



2640 Fountain View Drive, Houston, Texas 77057 | 713.260.0600 | Mark Thiele, **Interim President & CEO**
Houston Housing Authority Board of Commissioners: LaRence Snowden, *Chair* | Kristy Kirkendoll, *Vice Chair*
Dr. Max Miller, Jr. | Stephanie Ballard | Andrea Hillard Cooksey | Kris Thomas | Guillermo “Will” Hernandez

The Houston Housing Authority (“HHA”), has issued this Amendment No. 1 to Qualification Based Solicitation (“QBS”) 21-44 Environmental Engineering Services for the purposes of:

1. Incorporating the attached Draft Contract into the solicitation as Exhibit C for informational purposes which is not required to be submitted with the sealed responses; and,
2. Answering the following questions that was submitted to HHA by the specified due date:

Question 1: How many awards will be made?

Answer 1: See the first sentence in Section 6.5 of the solicitation.

Question 2: What’s the value of the contract?

Answer 2: That information is not provided during an open solicitation.

Question 3: Does this contract replace QBS 19-29?

Answer 3: It may.

Question 4: If you’re a current contract holder for QBS 19-29 do we need to submit for QBS 21-44?

Answer 4: QBS 19-29 has nothing to do with QBS 21-44. These are two (2) separate and distinct solicitations.

Question 5: Page 1 states the deadline to submit questions is October 15, but the Procurement Schedule on Page 4 states the deadline to submit questions is October 20. Will you confirm the deadline for submitting questions?

Answer 5: October 20th is the correct deadline.

Question 6: What was the dollar value of the incumbent contract(s)?

Answer 6: See Answer No. 2.

Question 7: Are subcontractors of the prime required to meet Section 3 Commitments (one of the five options), or only the prime contractors?

Answer 7: No, just the prime contractors.

Question 8: On Attachment A: Declaration, who are the “Persons Interested” that should be listed on this form? Is this the company President that is also signing the page, all officers, all owners, etc.?

Answer 8: Yes.

Question 9: Is the “Section 3 Compliance Report” (Page 26 of 26) to be included within the proposal or is it for information purposes (use for after award)?

Answer 9: No. It is provided for informational purposes.

Question 10: In order to know which box to check for “Secondary Option 5” in the Section 3 Commitment Form, will the contract dollar value be over or under \$100,000?

Answer 10: Considering Answer No. 2, you may select both boxes.

Question 11: What is the expected value of the contract?

Answer 11: See Answer No. 2.

Question 12: If the specific dollar amount of the contract is unknown, should we leave “Amount of Subcontract” blank on the Bidder’s Proposed M/WBE Participation Form?

Answer 12: No. You can insert a “percentage” in the “Percentage of Contract Total” column.

All other terms and conditions shall remain the same.

Date

**Kevin M. Coleman, MS, C.P.M.
Procurement Manager,
Houston Housing Authority**



A Fair Housing and Equal Employment Opportunity Agency. For assistance: Individuals with disabilities may contact the 504/ADA Administrator at 713-260-0353, TTY 713-260-0574 or 504ADA@housingforhouston.com

Architectural & Engineering Services for the [Click here to enter text.](#)

Agreement Between

Houston Housing Authority

And

[Click here to enter text.](#)

DRAFT

A/E Agreement # [Click here to enter text.](#)

Agreement

This **Agreement** is made the [Click here to enter text.](#) day of [Click here to enter text.](#), with an Effective Date of the date of execution by Houston Housing Authority (the “**Owner**”).

Between the **Owner:** Houston Housing Authority
2640 Fountain View
Houston, TX 77057

And

The **Design Professional:** [Click here to enter text.](#)
[Click here to enter text.](#)
[Click here to enter text.](#)

For the following **Project:**

Architectural and Engineering services for the properties known as [Click here to enter text.](#) property located at [Click here to enter text.](#) in accordance with [Click here to enter text.](#) # [Click here to enter text.](#), issued [Click here to enter text.](#) (which is incorporated herein and made part of this Agreement). The [Click here to enter text.](#) portion of this work is [Click here to enter text.](#) units of apartments. This work is to access and design a remodeling of the [Click here to enter text.](#) units and their site work. In the event that this Agreement or [Click here to enter text.](#) shall conflict or contradict with respect to any item or provision, the provisions of this Agreement shall prevail.

This Agreement shall become effective on the date that it is executed by Owner, and shall continue in effect for [Click here to enter text.](#) ([Click here to enter text.](#)) years from the effective date, unless terminated sooner. Owner retains the option to extend this Agreement for [Click here to enter text.](#) ([Click here to enter text.](#)) additional year. Design Professional shall perform all of the services and obligations described herein:

The Scope of Work (“SOW”) is as follows:

Article I. GENERAL SCOPE OF WORK:

See Exhibit A, the “Scope of Work”, attached and incorporated herein by reference.

The Owner and Design Professional agree as set forth below:

1. Pre-Design Services
 - a. Documentation and review of existing conditions
 - b. Programming
2. Schematic Design response to Pre-Design

3. Design Development with engineering impact
4. Construction Documents
5. Bidding & Negotiations
6. Construction Administration
7. Other Services & Requirements

Section 1.01 SERVICES

- A. Areas of Design Professional's Basic Services.** In planning, designing and administering construction or rehabilitation of the Project, the Design Professional shall provide the Owner with professional services in the following areas:
1. Additional Services covered by Owner
 - a) First Phase Environmental
 - b) Code Review
 - c) Accessibility
 - d) Landscape Architecture
 - e) Cost Estimating – Consultant / GSMA
 - f) Historic Designation – Anna Mod
 - g) Geotechnical Report
 2. Proposed Architectural Fee
 - a) Plumbing Engineer – Consultant ≠ GSMA
 - b) Architecture – GSMA
 - c) Site Planning – GSMA
 - d) Structural Engineering – Consultant / GSMA
 - e) Mechanical Engineering – Consultant / GSMA
 - f) Electrical Engineering – Consultant / GSMA
 - g) Civil Engineering – Consultant / GSMA
 - h) Construction Contract Administration – GSMA

