



UPTOWN

HOUSTON

Harris County Improvement District #1 / Uptown Houston

**Request for Qualifications for Professional Landscape Architect Services for
West Loop Shared Use Path and Bayou Bridge**

Issue Date

January 29, 2024

Submittal Date

February 29, 2024

2:00 PM CST

Clark Martinson, AICP, Public Space Director

1980 Post Oak Boulevard, Suite 1700, Houston, TX 77056

cmartinson@uptown-houston.com

713.621.2011

Harris County Improvement District No. 1

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL LANDSCAPE ARCHITECTURE SERVICES FOR WEST LOOP SHARED USE PATH AND BAYOU BRIDGE

Statement of Qualifications for landscape architecture design and construction phase support services to be submitted to Clark Martinson, Public Space Director, Harris County Improvement District No. 1 (the "District"), must be received on or before the date and time noted on the front cover of this Request for Qualifications (this "RFQ") through e-mail submissions and printed copy statements, as defined below under the Submission Information section below, submitted to the District office. Any submission received after the date and time specified will be returned unopened.

This RFQ can be accessed at www.uptown-houston.com

PROJECT DESCRIPTION

The District is implementing a project to be known as the West Loop Shared Use Path and Bayou Bridge that will connect the Uptown Houston area to Memorial Park in five (5) segments as described below and as shown in **Appendix A** (the "Project"):

- **Segment 1** – *Shared Street and West Loop Shared Use Path* - Shared Street Markings on Hollyhurst Street (Hallmark to Post Oak Boulevard), intersection safety countermeasures at the Uptown Park Boulevard/Post Oak Boulevard intersection, 10' wide concrete, asphalt, or pavers shared use path along Post Oak Boulevard to I-610 West Loop, and 10' wide concrete shared use path with lighting along I-610 West Loop to Buffalo Bayou. This segment includes neighborhood shared street improvements in the form of bicycle route signage and wayfinding and a minimum ten-foot wide shared-use path with lighting.
- **Segment 2** - *Buffalo Bayou Bridge and Memorial Park Old Archery Range*. A 14-foot clear shared use path on a suspension bridge (or similar) over Buffalo Bayou and/or truss bridges (prefabricated or similar) with lighting from the south bank of Buffalo Bayou to the Memorial Park Old Archery Range west of the I-610 West Loop providing a direct connect to a 10'-wide concrete shared-use bike path with lighting to the bayou banks below the I-610 West Loop bridges.
- **Segment 3** - *Shared-use Pathway under I-610 West Loop and Embankment and Storm Sewer Repairs in TxDOT ROW*. Structural and flood protection repairs to rip-rap embankment, retaining walls, and column surrounds for the I-610 West Loop Bridge supports and adjoining surfaces on both sides of Buffalo Bayou. Lighting and 14' wide concrete shared-use path with lighting from Memorial Park Old Archery Range to Houston Arboretum and Nature Center.
- **Segment 4** – *Houston Arboretum and Nature Center Path*. This is a ten-foot wide concrete trail with lighting in a 14' wide clear zone along the Houston Arboretum and Nature Center from TxDOT ROW and the shared use path under the I-610 West Loop bridges to Woodway Drive.
- **Segment 5** - *Woodway to Memorial Drive and Intersection Safety Counter Measures at the Woodway and Memorial Drive West Loop Intersections*. This segment is construction

of a ten-foot wide concrete trail with lighting from the existing Woodway Drive shared use path, across Woodway Drive, inside Memorial Park east of the I-610 West Loop frontage road, to and across Memorial Drive and the Bayou Club/Houston Polo Grounds driveway to the existing shared use path along N. Post Oak Road. Intersection safety counter measures include modifications of the “pork chop” free flowing right turn islands, crosswalks, signage, signalization, regulatory signs, and way finding signage.

Below is a link to the schematic design package previously prepared for the Project. It is the intention that the selected Design Team will further develop this design through completion of the scope of work described below.

[WEST LOOP SHARED USE TRAIL & BAYOU BRIDGE SCHEMATIC DESIGN](#)

The construction budget for the work is \$21,000,000, which is dependent on the extent of TxDOT repairs being undertaken within the TxDOT right-of-way portion of the Project.

INTRODUCTION

This RFQ is for Landscape Architect services described in the Project Description section above. A separate RFQ will be issued for the Engineering services. The Engineering Team will be required to work with the Landscape Architect, who will act as design leader. A separate RFP will be issued for Grant Management services, who will represent the District in receiving and drawing down grant funding. In addition, there is a separate RFP being submitted for Construction Manager-at-Risk (CMAR) services. The CMAR will provide pricing at the various design milestones and support the design team in study of alternate solutions and constructability methods to meet budget. All three documents are available for the respondent to this RFQ to review on the District’s website noted above.

It is intended that the respondents to this RFQ for Landscape Architecture services will comprise one firm, who will engage subconsultants as needed, to deliver the scope of services described below.

SCOPE OF SERVICES

The District is seeking statements of interest and qualifications (“SOQs”) from professional Landscape Architecture firms to provide complete landscape architecture services including, but not limited to, the following:

- Design team leader and Coordination Leader
- Landscape Architecture and Object/Art design
- Irrigation systems design
- Owner, Stakeholder and Agency engagement
- Lighting design (note electrical engineering by engineering team)
- Environmental graphics and wayfinding

The services will require review of the existing schematic design package and working with the Engineering Team to prepare design development and construction documents, approvals and

permitting, bid documents and construction phase services. Bid documents will be utilized by the CMAR to obtain competitive bids for each sub-trade.

Approvals noted above will include, but not be limited to, City of Houston, TxDOT, Harris County Flood Control District, Houston METRO, Texas Department of Licensing and Regulations and updates as needed to the National Environmental Policy Act.

This RFQ is seeking SOQs from interested professional Landscape Architecture firms for the work as described above in connection with the Project.

RFQ OVERVIEW

This RFQ is issued by the District a governmental agency and political subdivision of the State of Texas, for professional services teams, hereinafter referred to as "Respondent," to perform all necessary tasks involved in the landscape architecture and design of the previously identified shared-use path projects.

The intent of this RFQ is to obtain qualifications and to publicize the availability of contracting opportunities for the services described herein. The District Board of Directors creates no obligations, expressed or implied, by issuing this RFQ or by receipt of any submissions pursuant hereto. Neither this RFQ nor any SOQ submitted in response hereto is to be construed as a legal offer.

The award of any contract(s) as a result of this RFQ shall be at the sole discretion of the District Board, and subject to any contract(s) being approved in form and substance by the District's legal counsel. The District Board will not be responsible for any expenses incurred by any firm in preparing and submitting information responding to this RFQ.

Please note that the Project is funded, in part, using funds from the Federal Transit Administration (FTA). Therefore, work executed in connection with the Project must comply with FTA grant requirements. There may be a delay of one or more months after a CMAR is selected prior to the execution of a professional landscape architecture services contract. The respondent to the RFQ agrees that, if selected, the District shall not be liable for any damages or causes of action due to FTA delay.

CONFIDENTIAL INFORMATION

Respondents to this RFQ are advised that any information submitted to the District, including, but not limited to, materials contained in their responses, are subject to the Texas Public Information Act, and may be viewed and/or copied by any member of the public, including news agencies and competitors.

SELECTION TIMELINE

The Project, as described above, includes required final design for the construction of shared-use paths within one-half mile of existing transit stops for pedestrian facilities and three miles of existing transit stops as provided by the FTA's Livable Communities Initiative guidelines. The shared-use paths will be constructed in accordance with all American Association of State Highway and Transportation Officials (AASHTO) and Americans with Disabilities Act (ADA) requirements.

It is the intent of the District's Board of Directors to start the landscape architecture and design of the Project in the first quarter of Calendar Year (CY) 2024 and award the construction contract(s) in CY 2025. The timeline for award of the contract for the services outlined in this RFQ is as follows:

1. Publication of the RFQ	January 29, 2024
2. Deadline for submitting questions and clarifications	February 12
3. Deadline for response to questions	February 19
4. Deadline for submitting qualifications	February 29
5. Review period for submissions	March 1-15
6. Potential Interviews Period if desired	March 18-22
7. Board of Directors Action	March 27
8. Negotiate and Approval Initial Contract	Mar 28 – Apr 18

(The above calendar of events is tentative and is subject to change).

TERMS

Contract negotiations will be a subsequent process outside of the RFQ process. The successful respondent(s) should anticipate executing a standard Project Consultant Agreement in essentially the form attached hereto as **Appendix B (the "Contract")**; however, such copy shall not be deemed to be the final or binding contract and may be modified in whole or part by the District before execution. All contracts subject to this RFQ process must be approved by the District's legal counsel and action taken by the District's Board of Directors in order to be a valid and binding agreement.

Respondents are requested to review the contract terms and confirm their acceptance of the Terms with their RFQ response; or advise the District of any specific concerns with the form of the Contract.

FTA PROVISIONS

The Project is funded, in part, using funds from the FTA. Based on this federal participation, the Federally Required Contract Clauses, attached hereto as **Appendix C** and incorporated by reference, will apply to the Contract that may be awarded. Attached hereto as **Appendix D** are the federally required certifications (lobbying, suspension/debarment, and if applicable, DBE subcontractor). These certifications will need to be completed and executed before the Contract

can be awarded. Respondent should advise the District if it has any specific concerns about being able to execute the certifications. Please note that the lobbying and suspension/debarment form must only be filled out by the prime Respondent. The Disadvantage Business Enterprise (DBE) subcontractor form must be completed by all DBE subcontractors as well as the prime.

DBE GOAL

The federal government has set its DBE goal for federally funded contracts for fiscal year 2024 at 12.9% through race-neutral means. The DBE Clause is included in **Appendix C** - Federally Required Contract Clauses. The District's intent is to exceed the Federal DBE goal.

