



**HOUSTON**  
HOUSING AUTHORITY

Transforming Lives & Communities

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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 M. Kirkendoll, *Vice Chair*  
Dr. Max Miller, Jr. | Stephanie Ballard | Andrea Hillard Cooksey | Kris Thomas | Guillermo "Will" Hernandez

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The Houston Housing Authority ("HHA"), has issued this Amendment No. 2 to QBS 21-36 APV / HOAPV Developer for the purposes of:

1. Incorporating the attached Draft Contract as Exhibit H for informational purposes, which is not required to be submitted with the sealed proposal; and,
2. Answering the following Questions that were submitted to "HHA" in writing by the specified due date:

**Question 1:** It appears that the only procurement remaining to complete the development team is the selection of the general contractor. Is it the intention of the HHA to require an RFQ process to be completed by the selected developer or should respondents propose a qualified contractor as part of its team to include in its response to this RFQ?

**Answer 1:** The development process is still underway; thus, procurements will be done as they are deemed necessary. Additionally, there is no requirement in QBS 21-36 for the Developer to submit a general contractor RFQ.

**Question 2:** The RFQ requires that respondents complete Attachment F: Bidder's Proposed M/WBE Participation Form; however, the RFQ also states that the selected developer will assist HHA in procuring a general contractor. Since the general contractor will not be selected until after the HHA selects the developer, what is HHA's expectation with respect to the level of detail requested on the attachment?

**Answer 2:** Each company/organization interested in doing business the HHA must be in compliance with Section 3 requirements. Therefore, each respondent will be evaluated and scored solely based on submitted information and responses provided.

**Question 3:** The RFQ requires that respondents complete Attachment G: HHA Section 3 Requirements and Commitment. Given that the general contractor will not be selected until after the developer is selected, what is HHA's expectation with respect to the level of detail requested on the attachment?

**Answer 3:** Each company/organization interested in doing business the HHA must be in compliance with Section 3 requirements. Therefore, each respondent will be evaluated and scored solely based on submitted information and responses provided.

**Interested parties are reminded, per Section 3.0 Procurement Schedule, 2 P.M. “CST” November 17, 2021 is the deadline to submit sealed responses to this solicitation.**

**All other terms and conditions shall remain the same.**

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**Kevin M. Coleman, M.S., 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 713-260-0547 or [504ADA@housingforhouston.com](mailto:504ADA@housingforhouston.com)*

**CONTRACT NO.** \_\_\_\_\_

**FOR**

\_\_\_\_\_ **SERVICES**

**BETWEEN**

\_\_\_\_\_

**AND**

**THE HOUSTON HOUSING AUTHORITY**

This contract (the "Contract"<sup>1</sup>) is entered into by and between the HOUSTON HOUSING AUTHORITY (the "HHA"<sup>2</sup>),<sup>2</sup> having its principal place of business at 2640 Fountain View, Houston, Texas 77057, and \_\_\_\_\_ (the "Contractor"), having its principal place of business at \_\_\_\_\_. Hereinafter, all references to the "Parties" shall mean the HHA and the Contractor.

**WITNESSETH:**

WHEREAS, the HHA is a public body corporate, duly organized and validly existing and in good standing under the laws of the State of Texas and currently engaged in business defined in the Local Government Code of the State of Texas, including the provision of decent, safe, and sanitary housing to the residents of its facilities, low-income families, the elderly, and the disabled;

WHEREAS, the HHA, or its affiliates or subsidiaries, owns certain multifamily housing developments, including that certain multifamily housing development commonly known as \_\_\_\_\_ ("                    ");

WHEREAS the HHA requires a contract for the \_\_\_\_\_ services of \_\_\_\_\_ at the \_\_\_\_\_.

WHEREAS the HHA, on or about \_\_\_\_\_, issued \_\_\_\_\_(s) No. \_\_\_\_\_, including \_\_\_\_\_, soliciting responses from qualified firms to contract for the \_\_\_\_\_ services at \_\_\_\_\_.

<sup>1</sup> The Contract may also be referred to interchangeably as the "Agreement."

<sup>2</sup> In addition to being referred to as the "HHA," the Houston Housing Authority may alternatively be referred to as the "Authority," the "Agency," the "PHA," the "Housing Authority," the "Local Authority," the "LHA," or the "HA."