B. Phases and Descriptions of Basic Services

1. Planning Services/Pre-Design Phase. These services are to review existing conditions and discuss the program for each project. Once program is reviewed and submitted to Owner, Owner will review for comment. The Design Professional will revise and resubmit program for approval by owner.
2. Schematic Design/Preliminary Study Phase. After receipt of Approval of Program from the Owner, the Design Professional shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the complete concept of the Project, including all major elements of the construction and site design(s), planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. Additionally, the Design Professional shall make an independent assessment of the accuracy of the information provided by the Owner concerning existing conditions. Documents in this phase shall include:
 - a) Site plan(s) - based on survey provided by owner
 - b) Schedule of building types, unit distribution, and bedroom count, architect to provide in excel spreadsheet.
 - c) Scale plan of all buildings, and typical dwelling units
 - d) Preliminary construction cost estimates
 - e) Project specific analysis of codes, ordinances and regulations
 - f) Three dimensional line drawings – this will be Revit 3D drawings, perspectives or axonometric, not renderings.
3. After Schematic Design documents are reviewed by the Owner, they will compare preliminary construction cost estimates and verify if budget and scope of work are compatible. If not Owner is to direct the Design Professional which portions of the work are to progress into Design Development.
4. Design Development Phase. After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Professional shall prepare and submit to the Owner Design Development Documents. The Design Professional shall revise these documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:
 - a) Drawings sufficient to fix and illustrate project scope and character in all essential design elements
 - b) Wall sections and elevations
 - c) Outline specifications
 - d) Cost estimates and analysis; second version
 - e) Recommendations for phasing of construction
 - f) Site plans
 - g) Landscape plan
 - h) Floor plans
 - i) Elevations, building and wall sections

- j) Updated three-dimensional line drawings; as noted in schematic design section
- k) Engineering drawings – Civil, Structural, Mechanical, Plumbing, Electrical schematic systems for all disciplines.

C. Construction Document Phase. After receipt of the Owner's written approval of Design Development Documents, the Design Professional shall prepare Construction Documents. The Design Professional shall revise these Construction Documents consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. They shall include in a detailed manner all work to be performed; all material; workmanship; finishes and equipment required for the architectural, structural, mechanical, plumbing, electrical, and site work; survey maps furnished by Owner; and direct reproduction of any logs and subsurface soil investigations, furnished by owner. These documents shall include:

1. Technical Specifications
2. Plans and drawings for permitting
3. Updated cost estimates, third version

D. Bidding and Award Phase. After written approval of Construction from the Owner, the Design Professional shall assist in administering the bidding and award of the Construction Contract. This shall include after consultation with the Owner and Owner's attorney, if requested by the Owner, the Design Professional shall also prepare and assemble all bidding and contract documents:

1. Solicitation for Bids
2. Form of Contract
3. Special Conditions
4. General Conditions
5. Responding to inquiries
6. Drafting and issuing addenda approved by Owner
7. Attending pre-bid conference(s)
8. Attending public bid openings
9. Reviewing and tabulating bids
10. Recommending list of eligible bids
11. Recommending award
12. Altering drawings and specifications as often as required to award within the Estimated Construction Contract Cost

E. Construction Administration Phase. After execution of the Construction Contract, the Design Professional shall, in a prompt and timely manner, administer the Construction Contract and all work required by the Construction Documents. The Design Professional shall endeavor to protect the Owner against defects and deficiencies in the execution and performance of the work. The Design Professional shall:

1. Administer the Construction Contract.
2. Conduct pre-construction conference and attend dispute resolution conferences and other meetings when requested by the Owner.
3. Review and approve contractor's shop drawings and other Submittals for conformance to the requirements of the contract documents.
4. At the Owner's written request, and as Additional Service, procure testing from qualified parties.
5. Monitor the quality and progress of the work and furnish a written field report per site visit. This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to the Design Professional's failure to properly perform its duties and responsibilities. The Owner may direct additional monitoring but only as Additional Services.
6. Require any sub-consultant to provide the services listed in this section where and as applicable and to visit the Project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Design Professional.
7. Review, approve and submit to Owner the Contractor Requests for Payment.
8. Conduct all job meetings and record action in a set of minutes which are to be provided to the Owner.
9. Make modifications to Construction Contract Documents to correct errors, clarify intent or to accommodate change orders.
10. Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
11. Promptly notify Owner in writing of any defects or deficiencies in the work, or of any matter of dispute with the Contractor.
12. Negotiate, prepare cost or price analysis for, and countersign, change orders.
13. Prepare written punch list, certificates of completion and other necessary construction close-out documents.
14. Prepare a set of reproducible record prints of Drawings showing significant changes in the work made during construction, including the locations of underground utilities and appurtenances referenced to permanent surface improvements, based on marked-up prints, drawings and other data furnished by the contractor to the Design Professional.

- F. Post Completion/Warranty Phase.** After execution of the Certificate of Completion by the Owner, the Design Professional shall:
1. Consult with and make recommendations to Owner during warranties regarding construction, and equipment warranties.
 2. Perform an inspection of construction work, material, systems and equipment no earlier than nine (9) months and no later than ten (10) months after completion of the construction contract and make a written report to the Owner. At the Owner's request, and by Amendment to the Additional Services section of this contract, conduct additional warranty inspections as Additional Services.
 3. Advise and assist Owner in construction matters for a period up to eighteen months after completion of the project, but such assistance is not to exceed forty hours of service and one non-warranty trip away from the place of business of the Design Professional.
- G. Time of Performance.** The Design Professional's schedule for preparing, delivering and obtaining Owner's approval for Basic Services shall be per schedule:
1. Exhibit 4 – [Click here to enter text.](#)
- H. Design Professional's Additional Services**
1. Description of Additional Services. Additional Services are all those services provided by the Design Professional on the Project for the Owner that are not defined as Basic Services in this Agreement or otherwise required to be performed by the Design Professional under this Agreement. Generally, they include major revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Professional and not due to any errors, omissions, or failures on the part of the Design Professional to carry out obligations otherwise set out in this Agreement.
 2. Written Addendum or Contract Amendment. All additional services not already expressly provided for by this agreement shall be agreed to through either a written addendum or written amendment to this Agreement.

