

OWNER REPRESENTATIVE SERVICES REQUEST FOR PROPOSALS (“RFP”)

ISSUE DATE: January 24, 2020

DUE DATE: **12:00 p.m. on February 6, 2020** (the “Submission Deadline”)

INSTRUCTIONS: Please submit five (5) paper copies and one (1) electronic copy of the Request for Proposals (“RFP”) on a flash drive. One (1) paper copy of the diversity participation information provided by proposer should be delivered with the Proposal in a separately-sealed envelope labelled “Diversity”. Submittals must be delivered in a sealed envelope in person, via mail or courier. Please write “**Owner 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 the content or subject matter of this RFP must be sent by email to bids@houstonfirst.com no later than **10:00 a.m. on February 4, 2020**. Questions will be answered collectively in the form of a Letter of Clarification. Due to time constraints, HFC strongly encourages proposers to submit questions as early as possible.

PURPOSE & OVERVIEW

Houston First Corporation (“HFC”) is soliciting proposals from experienced capital project/construction managers, developers, and hospitality-industry consultants able to assist and represent HFC as needed 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 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 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 prompt, well-reasoned advice to HFC staff on all material matters arising in connection with the Hotel Project and to represent the best interests of HFC as directed. Services are to commence upon selection by HFC and are expected to continue 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 because of construction of the Hotel on the top of Partnership Tower, HFC seeks the services of a qualified proposer able to advise and make recommendations to HFC in connection with the Hotel Project, with an emphasis on matters that could affect Partnership Tower, its operations and systems.

During pre-development, HFC will require advice and specific recommendations with regard to the exercise by HFC of its rights under the documents between HFC and the Hotel Developer with regard to the Hotel Developer's proposed plans, specifications, site logistics, modifications to Partnership Tower, and all other development aspects pertaining to the Hotel Project. Throughout construction of the Hotel Project, the selected proposer(s) are to act as HFC's representative with respect to monitoring performance by the Hotel Developer of its obligations with respect to construction and to provide advice and recommendations to HFC with regard thereto.

HFC does not seek from the successful proposer under this RFP services that constitute the practice of architecture or engineering under Title 6 of the Texas Occupations Code or other applicable law, or the provision of general contractor construction services. The selected proposer 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 Proposer by HFC and are anticipated to extend through substantial completion of the construction of the Hotel.

PRE-SUBMITTAL CONFERENCE

A pre-submittal conference will be held for the benefit of all potential Proposers at **10:00 a.m. on February 3, 2020** in the **HFC Board Room** located on the second floor of **Partnership Tower**, located at 701 Avenida de las Americas, Houston, Texas 77010. Although attendance at the conference is not mandatory, all prospective Proposers are urged to be present.

LETTERS OF CLARIFICATION

Responses to all material questions timely submitted by potential Proposers, as well as revisions incorporated into this RFP by HFC, if any, will be confirmed by HFC in a letter posted online at <http://www.houstonfirst.com/do-business/> ("Letter of Clarification"). When issued, Letters of Clarification become part of this RFP and automatically supersede any previous specifications or provisions in conflict therewith. By submitting their proposal, Proposers 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 Proposers to monitor the foregoing link and ensure they receive any such Letters of Clarification and incorporate them in their proposal.

PROPOSAL FORMAT AND EVALUATION

To be considered responsive, Proposers are asked to include the following information in their proposal:

- a. **Transmittal Letter:** Write a brief letter summarizing proposer's understanding of the work to be done communicating effectively why the proposer 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 RFP, 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 Proposer and include a direct phone number and email address. Proposers must make a specific, unambiguous statement accepting and agreeing to comply, if selected, with the Material Contract Agreement Terms and Conditions provided below.
- b. **Experience and References:** Describe the proposer's experience in developing/renovating on top of an existing, operating building, or providing construction management/consulting services for a complex hospitality-industry project, including any experience in central business district settings. In each example given, describe the role played by Proposer's key personnel that participated. Provide three references for whom Proposer 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 that would be assigned to the project with a summary of their qualifications. List the names of key personnel who will provide the services and provide their resumes.
- d. **Pricing:** Submit proposer's pricing for services with all potential fees and charges to HFC fully disclosed. Proposers are encouraged to provide pricing options (e.g., hourly rates, a flat monthly fee, or a combination thereof) and/or alternative pricing structures with corresponding scope(s) of service (e.g., remote performance of most services with weekly or monthly in-person meetings, pre-construction and construction fees stated separately).
- e. **Diversity Efforts:** Proposers should indicate how they intend to make good faith efforts to utilize diverse companies to meet the Diversity Goal set forth in this RFP.

Although there is no page limit, proposers are asked to ensure that their proposals are clear and concise. Each proposal received in response to this RFP will be reviewed and ranked based on the following weighted criteria: Transmittal Letter, including acceptance of the Owner Representative Services Agreement (15 points); Experience and References (25 points); Key Personnel (30 points); Pricing (20 points); and Diversity Efforts (10 points).