WHEREAS the HHA reviewed the responses it received to \_\_\_\_ No. \_\_\_\_, and determined that the response submitted by the Contractor was the \_\_\_\_\_ and \_\_\_\_\_; and

NOW THEREFORE, in consideration of the promises of the Parties herein, and pursuant to the mutual covenants and terms and conditions set forth in this Contract, the HHA and the Contractor agree to be legally bound as follows:

## 1. The Contract Documents.

- 1.1 In addition to the foregoing document, this Contract shall include: (a) § I of Form \_\_\_\_\_, as promulgated by the Department of Housing and Urban Development (“HUD”), and commonly known as “\_\_\_\_\_” (“Form \_\_\_\_\_”); (b) \_\_\_\_\_, including all exhibits, addenda, or amendments thereto (“\_\_\_\_\_”); (c) Contractor’s Response to \_\_\_\_\_, including all exhibits, addenda, or amendments thereto. Form \_\_\_\_\_ is attached hereto and incorporated by reference as if set forth fully herein. The parties agree to be bound by the terms of Form \_\_\_\_\_ and the contract documents as outlined herein.
- 1.2 Form \_\_\_\_\_, Contractor’s Response to \_\_\_\_\_ are attached hereto as, respectively, Exhibit 1, Exhibit 2 and Exhibit 3 and are incorporated by reference as if set forth fully herein.
- 1.3 In the event of a conflict between or among the contract documents, the following order of priority shall apply: (a) Form \_\_\_\_\_; (b) the foregoing document; (c) \_\_\_\_\_ and (d) Contactor’s Response to \_\_\_\_\_. The Section 3 Form and the M/WBE Form shall receive the lowest priority in the event of a conflict between or among the contract documents.
- 1.4 A Contract document’s silence on a provision, issue, or term and condition found in another Contract document shall not be considered a conflict between or among the Contract documents.

## 2. Contractor’s Services.

- 2.1 The work/services<sup>3</sup> to be performed by the Contractor pursuant to this Contract shall include, but not necessarily be limited \_\_\_\_\_ as outlined in Exhibit “\_\_\_\_\_” (Scope of Work) included in \_\_\_\_\_ and incorporated by reference heretofore.
- 2.2 The contractor shall be required to provide all the necessary personnel, supervision, transportation, equipment, insurance, tools, supplies, materials, and any other item(s)

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<sup>3</sup> Hereinafter referred to interchangeably as “Work” or “Services”.

or resource(s) needed to perform \_\_\_\_\_ Services at the \_\_\_\_\_, including but not limited to:

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

2.3 Absent the HHA's written consent or written instruction, the Work under this Contract shall be performed by Contractor.

2.4 The HHA may designate a Project Manager during the period of performance.

2.5 Contractor agrees to conduct all activities and perform all Work under this Agreement in accordance with all applicable federal, state and local laws, rules, regulations, policies, procedures and issuances in effect or promulgated during the term of this Agreement.

### **3. Consideration and Payment.**

3.1 In consideration of the work to be performed by the Contractor in accordance with the requirements and Scope of Work previously referenced herein as Exhibit \_\_\_\_\_ and pursuant to the Contract, the HHA shall pay the Contractor an amount not to exceed \_\_\_\_\_ (\$\_\_\_\_\_), during the Contract term.

3.2 The amount to be paid to Contractor shall consist of the Fee Schedule, attached hereto as Exhibit \_\_\_\_\_.

3.3 Contractor shall receive payment after invoices have been submitted and work has been approved by HHA's Project Manager. Payment terms are net 30 days.

3.4 The Contractor will ensure that its work and services are provided in a cost-efficient manner.

3.5 By the twentieth day of a given month, the Contractor, with respect to the work and services provided under this Contract in the preceding month, shall provide the HHA with an invoice that includes: (a) an itemized list of the work and services performed, (b) who performed the work and services, (c) the Properties and amount at which the work and services was billed; (d) the amount of time spent on the work and services, measured in one-tenth of an hour increments, (3) costs incurred for reimbursable expenses, if any such expenses are reimbursable under this Contract. Invoices comporting with this section that are approved by the HHA shall be due and payable by the HHA no later than thirty days after receipt. Invoices may be sent by the Contractor to the HHA via the United States Postal Service or via email. If sent via

email, an invoice shall be considered to be received by the HHA on the day the email was sent by the Contractor.