CLARIFICATION OF THE RFQ

Questions concerning this RFQ shall be directed via electronic mail to:

Clark Martinson, AICP
RFQ Coordinator
E-mail: cmartinson@uptown-houston.com
Subject Line: West Loop Shared Use Path and Bayou Bridge Architecture

by the date and time noted on the front cover of this RFQ.

SUBMISSION INFORMATION

Email a pdf and submit one original hard copy of the response to this RFQ, clearly marked, and five (5) additional hard copies to the District in a sealed package and be clearly marked "RFQ West Loop Shared Use Path and Bayou Bridge Architect". The SOQ shall be submitted no later than the date noted on the front page of this RFQ. Respondents shall respond to the written RFQ and any exhibits, attachments, or amendments. A respondent's failure to submit the required documents before the deadline will cause that SOQ to be disqualified. Respondents assume responsibility for delays caused by any delivery service. Postmarking by the due date shall not substitute for actual SOQ receipt by the District. Late responses shall not be accepted, nor shall additional time be granted to any Respondent.

The District will accept sealed SOQs in person Monday through Friday, 8:00 a.m. to 5:00 p.m. at:

Harris County Improvement District No. 1
Clark Martinson, AICP
1980 Post Oak Boulevard, Suite 1700
Houston, TX 77056

PROJECT SCHEDULE

Services are anticipated to begin in May 2024. Construction is anticipated to begin middle of calendar year 2025.

POINT OF CONTACT

The RFQ Coordinator is the sole point of contact for this procurement from advertisement through Contract award. All communication between Respondent and the District on release of this RFQ shall be with the RFQ Coordinator, as follows:

Name	Clark Martinson, AICP, Public Space Director
E-mail Address	cmartinson@uptown-houston.com

Any other communication will be considered unofficial and non-binding on the District. No authority is intended or implied that the RFQ may be amended, or alterations accepted, prior to opening of the SOQs without written approval of the RFQ Coordinator. Respondents are to rely on written statements issued by the RFQ Coordinator only.

To ensure the fair evaluation of an SOQ, the District prohibits unsolicited communication initiated by Respondent to a District representative evaluating or considering the solicitations prior to the time a decision has been made. Communication between Respondent and the District will be initiated by the RFQ Coordinator in order to obtain information or clarification needed to develop an accurate evaluation of the solicitation. Unsolicited communication may be grounds for disqualifying the offending Respondent from consideration for award.

QUALIFICATIONS PACKAGE

The RFQ and the attached forms/documents are considered part of the response package. Qualifications must be submitted on the forms provided with the RFQ in their entirety and signed by an authorized representative by original signature. Failure to complete and sign the SOQ and forms may disqualify the SOQ from being considered by the District. Any individual signing on behalf of the submitter expressly affirms that he/she is duly authorized to tender the SOQ and to sign the SOQ under the terms and conditions in this RFQ. Respondent further understands that the signing of the SOQ shall be of no consequence unless the Contract is subsequently awarded and properly executed by the District and its Board of Directors.

QUALIFICATIONS SUBMITTAL REQUIREMENTS

The SOQ will be due to the District by the date noted on the front cover of this RFQ. SOQs may not be accepted after this deadline.

The SOQ should include the following:

- 1) Cover Page (**Limited to one page**)
 - a. Should include the following: Primary Firm Name, Primary Firm Contact Information, and RFQ Name.
- 2) Statement of Interest (**Limited to two pages**)
 - a. A letter of interest, signed by a principal of the professional Landscape Architecture firm, with a statement as to the firm's availability to complete the work and an overview of the firm or team proposed to complete the effort.
 - b. The Statement of Interest should include Respondent's confirmation of acceptance with the terms of the draft Contract provided in **Appendix B**; or should Respondent have concerns about the terms of the Contract, they should be raised at this time.
- 3) Project Understanding and Firm/Team Background. (**Limited to four pages**)
 - a. Project Understanding: Provide a demonstration of the understanding of the Project needs through the design and project implementation process. Outline a general approach for implementation.
 - b. Firm/Team Background: Outline the members of the Landscape Architecture firm and their representative experience and qualifications related to the Project. Include an organizational chart for the Landscape Architecture Team Project delivery.
 - c. A proposed schedule of activities for the delivery of the Project as described in the Scope of Services section above.
- 4) Resources and Staff. (**Limit to five pages**)
 - a. Overview of the ability of the firm to staff the Project with qualified personnel and their relationship to the Project. Utilize reduced resumes to meet the page limit.
- 5) Examples of Experience (**Limit to five pages**).
 - a. Five (5) relevant projects completed in the last five (5) years, similar in scope to this Project that best illustrates the firm's capabilities, including demonstrated experience and timeliness of completing work. Provide reference contacts, including names and email addresses.
- 6) State Compliance Forms (**Appendix E**).
 - a. Conflict of Interest Questionnaire. Please complete. If no conflict of interest, mark the form with "N/A" and return.
 - b. Advise the District if Respondent anticipates that it cannot execute the following Certifications (FTA and State) at the execution of the Contract:
 - i. Suspension and Debarment Certification
 - ii. Bidder Certification (DBE Participation)
 - iii. DBE and SBE Subcontractor Certification

- iv. House Bill 89 Verification. Please complete with notarization.
- v. Delinquent State Business Tax Certification. Please complete and return.

EVALUATION CRITERIA FOR SUBMISSIONS

A Consultant Selection Committee, consisting of representation from the District, City of Houston, TxDOT, Memorial Park Conservancy, and Houston Arboretum, will evaluate SOQs on the firm’s ability to meet the requirements of this RFQ. The SOQ will be evaluated utilizing the following criteria:

1) Pass/Fail Criteria

- a. Compliance with the provision of the requested information as stipulated in the instruction for SOQs, including the required federal forms and suspension and debarment by federal and state agencies.

2) Scoring Criteria

- a. SOQs which comply with the above criteria will be evaluated based upon consideration of the criteria below.

Criteria	Points
Project Understanding and Firm/Team Background	35
Resources and Staff	40
Examples of Experience	15
References	10
Total	100

- b. Scores may be adjusted by the Consultant Selection Committee following interviews for those firms invited to Oral Presentation.

FEDERAL PROVISIONS

This Project is funded, in part, using funds from the Federal Transit Administration (FTA) and through Department of Housing and Urban Development (HUD). Based on this federal participation, the Federally Required Contract Clauses (see **Appendix C**) will apply to any Contract that may be awarded. The Contract is compliant with 2 CFR Part 200, Uniform Guidance. The Contract will also include the Contract Clauses included in Appendix II to the Uniform Guidance a copy of which is attached hereto as **Appendix C**.

DBE REQUIREMENTS

This Project and the Contract are subject to the federal requirements in accordance with Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Agency’s overall goal for DBE participation is noted above under DBE Goal.

CONFLICT OF INTEREST QUESTIONNAIRE

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (House Bill 914) requires that any vendor or person considering doing business with a local government entity disclose the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict of Interest Questionnaire form is attached hereto as part of **Appendix D**. Any attempt to intentionally or unintentionally conceal or obfuscate a conflict of interest may automatically result in the disqualification of the Respondent’s proposal.

DISCLOSURE OF INTERESTED PARTIES

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295), which is available at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm, to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The District requires the selected contractor to file Form 1295 electronically with the Texas Ethics Commission at the time of the Contract Award.

HOUSE BILL 89 VERIFICATION

Passed by the Texas Legislature in 2017, House Bill 89 prohibits a governmental entity from entering into a contract for goods or services with a company unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract. Tex. Gov’t Code 2270.002.

SENATE BILL 252 CERTIFICATION

Pursuant to Texas Government Code, Chapters 2252, 2274 and 2276, the governmental entity must certify that the selected Respondent is not listed on the website of the Comptroller of the State of Texas (the “Comptroller”) concerning (i) a company known to have contracts with or provide or services to the identified countries or foreign terrorist organizations, (ii) a company that boycotts or will boycott energy companies, or (iii) a company that discriminates or will discriminate against firearm entities or firearm trade associations. The District will not enter into a Contract with a selected Respondent who in on a Comptroller list.

DELINQUENT STATE BUSINESS TAX

All Respondents shall certify that it is not delinquent in a tax owed the state under Chapter 171, Tax Code, pursuant to the Texas Business Corporation Act, Texas Statutes, Article 2.45, by completing the Delinquent State Business Tax certification.

EVALUATION/SELECTION PROCESS

The most qualified Respondent, as established via the scoring criteria and/or as otherwise determined by the District, in its sole discretion, will be selected for this job. The District will negotiate with the most qualified Respondent in order to reach a fair and reasonable price.

The District may select or create a short list of viable candidate firms/teams. Once the short list has been determined, there may be an oral interview and/or presentation session scheduled for the highest ranked firms. The presentation should demonstrate the firm's experience in providing services for similar projects, experience in coordination of construction activities with other design firms, projects, and entities, along with any other items covered by the SOQ submitted. Based on the SOQs and interviews, the Consultant Selection Committee will determine the most highly qualified firms on the basis of demonstrated competence, experience, and qualifications for the Project. All short-listed firms will be notified of the top Respondent selected based upon presentations and references.

Negotiations will be initiated with the top-ranked firm on the short list. The firm will be contacted and requested to meet with the District to develop a detailed proposed scope of work and a schedule of fees for that work. The price proposal generated should substantially reflect the same composition and level of involvement as presented in the SOQ.

If a mutually agreeable cost and/or price proposal cannot be negotiated, the District will formally end the negotiation and proceed to select and negotiate with the next most highly qualified firm on the basis of demonstrated competence, experience, and qualifications. The District reserves the right to make no award from this RFQ if deemed in its best interest to do so, and may, at its election, re-advertise and reissue the original, or an amended RFQ.

CONTACT WITH THE DISTRICT EMPLOYEES AND AFFILIATES

No submitting firm shall, directly or indirectly, engage in any conduct (other than the submission of the RFQ or other prescribed submissions and/or presentations before the Consultant Selection Committee) to influence any employee, consultant, agent, or board member of the District or a Consultant Selection Committee member concerning award of a contract as a result of this solicitation. Violation of this prohibition may result in disqualification of the firm from further participation in the solicitation for services or goods sought herein, or from participation in future District solicitations or contracts. All contact on this solicitation should be addressed to the authorized representative listed above.