HFC intends to award a contract to the proposer(s) offering the best value to HFC, as measured by HFC utilizing the foregoing evaluation criteria, including the right to award one or more contracts by criteria 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 one or more 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.

FORM OF AGREEMENT

By submitting a response to this RFP, proposer agrees, if selected, to enter into an agreement including the Material Contract Terms and Conditions set forth below as Attachment "1".

DIVERSITY PARTICIPATION

The proposer 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: **15%** of the total value of the Agreement. Proposers 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 proposers, including required forms, should be delivered with the proposal in a **separately-sealed envelope** labelled "**Diversity**".

VENDOR CODE OF CONDUCT

Proposers 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 Proposers be familiar with and abide by the Code of Conduct for Vendors.

RESTRICTIONS ON COMMUNICATIONS

Throughout the selection process, commencing with the Issue Date, Proposers are directed not to communicate with any HFC employee, officer or director regarding their Proposal, or any matter relating to this RFP, other than through bids@houstonfirst.com or during the pre-submittal conference. Proposers are solely responsible for observation and compliance with such restrictions, and HFC reserves the right to reject any proposal due to violation of this provision.

CONFLICTS OF INTEREST

Proposers 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, Proposers 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 RFP content must be filed by the actual or potential proposer with the Purchasing Agent no later than five business days prior to the Submission Deadline. If the protest consists of a dispute regarding the Proposer 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 proposer after the Submission Deadline, but at least three business days prior to consideration of a contract resulting from this RFP 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 proposer, with sufficient information to establish that a bona fide proposer is the person or entity filing the protest; (b) The full title of the RFP; (c) Material grounds for the protest, including the provisions of the RFP and the applicable law or regulation that serves as the basis for the protest; (d) A statement of the specific relief requested by the proposer; (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 proposer promptly to acknowledge receipt of a protest.

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 will have the opportunity to raise objections to disclosure with the Texas Attorney General at their expense.

RFP PACKETS

A complete copy of this RFP, including exhibits, 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 consideration and ranking by HFC.

ATTACHMENT “1”
MATERIAL CONTRACT TERMS AND CONDITIONS

Standard of Care. Owner Representative represents and warrants to HFC that the Services shall be performed (a) in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for comparable services; and (b) in full compliance with federal, state, and local laws, statutes, ordinances, rules, regulations and lawful orders of public authorities, as may be amended from time to time.

Conflicts of Interest. Owner Representative represents that it 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. Owner Representative shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise Owner Representative’s professional judgment with respect to the Services or this Agreement, nor shall Owner Representative 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.

Supervision. Owner Representative shall supervise and control the Services using Owner Representative’s best skill and attention, including but not limited to the enforcement of strict discipline and good order among Owner Representative’s employees, agents, contractors, subcontractors, and any other persons carrying out the Services. Owner Representative shall not employ, retain or engage unfit persons or persons not properly skilled in the tasks assigned to them. Owner Representative shall be solely responsible for, and have control over, means, methods, techniques, sequences and procedures and for coordinating all aspects of the Services, except to the limited extent other, specific instructions concerning such matters are set forth in this Agreement.

Expenses. During the Term, Owner Representative shall be reimbursed monthly for (a) the actual amount of all reasonable expenses incurred by Owner Representative in connection with out-of-town travel related to the Project (including reasonable transportation, lodging, meals, long distance communication charges and expenses directly related to the Project) to the extent approved by HFC in advance and (b) costs which are otherwise contemplated in the approved Project Cost Budget (the “Reimbursable Project Costs”). All requests for payment of Reimbursable Expenses shall be accompanied by invoices of other reasonably satisfactory documentation. In no event shall HFC have any obligation to pay or reimburse Owner Representative for salaries or other employment costs of Owner Representative’s personnel, overhead or other general or administrative costs, or the costs of insurance required to be maintained hereunder by Owner Representative. For the avoidance of doubt, the parties agree that reimbursable expenses shall not include first-class travel or accommodation, overhead or general administrative costs.

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

Insurance Requirements. With no intent to limit Owner Representative’s liability under the indemnification provisions, Owner Representative shall provide and maintain, and shall require its contractors and subcontractors to maintain, from the Effective Date, until final completion of all services related hereto, at least the following insurance and available limits of liability: (a) Commercial

General Liability, including contractual liability, bodily injury/death, property damage, and personal and advertising injury with limits of at least \$1,000,000 each occurrence and \$2,000,000 aggregate; (b) Automobile Liability, with a combined single limit of \$1,000,000; (c) Workers' Compensation with statutory limits (Owner Representative shall not self-insure for Worker's Compensation); and (d) Employer's Liability, with limits of \$1,000,000 for each accident, disease limits of \$1,000,000 per policy and \$1,000,000 per employee.