- 3.6 If the HHA does not approve of an invoice, or a part thereof, the HHA will, within seven business days after receipt of the invoice, provide the Contractor with written notice of adjustments that the HHA believes are warranted. If, within seven business days of receiving such notice from the HHA the Contractor does not present the HHA with additional detail or documentation to adequately support the disputed invoice (or portion thereof), then any adjustments made by the HHA to the invoice in question shall become binding upon the Contractor and the Contractor will waive any and all of its rights to dispute the adjusted invoice. If the Contractor responds timely within the seven business day timeframe allotted herein, and provides sufficient detail to adequately support the disputed invoice, (or disputed portion thereof), then the HHA shall consider the Contractor's timely response and will not unreasonably withhold payment of the disputed amount, provided that the additional detail or documentation submitted by the Contractor sufficiently and adequately supports the disputed invoice (or disputed portion thereof).
- 3.7 The HHA shall pay only the Contractor under this Contract. The HHA shall have no liability, directly or indirectly, for payment to the Contractor's employees, workers, agents, contractors, or subcontractors, if any. The Contractor agrees to indemnify, hold harmless, and defend the HHA and its employees, agents, affiliates, subsidiaries, representatives, and board members from any and all such claims.
- 3.8 **The Contractor is solely responsible for the payment of wages and any applicable benefits to workers for work performed under this contract. The Contractor shall be responsible for withholding federal and state income taxes, paying Federal Social Security taxes, maintaining unemployment insurance and maintaining workers' compensation insurance, in an amount and under such terms as required by the applicable laws of the State of Texas. THE HHA'S PAYMENT IS TO THE CONTRACTOR. HHA SHALL HAVE NO LIABILITY, DIRECTLY OR INDIRECTLY, FOR PAYMENT TO THE CONTRACTOR'S WORKERS OR TO SUBCONTRACTORS. THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE HHA, ITS EMPLOYEES, REPRESENTATIVES, AND AFFILIATES HARMLESS FROM ANY AND ALL SUCH CLAIMS.**
- 3.9 **The HHA is not responsible to the Contractor or the Contractor's workers for payment of any overtime compensation or any additional payments pursuant to the Fair Labor Standards Act; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C 2000e, et al., as amended; or any provisions of the Texas Labor Code Ann., as amended. The HHA will not be responsible for overtime wages.**

#### **4. Term/Period of Performance, Effective Date, and Termination.**

- 4.1 This Contract shall have an initial term of \_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_ from the effective date. At its sole discretion, the HHA may elect to extend the period of performance for up to an additional \_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_, in \_\_\_\_\_ (\_\_\_\_) year increments.
- 4.2 All work performed by the Contractor under the Contract shall be performed between the hours of \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m., Monday through Friday. HHA reserves the right to change hours as necessary.
- 4.3 This Contract shall be signed by the HHA and the Contractor. The Contractor shall sign the Contract first, and after signing, shall deliver the original signed contract, along with any and all required payment bonds, performance bonds, and required proof of insurance, to the HHA for signature by the HHA. This Contract shall not become effective until it is executed by the HHA. The Contract's effective date shall be the date of execution by the HHA.
- 4.4 Execution of the Contract by the Contractor is a representation that the Contractor has visited the work site, become generally familiar with local conditions under which the Contractor is to perform its work, and correlated personal observations with the requirements set forth in the Contract.
- 4.5 Passage of the Agreement expiration date shall not extinguish or prejudice HHA's right to enforce this Agreement with respect to default or defect in performance that has not been cured.
- 4.6 Irrespective of any default hereunder, HHA may at any time cancel the contract in whole or in part. Should this occur, the Contractor shall be entitled to equitable compensation for all work completed and accepted by HHA's Project Manager prior to such termination or cancellation.

## **5. Confidentiality.**

- 5.1 The Contractor acknowledges and agrees that all information which the Contractor shall receive from the HHA or its agents or affiliates in connection with this Contract shall be confidential and the Contractor shall not disclose such information to any party without the HHA's prior written consent or unless required to do so by law.

## **6. Contractor's Representations and Warranties.**

- 6.1 The Contractor represents and warrants that it has all applicable licenses and registrations to engage in and perform the services contemplated by this Contract. Unless otherwise stated herein, all local, State, or Federal permits or registrations which may be required to provide the services to be provided by the Contractor shall be the sole responsibility of the Contractor and any costs submitted by the Contractor in its

Response shall reflect all costs required by the Contractor to procure and provide such necessary permits and registrations.