Section 1.02 COMPENSATION AND PAYMENT

- A. Fee For Basic Services.** In consideration of the Basic Services described herein, the Owner will pay the Design Professional for Basic Services performed under this agreement, a Fixed Fee (stipulated sum) not to exceed [Click here to enter text.](#) Dollars and [Click here to enter text.](#) Cents ([Click here to enter text.](#)) plus Reimbursable Expenses identified in this Agreement. Such payment shall be compensation for all Basic Services required, performed, or accepted under this Contract. A summary of fees allocated by category is as follows:

- B.** Payment Schedule. Progress payments for Basic Services for each phase of work shall be made in proportion to services performed for each Phase within **Click here to enter text.** days of completion of each Phase as follows and as outlined in Exhibit 6:

Schematic Design/Preliminary Study Phase

Design Development Phase:

Bidding, Construction & Contract Document Phase:

Bidding & Award Phase:

Construction Phase:

Post Completion/ Warranty Phase:

Section 1.03 EXPENSES & INVOICING

- A.** Reimbursable Expenses. There are no reimbursable expenses. Drawing to be provided electronically at all stages of reimbursable review and permitting.
- B.** Payment for Additional Services. The Owner will pay the Design Professional only for Additional Services as outlined in Exhibit **Click here to enter text.** which is incorporated by reference in this Agreement.

C. Invoicing and Payments

1. Invoices. All payments shall require a written invoice from the Design Professional. Invoices shall be made no more frequently than on a monthly basis. Payments for Basic Services shall be in proportion to services completed within each phase of work. When requesting such payment, the invoice shall identify the phase and the portion completed. All invoices shall state the Agreement, name and address to which payment shall be made, the services completed and the dates of completion, and whether the invoice requests payment for Basic Services, Reimbursable or Additional Services. Invoices seeking payment for Reimbursable or Additional Services must provide detailed documentation.
2. Time of Payment upon the Design Professional's proper submission of invoices for work performed or reimbursable expenses, the Owner shall review and, if the work is in conformance with the terms of the Agreement, make payment within thirty (30) days of the Owner's receipt of the proper invoice.

Section 1.04 RESPONSIBILITIES

A. Design Professional's Responsibilities

1. Basic Services. The Design Professionals shall provide the Basic Services set out in this Agreement.
2. Additional Services. When required under this Agreement or agreed to as set out in this Agreement, the Design Professional shall provide Additional Services on the Project.
3. General Responsibilities. The Design Professional shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Professional under this Agreement. The Owner's review, approval, acceptance of, or payment for Design Professional services shall not be construed as a waiver of any rights under this Agreement or of any cause of action for damages caused by Design Professional's negligent performance under this Agreement. Furthermore, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Owner or Design Professional by law.

4. Designing within Funding Limitations. If this Agreement is extended at the Owner's sole discretion, the Design Professional shall perform services required under this Agreement in such a manner so as to cause an award of a Construction Contract(s) that does not exceed [Click here to enter text](#). Dollars and [Click here to enter text](#). Cents (\$[Click here to enter text](#).) and this fixed limit shall be called the Maximum Construction Contract Cost. The amount may be increased by the Owner, but only with written notice to the Design Professional. If the increase results in a change to the scope of work, an amendment to this Agreement will be required. The Design Professional and the Owner may mutually agree to decrease the Maximum Construction Contract Cost, but only by signing a written amendment to this Agreement. Should bids for the Construction Contract(s) exceed the Maximum Construction Contract Cost, the Owner has the right to require the Design Professional to perform redesigns, rebids and other services necessary to cause an award of the Construction Contract within the Maximum Construction Contract Cost without additional compensation or reimbursement.
5. Compliance with Laws, Codes and Regulations. The Design Professional shall comply with all applicable Federal, State, and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. If the Project is within an Indian reservation, tribal laws, codes and regulations shall be substituted for state and local laws, codes, ordinances and regulations. However, on such a Native American Projects, the Owner may additionally designate that some or all state and local codes shall apply. In some of these circumstances, a model national building code may be selected by the Indian or Native American Owner. The Design Professional shall certify that Contract Documents will conform to all applicable laws, codes, ordinances and regulations. The Design Professional shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design professional shall make all changes in the Bidding and Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations. If subsequent to the date the Owner issues a notice to proceed, revisions are made to applicable codes or non-federal regulations, the Design Professional shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes. The Design Professional, however, is obligated to notify the Owner of all significant code or regulatory changes within sixty (60) days of their change, and such notification shall be required in order for the Design Professional to be entitled to any additional compensation or reimbursement.
6. Seal. Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced under this Agreement when required by law or when the project is located on an Indian Reservation.
7. Attendance at Conferences. The Design Professional or designated representative shall attend project conferences and meetings involving matters related to basic services covered under this contract. Attendance at community wide meetings shall be considered an additional service.