SUBMISSION INFORMATION

If you are interested in your firm being considered for the Project, please submit your SOQ at the location listed herein in the format described above under Qualifications Submittal Requirements. Information on the RFQ will be posted to the District's website.

All existing Project information, any changes to the RFQ, and any changes to the submission time and date will be published on the District's website. Submitting firms accept sole responsibility for downloading all of the required documents required for the RFQ. Late SOQs will be rejected.

CONFIDENTIAL INFORMATION

Respondents are advised that any information submitted to the District, including but not limited to materials contained in their responses, are subject to the Texas Public Information Act, and may be viewed and/or copied by any member of the public, including news agencies and competitors.

CONTRACT TYPE AND PAYMENT

The Contract for will be a firm-fixed price contract based on the negotiated fee with the most qualified proposer. Fees will be negotiated based upon labor, overhead, and profit for the professional services listed in the Scope of Services section above. The District will allow for progress payments based on the scope of work. The monthly invoice will be paid within thirty (30) days after the District's monthly Board meeting.

TERMS

Contract negotiations will be a subsequent process outside of the RFQ process. The successful Respondent should anticipate executing a standard Professional Services Contract. The contract will be in compliance with 2 CFR 200 and include the Contract Clauses included in Appendix II to the Uniform Guidance, a copy of which is attached hereto as **Appendix C**, however, such copy shall not be deemed to be the final or binding contract and may be modified in whole or part by the District before execution. All contracts subject to this RFQ process are to be approved by the District's legal counsel and action taken by the District's Board of Directors in order to be a valid and binding agreement.

LEGAL REQUIREMENTS

All applicable provisions of federal, state, county, and local laws including all ordinances, rules, and regulations will govern the development, submittal and evaluation of all SOQs received in response to this RFQ and shall govern any and all claims between person(s) submitting a SOQ and the District, by and through its officers, employees, and authorized representatives. A lack of knowledge by Respondent concerning any of the aforementioned shall not constitute a cognizable defense against the legal effect thereof. Respondent agrees that it will not discriminate on the basis of race, creed, color, national origin, sex, age, or disability.

APPROPRIATIONS CLAUSE

By submitting a SOQ, Respondent certifies that it understands that the District, an entity of government, is subject to the appropriation of funds by its legislative body in an amount sufficient to allow continuation of its performance in accordance with the terms and conditions of this contract for each and every fiscal year following the fiscal year in which the Contract is executed and entered into and for which the Contract shall remain in effect. The District shall, upon receipt of notice that sufficient funds are not available to continue its full and faithful performance of the Contract, provide written notice to the consultant of such event within thirty (30) days and, be thereafter released at all further obligations in any way related to the Contract.

PROTEST PROCEDURES

Any interested party who feels it has been aggrieved in connection with the solicitation, evaluation, or award of an Agreement may file a protest with the Project Manager of the District (as identified below and referred to hereinafter as the "Manager") and appeal any adverse decision to the District's Executive Director (as identified below). Such protest must be in writing and submitted to the Manager as follows:

Pre-Proposal Protests: Protests pertaining to the terms, conditions or proposed form of procurement must be received by the Manager within five (5) business days prior to the date established for the opening of bids or receipt of responses. Untimely or late protests will not be considered unless the Manager concludes that the issue(s) raised by the protest involves fraud, gross abuse of the procurement process or otherwise indicates substantial prejudice to the integrity of the procurement system. Submit all protests to:

Harris County Improvement District No. 1
Attention: Clark Martinson
1980 Post Oak Boulevard, Suite 1700
Houston, TX 77056

Post-Award Protests: Protests concerning award decisions, including bid evaluations, must be received by the Manager within five (5) business days after the award has been made and recognized by the District's Board of Directors. Untimely or late protests will not be considered, unless the Manager concludes that the issue(s) raised by the protest involves fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement system.

Interested Parties: For the purposes of this procedure, "interested parties" shall be defined as follows:

For Pre-Bid / Pre-Proposal Protests concerning the terms, conditions or form of a proposed procurement, any prospective Respondent whose direct economic interest would be affected by the award, or failure to award a Contract.

For Post-Award Protests concerning award decisions, only those actual Respondents, who have submitted a response to this RFQ and who, if their complaint is deemed by the District to be meritorious, would be eligible for selection as the successful Respondent for award of a Contract.

All formal protests shall be signed, notarized and reference the following:

- Name, address and telephone number of the interested party;
- Solicitation number and title;
- Specific statutory or regulatory provision(s) that the action under protest is alleged to have violated;
- Specific description of each act alleged to have violated the statutory or regulatory provision(s) identified above;
- Precise statement of facts;
- Identification of the issue(s) to be resolved; and
- Argument and authorities in support of the protest.

The Manager shall have the authority, prior to any appeal to the Executive Director of the District (as identified below), to settle any dispute and resolve the protest. The Manager may solicit written responses regarding the protest from other interested parties. If the protest is not resolved by mutual agreement, the Manager will issue a written determination on the protest.

If the Manager determines that no violation of rules or statutes has occurred, he shall inform the protesting party, and at his discretion, other interested parties by letter which sets forth the reasons for the determination.

If the Manager determines that a violation of the rules or statutes has occurred and a Contract has not yet been awarded, he shall so inform the protesting party, and at his discretion, other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

If the Manager determines that a violation of the rules or statutes has occurred and a Contract has been awarded, he shall so inform the protesting party, and at his discretion, other interested parties by letter which sets forth the reasons for the determination, which may include ordering of the Agreement void.

If the protest is not resolved by mutual agreement, the Manager will issue a written determination on the protest.

Appeals: The Manager's determination on protest may be appealed to Michael Moore, the Executive Director of the District. An appeal to the Executive Director must be received no later than ten (10) business days after the date of the written determination issued by the Manager and be addressed as stated above of this procedure except, Attn: Michael Moorer, and sent via certified mail. The appeal shall be limited to a review of the determination made by the Manager.

The Executive Director and Attorney/Legal Counsel for the District will review the protest, the Manager's determination, any responses from interested parties, and the appeal, and prepare a written response to the protesting party.

The Executive Director's response shall be the final administrative action taken by the District.

Any protest submitted must follow these procedures or it will be returned without action.

Appendix "A" – Project Map



Appendix "B" – Draft District Contract

PROJECT CONSULTANT AGREEMENT

This **PROJECT CONSULTANT AGREEMENT** (this "Agreement") is entered into by and between _____ ("Consultant") and **HARRIS COUNTY IMPROVEMENT DISTRICT No. 1** ("Owner") as of the Effective Date.

RECITALS

- A. Owner is in the process of implementing the capital project program referenced herein (the "Project").
- B. Owner desires to secure the services of Consultant in connection with the Project, incorporated herein by reference (the "Consultant Services").
- C. Consultant is willing to provide the Consultant Services for the fee set out in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Consultant Fee").

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1
DEFINITIONS

- 1. "Agreement" means this Project Consultant Agreement and all documents attached hereto or incorporated by reference herein.
- 2. "Business Day" means Monday through Friday, excluding bank holidays and legal holidays recognized by the State of Texas.
- 3. "Certificate of Completion" means the document issued by the Design Professional certifying the Final Completion of the Projects.
- 4. "Change Order" will mean a change to the work of the Project (and a corresponding change in the terms of the applicable Contract Documents), agreed to in writing by Owner, that is not a result of the negligence, errors, omissions or failure to perform of Contractor or any third party engaged by Contractor, but that may include changes required by Governmental Authorities or Governmental Requirements and shall include Change Orders for Excused Delays that are (i) compensable by Owner due to Owner's delay, or (ii) compensable through insurance coverage.
- 5. "City" means the City of Houston, Texas.
- 6. "Consultant" means selected firm under this contract

7. “Consultant Fee” means the aggregate of fees to be paid to Consultant for the performance of the Consultant Services, as set forth on **Exhibit "A"**.
- 1.8 “Contract Documents” means the Preliminary Plans, the Plans, related specifications and all written modifications and amendments thereto (as approved by Owner pursuant to a written Change Order), and all subsequent drawings, specifications, addenda, budgets, and schedules which are approved in writing by Owner.
- 1.9 “Contractor” means the general contractor(s) selected by Owner to construct the Project.
- 1.10 “Designated Representative” means the representatives of Owner and Consultant appointed in accordance with Section 2.3 hereof.
- 1.11 “Design Professional” means the engineer(s) and/or architect(s) selected by Owner to provide design, construction and engineering/architectural services with respect to the Projects.
- 1.12 “Development Schedule” means the consolidated schedule of major activities, approvals, design and construction periods for the Project, prepared in a format approved by Owner, as same may be updated during the course of the Project upon Owner’s approval.
- 1.13 “Excused Delays” means any acts or events that prevent Contractor from performing its obligations under its contract with Owner, if such act or event was not reasonably foreseeable and is beyond the reasonable control, and not the result of the fault or negligence of Contractor or anyone working under Contractor. Subject to the satisfaction of the conditions established in the previous sentence, Excused Delays include, but are not limited to, the following acts or events: (a) unusually severe weather and natural phenomenon, including without limitation, storms, floods, lightning and earthquakes; (b) fires and explosions; (c) wars or war-like actions, civil disturbances, riots, insurrections, terrorism and sabotage; (d) transportation disasters, whether by sea, rail, air or land; (e) strikes or other labor disputes (not caused by Contractor or anyone working under Contractor); (f) industry-wide materials shortages not reasonably foreseeable by Contractor; and (g) actions or failures to act of any Governmental Authority, including changes in laws, codes or policies after Contractor has obtained the required permits for the Project. Excused Delays shall extend the Scheduled Substantial Completion Date only for the reasonable period of time necessary to make up delays that actually impact the critical path of a Project as reflected on the Development Schedule, as documented by Contractor and approved by Owner, but not to exceed an extension on a day-for-day basis.
- 1.14 “Final Completion” means the date on which (a) all of the items contained in the Contract Documents for a Project, including any Punchlist items, are complete, (b) all affidavits and lien waivers or releases for a Project have been completed and furnished to Owner (or bonds have been issued for any amount for which a lien release has not been obtained), and (c) the Certificate of Completion for a Project has been issued by the Design Professional.
- 1.15 “Governmental Authority” means any government agency having jurisdiction over a Project.