- 6.2 The Contractor represents and warrants that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree or have the potential of conflicting with the performance of its services under the Contract or the impartial rendering of assistance or advice to the HHA. The Contractor further represents, covenants, and warrants that in the performance of the Contract no person having any such interest shall be employed. In the event the Contractor becomes aware of such an interest after the execution of this Contract, the Contractor shall immediately disclose the interest to the HHA in writing. The Contractor agrees that in carrying out its duties and responsibilities under this Agreement, it will neither undertake, nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any laws, decrees, rules, or regulations in effect in Texas or the United States; or (ii) would have the effect of causing the HHA to be in violation of any laws, decrees, rules, or regulations in effect in Texas or the United States.
- 6.3 Contractor agrees that in connection with this Agreement or any extension thereof, it will update the Conflict of Interest Questionnaire and any other relevant forms required by law, HUD or HHA, as needed. Contractor further agrees to notify the HHA immediately of any conflict of interest relating to the subject matter of this Agreement.
- 6.4 The Contractor represents and warrants that in performing its services under this Contract, it will comply with all applicable State of Texas laws and regulations pertaining to the provision of its services under this Contract and that the Contractor will perform its services in a good and workmanlike manner, with the same degree of skill, diligence, competency and knowledge which is ordinarily exhibited, possessed by and consistent with the professional standards that apply to the provision of such services in metropolitan areas of similar size to Houston, Texas and other professionals in good standing in the same or similar field as Contractor.

## **7. Insurance.**

- 7.1 The Contractor shall maintain the following insurance for the duration of this Contract, unless otherwise noted:
- a. Workers' compensation insurance in accordance with State of Texas rules and regulations for all employees providing work and services hereunder. The policy must be endorsed to contain a waiver of subrogation and a thirty (30) day notice of cancellation or non-renewal in favor of the HHA.
  - b. Commercial 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 cover the operations of the Contractor under this Contract and shall protect the Contractor and its officers, agents, and employees 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. If the Contractor has a "claims made policy," then the following additional requirements apply: (i) the policy must provide a "retroactive date" which must be on or before the date the Contractor executes this Contract; and (ii) the extended reporting period may not be less than five years following the completion date of this Contract. Regardless of whether the Contractor's policy is claims made or per occurrence, the HHA must be named as an additional insured and the policy must be endorsed to be primary/noncontributory and to contain a waiver of subrogation in favor the HHA. The policy must also be endorsed with a thirty (30) day notice of cancellation or non-renewal in favor of the HHA.

- c. Automobile liability insurance covering owned, non-owned, hired and all vehicles used by the Contractor or its officers, employees, or agents 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 HHA must be named as an additional insured under this policy and this policy must be endorsed to be primary and to contain a waiver of subrogation in favor the HHA. The policy must also be endorsed with a thirty (30) day notice of cancellation or non-renewal in favor of the HHA.
- d. Umbrella/Excess Liability Insurance in the amount of \$\_\_\_\_\_ providing excess limits over Workers' Compensation, Automobile Insurance, Professional Liability and General Liability Insurance. The HHA must be named as an additional insured and this policy must be endorsed to be primary/noncontributory and contain a waiver of subrogation endorsement in favor of the HHA. The policy must also be endorsed with a thirty (30) day notice of cancellation or non-renewal in favor of the HHA.
- e. Errors and omissions professional liability insurance in an amount no less than \$2,000,000 and for a continuous period of at least three years following the completion of the Contractor's services under this Agreement. The policy shall provide for coverage for all work performed by the Contractor. The Contractor shall ensure that any subcontractors hired by the Contractor that perform work on the Contractor's behalf will maintain their own Errors and Omissions Professional Liability Insurance coverage in the amount of no less than \$2,000,000 and the Contractor shall obtain evidence of such insurance in a manner satisfactory to the HHA and provide such evidence to the HHA upon the HHA's request. The policy must also be endorsed with a thirty (30) day

notice of cancellation or non-renewal in favor of the HHA.