B. Owner's Responsibilities

1. Information. The Owner shall provide information regarding requirements for the project, including a program that shall set forth the Owner's objectives and schedule. The Owner shall also establish and update the Maximum Construction Cost. This shall include the Owner's giving notice of work to be performed by the Owner or others and not included in the Construction Contract for the Project. The Design Professional, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.
2. Notice of Defects. If the Owner observes or otherwise becomes aware of any fault or defect in the construction of the project or nonconformance with the Construction Contract, the Owner shall give prompt written notice of those faults, defects or nonconformance to the Design Professional.
3. Contract Officer. The Owner shall designate a Contract Officer authorized to act on its behalf with respect to the design and construction of the Project. The Contract Officer shall examine documents submitted by the Design Professional and shall promptly render decisions pertaining to those documents so as to avoid unreasonably delaying the progress of the Design Professional's work.
4. Duties to Furnish. The Owner shall provide the Design Professional the items listed below.
5. Survey and Property Restrictions. The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Professional to furnish any of these items as an Additional Service.
6. Existing Conditions. The Owner shall provide the Design Professional any available "as built" drawings of buildings or properties, architect surveys, test reports, and any other written information that it may have in its possession and that it might reasonably assume affects the work.
7. Waivers. The Owner shall provide the Design Professional information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.
8. Minimum Wage Rates. The Owner shall furnish the Design Professional the schedule of minimum wage rates approved by the U.S. Secretary of Labor for inclusion in the solicitation and Contract Documents.
9. Tests. When expressly agreed to in writing by both the Owner and the Design Professional, the Owner shall furnish the Design Professional all necessary structural, mechanical, chemical or other laboratory tests, inspections and reports required for the Project.
10. Contract Terms. The Owner or its legal counsel may provide the Design Professional text to be incorporated into Bidding and Construction Contract Documents.

Section 1.05 CONTRACT ADMINISTRATION

- A. Prohibition of Assignment.** The Design Professional shall not assign, subcontract, or transfer any services, obligations, or interest in this Agreement without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for financing the Design Professional's performance.
- B. Ownership of Documents.** All drawings, specifications, studies and other materials prepared under this contract shall be the property of the Owner and at the termination or completion of the Design Professional's services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project for any other purpose. If the Owner re-uses the subject data without the Design Professional's written verification, such use will be at the sole risk of the Owner without liability to the Design Professional.
- C. Substitutions**
1. The Design Professional shall identify in writing principals and professional level employees and shall not substitute or replace principals or professional level employees without the prior approval of the Owner which shall not unreasonably be withheld.
 2. The Design Professional's personnel identified below are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Design Professional shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on the contract. No diversion or substitution of such key personnel shall be made by the Design Professional without the prior written consent of the Owner.
 - a. [Click here to enter text.](#)
- D. Suspension.** The Owner may give written notice to the Design Professional to suspend work on the project or any part thereof. The Owner shall not be obligated to consider a claim for additional compensation if the Design Professional is given written notice to resume work within [Click here to enter text.](#) calendar days. If notice to resume work is not given within [Click here to enter text.](#) calendar days, the Design Professional shall be entitled to an equitable adjustment in compensation.
- E. Subcontracts.** The Design Professional will cause all applicable provisions of this Agreement to be inserted in all its subcontracts.

- F. Disputes.** In the event of a dispute arising under this Agreement, the Design Professional shall notify the Owner promptly in writing and submit its claim in a timely manner. The Owner shall respond to the claim in writing in a timely manner. The Design Professional shall proceed with its work hereunder in compliance with the instructions of the Owner, but such compliance shall not be a waiver of the Design Professional's rights to make such a claim. Any dispute not resolved by the parties to this Agreement may be determined by a court of competent jurisdiction or by consent of the Owner and Design Professional by other dispute resolution methods.
- G. Termination.** The Owner may terminate this Agreement for the Owner's convenience or for failure of the Design Professional to fulfill contract obligations. The Owner shall terminate by delivering to the Design Professional a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Professional shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process. If the termination is for convenience of the Owner, the Owner shall be liable only for payment for accepted services rendered before the effective date of termination.
- H. Insurance.** The Design professional shall carry Commercial or Comprehensive General Liability Insurance, Professional Liability Insurance (for a period extending two years past the date of completion of construction), and other insurance as are required by law, all in minimum amounts as set forth in Section 2.02 below. The Design Professional shall furnish the Owner certificates of insurance and they shall state that a thirty-day notice of prior cancellation or change will be provided to the Owner. Additionally, the Owner shall be an additional insured on all Commercial or Comprehensive General Liability policies.
- I. Retention of Rights.** Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Design Professional shall be and remain liable to the Owner in accordance with the applicable law for all damages to the Owner in accordance with the applicable law for all damages to the Owner caused by the Design Professional's negligent performance of any of the services furnished under this contract.

Section 1.06 ADDITIONAL REQUIREMENTS

- A. Contract Provisions Required by Federal Law or with the U.S. Department of Housing and Urban Development (HUD).**

- B. Contract Adjustments.** Notwithstanding any other term or condition of this Agreement, any settlement or equitable adjustment due to termination, suspension or delays by the Owner shall be negotiated based on the cost principles stated at 48 CFR Subpart 31.2 and conform to the Contract pricing provisions of 24 CFR 85.36(f).
- C. Additional Services.** The Owner shall perform a cost or price analysis as required by 24 CFR 85.36(f) prior to the issuance of a contract modification/amendment for Additional Services. Such Additional Services shall be within the general scope of services covered by this Agreement. The Design Professional shall provide supporting cost information in sufficient detail to permit the Owner to perform the required cost or price analysis.
- D. Restrictive Drawings and Specifications.** In accordance with 24 CFR 85.36(c)(3)(i), the Design Professional shall not require the use of materials, products, or services that unduly restrict competition.
- E. Design Certification.** Where the Owner is required by federal regulations to provide HUD a Design Professional certification regarding the design of the Projects (24 CFR 968.235), the Design Professional shall provide such a certification to the Owner.
- F. Retention and Inspection of Records.** Pursuant to 24 CFR 85.36(i)(10) and (11), access shall be given by the Design Professional to the Owner, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the Design Professional which are directly pertinent to that specific Contract for the purpose of making an audit, examination, excerpts, and transcriptions. All required records shall be retained for three years after the Owner or Design Professional and other subgrantees make final payments and all other pending matters are closed.
- G. Copyrights and Rights in Data.** HUD has no regulations pertaining to copyrights or rights in data as provided in 24 CFR 85.36. HUD requirements, Article 45 of the General Conditions to the Contract for Construction (form HUD-5370) requires that contractors pay all royalties and license fees. All drawings and specifications prepared by the Design Professional pursuant to this contract will identify any applicable patents to enable the general contractor to fulfill the requirements of the construction contract.

