value of the Engineering Services 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.

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

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

**RESTRICTIONS ON COMMUNICATIONS.** From the Issue Date until the Submission Deadline, respondents are directed not to communicate with any HFC or City of Houston employee, officer or director regarding any matter relating to this RFQ, other than through [bids@houstonfirst.com](mailto:bids@houstonfirst.com).

HFC reserves the right to reject any SOQ due to violation of this provision.

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

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

**ATTACHMENT “A”  
ENGINEERING SERVICES AGREEMENT**

This Engineering 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 due to planned construction by the Texas Department of Transportation of the North Houston Highway Improvement Project, Segment 3: Downtown Loop System (the “NHHIP Project”), and resulting implications, known and unknown, for the operation of the George R. Brown Convention Center, including vehicular and pedestrian access to the facility during and following construction of the NHHIP Project, back-of-the-house operations, utility configuration, and layout of the loading docks and staging areas along the eastern edge of the facility.

1.2 Services to be performed by Firm under this Agreement in connection with the anticipated effect of the NHHIP Project on HFC assets and interests include, but shall not be limited to, (a) professional civil, structural (bridge design), mechanical, electrical, plumbing, and traffic engineering; (b) phased schematic design, design development, construction documentation, and construction administration; and (c) space planning and design expertise for convention center back-of-the-house areas, surveying, geotechnical, hardscape and exterior finishes, and cost estimating.

1.3 Firm shall provide professional engineering and related services in furtherance of HFC’s best interests in light of the NHHIP 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 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 his 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 (a) 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; and (b) such hourly rates for services may be adjusted on January 1, 2021 and triennially thereafter (i.e., January 1, 2025; January 1, 2028), provided that no rate is increased by more than five percent. Adjusted rates will be made a part of any Task Order made effective subsequent to such date, but shall not apply retroactively to Task Order made effective prior to the date on which the rates were adjusted. 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] 2018. 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 **June 30, 2023** (the "Term"). HFC may, in its discretion, renew the Term for up to five 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 to cure the default as provided herein.

5.2 Default. Firm shall be deemed to be in default under this Agreement due to the occurrence of any of the following events: (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 so cure such default prior to the termination date, then this Agreement shall terminate automatically on the termination date without further notice from HFC.

5.5 Termination for Convenience. HFC reserves the right to terminate this Agreement for its convenience at any time by giving 30 calendar days' written notice to Firm. HFC's right to terminate this Agreement for convenience is cumulative of all rights and remedies that exist now or in the future. On receiving the notice, Firm shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Firm shall submit an invoice showing in detail the services performed under this Agreement up to the termination date. HFC shall then pay the fees to Firm for services actually performed, but not already paid for, in the same manner as prescribed herein. **TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE FIRM'S EXCLUSIVE REMEDIES FOR HFC'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. FIRM WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED HEREIN), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM HFC'S TERMINATION FOR CONVENIENCE.**

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

5.7 Final Accounting. Upon termination of this Agreement by either party for any reason, Firm shall immediately discontinue all services under this Agreement; promptly cancel all orders or subcontracts chargeable to this Agreement; shall deliver to HFC a final accounting, reflecting the

status of the Project and payments made to Firm, Architect, and others; and deliver true and correct copies of all documents that include information relating to the Project. Firm shall furnish all such other information and cooperate with HFC shall reasonably request in order to effectuate an orderly and systematic termination and/or transfer of Firm's duties hereunder.

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

## **ARTICLE 6: DIVERSITY**

6.1 Good Faith Diversity Efforts. Firm shall make good faith efforts to award subcontracts equal to **thirty-five percent (35%)** 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 Engineering 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]