- 1.16 “Governmental Requirements” means all laws, statutes, ordinances, codes, regulations, rules, orders and directives applicable to a Project.
- 1.17 “Owner” means Harris County Improvement District No. 1y.
- 1.18 “Plans” means the design documents for the Projects as approved by all Governmental Authorities.
- 1.19 “Preliminary Plans” means the design documents for the Project that are prepared by the Design Professional for approval by Owner and thereafter for submission to all Governmental Authorities for approval.
- 1.20 “Project” means the program described in **Exhibit “B”**.
- 1.21 “Project Budget” will mean the budget of costs for the Project, prepared in a format approved by Owner.
- 1.22 “Punchlist” means a list of punchlist items and estimated associated costs prepared in a coordinated effort between Consultant, the Design Professional and Owner to be completed by the Contractor after the date of Substantial Completion so that the Project will be in conformity with all Governmental Requirements and the Plans.
- 1.23 “Reimbursable Expenses” means those expenses incurred by Consultant in connection with a Project and approved for payment by Owner in their sole discretion; provided, however, Owner’s Designated Representative shall have the authority to approve the following Reimbursables Expenses up to \$5000.00 per month: travel, delivery, outside printing, postage and other reasonable and customary out-of-pocket expenses incurred in connection with this Agreement.
- 1.24 “Scheduled Substantial Completion Date” means the date established for Substantial Completion as part of the Development Schedule, as extended by such periods of time included in Excused Delays.
- 1.25 “Substantial Completion” means the date on which (a) the Project is sufficiently completed in accordance with all Governmental Requirements and the Contract Documents, including issuance of a Certificate of Substantial Completion, so that Owner may utilize the Project for its intended purpose, (b) all affidavits and lien waivers or releases have been completed and furnished to Owner (except to the extent unavailable due to items contained on the Punchlist or items which Contractor is contesting and provides reasonable assurance of any necessary payment), and (c) all permits with respect to a Project have been issued.

ARTICLE 2

CONSULTANT’S DUTIES AND RESPONSIBILITIES

- 2.1 Duties and Responsibilities. Subject to Article 3, Owner hereby contracts with and engages Consultant to perform the Consultant Services. Consultant hereby accepts such engagement and hereby agrees to perform the Consultant Services pursuant to the terms of this Agreement.

- 2.2 Other Consultants. Consultant will work with the Design Professional and all other consultants selected by or approved by Owner with respect to the Projects.
- 2.3 Designated Representative. For purposes of this Agreement, Owner has appointed its Administrator, Michael Moore, as its Designated Representative, and Consultant has appointed _____ as its Designated Representative. The owner and Consultant may appoint a new Designated Representative at any time upon notice to each other.
- 2.4. Authority to Act. Consultant shall not act as an agent of Owner with respect to any contracts or other matters concerning the Projects. Instead, Contractor shall be deemed an independent contractor for all purposes in connection with this Agreement with authority to act on Owner's behalf only as specifically set forth in this Agreement.
- 2.5 Standard of Care. (a) Consultant agrees to perform the Consultant Services in an efficient, timely manner. In connection with performance of its duties hereunder, Consultant will comply with the terms of this Agreement and industry standards to promote the best economic interests of Owner with respect to the Projects, will employ the best skills and resources available to it, will endeavor to expedite the Projects, will guard Owner against unnecessary costs and expenses, will control costs and reduce costs where practicable, and will maintain close communication and coordination with Owner as required by the terms of this Agreement. Consultant agrees to function as part of Owner's design and construction team for the purpose of facilitating the planning, design and construction of the Projects in the most expeditious and least costly manner consistent with industry standards.
- (b) Owner and Consultant recognize that this Agreement creates a special relationship of trust and confidence between the respective parties, due to the fact that Consultant will be acting in a fiduciary role with respect to Owner in providing the Consultant Services. Owner and Consultant recognize that, due to the special fiduciary relationship between them, it is the intention of this Agreement to impose, and of Consultant to accept, the special and additional duties of trust and confidence created hereby. Further, Consultant recognizes the obligation to cooperate in all respects with the Owner's other consultants on the Project and understands that Owner has required like cooperation from Owner's employees and independent contractors in regard to Consultant.
- 2.6 Legal Action. In the event a suit is filed against Consultant, Owner and immediate steps are required, Consultant will take such steps as are necessary to advise Owner of the existence of such legal action to avoid compromising or waiving any legal right or defense of Owner.
- 2.7 Assertion of Owner's Rights. No provision of this Agreement will relieve Consultant of (i) its responsibility to Owner for all matters related to the Consultant Services or (ii) its responsibility to assert all rights of Owner person or entities' performance thereunder, as and to the extent provided in this Agreement.
- 2.8 Compliance with Governmental Requirements; Consultant Employees.
- (a) Governmental Requirements. Consultant agrees that while providing the Consultant Services pursuant to this Agreement, Consultant, including its employees and consultants/contractors of any tier, shall comply with all Governmental Requirements. In addition, Consultant shall, at its expense, cooperate with and provide Owner with such

information and data as may be reasonably required in order for Owner to comply with all Governmental Requirements.

(b) Consultant Employees. Consultant assumes full responsibility for the actions of its employees while providing the Consultant Services, provided such persons are acting within the course and scope of their employment. Consultant agrees to promptly remove any employee from a Project if such employee's conduct violates any Governmental Requirements.

2.9 Disclosure of Information. Consultant understands that any information it provides to Owner pursuant to this Agreement may be subject to disclosure by Owner to the public in accordance with applicable law, including the Texas Public Information Act.

ARTICLE 3 TERM AND TERMINATION

3.1 Term. This Agreement will commence upon the Effective Date and will terminate thirty (30) days after Final Completion of all phases of the Projects, unless otherwise terminated as provided herein or extended in writing by the parties hereto.

3.2 Termination Without Fault. Owner reserves the right to terminate this Agreement in whole or in part, without cause, upon thirty (30) days written notice to Consultant. In addition, this Agreement may be terminated by Owner, without the breach of any party, upon the happening of any of the following events:

1. The failure of any contingency as provided in Section 3.3 below; or
2. At the convenience of Owner, if Owner, in its sole discretion, determines that all or any portion of a Project is no longer required, desired or financially feasible, which determination will be final and not subject to review.

In the event of termination of this Agreement pursuant to this Section, Owner's only liability to Consultant shall be the payment of valid outstanding invoices for those Consultant Services rendered prior to the effective date of such termination. Consultant agrees to render a final invoice to Owner for all Consultant Services performed by Consultant prior to such termination within thirty (30) days after completion of the Consultant Services performed.

3.3 Contingencies. This Agreement is expressly contingent upon the following items, each of which is a material part of this Agreement, the failure of which substantially impairs the ability of the parties to continue with the Projects and this Agreement:

3.3.1 The ability of Owner to obtain approval from its Board of Directors, as appropriate, for the development of the Projects as contemplated hereby.

3.4 Termination. In addition to the remaining provisions of this Article 3, this Agreement may be terminated as follows:

3.4.1 By either party upon the occurrence of any of the following events of default by the other party, which termination will be effective as of the date specified in a written notice of termination given by the non-defaulting party to the defaulting party:

(a) The filing of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

(b) The consent to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights; or

(c) The entry of an order against a party or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of such party in any involuntary proceeding, and the continuation of such order, judgment, or decree unstayed for any period of ninety (90) consecutive calendar days.

3.4.2 By Consultant upon Owner's failure to perform or observe any covenant, obligation or requirement of this Agreement, and the continuation of such failure for (i) ten (10) calendar days after written notice thereof from Consultant specifying the nature and extent of any monetary default or (ii) thirty (30) calendar days after written notice thereof from Consultant specifying the nature and extent of any non-monetary default. Any such termination will be effective as of the date specified in a written notice of termination; provided, however, that if upon receipt of such notice, Owner promptly and with all due diligence proceeds to attempt to cure the default within the time specified herein and thereafter diligently pursues such efforts to completion, then Consultant may not terminate this Agreement pursuant to this Section 3.4.2.

3.4.3 By Owner upon Consultant's failure to perform or observe any covenant, obligation or requirement of this Agreement, and unless otherwise specifically set forth in this Agreement, the continuation of such failure for thirty (30) calendar days after written notice thereof from Owner specifying the nature and extent of such default. Any such termination will be effective as of the date specified in a written notice of termination; provided, however, that if upon receipt of such notice, Consultant promptly and with all due diligence proceeds to attempt to cure the default within the time specified and thereafter diligently pursues such efforts to completion then Owner will have no right to terminate this Agreement pursuant to this Section 3.4.3.

3.4.4 By Owner if the Consultant Fee allocated to each Project on **Exhibit "A"** or the Reimbursable Expenses are exceeded without the consent of Owner's Board of Directors as provided in Section 4.1.

3.5 Effect of Termination. Upon the termination of this Agreement pursuant to Section 3.4 above, the non-defaulting party will have all rights and remedies available to it by reason of applicable provisions of law or equity.

ARTICLE 4

CONSULTANT FEE AND REIMBURSABLE EXPENSES

4.1 Work Authorization. Upon execution of this Agreement by Consultant and Owner, Consultant is authorized to begin providing Basic Consultant Services (as defined in **Exhibit "B"**). Consultant understands and agrees that no additional Consultant Services

will be provided under this Agreement until it receives a written Work Authorization in the form attached hereto as **Exhibit "B"** that has been executed by Owner's Designated Representative and which authorizes Consultant to commence work on a specific Project. No Work Authorization will be issued for a specific Project unless and until such Project is included in an approved District budget.