- 7.2 Before commencing its performance of any work or services under this Contract, the Contractor, at the request of the HHA, shall provide the HHA with copies of the applicable certificates of insurance, policies, declarations, and endorsements for the required coverages listed above so that the HHA may confirm: (a) that said coverages are valid and in effect; (b) that it is named as an additional insured under the Contractor's comprehensive general liability insurance policy ("CGL"), umbrella/excess liability insurance, errors and omissions/professional liability insurance 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 HHA; (d) that the Contractor's CGL policy, umbrella/excess liability and automobile policy are primary; and that (e) the Contractor's CGL policy, workers' compensation, umbrella/excess liability insurance and automobile policy contain waivers of subrogation in favor of the HHA. All certificates of insurance must reference this job/project and contract number.
- 7.3 All insurance shall be carried with companies that are financially responsible and admitted to do business in the State of Texas. The Contractor shall not permit the insurance policies required for this Contract to lapse during any period for which this Agreement is in effect.
- 7.4 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 Contractor under this Contract, including, but not limited to, liability assumed by the Contractor pursuant to section 8 of this Contract.
- 7.5 The Contractor shall be solely responsible for any premiums, deductibles, or self-insured retentions that may apply to the insurance coverages required in this Contract.
- 7.6 The Contractor 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 HHA.

## **8. INDEMNITY AND HOLD HARMLESS.**

- 8.1 THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD THE HHA AND 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, BROUGHT FOR, OR ON ACCOUNT OF ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ASSERTED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE INDEMNIFIED PERSONS' OR CONTRACTOR'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 CONTRACTOR OR ANY SUBCONTRACTOR'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. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THIS INDEMNITY CONTROLS OVER ALL OTHER PROVISIONS IN THE AGREEMENT AND SURVIVES THE TERMINATION OF THIS AGREEMENT.

8.2 THE CONTRACTOR SHALL BE RESPONSIBLE FOR, AND SHALL RELEASE AND HOLD HARMLESS THE HHA FROM ANY LIABILITY FOR, ALL DAMAGE AND LOSS SUSTAINED BY IT TO ITS TOOLS AND EQUIPMENT UTILIZED IN THE PERFORMANCE OF SERVICES, OR THE PERFORMANCE OF ANY SUBCONTRACTORS' SERVICES, HEREUNDER. THE CONTRACTOR SHALL BE RESPONSIBLE FOR SATISFYING ALL DEDUCTIBLES UNDER ITS POLICIES WITHOUT REIMBURSEMENT FROM THE HHA AND THE DEDUCTIBLE PORTION OF ANY LOSS SHALL NOT BE EXCLUDED FROM THE CONTRACTOR'S INDEMNITY OBLIGATION.

8.3 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.

**9. Notices.**

9.1 All notices and communications regarding the Contract must be in writing and shall be directed to the following representatives:

HHA

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

\_\_\_\_\_

CONTRACTOR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

\_\_\_\_\_

**10. Compliance with Federal Laws and Regulations**

10.1 To the extent applicable, the Contractor shall comply with any and all federal laws and regulations, including but not limited to, the following:

- 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 the benefits of federally funded programs because of race, color, religion, sex, or national origin;
- The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, the prohibition against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act;
- All federal and state laws, rules and regulations related to energy efficiency and resource conservation;
- The requirements of Executive Order 11246 relating to equal employment opportunity in connection with federally funded programs;
- 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; and
- The requirements of Executive Orders 11625, 12432 and 12138 to implement Minority Business Enterprise (“MBE”) and Women’s Business Enterprise (“WBE”) participation goals in federal agencies’ programs.

**11. Compliance with M/WBE and Section 3 Policy.**

- 11.1 When subcontracting, the Contractor agrees to utilize its good faith and best efforts to subcontract a sufficient dollar amount with M/WBE’s certified as such or recognized by the HHA as certified M/WBE in an effort to meet the HHA’s goal of a minimum of 30% of the final contract dollars being expended on one or more M/WBEs. All adjustments that cause the contract price to increase will also increase the total amount that the Contractor must expend on M/WBEs.
- 11.2 The Contractor hereby specifically agrees to adhere to the M/WBE Participation Plan as submitted by the Contractor and attached hereto as Exhibit 3.
- 11.3 The Contractor further agrees to adhere to the Section 3 Business Certification as submitted by the Contractor within its Response, attached hereto as Exhibit 4.