Rating. The issuer of any insurance 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.

Endorsements. Each insurance policy, except those for Workers' Compensation and Employer's Liability, must include an additional insured endorsement in favor of HFC and the City of Houston. Each insurance policy must contain an endorsement approved by HFC waiving any claim or right in the nature of subrogation in favor of HFC and the City of Houston.

Premiums and Deductibles. Owner Representative shall be solely responsible for payment of all insurance premiums hereunder. Owner Representative 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.

Primary Insurance. Each insurance policy hereunder, except Workers' Compensation, shall be primary insurance to any other insurance available to HFC and the City of Houston with respect to claims arising hereunder.

Release. OWNER REPRESENTATIVE AGREES TO AND SHALL RELEASE HFC AND THE CITY OF HOUSTON, INCLUDING THEIR AGENTS, EMPLOYEES, OFFICERS AND DIRECTORS, FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE OF SERVICES BY OWNER REPRESENTATIVE, INCLUDING ITS EMPLOYEES, AGENTS, AND CONTRACTORS OF ANY TIER IN CONNECTION WITH THE SERVICES, INCLUDING BUT NOT LIMITED TO LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY OWNER REPRESENTATIVE UNDER THIS AGREEMENT.

Indemnification. OWNER REPRESENTATIVE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HFC AND THE CITY OF HOUSTON, INCLUDING THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS AND DIRECTORS (COLLECTIVELY "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, JUDGEMENTS, 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 SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE OF SERVICES BY OWNER REPRESENTATIVE, INCLUDING CLAIMS RELATING TO THE ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF OWNER REPRESENTATIVE (INCLUDING ITS EMPLOYEES, AGENTS, AND CONTRACTORS OF ANY TIER), AND FURTHER INCLUDING LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY OWNER REPRESENTATIVE UNDER THIS AGREEMENT. OWNER REPRESENTATIVE

DOES NOT INDEMNIFY THE INDEMNITEES FOR THEIR SOLE NEGLIGENCE. OWNER REPRESENTATIVE SHALL CAUSE ITS CONTRACTORS OF ANY TIER TO INDEMNIFY THE INDEMNITEES TO THE SAME EXTENT AND IN THE SAME FORM AS THE FOREGOING INDEMNITY TO THE INDEMNITEES.

Indemnification Procedures. If HFC or Owner Representative 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. 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 Owner Representative is prejudiced, suffers loss, or incurs expense because of the delay. Owner Representative may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to HFC. Owner Representative shall then control the defense and any negotiations to settle the claim. Within 10 calendar days after receiving written notice of the indemnification request, Owner Representative must advise HFC as to whether or not it will defend the claim. If Owner Representative does not assume the defense, then HFC shall assume and control the defense, and all defense expenses constitute an indemnification loss. If Owner Representative 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. Owner Representative 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; would require the Indemnitees to pay amounts that Owner Representative does not fund in full; or would 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.

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

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

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 Owner Representative any such default, and Owner Representative 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 Owner Representative.

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

the termination is ineffective; should Owner Representative 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.

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 Owner Representative. 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, Owner Representative 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, Owner Representative 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 Owner Representative 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 OWNER REPRESENTATIVE'S EXCLUSIVE REMEDIES FOR HFC'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH UNDER THIS AGREEMENT. OWNER REPRESENTATIVE 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.**

Termination by Owner Representative. Owner Representative 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 Owner Representative 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 Owner Representative 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.

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 Owner Representative. To the extent not prohibited by Applicable Law and in addition to any other remedy, HFC reserves the right but not the obligation to offset any amount that Owner Representative owes HFC against any amounts due Owner Representative under this Agreement.

Diversity Goal. Owner Representative shall make good faith efforts to award subcontracts equal to **fifteen percent (15%)** of the value of this Agreement to certified, diverse suppliers of goods and services in accordance with the Diversity Program established by HFC, which is made a part hereof for all purposes. Owner Representative 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.

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.

Assignment. Owner Representative shall not assign this Agreement in whole or in part without the prior written consent of HFC and shall not have the right to reassign key personnel without the prior written consent of HFC. For purposes hereof, any transfer of ownership interests in Owner Representative, direct or indirect, occurring after the Effective Date shall be deemed an assignment by Owner Representative 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 Owner Representative.

Independent Contractor. The relationship of Owner Representative to HFC shall be that of an independent contractor. Owner Representative 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.

Governing Law/Venue. To the extent not preempted by federal law or regulation, this Agreement shall be construed and enforced in accordance with the laws of the State of Texas, notwithstanding any choice-of-law or conflicts-of-law rules to the contrary. Any action to enforce this Agreement or any litigation or claims otherwise regarding this Agreement must be brought in a court of competent jurisdiction in Harris County, Texas.