- H. Conflicts of Interest.** Based in part on federal regulations (24 CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when:

- a. The employee, officer or agent,
- b. Any member of his or her immediate family,
- c. His or her partner, or
- d. An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, or parties to subagreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents or by Contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Neither the Owner nor any of its contractors or their subcontractors shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

No member, officer, or employee of the Owner, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof.

- I. Disputes. In part because of HUD regulations (24 CFR 85.36(i)(1)), this Design Professional Agreement, unless it is a small purchase contract, has administrative, contractual, or legal remedies for instances where the Design Professional violates or breaches Agreement terms, and provide for such sanctions and penalties as may be appropriate.

- J. Termination. In part because of HUD regulations (24 CFR 85.36(i)(2)), this Design Professional Agreement, unless it is for an amount of \$10,000 or less, has requirements regarding termination by the Owner when for cause or convenience. These include the manner by which the termination will be effected and basis for settlement.

- K. Interest of Members of Congress. Because of Contract agreement between the Owner and HUD, no member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit to arise from it.

- L. Limitation of Payments to Influence Certain Federal Transaction. The Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions Act, Section 1352 of Title 31 U.S.C., provides in part that no appropriate funds may be expended by recipient of a federal contract, grant, loan, or cooperative agreement to pay any person, including the Design Professional, for influencing or attempting to influence an officer or employee of Congress in connection with any of the following covered Federal actions: the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

M. Employment, Training, and Contracting Opportunities of Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

1. The work to be performed under this contract may be subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low income persons, particularly persons who are recipients of HUD assistance for housing.
2. To the extent required by law, the parties to this contract will comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with part 135 of the regulations.
3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
5. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

N. Reserved.

- O. Clean Air and Water. (Applicable to contracts in excess of \$100,000). Because of 24 CFR 85.36(i)(12) and Federal law, the Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857h-4 transferred to 42 USC § 7607, section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), on all contracts, subcontracts, and subgrants of amounts in excess of \$100,000.

- P. Energy Efficiency. Pursuant to Federal regulations (24 CFR 85.36 (i)(13)) and Federal law, except when working on an Indian housing authority Project on an Indian reservations, the Design Professional shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163 codified at 42 U.S.C.A. § 6321 et. seq.).

- Q. Prevailing Wages. In accordance with Section 12 of the U. S. Housing Act of 1937 (42 U.S.C. 1437j) the Design Professional shall pay not less than the wages prevailing in the locality, as determined by or adopted (subsequent to a determination under applicable State or local law) by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians.

- R. Non-applicability of Fair Housing Requirements in Indian Housing Authority Contracts. Pursuant to 24 CFR section 905.115(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d-4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, and the Fair Housing Act (42 U.S.C. 3601-3620), which prohibits discrimination based on race, color, religion, sex, national origin, handicap, or familial status in the sale or rental of housing do not apply to Indian Housing Authorities established by exercise of a Tribe's powers of self-government.

- S. Prohibition against Liens. The Design Professional is prohibited from placing a lien on the Owner's property. This prohibition shall be placed in all Design Professional subcontracts.

Article II. OTHER OWNER REQUIREMENTS & MISCELLANEOUS PROVISIONS

Section 2.01 ADDITIONAL DOCUMENTS INCORPORATED INTO THIS AGREEMENT.

- A. [Click here to enter text.](#) #1 [Click here to enter text.](#), as published by the Owner on or about [Click here to enter text.](#) , and all of its amendments, exhibits, attachments, and addenda, is hereby incorporated by reference into this Agreement as if set forth fully herein and is attached hereto as Exhibit 1.

- B.** In the event of a conflict between or among them, this Agreement shall control over [Click here to enter text.](#) # [Click here to enter text.](#) .

Section 2.02 INSURANCE

- A.** The Design Professional shall maintain the following insurance for the duration of this Agreement unless otherwise noted:
1. Workers' compensation insurance in accordance with State of Texas rules and regulations for all employees providing work and services hereunder. This policy must be endorsed to contain a waiver of subrogation and a thirty (30) day notice of cancellation or non-renewal in favor Owner.
 2. Commercial/Comprehensive general liability insurance with a single limit for bodily injury of \$1,000,000.00 per occurrence and property damage limit of no less than \$1,000,000.00 per occurrence. The insurance may have a combined aggregate of coverage amounting to no less than \$2,000,000.00. Such insurance shall protect the Design Professional against claims of bodily injury or death, including specifically such claims resulting from any form of sexual misconduct and for property damage to others. Such insurance shall also include coverage for completed operations and contractual liability. The insurance shall cover the use of all equipment, hoists and vehicles used on any work site(s) not covered by automobile liability under (c) below. If the Design Professional has a "claims made policy," then the following additional requirements apply. The policy must provide a "retroactive date" which must be on or before the execution date of the Agreement and the extended reporting period may not be less than five years following the completion date of the Agreement. The Owner must be named as an additional insured under this policy and this policy must be endorsed to be primary/noncontributory and contain a waiver of subrogation endorsement in favor the Owner. This policy must also be endorsed with a thirty (30) day notice of cancellation/nonrenewal in favor of Owner.
 3. Automobile liability insurance covering owned, non-owned, hired and all vehicles used by the Design Professional with a combined single limit of not less than \$1,000,000.00 applicable to bodily injury, sickness or death and loss of, or damage to, property in any one occurrence. The Owner must be named as an additional insured under this policy and this policy must be endorsed to be primary/noncontributory and contain a waiver of subrogation endorsement in favor the Owner. This policy must also be endorsed with a thirty (30) day notice of cancellation/nonrenewal in favor of Owner.
 4. Umbrella/Excess Liability Insurance in the amount of \$10,000,000.00 providing excess limits over Workers' Compensation, Automobile Insurance, Professional Liability and General Liability Insurance. The Owner must be named as an additional insured under this policy and this policy must be endorsed to be primary/noncontributory and contain a waiver of subrogation endorsement in favor the Owner. This policy must also be endorsed with a thirty (30) day notice of cancellation/nonrenewal in favor of Owner.