**12. Records.**

- 12.1 Without limitation to any other provision of the Contract, the Contractor shall maintain all records pertaining to the Contract, which the HHA reasonably requires for three (3) years from the expiration date of the Contract unless a longer period is required under

Title 24, CFR §85.42. The Contractor shall maintain records required by 24 CFR §135.120 for the period that HUD requires the records to be maintained. The Contractor will give the HHA, HUD, the Comptroller General of the United States, the General Accounting Office, and any of their authorized representative's access to, and the right to examine, audit, copy, or reproduce all records pertaining to the project financed under the Contract and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained.

### **13. Independent Contractor.**

- 13.1 The Contractor is an independent contractor of the HHA and not an employee of the HHA. Nothing contained in the Contract will be deemed or construed to create a partnership between the Contractor and the HHA. The Contractor will have no authority to create any obligation or make representations or warranty binding on the HHA. All personnel supplied or used by the Contractor in connection with this Contract will be deemed employees, agents, or subcontractors of the Contractor and will not be considered employees, agents, or subcontractors of the HHA for any purpose whatsoever. The Contractor is solely responsible for payment of wages and overtime to the Contractor's employees. By entering into this Contract the Contractor and the HHA are not entering into a joint employment relationship or an employment relationship of any kind.
- 13.2 The Contractor agrees to comply with all applicable federal and state laws pertaining to the proper classification of workers. Additionally, the Contractor is aware that in accordance with Section 214.008 of the Texas Labor Code, contractors and subcontractors who fail to properly classify individuals performing work under a governmental contract will be penalized \$200.00 for each individual that has been misclassified.

### **14. Subcontracts.**

- 14.1 The Contractor shall not subcontract any portion of its services under this Contract without first obtaining the written consent of the HHA.

### **15. Non-Appropriation.**

- 15.1 The Contractor understands that the HHA is a governmental entity and this Agreement is contingent upon the receipt, availability and allocation of funding allocated to the HHA for the payment of such services or obligations. Should it not be funded for any period during the term of the Agreement, any sums due for the remainder of the term shall be forgiven and the HHA shall not be liable for payment. HHA may terminate this Agreement in writing at any time, or suspend services, if sufficient funds are not available to continue operations under this Agreement. Upon such written notice from the HHA, the Contract will automatically terminate.

### **16. Proprietary Information.**

- 16.1 The Contractor shall maintain the confidentiality of all proprietary information provided to it by the HHA. Information in the public domain, or otherwise obtained independently by the Contractor, is not considered confidential.
- 16.2 Any programs, data, or other materials furnished by the HHA for use by the Contractor concerning the services performed under the Contract shall remain the sole property of the HHA.

### **17. Ownership of Work Product.**

- 17.1 All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products (“Work Product”) prepared or assembled by the Contractor or its subcontractors pursuant to this Contract shall be the exclusive property of the HHA and copies of all Work Products shall be delivered to the HHA upon the completion or termination of the Contract. The Contractor hereby assigns to the HHA ownership of all right, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. Further, Contractor hereby grants to the HHA a perpetual, royalty-free, paid-in-full, nonexclusive and irrevocable license to copy, reproduce, perform, dispose of, or use, in whole or in part, the Work Product and to authorize others to do so. The Contractor also agrees to execute all papers necessary for the HHA to perfect its ownership of the rights in the Work Product.

### **18 Criminal Background Checks Required.**

- 18.1 After execution of this Agreement and as soon as reasonably possible, the Contractor shall conduct criminal background checks on all employees and subcontractors before such employees or subcontractors are assigned to perform any work under this Agreement. The Contractor agrees that no employee or subcontractor currently suspended or debarred under 2 CFR § 180, et seq., or who has been convicted of a felony, shall be authorized to perform any work under the terms of this Agreement, without prior written approval from the HHA.

### **19. Special Requirements.**

- 19.1 The Contractor agrees that if the United States Department of Housing and Urban Development (“HUD”) requires a cost certification after substantial completion of the work performed under the Contract, then the Contractor will cooperate with the HHA and HUD and assist in providing such cost certification, provided that any payment to the Contractor hereunder shall not be conditioned upon any such cost certification, but shall be paid in accordance with the terms of the Contract.

## 20. Time.

20.1 Time is of the essence in the Contract and each and all of its provisions.

## 21. Tax Exempt Status.

21.1 The HHA is a unit of government and its functions are governmental functions. Its property is public property used for essential public and governmental purposes. By virtue of Section 392.005 of the Texas Local Government Code (the "Housing Authorities Law"), the HHA and its property are exempt from all taxes, including sales tax. A copy of the Tax Exemption Certificate will be provided to the Contractor, if required.