- 4.2 Payment of Consultant Fee and Reimbursable Expenses. (a) For the Consultant Services, Owner will pay Consultant as set out on **Exhibit "A"**. In addition, Owner shall pay Consultant for all Reimbursable Expenses as set out on **Exhibit "A"**. Consultant understands and agrees that the Consultant Fee for each Project shall not be exceeded unless unanticipated conditions arise, and Owner's Board of Directors approves the requested increase. Consultant further understands and agrees that any Consultant Fee and/or Reimbursable Expense submitted for payment that does not relate to a Project, as determined by Owner in its sole discretion, will not be reimbursed or otherwise paid to Consultant. Notwithstanding the foregoing, Owner shall at all times have the right, with notice to Consultant, to withhold any amounts due under this Agreement from the Consultant Fee (including, but not limited to, such amounts described in Section 4.3 below) to reasonably protect Owner against loss arising out of the performance of the Consultant Services.
- 4.3 Repayment for Non-Projects Costs. No payments may be made to Consultant for items that are determined to be ineligible projects costs under Chapter 311, Texas Tax Code. Any payments made for such ineligible project costs, as determined by the Owner in its sole discretion shall be refunded by Consultant immediately upon the written request of the Owner. The Owner also has the right to withhold such amounts from the consultant fee.

ARTICLE 5

INSURANCE, INDEMNITY AND LIMITATION OF LIABILITY

- 5.1 Insurance. Consultant will maintain, or cause to be maintained, insurance covering the following risks, to the extent stated:
- 5.1.2 Worker's Compensation Insurance covering all employees of Consultant, as required by applicable law.
- 5.1.2 Employer's Liability Insurance in the amount of \$100,000 bodily injury for each accident, \$500,000 for bodily injury by disease (policy limit), and \$100,000 for bodily injury by disease for each employee.
- 5.1.3 Comprehensive Automobile Liability (including Employer's Non-Ownership and Hired Auto Coverage) covering liability arising out of the use of any Consultant vehicle used in conjunction with the Projects, whether owned or leased, with a combined single limit per occurrence of \$500,000.
- 5.1.4 Professional Liability Coverage in the aggregate amount of \$2,000,000.00 and \$1,000,000 per occurrence, issued on a claims made basis. Coverages will be specific for the Projects and not aggregated with insurance for other undertakings of Consultant.

5.1.5 Commercial General Liability, including Broad Form Coverage, Contractual Liability, Bodily and Personal Injury, and Completed Operations (for a period of one year after completion of the Projects).

Defense costs shall be excluded from the face amount of the policies listed above and aggregate limits are per 12-month policy periods, unless otherwise indicated.

- 5.2 Terms; Waivers; Endorsements. Such insurance will be written on an occurrence basis unless Owner otherwise consents in writing, which consent will not be unreasonably withheld or delayed; provided, however, that professional liability insurance shall be issued on a claim made basis and shall continue for two (2) years after Final Completion of each Project. Such insurance will contain (i) a waiver of subrogation endorsement as to Owner, and (ii) an endorsement that the policy is primary to any other insurance available to the Owner with respect to claims arising under this Agreement (except as to Worker's Compensation and professional liability insurance), without reduction or right of offset or contribution on account of any insurance provided by Owner, to themselves or it's respective officers, agents or employees.
- 5.3 Certificates of Insurance. Before commencing performance of the Consultant Services, Consultant shall furnish to Owner a certificate(s) from its insurance carrier(s) showing that it has complied with the provisions of this Article 5. Consultant also agrees to furnish copies of certificates of insurance coverage to Owner upon request and from time to time during the Projects. In the event of failure of Consultant to furnish and maintain such insurance or to furnish a satisfactory certificate therefore within ten (10) days of written notice from Owner, Owner shall have the right to take out and maintain the said insurance for and in the name of Consultant, and Consultant agrees to furnish all necessary information to permit Owner to take out and maintain such insurance for the account of Consultant and to pay the cost thereof to Owner immediately upon presentation of a bill.
- 5.4 Cancellation. All insurance policies will provide that such insurance will not be altered or canceled without thirty (30) days advance written notice to Owner. In addition, Consultant either shall (a) give written notice to Owner within five (5) days of the date on which total claims by any party against such insurance policies reduce the aggregate amount of coverage below the amounts required by this Agreement, or (b) have a policy contain an endorsement establishing a policy aggregate for the Projects.
- 5.5 Deductibles. Consultant also shall be responsible for and bear any claims or losses under this Agreement to the extent of any deductible amounts and waives any claim it may have for the same against Owner, and its respective officers, agents and employees.
- 5.6 Insurer Requirements. All policies of insurance required by this Agreement shall be issued by companies having a certificate of authority to transact business in Texas and a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most recent edition of *Best's Key Rating Guide, Property-Casualty United States*.
- 5.7 Additional Insureds. Each policy listed above, except for Worker's Compensation, Employer's Liability and Professional Liability, must name Owner, and it's respective officers, agents and employees) as additional insured parties on the original policies and all renewal or replacement policies.

5.8 **INDEMNITY PROVISIONS.**

5.8.1 General Indemnity. CONSULTANT SHALL BE RESPONSIBLE TO OWNER, AND IT'S "INDEMNIFIED PARTIES" FOR THE ACTS AND OMISSIONS OF ITS EMPLOYEES, ITS SUBCONTRACTORS OF ANY TIER AND THEIR AGENTS AND EMPLOYEES, AND ALL OTHER PERSONS PERFORMING ANY OF THE WORK CONTEMPLATED IN THIS AGREEMENT UNDER A CONTRACT WITH CONSULTANT (COLLECTIVELY, THE "CONSULTANT PARTIES"). ACCORDINGLY, CONSULTANT AGREES TO INDEMNIFY, DEFEND AND HOLD THE INDEMNIFIED PARTIES HARMLESS AGAINST ALL LIABILITY, LOSS, DAMAGE AND EXPENSE (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AND COSTS) RESULTING FROM THE ACTS AND/OR OMISSIONS OF THE CONSULTANT PARTIES (WHETHER WILLFUL OR DUE TO NEGLIGENCE OR GROSS NEGLIGENCE), IN CONNECTION WITH THIS AGREEMENT.

5.8.2. Personal Injuries or Property Damage. CONSULTANT HEREBY COVENANTS AND AGREES TO, AND DOES HEREBY, DEFEND, INDEMNIFY AND HOLD THE INDEMNIFIED PARTIES HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE OR LOSS, INCLUDING DEATH, TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO ANY PERFORMANCE BY THE CONSULTANT PARTIES UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

1. THE ACTUAL OR ALLEGED NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) OR INTENTIONAL ACTS OR OMISSIONS OF THE CONSULTANT PARTIES;

2. THE INDEMNIFIED PARTIES 'AND THE CONSULTANT PARTIES ' ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER ANY OF SUCH PARTIES ARE IMMUNE FROM LIABILITY OR NOT; AND

3. THE INDEMNIFIED PARTIES 'AND THE CONSULTANT PARTIES ' ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER ANY OF SUCH PARTIES ARE IMMUNE FROM LIABILITY OR NOT.

CONSULTANT AGREES TO DEFEND, INDEMNIFY, AND HOLD THE INDEMNIFIED PARTIES HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THIS AGREEMENT TERMINATES. THE CONSULTANT'S INDEMNIFICATION IS LIMITED TO \$1,000,000 PER OCCURRENCE. CONSULTANT SHALL NOT INDEMNIFY THE INDEMNIFIED PARTIES FOR THE INDEMNIFIED PARTIES 'SOLE NEGLIGENCE.

5.8.3. District Property. CONSULTANT ALSO AGREES TO INDEMNIFY AND HOLD HARMLESS THE DISTRICT FOR ANY AND ALL INJURY OR DAMAGE TO DISTRICT PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSION OF THE CONSULTANT PARTIES OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES.

5.8.4. RELEASE. CONSULTANT AGREES TO AND SHALL RELEASE THE INDEMNIFIED PARTIES FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO THE PERFORMANCE OF THE CONSULTANT PARTIES UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE OR LOSS IS CAUSED BY THE INDEMNIFIED PARTIES 'NEGLIGENCE.

5.8.5. CONSULTANT SHALL REQUIRE ALL CONTRACTORS ENGAGED BY IT (AND THEIR SUBCONTRACTORS OF ANY TIER) ENGAGED TO PERFORM OR CONSTRUCT THE PROJECTS FOR OWNER TO RELEASE AND INDEMNIFY THE INDEMNIFIED PARTIES TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE OF AND INDEMNITY TO THE INDEMNIFIED PARTIES HEREUNDER.

5.8.6. Indemnification procedures.

A. Notice of Claims. If the Indemnified Parties or Consultant receive notice of any claim or circumstances that could give rise to an indemnified loss, the receiving party shall give written notice to the other party within ten (10) days. The notice must include the following:

- i. A description of the indemnification event in reasonable detail;
- ii. The basis on which indemnification may be due; and
- iii. The anticipated amount of the indemnified loss.

This notice does not stop or prevent the Indemnified Parties from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the Indemnified Parties do not provide this notice within the ten (10) day period, they do not waive any right to indemnification except to the extent that the Consultant is prejudiced, suffers loss, or incurs expense because of the delay.

B. Defense of Claims. (a) Assumption of Defense. Consultant may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the Indemnified Parties. Consultant shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, Consultant must advise the Indemnified Parties as to whether or not it will defend the claim. If Consultant does not assume the defense, the Indemnified Parties shall assume and control the defense, and all defense expenses constitute an indemnification loss.

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

5.8.7 The indemnifications set out above apply whether: (i) the activities involve employees, independent contractors, or agents of Consultant, or (ii) the claim results in a monetary obligation that exceeds any contractual commitment made by Consultant or any such other parties.

5.8.8 The indemnifications set out above extend to the successors and assigns of Consultant, and the indemnifications and releases survive the termination of this Agreement and the dissolution or, to the extent allowed by law, the bankruptcy of Consultant.