5. Errors and omissions professional liability insurance in an amount no less than \$1,000,000.00 and for a period of at least two years past the date of completion of construction. The policy shall provide for coverage for all work performed by the Design Professional. The Design Professional shall ensure that any subcontractors hired by the Design Professional that perform work on the Design Professional's behalf will maintain their own Errors and Omissions Professional Liability Insurance coverage in the amount of no less than \$1,000,000.00 and the Design Professional shall obtain evidence of such insurance in a manner satisfactory to the Owner and provide such evidence to the Owner upon the Owner's request. This policy must also be endorsed with a thirty (30) day notice of cancellation/nonrenewal in favor of Owner.
- B.** Before commencing its performance of any work or services under this Agreement, the Design Professional shall provide the Owner with copies of the applicable certificates of insurance, policies, declarations, and endorsements for the required coverages listed above so that the Owner may confirm: (a) that said coverages are valid and in effect; (b) that it is named as an additional insured under the Design Professional's commercial/comprehensive general liability insurance policy ("CGL"), umbrella/excess liability insurance policy, and its automobile liability insurance policy; (c) that none of the required policies may be cancelled or non-renewed until at least thirty days prior written notice has been provided to the Owner; (d) that the Design Professional's CGL policy, umbrella/excess policy, and automobile policy are primary; and that (e) the Design Professional's CGL policy, umbrella/excess policy, worker's compensation policy and automobile policy contain waivers of subrogation in favor of the Owner. All certificates of insurance must reference this job/project and contract number.
- C.** All insurance shall be carried with companies that are financially responsible and admitted to do business in the State of Texas. The Design Professional shall not permit the insurance policies required for this Agreement to lapse during any period for which this Agreement is in effect. It is Design Professional's sole responsibility to provide all requisite insurance documents to Owner in timely fashion.
- D.** The insurance requirements in this section are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the Design Professional under this Agreement, including, but not limited to, liability assumed by the Design Professional pursuant to §2.03 of this Agreement.

- E. For all required policies, the Design Professional shall be solely responsible for any premiums, deductibles, or self-insured retentions that may apply to the required coverages set forth in §2.02 of this Agreement. For all additional insured endorsements required herein, the additional insured language shall not be limited to the fault of Design Professional or those acting on its behalf, and the provisions in this Agreement requiring Owner to be provided additional insured coverage are incorporated into and made a part of Design Professional's respective policies by reference.
- F. The Design Professional shall require each of its subcontractors, if any, to provide the coverages noted in this section, unless such coverages are waived or reduced in writing by the Owner.
- G. This section shall control over §1.05.C and H.

Section 2.03 INDEMNIFICATION AND HOLD HARMLESS

- A. DESIGN PROFESSIONAL shall indemnify DEFEND, and hold OWNER, its OFFICERS, AGENTS, SUBSIDIARIES, AFFILIATED ENTITIES, COMMISSIONERS AND EMPLOYEES (THE "INDEMNIFIED PERSONS") HARMLESS FROM ALL LIABILITY, LOSS OR DAMAGE, INCLUDING REASONABLE ATTORNEY FEES AND EXPENSES, RESULTING FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ASSERTED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE INDEMNIFIED PERSONS' OR DESIGN PROFESSIONAL'S EMPLOYEES), FOR PERSONAL INJURY, DEATH, OR FOR LOSS OF OR DAMAGE TO ANY AND ALL PROPERTY IN ANY WAY ARISING OUT OF, IN CONNECTION WITH, OR TO THE EXTENT CAUSED BY THE DESIGN PROFESSIONAL'S PERFORMANCE HEREUNDER. SUCH INDEMNITY SHALL BE WITHOUT REGARD TO THE NEGLIGENCE (WHETHER ACTIVE, PASSIVE, SOLE, CONCURRENT OR GROSS), STRICT LIABILITY OR OTHER FAULT OF ANY INDEMNIFIED PERSON.**
- B. DESIGN PROFESSIONAL SHALL BE RESPONSIBLE FOR, AND SHALL RELEASE AND HOLD HARMLESS OWNER FROM ANY LIABILITY FOR, ALL DAMAGE AND LOSS SUSTAINED BY IT TO ITS TOOLS AND EQUIPMENT UTILIZED IN THE PERFORMANCE OF DESIGN PROFESSIONAL'S SERVICES HEREUNDER. DESIGN PROFESSIONAL SHALL BE RESPONSIBLE FOR SATISFYING ALL DEDUCTIBLES UNDER ITS POLICIES WITHOUT REIMBURSEMENT FROM THE OWNER AND THE DEDUCTIBLE PORTION OF ANY LOSS SHALL NOT BE EXCLUDED FROM THE DESIGN PROFESSIONAL'S INDEMNITY OBLIGATION.**