## 22. Cooperation with HHA.

22.1 In the performance of this Contract, the Contractor agrees to cooperate with the HHA and its staff, including the HHA's Section 3 Coordinator.

## 23. Miscellaneous.

23.1 Legal Construction/Severability. HHA and Contractor agree, that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by the party of that or any other provision of this Agreement. 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 Contract are for reference only and are not intended to restrict or define the text of any section or article herein. This Contract shall not be construed more or less favorably by reason of the authorship or origin of its language; this Contract shall not be construed against the drafter in the event of an ambiguity (or otherwise).

23.2 Limitation of Liability. In no event shall the HHA be liable to the Contractor for any indirect, incidental, or exemplary damages.

23.3 Own Investigation. The Contractor represents and warrants that it entered this Contract based solely on its own investigation and due diligence and not on reliance on any statements, representations, or omissions of the HHA unless otherwise noted in this Contract. The Contractor represents and warrants that it is fully satisfied that it has received any information it requested from the HHA in order to determine whether to enter this Contract. The Contractor expressly disclaims any reliance on any representation, statement, or omission by the HHA with respect to this Contract, including the Contractor's decision to enter this Contract, unless otherwise noted herein.

- 23.4 *Venue and Choice of Law.* Venue for any legal action arising from or relating to this Contract shall exclusively lie in Harris County, Texas. The laws of the State of Texas shall govern and control any dispute that arises from or relates to this Agreement. In the event of any litigation arising from or related to this Agreement, or the services provided under this Agreement, each party will be responsible for its own costs incurred including staff time, court costs, attorney fees, and all other related expenses incurred in such litigation.
- 23.5 *Notice of Court Actions.* The Contractor agrees to give the HHA immediate notice in writing of any actions or suits filed and prompt notice of any claims made against the HHA or any of the parties involved in the implementation and administration of the Contract.
- 23.6 *Integration.* This Contract, along with the attached Exhibits, 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 Contract.
- 23.7 *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 Contract does not preclude pursuit of other remedies in this Contract or that are provided by law.
- 23.8 *Non-Waiver.* No covenant or condition of the 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 the Contract or by law or in equity despite such forbearance or indulgence. Unless otherwise stated herein, this Contract cannot be modified or altered in any way without the express written consent of the parties hereto.
- 23.9 *Remedies Cumulative.* All rights and remedies of HHA and Contractor shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of HHA according to law.
- 23.10 *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.

- 23.11 *Assignment.* The Contractor shall not assign, subcontract, or transfer any services, obligations, or interest in this Contract without the prior written consent of the HHA. Such consent shall not unreasonably be withheld when such assignment is for financing the Contractor's performance.
- 23.12 *Successors and Assigns.* This Contract shall be binding on and inure to the benefit of the parties to this Contract and their respective heirs, executors, administrators, legal representatives, successors, and assigns, if any.
- 23.13 *No Third-Party Rights.* Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of third party against either the HHA or the Contractor.
- 23.14 *Amendment.* This Agreement may only be amended by a written amendment signed by the authorized agents of both parties.
- 23.15 *Survival.* The terms, conditions, representations, and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.
- 23.16 *Publicity.* Contractor shall not use in its advertising, marketing or other promotion efforts; any data, pictures or other representation of HHA except on prior specific written authorization from the HHA President/CEO or designee.
- 23.17 *No Personal Inducements.* Contractor acknowledges and agrees that HHA requires all Contractors to adhere to basic principles in conducting business with HHA. These principles include no direct or indirect personal inducement of HHA employees or Commissioners, such as the giving of gifts, money, tickets, trips, loans, discounts or any other item or service in connection with this Agreement. Contractor further acknowledges and agrees that breach of these principles may be grounds for termination of this Agreement.
- 23.18 *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").
- 23.19 *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.

23.20 *Authority.* Contractor represents and warrants that Contractor has the power and authority to enter into and perform this Agreement and that this Agreement, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.

**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\*\*\*\*\***

**IN WITNESS THEREOF,**

**HOUSTON HOUSING AUTHORITY**

**SERVICE PROVIDER**

**By:** \_\_\_\_\_  
**Mark Thiele, Interim President & CEO**

**By:** \_\_\_\_\_  
\_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Contract No.** \_\_\_\_\_