5.8.9 Consultant will procure, within an insurance policy obtained pursuant to this Article 5, specific insurance coverage to cover the indemnifications set out above, in accordance with the terms of this Section 5.8.

5.8.10 The indemnities set out above shall not be limited as to amount or type of damages by the provisions of any worker's compensation act, disability act or other employee benefit act.

5.9 No Limitation of Liability of Others. Notwithstanding the limitation of liability conferred upon Consultant contained in this Article 5, such limitation of liability will in no way attach to or include or benefit any other consultant engaged in work or services on the Projects.

5.10 Limitation of Liability for Special Damages. In no event shall Owner, Consultant, the District be liable under any claim, demand or action (whether arising in contract, tort or otherwise) arising out of or relating to this Agreement for any special, indirect, incidental, exemplary or consequential damages (including, but not limited to, loss of anticipated profits, loss of use or business disruption), regardless of whether or not such entity, its employees or agents, have been advised of the possibility or likelihood of such damages.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Consultant's Representations. Consultant hereby represents and warrants as follows:

6.1.1 This Agreement constitutes the valid and legally binding obligation of Consultant and is enforceable against Consultant in accordance with its terms.

6.1.2 Consultant has full right, power and authority and is duly authorized to enter into this Agreement, to perform each of the covenants on its part to be performed hereunder and to execute, deliver and perform its obligations under all documents required to be executed and delivered by it pursuant to this Agreement.

6.1.3 No authorization, consent or approval of any Governmental Authority (including courts) is required for the execution and delivery by Consultant of this Agreement or the performance of its obligations hereunder, other than the permits, licenses, and approvals to be obtained for the actual development of the Projects.

6.1.4 Consultant represents and warrants that it has no known obligations to any third party that will limit or restrict its ability to perform the Consultant Services under this Agreement.

6.1.5 Consultant represents that it is in compliance with all applicable federal, state or local laws, regulations and orders with respect to equal opportunity and affirmative action, and either has previously provided, or will provide, Owner with a copy of any requested certifications regarding such compliance as Owner may request during the terms of this Agreement.

6.2 Owner's Representations. Owner hereby represents and warrants as follows:

6.2.1 Owner is a not-for-profit local government corporation duly formed, validly existing and in good standing under the laws of Texas and duly authorized to do business in the State of Texas. This Agreement constitutes the valid and legally binding obligation of Owner and is enforceable against Owner in accordance with its terms.

6.2.2 Owner has full right, power and authority and is duly authorized to enter into this Agreement, to perform each of the covenants on its part to be performed hereunder and to execute, deliver and to perform its obligations under all documents required to be executed and delivered by it pursuant to this Agreement.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Independent Contractor. At all times, Consultant will be an independent contractor under this Agreement. Consultant shall have the right to determine the method, details and means of performing the Consultant Services. In no event will any employee, contractor or agent of Consultant be considered an employee, contractor or agent of Owner. Consultant shall be responsible for all matters governing employment of its work force, including (but not limited to) the payment of salaries (including withholding of employment taxes) and worker's compensation and disability benefits. Nothing contained in this Agreement will be construed to create a partnership or joint venture between Owner and Consultant or their successors in interest hereunder.

7.2 Audit. At its cost and expense, Owner shall have the right to review and/or audit Consultant's records relating to the Projects, the Consultant Services, the Consultant Fees and/or the Reimbursable Expenses. Such audit may, at Owner's option, include a review of Consultant's compliance with all applicable laws and regulations. Consultant agrees to provide access to its facilities and to provide all information related to this Agreement as requested by Owner.

7.2 Documents. Except as otherwise provided herein, all drawings, plans, specifications and other documents prepared for Owner for the Projects pursuant to this Agreement will

become and remain the property of Owner whether or not the Projects are completed, and Consultant will not make use of such items for any other purpose.

- 7.3 Approvals. Except as expressly provided otherwise in this Agreement, whenever this Agreement requires the consent or approval of Owner or Consultant, such consent or approval will not be unreasonably withheld or delayed, except that Owner shall have the unfettered right in its sole discretion to approve the Contract Documents.
- 7.4 Waiver. The failure of either party to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, will not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by either party of any term or provision hereof will be deemed to have been made unless expressed in writing and signed by such party.
- 7.5 Partial Invalidity. In the event that any portion of this Agreement is declared invalid by order, decree or judgment of a court, this Agreement will be construed as if such portion had not been inserted herein except when such construction would operate as an undue hardship to Consultant or Owner or constitute a substantial deviation from the general intent and purpose of said parties as reflected in this Agreement.
- 7.6 Assignment. Owner shall have the right to assign this Agreement to any entity created by or affiliated with Owner, and any such assignee will be deemed to be Owner for purposes of this Agreement. Without the prior written consent of Owner, which consent may be given or withheld in Owner's sole discretion, Consultant will not assign its rights and obligations under this Agreement to any other party. Except as provided in the preceding sentences, neither Owner nor Consultant shall assign or transfer, or permit the assignment or transfer of their respective interests in this Agreement. Further, any permitted assignment will not relieve Owner or Consultant from its obligations hereunder unless Consultant or Owner, as applicable, expressly consents in writing to such release.
- 7.7 Applicable Law. This Agreement will be construed under and will be governed by the laws of the State of Texas.
- 7.8 Headings. Headings and titles are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Article or Section to which they refer.
- 7.9 Notices. Notices required to be given under the terms of this Agreement will be in writing and delivered personally, delivered by Federal Express or other nationally recognized overnight express delivery service, or sent by facsimile transmission with transmission confirmation set forth below:

Notice To Owner:

Harris County Improvement District #1
1980 Post Oak Boulevard, Suite 1580
Houston, Texas 77056

Notice To Consultant:

or at such other address as from time to time is designated by the party receiving the notice. Such notices shall be deemed received on (i) the date of delivery, if delivered by hand or by overnight express delivery service, or (ii) on the date of transmission, if sent by facsimile transmission.

- 7.10 Participation in Claims Resolution. Consultant and Owner agree that their respective officers, employees, and agents agree to participate as necessary and required in the settlement of any and all claims arising from this transaction, including testimony in courts of competent jurisdiction.
- 7.11 Definition of “Including”. In this Agreement, whenever general words or terms are followed by the word “including” (or other forms of the word “include”) and words of particular and specific meaning, the word “including” (or other forms of the word “include”) will be deemed to mean “including without limitation”, and the general words will be construed in their widest extent, and will not be limited to persons or things of the same general kind or class as those specifically mentioned in the words of particular and specific meaning.
- 7.12 Binding Effect. This Agreement will bind and inure to the benefit of the respective successors and assigns of the parties hereto.
- 7.13 Entire Agreement. This Agreement, and all exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and writings, and may be changed only by a writing signed by the parties hereto.
- 7.14 Time of Essence. Time is of the essence of this Agreement. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, expires on a day other than a Business Day, then such time period shall be automatically extended through the close of business on the next regularly scheduled Business Day.
- 7.15 Third Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer upon any other party other than the parties hereto and their respective successors and assigns, any right or interest whatsoever. No party other than the parties hereto is entitled to rely in any way upon the warranties, representations, obligations or limitations of liability whatsoever in this Agreement. Nothing in this Section 7.15 shall affect the third party beneficiary rights of Owner established elsewhere in this Agreement.
- 7.16 Survival of Certain Provisions. The provisions of Article 5 and Article 6 shall survive the termination of this Agreement, regardless of the reason for termination.
- 7.17 Federally Required Contract Clauses. The clauses contained in **Exhibit”C”** attached hereto are fully incorporated herein by this reference and are binding on the parties hereto.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered, and to take effect as of the Effective Date.

CONSULTANT:

HCID#1:

**HARRIS COUNTY IMPROVEMENT
DISTRICT #1**

By: _____

By: _____

EXHIBIT "A"
RATE SCHEDULE

<u>Category</u>	Hourly Rate*
Principal	
Sr. Project Manager	
Project Manager	
Senior Architect	
Architect/Senior Designer	
Graduate Architect	
Clerical	

Reimbursable Expenses:

Travel	Federal Published Rate
Delivery	At Cost
Outside printing/plotting	At Cost
Other reasonable and customary expenses	At Cost
Sub-consultants	Cost + 8%

*The maximum adjustment on the hourly rate shall not exceed a multiplier of 1.05 per year for escalation and pay raises.

EXHIBIT "B"

**WORK AUTHORIZATION FOR HARRIS COUNTY IMPROVEMENT DISTRICT NO. 1
PROJECT NO. _____**

This Work Authorization authorizes consultant services to be performed by _____ (the "Consultant") in connection with Harris County Improvement District #1 Project _____ (the "Project") pursuant to the Project Consultant Agreement (the "Agreement") between the Consultant and Harris County Improvement District No. 1 (the "Owner"). Unless otherwise defined herein, all capitalized terms used in this Work Authorization are defined in the Agreement.

This Work Authorization consists of the following:

1.0 SCOPE OF SERVICES

2.0 PAYMENT

Payment to the Consultant for the Services rendered in connection with the Project shall be lump sum per work order or time and expenses basis in accordance with **Exhibit "A"** to the Agreement, as applicable.

IN WITNESS WHEREOF, the parties have executed this Work Authorization as of _____, 20____.

**OWNER:
HARRIS COUNTY
IMPROVEMENT DISTRICT No. 1**

CONSULTANT:

By: _____
Name: _____

Title: _____

By: _____
Name: _____

Title: _____

Appendix "C" – Federally Required Contract Clauses

These federally required contract clauses are in accordance with FTA Circular 4220.1F, Third Party Contracting Guidance. The Respondent and future Contractor (Respondent/Contractor) certifies to abide by the clauses below as part of this procurement. The Respondent must also complete the forms included in **RESPONDENT/CONTRACTOR PRE-AWARD CERTIFICATIONS, APPENDIX "D."** Insofar as something is labeled as not applying to this RFQ or "Contract," that provision shall apply if it is later determined to be required per the relevant grant funding sources.