- C. OWNER SHALL NOTIFY DESIGN PROFESSIONAL OF ANY CLAIM OWNER RECEIVES NOTICE OF ASSERTED AGAINST THE INDEMNIFIED PERSONS WITH RESPECT TO WHICH INDEMNIFIED PERSONS ARE INDEMNIFIED AGAINST LOSS BY DESIGN PROFESSIONAL OR ITS SUBCONTRACTORS HEREUNDER WITHIN FIFTEEN (15) DAYS OF OWNER'S RECEIPT OF NOTICE OF SUCH CLAIM, AND SHALL PROMPTLY DELIVER TO DESIGN PROFESSIONAL THE ORIGINAL OR A TRUE COPY OF ANY SUMMONS OR OTHER PROCESS, PLEADING, OR NOTICE ISSUED OR SERVED IN ANY SUIT OR OTHER PROCEEDING TO ASSERT OR ENFORCE ANY SUCH CLAIM. IF OWNER OR ANY OF THE INDEMNIFIED PERSONS DO NOT PROVIDE THIS NOTICE WITHIN THE FIFTEEN (15) DAY PERIOD, IT DOES NOT WAIVE ANY RIGHT TO INDEMNIFICATION EXCEPT TO THE EXTENT THAT DESIGN PROFESSIONAL IS PREJUDICED, SUFFERS LOSS, OR INCURS EXPENSE BECAUSE OF THE DELAY.**
- D. FOLLOWING SUCH NOTIFICATION, AND EXCEPT AS OTHERWISE PROVIDED BELOW, DESIGN PROFESSIONAL SHALL DEFEND ANY SUCH SUIT AT ITS SOLE COST AND EXPENSE WITH ATTORNEYS OF ITS OWN SELECTION WHO ARE REASONABLY SATISFACTORY TO OWNER.**
- E. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY LEGAL LIMITATIONS AFFECTING THE SCOPE OF PERMISSIBLE INDEMNITY SHALL BE READ INTO THESE CLAUSES SUCH THAT THE CLAUSE PROVIDES THE MAXIMUM INDEMNITY PURSUANT TO ITS TERMS WHILE STILL COMPLYING WITH THE LEGAL LIMITATIONS.**

Section 2.04 INDEPENDENT CONTRACTOR

In performing services under this Agreement, Design Professional is an independent contractor of Owner and not an employee of Owner. Nothing contained in this Agreement will be deemed or construed to create a partnership between the Design Professional and Owner. Design Professional will have no authority to create any obligation or make representations or warranty binding on Owner. All personnel supplied or used by Design Professional in connection with this Agreement will be deemed employees, agents, or subcontractors of Design Professional and will not be considered employees, agents, or subcontractors of Owner for any purpose whatsoever. Design Professional is solely responsible for payment of wages and/or overtime to Design Professional's employees. By entering into this contract Design Professional and Owner are not entering into a joint employment relationship.

Section 2.05 TEXAS LABOR CODE NOTICE

Design Professional will observe and abide by all applicable laws, regulations,

policies, and procedures, including, but not limited to, state and federal law, and those of Owner relative to conduct on its premises. To the extent applicable, Design Professional understands that as of January 1, 2014, the Texas Labor Code is amended with the addition of Section 214.008, which states that a person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code, shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the person directly retains and compensates for services performed in connection with the contract. Under this section, penalties apply to misclassification of certain workers.

Section 2.06 NON-APPROPRIATION

The Design Professional understands that the Owner is a governmental entity and should it not be funded for any period during the term of this Agreement any sums due for the remainder of the term shall be forgiven and the Owner shall not be liable for payment. The Owner is required to give the Design Professional written notice within thirty days after learning that the funds will not be available. Upon such written notice from the Owner, this Agreement will automatically terminate.

Section 2.07 NON WAIVER

No covenant or condition of this contract may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party to which the same may apply and until complete performance of any covenant or condition, the aggrieved party shall be entitled to invoke any remedy available to it under this contract or by law or in equity despite said forbearance or indulgence.

Section 2.08 NOTICES

Service of all notices under this contract shall be sufficient if given personally or mailed to the party involved at its respective address herein set forth, or at such address as such party may provide in writing for time to time. Any such notice mailed to such address shall be effective when deposited in the United States mail, duly addressed, and with postage prepaid. Notices delivered in person shall be deemed communicated at the time of actual delivery.

The contact person(s) for **OWNER** is/are

[Click here to enter text.](#), [Click here to enter text.](#)
Houston Housing Authority
2640 Fountain View
Houston, Texas 77057
Phone: (713) 260- [Click here to enter text.](#)

The contact person(s) for the **DESIGN PROFESSIONAL** is/are

[Click here to enter text.](#), [Click here to enter text.](#)

[Click here to enter text.](#)

[Click here to enter text.](#)

Phone: [Click here to enter text.](#)

Section 2.09 MISCELLANEOUS PROVISIONS

- A. Legal Construction.** If any provision in this Agreement is for any reason unenforceable, then the remaining provisions of the Agreement shall be enforced, to the extent possible, consistent with the intent of the Parties as evidenced by this Agreement and this Agreement shall be enforced as if the unenforceable provision had never been included herein. Whenever context requires, the singular will include the plural (and vice-versa) and references to gender shall include the masculine and feminine. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section or article herein. This Agreement shall not be construed more or less favorably by reason of the authorship or origin of its language; this Agreement shall not be construed against the drafter in the event of an ambiguity (or otherwise).
- B. Own Investigation.** The Design Professional represents and warrants that it entered this Agreement based solely on its own investigation and due diligence and not on reliance on any statements, representations, or omissions of the Owner unless otherwise noted in this Agreement. The Design Professional represents and warrants that it is fully satisfied that it has received any information it requested from the Owner in order to determine whether to enter this Agreement. The Design Professional expressly disclaims any reliance on any representation, statement, or omission by the Owner with respect to this Agreement, including the Design Professional's decision to enter this Agreement, unless otherwise noted in this Agreement.
- C. Attorneys' Fees.** In the event of any controversy, claim, or dispute between the Owner and the Design Professional affecting or relating to the subject matter or the performance of the Contract, the prevailing party will be entitled to recover from the non-prevailing party all the prevailing party's reasonable expenses, including but not limited to reasonable attorney's fees, expert witness fees, and court costs, pursuant to Texas Local Government Code Section 271.159, or as otherwise permitted by law. Notwithstanding anything herein to the contrary, the preceding sentence shall not apply to attorney's fees incurred which are subject to the Design Professional's obligations to indemnify and defend any indemnitee.
- D. Venue and Choice of Law.** Venue for any legal action arising from or relating to this Agreement shall exclusively lie in Harris County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas and all the obligations of the parties created hereunder are enforceable in Harris County, Texas. Its validity and the interpretation of its terms shall be governed by the laws of the State of Texas.

- E. Integration.** This Agreement contains the complete agreement of the parties and cannot be varied except by the parties' written agreement. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.
- F. Waiver of Default.** It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedy set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or that are provided by law.
- G. Concurrent Remedies.** No right or remedy herein conferred on or reserved to a party hereto is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.
- H. Written Consent.** Unless otherwise stated herein, this Agreement cannot be modified or altered in any way without the express written consent of the parties hereto.
- I. Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns, if any. As noted, the Design Professional cannot assign this Agreement without the written consent of the Owner.
- J. No Third-Party Rights.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of third party against either the Owner or the Design Professional.
- K. Time is of the essence.** Time is of the essence in this Agreement and in each and all of its provisions.
- L. Tax Exempt Clause.** The **OWNER** is a housing authority formed under section 392 of the Texas Local Government Code. By virtue of section 392.005 of the Texas Local Government Code, **OWNER** and its property are exempt from taxation by the State of Texas or a municipality or other political subdivision of the State of Texas.
- M. Equal Employment Opportunity/Compliance with Federal Regulations.** The **DESIGN PROFESSIONAL** shall take steps to ensure that, whenever possible, subcontractors are awarded to small business firms, minority firms, women's business enterprises and labor surplus area firms.

The **DESIGN PROFESSIONAL** shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The **DESIGN PROFESSIONAL** shall take affirmative action to ensure that

applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoffs, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The **DESIGN PROFESSIONAL** shall comply with the requirements of Title VII of the Civil Rights Act of 1968 and Title VI of the Civil Rights Act of 1964, relating to prohibitions against discrimination in housing and in the benefits of federally funded programs because of race, color, religion, sex or national origin.

The **DESIGN PROFESSIONAL** shall comply with the requirements of Executive Order No. 11246, which relates to the Equal Employment Opportunity requirements of federally funded programs.

The **DESIGN PROFESSIONAL** shall adhere to the prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973, and under the Americans with Disabilities Act of 1989.

The **DESIGN PROFESSIONAL** will meet the requirements of Executive Order No. 11625, No. 12432 and No. 12138 relating to minority and women's business enterprises.

The **DESIGN PROFESSIONAL** shall comply with all pertinent laws, federal regulations, criteria, additional instructions from **OWNER** or HUD policies, and procedures necessary to fulfill its obligations hereunder, including but not limited to the requirements of Section 3 of the Housing and Urban Development Act of 1968 relating to training and employment of individuals and contracting for business opportunities in metropolitan areas in which federally funded programs are being operated.

N. Proprietary Information.

1. **DESIGN PROFESSIONAL** shall maintain the confidentiality of all proprietary information provided to it by **OWNER**. Information in the public domain or otherwise obtained independently by **DESIGN PROFESSIONAL** is not considered confidential.
2. Any programs, data or other materials furnished by **OWNER** for use by **DESIGN PROFESSIONAL** concerning the services performed under this Agreement shall remain the sole property of **OWNER**.

- O. Legal and Regulatory Compliance.** All activities under this Agreement shall comply with all applicable local, state and federal laws, ordinances and regulations. This Agreement shall automatically be amended as necessary to comply with all applicable local, state and federal laws, ordinances and regulations, including incorporation of any provisions now or hereafter applicable to the subject matter hereof and/or required to be included by any federal, state or local governmental authority with relevant jurisdiction over the subject matter hereof. Any such change or incorporation of legal and regulatory requirements shall be deemed incorporated herein, irrespective of whether or not such provisions are expressly set forth in this Agreement or any written amendment hereto.
- P. Consequential Damages.** In no event shall the HHA or its agents be liable to the Contractor for any consequential, indirect, special, incidental, or exemplary damages
- Q. Additional Documents Addendum.** Prior to commencement of any services under this Agreement, Design Professional shall provide all requisite documents evidencing that the insurance requirements herein have been satisfied. This Agreement is voidable at the sole discretion of Owner, if Design Professional fails to comply with any requirements for maintaining or providing any proof of insurance. Additionally, and without waiving anything herein, Owner further reserves the right to withhold any and all payments to Design Professional if Design Professional begins work without having procured and provided the required insurance documentation (with all proper endorsements) to Owner.
- R. Force Majeure** neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but not limited to acts of god, strikes, epidemics, pandemics, disease, war, acts of terrorism, riots, civil disorder or unrest, flood, fire, tsunami, volcano, sabotage, air space closure, ground stop(s), a U.S. Department of State travel warning or any other circumstances of like character (“force majeure occurrence”).
- S. Other:** Contractor shall adhere to all federal, state and local laws and ordinances, as well as standards and recommendations outlined by the World Health Organization (WHO); Centers for Disease Control (CDC) and Occupational Safety and Health Administration (OSHA), and any other standards or procedures applicable to Contractor as it relates to the health, safety and welfare of tenants, residents, guests, HHA employees and others who may be involved in the execution of this Agreement.

IN WITNESS THEREOF, this document may be executed in multiple counterparts. Each counterpart is deemed an original. All counterparts together constitute one and the same instrument. Each party warrants that the undersigned is a duly authorized representative with the power to execute this contract.

*******SIGNATURES FOLLOW*******

HOUSTON HOUSING AUTHORITY
"Owner"

[Click here to enter text.](#)
"Design Professional"

Mark Thiele
Interim President & CEO

[Click here to enter text.](#)
[Click here to enter text.](#)

Date Signed

Date Signed

A/E Agreement # [Click here to enter text.](#)