1. FLY AMERICA

- a. The Respondent/Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Respondents/ Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Respondent/Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.
- b. The Respondent/Contractor also agrees to include any applicable requirements in each subcontract involving international air transportation financed in whole or in part with Federal assistance provided by FTA.

2. BUY AMERICA – Does not apply to this Contract.

3. CHARTER BUS and SCHOOL BUS REQUIREMENTS – Does not apply to this Contract.

4. CARGO PREFERENCE REQUIREMENTS – Does not apply to this Contract.

5. SEISMIC SAFETY REQUIREMENTS – Does not apply to this Contract.

6. ENERGY CONSERVATION

- a. As authorized by the State of Texas, The Texas State Energy Conservation Office (SECO) has adopted the most recent edition of the International Energy Conservation Code (IECC) without amendment for new buildings or additions only. The Respondent/Contractor shall design the facility in accordance with 2015 IECC.
- b. The Respondent/Contractor also agrees to include any applicable requirements in each subcontract involving construction of commercial buildings financed in whole or in part with Federal assistance provided by FTA.

7. CLEAN WATER

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Township and understands and agrees that the Township will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING – Does not apply to this Contract.

9. PRE-AWARD and POST DELIVERY AUDIT REQUIREMENTS – Does not apply to this Contract.

10. LOBBYING

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Agency's Contractors shall certify and disclose accordingly.

11. ACCESS TO RECORDS AND REPORTS

- 1. The following access to records requirements applies to this contract:
 - a. Uptown Houston is an FTA Recipient in accordance with 49 C.F.R. 18.36(i). The Respondent/Contractor agrees to provide Uptown Houston, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers, and records of the Respondent/Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - b. The Respondent/Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - c. The Respondent/Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Respondent/Contractor agrees to maintain same until Uptown Houston, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39(i)(11).
 - d. FTA does not require the inclusion of these requirements in subcontracts.

12. FEDERAL CHANGES

- a. The Respondent/Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement between Uptown Houston and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Respondent/Contractor's failure to so comply shall constitute a material breach of this contract.
- b. The Respondent/Contractor also agrees to include any applicable requirements in each subcontract involving a federal change financed in whole or in part with Federal assistance provided by FTA.

13. BONDING REQUIREMENTS – Does not apply to this Contract.

14. CLEAN AIR

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Township and understands and agrees that the Township will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- b. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS

- a. If the Contractor procures \$10,000 or more of one of the Environmental Protection Agency designated items in a fiscal year or has procured \$10,000 or more of such items in the previous fiscal year using Federal funds, the Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

16. DAVIS-BACON and COPELAND ANTI-KICKBACK ACTS – Does not apply to this Contract.

17. CONTRACT WORK HOURS and SAFETY STANDARDS ACT – Does not apply to this Contract.

18. RESERVED

19. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

- a. Uptown Houston and the Respondent/Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Uptown Houston, the Respondent/Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Respondent/Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD and FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- a. The Respondent/Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions

pertaining to this Project. Upon execution of the underlying contract, the Respondent/Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Respondent/Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Respondent/Contractor to the extent the Federal Government deems appropriate.

- b. The Respondent/Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Respondent/Contractor, to the extent the Federal Government deems appropriate.
- c. The Respondent/Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

a. By Uptown Houston for Convenience:

- i. Uptown Houston may terminate this Agreement/Purchase Order at any time upon 30-calendar days' notice in writing to the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Agreement/Purchase Order and shall proceed to cancel promptly all existing orders and Agreement/Purchase Orders insofar as such orders and Agreement/Purchase Orders are chargeable to this Agreement/Purchase Order. As soon as practicable after the receipt of notice of termination, the Contractor shall submit a statement to the appropriate department(s) showing in detail the services performed or items delivered under this Agreement/Purchase Order to date of termination. Uptown Houston agrees to compensate the Contractor for that portion of the prescribed charges for which the services were actually performed, or items delivered under this Agreement/Purchase Order and not previously paid.

b. By Uptown Houston for Default by the Contractor:

- i. In the event that the materials and/or services furnished by the Contractor do not conform to the standard set forth herein, or if the deliveries and servicing of this Agreement/Purchase Order do not conform to the requirements detailed herein, the Uptown Houston through a written notice to the Contractor describing such default may as its options:
 - 1. Terminate the Agreement/Purchase Order for default and Uptown Houston shall have no further obligation under the Agreement/Purchase Order.

2. Allow the Contractor to cure default within a reasonable time as specified in the notice. Uptown Houston, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the Contractor cures such default to Uptown Houston's satisfaction, then the proposed termination shall be ineffective. If the Contractor fails to cure such default prior to the proposed date of termination, then Uptown Houston may terminate its performance under this Agreement/Purchase Order as of such date and have no further obligation under the Agreement/Purchase Order.
 - ii. In the event of failure to deliver any or all of the items or to perform required services, Uptown Houston may cover its loss by reasonably procuring from another source the items not delivered or the services not performed. The Contractor shall be responsible for and shall pay to Uptown Houston immediately upon demand the difference in price between that offered by the Contractor and that which Uptown Houston was forced to pay for covering the Contractor's failure to deliver or perform services.
- c. **By the Contractor for Default by Uptown Houston:**
 - i. Default by Uptown Houston shall occur if Uptown Houston fails to perform or observe the terms and conditions of this Agreement/Purchase Order required to be performed or observed by Uptown Houston, and the Contractor gives notice in writing to Uptown Houston within 30 calendar days of the act or omission claimed by the Contractor to constitute default on the part of Uptown Houston.
 - ii. Upon receipt of such notice in writing from the Contractor, however, Uptown Houston shall have 30 calendar days to cure such default. The Contractor, at its sole option, may extend the proposed date of termination to a later date.
 - iii. If Uptown Houston cures such default prior to the proposed date of termination, the proposed termination shall be ineffective. If Uptown Houston fails to cure such default prior to the proposed date of termination, then the Contractor may terminate its performance under this Agreement/Purchase Order as of such.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

- a. This contract is a covered transaction for the purposes of 49 C.F.R. Part 29. As such, the Respondent/Contractor is required to verify that none of the Respondent/Contractor, its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 C.F.R. 29.905, are excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945.
- b. The Respondent/Contractor is required to comply with 49 C.F.R. 29, Subpart C and must include the requirement to comply with 49 C.F.R. 29, Subpart C in any lower tier covered transaction it enters into.
- c. The certification (**SEE APPENDIX "D"**) is a material representation of fact relied upon by Uptown Houston. If it is later determined that the Respondent/Contractor knowingly rendered an erroneous certification, in addition to remedies available to Uptown Houston, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Respondent/Contractor agrees to comply with the requirements of 49 C.F.R. 29, Subpart C and Executive Order 12549 while this offer is valid and throughout the period of any contract that may arise from this offer.

- d. The Respondent/Contractor also agrees to include these requirements in each subcontract exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

23. PRIVACY ACT – Does not apply to this Contract.

24. CIVIL RIGHTS REQUIREMENTS

2. The following requirements apply to the underlying contract:

a. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Respondent/Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Respondent/Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

b. **Equal Employment Opportunity** - The following requirements apply to the underlying contract:

i. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Respondent/Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Respondent/Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Respondent/Contractor agrees to comply with any implementing requirements FTA may issue.

ii. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Respondent/Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Respondent/Contractor agrees to comply with any implementing requirements FTA may issue.

iii. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Respondent/Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to

employment of persons with disabilities. In addition, the Respondent/Contractor agrees to comply with any implementing requirements FTA may issue.

- c. The Respondent/Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

- a. **Violation and Breach of Contract** – Substantial failure of the Respondent/Contractor to perform the Scope of Services defined in accordance with the terms of this Contract will be a default of this Contract. In the event of a default, Uptown Houston will have all remedies in law and equity, including the right to specific performance, without further assistance, and the right to termination or suspension as provided herein. The Respondent/Contractor recognizes that in the event of a breach of this Contract by the Respondent/Contractor before the Uptown Houston takes action contemplated herein, Uptown Houston will provide the Respondent/Contractor with sixty (30) days written notice that the Uptown Houston considers that such a breach has occurred and will provide the Respondent/Contractor a reasonable period of time to respond and to take necessary corrective action. Uptown Houston reserves the right to waive the notice period, in its sole discretion, in the event that the Contractor's breach could cause or has caused irreparable or serious harm to the subject matter of the Contract, public safety, or the community.
- b. **Disputes.** Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Uptown Houston. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Respondent/Contractor mails or otherwise furnishes a written appeal to Uptown Houston. In connection with any such appeal, the Respondent/Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Uptown Houston shall be binding upon Respondent/Contractor and Respondent/Contractor shall abide by the decision.
- c. **Performance During Dispute.** Unless otherwise directed by Uptown Houston, Respondent/Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- d. **Claims for Damages.** Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- e. **Remedies.** Unless this Contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between Uptown Houston and Respondent/Contractor arising out of or relating to this Contract or its breach will be decided in a court of competent jurisdiction within Harris County, Texas. The laws of Texas shall apply to this Agreement without regard to any choice of law provision to the contrary.
- f. **Rights and Remedies.** The duties and obligations imposed by the Contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed

or available by law or regulation. No action or failure to act by Uptown Houston or Respondent/Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

26. PATENT AND DISPUTE RESOLUTION – Does not apply to this Contract.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS – Does not apply to this Contract.

28. DISADVANTAGED BUSINESS ENTERPRISES

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The agency's overall goal for DBE participation is 12.91% race-neutrally. There is no separate contract goal for this procurement.
- b. The Respondent/Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Respondent/Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Respondent/Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Uptown Houston deems appropriate.
- c. Respondents or Proposers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 C.F.R. 26.53 (**SEE APPENDIX "D"**). Award of this contract is conditioned on submission of the following concurrent with and accompanying an initial SOQ:
 - i. The names and addresses of subcontractors that will participate in the contract;
 - ii. A description of the work that each subcontractor will perform;
 - iii. Whether the subcontractor is a DBE, non-DBE, or a Small Business Enterprise (SBE);
 - iv. The ethnic code, as described in the form;
 - v. The age of the firm;
 - vi. The annual gross receipts from the firm;
 - vii. The dollar amount of the participation of each DBE firm participating; and
 - viii. Written confirmation from the DBE subcontractor that it is participating in the contract as provided in the commitment made under (8) (**SEE APPENDIX "D"**).
- d. The Respondent/Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from Uptown Houston. The Respondent/Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the timeframe stated in this paragraph may occur only for good cause, as determined by Uptown Houston, and following written approval of Uptown Houston. **HOWEVER, CONTRACTOR SHALL INDEMNIFY UPTOWN HOUSTON FOR ANY CLAIMS MADE AGAINST UPTOWN HOUSTON FOR VIOLATION OF THE PROMPT PAY ACT OR OTHER RELEVANT STATUTE.** This clause applies to both DBE and non-DBE subcontractors and shall be

included in the contract between the Respondent/Contractor and any and all subcontractors.

- e. The Respondent/Contractor must promptly notify Uptown Houston, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Respondent/Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Uptown Houston.
- f. The Respondent/Contractor shall report DBE participation on a monthly basis on the Contractor Payment Report Form **(to be included in the Contract)**.
- g. Uptown Houston encourages the Respondent/Contractor on DOT-assisted contract to make use of financial institutions owned and controlled by socially and economically disadvantaged individuals. The Federal Reserve Statistical Release maintains a list of Minority-Owned Banks.

29. RESERVED

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

- a. The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth [in Best Practices Procurement and Lessons Learned Manual, Appendix A Federally Required and Other Model Contract Clauses](#), are hereby incorporated by reference. The following clauses apply to this Contract.
 - i. Access to Records and Reports
 - ii. Clean Air Act and Federal Water Pollution Control Act
 - iii. Civil Rights Laws and Regulations
 - iv. Disadvantaged Business Enterprise (DBE)
 - v. Fly America
 - vi. Government-Wide Debarment and Suspension
 - vii. Lobbying Restrictions
 - viii. No Government Obligation to Third Parties
 - ix. Program Fraud and False or Fraudulent Statements and Related Acts
 - x. Termination
 - xi. Violation and Breach of Contract
- b. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any the Owner requests which would cause the Owner to be in violation of the FTA terms and conditions.
- c. The Contractor also agrees to include any applicable requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

31. DRUG AND ALCOHOL TESTING – Does not apply to this Contract.

32. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY

- a. ADA Accessibility ensures that all individuals regardless of disability are not excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- b. The Respondent/Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and

facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

- c. The Respondent/Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable.
- d. In addition, the Respondent/Contractor agrees to comply with applicable implementing Federal regulations any later amendments thereto and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing.
- e. The Respondent/Contractor and all of its subcontractors shall adhere to any applicable ADA Accessibility requirements from the following:
 - i. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, U.S. DOT regulation.
 - ii. 49 CFR Part 37 - Transportation Services for Individuals with Disabilities (ADA), U.S. DOT regulation
 - iii. 49 CFR Part 38 and 36 C.F.R. Part 1192 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles, Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulation
 - iv. 28 C.F.R. Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services, U.S. DOJ regulation
 - v. 28 C.F.R. Part 36 – Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, U.S. DOJ regulation
 - vi. 41 C.F.R. Subpart 101-19 – Accommodations for the Physically Handicapped, U.S. General Services Administration (U.S. GSA) regulation"
 - vii. 29 C.F.R. Part 1630 – Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, U.S. EEOC
 - viii. 47 C.F.R. Part 64, Subpart F – Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled, U.S. Federal Communications Commission regulation
 - ix. 36 C.F.R. Part 1194 – Electronic and Information Technology Accessibility Standards, U.S. ATBCB regulation
 - x. 49 C.F.R. Part 609 – Transportation for Elderly and Handicapped Persons, FTA regulation
 - xi. Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

33. VETERAN'S PREFERENCE – Does not apply to this Contract.

34. SEAT BELT USE

- a. The Respondent/Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, companyA-60 rented vehicles, or personally operated

vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Uptown Houston.

35. DISTRACTED DRIVING, INCLUDING TEXT MESSAGING WHILE DRIVING

- a. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

36. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICE OR EQUIPMENT

- a. Contractors are prohibited from obligating or expending loan or grant funds to:
 - i. Procure or obtain;
 - ii. Extend or renew a contract to procure or obtain; or
 - iii. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - 2. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - 3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
 - iv. In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

37. TRAFFICKING IN PERSONS

- a. Contractor agrees that it and its employees that participate in the contract, may not: Engage in severe forms of trafficking in persons during the period of time the contract is in effect, procure a commercial sex act during the period of time that the contract is in effect, or use forced labor in the performance of the contract or subcontracts

thereunder. The Contractor will inform Agency immediately of any information it receives from any source alleging a violation of the prohibitions listed in section.

38. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTION

- a. The contractor hereby certifies the following:
 - i. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.
 - ii. Agrees to require all subcontractors to provide this certification and to flow this requirement down to participants at all lower tiers, without regard to the value of any subcontract.

APPENDIX “D” – Federally Required Certifications

Suspension and Debarment Certification Form

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

To be completed by the prime contractor and all subcontractors.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988, Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE)

The prospective primary Respondent/Contractor certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary Respondent/Contractor is unable to certify any of the statements in this certification, such prospective primary participant shall attach an explanation to this SOQ.

DATE: _____

SIGNATURE: _____

RESPONDENT/
CONTRACTOR: _____

NAME/TITLE: _____

INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this SOQ, the Respondent/Contractor is providing the certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Respondent/Contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the District's determination whether to enter into this transaction. However, the failure of the Respondent/Contractor to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the District determined to enter into this transaction. If it is later determined that the Respondent/Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the District may terminate this transaction for cause or default.
3. The Respondent/Contractor shall provide immediate written notice to the District to which this SOQ is submitted if at any time the Respondent/Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "bid," "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "person," "primary covered transaction," "principal," "SOQ," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. the Respondent/Contractor may contact the District to which this SOQ is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
5. The Respondent/Contractor agrees by submitting this SOQ that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the District entering into this transaction.
6. The Respondent/Contractor further agrees by submitting this SOQ that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transactions," provided by the District entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Respondent/Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 6 of these instructions, if a Respondent/Contractor in a covered transaction knowingly enters into a lower tier covered transaction with a subcontractor who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the District may terminate this transaction for cause or default.
9. The Respondent/Contractor also agrees to include these requirements in each subcontract, or a lower tier covered transaction, exceeding \$25,000 financed in whole or in part with Federal assistance provided by FTA.

Respondent/Contractor Certification Instructions:

The prime Respondent/Contractor shall complete this form by listing 1) Names of ALL proposed subcontractors, whether or not the subcontractor is a DBE or SBE. 2) Contact information, 3) Description of work to be performed/product to be provided, 4) Status as a DBE or non-DBE, 5) Ethnic Code of firm, 6) Gender code of owner, and 7) % or \$ amount of Total Subcontract. Those contractors which are listed on this form as DBEs must have current certification as a DBE with a participating TUCP certifying agency. The DBE certification must be complete by the time the SOQs are submitted. Additionally, those (sub)contractors which are listed on this form as DBEs must complete DBE SUBCONTRACTOR CERTIFICATION, agreeing to the information listed here.

Respondent/ CONTRACTOR: _____

Project Name: _____

Ethnic Codes

- A) Black American B) Hispanic American C) Native American D) Sub-continental Asian American**
E) Asian-Pacific American F) Non-Minority Women G) Other

Gender Codes

- A) Male B) Female C) Choose Not to Disclose**

1) Name of subcontractor	2) Address, Telephone # of DBE Firm (Including name of contact person)	3) Description of Work, Services Provided	4) DBE, SBE or non-DBE	5) Ethnic Code	6) Gender Code	7) DBE % or \$ amount of Total Contract

--	--	--	--	--	--	--

This schedule must be completed as instructed above and include every subcontractor proposed on this project. USE ADDITIONAL FORMS AS NEEDED.

The undersigned will enter into a formal agreement with DBE contractors for work listed in this schedule upon execution of a contract with the District. The Contractor agrees to the terms of this schedule by signing below and submitting the **DBE SUBCONTRACTOR CERTIFICATION**, as completed by the DBE subcontractor(s).

DATE: _____

SIGNATURE: _____

RESPONDENT/
CONTRACTOR: _____

NAME/TITLE: _____

DBE Subcontractor Certification

NOTE: In accordance with 49 CFR (Code of Federal Regulations) Part 26 and Board policy, DBE firms participating in the DBE Program must have "current" certification status with a TUCP Certifying Agency by the due date established for this RFQ.

1. TO:(Respondent/Contractor):_____
2. The undersigned is either currently certified under the Texas Unified Certification Program (TUCP) as a DBE or will be at the time this solicitation is due.
3. The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both) _____
_____ and
at the following price \$_____ and/or _____% of the total contract amount (should be the same \$ or % found on **RESPONDENT/ CONTRACTOR CERTIFICATION**).
4. The DBE subcontractor should complete this section only if the DBE is subcontracting any portion of its subcontract.

With respect to the proposed subcontract described above, the undersigned DBE anticipates that _____% of the dollar value of this subcontract will be sublet and/or awarded to other contractors. Any and all DBE subcontractors a DBE subcontractor uses must be listed on Form 1 and must also be DBE certified.

Date: _____ DBE Firm: _____

SIGNATURE: _____

PRINT NAME: _____

PHONE NUMBER: _____

Date: _____ Respondent/
Contractor: _____

SIGNATURE: _____

PRINT NAME: _____

PHONE NUMBER: _____

ATTACH COPY OF TEXAS UNIFIED CERTIFICATION PROGRAM CERTIFICATE

Prohibition on Certain Telecommunications and Video Surveillance Service or Equipment

Contractor hereby acknowledges that the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115232, § 889 (Aug. 13, 2018) (the Act) prohibits the Agency from procuring certain “covered telecommunications equipment or services,” as defined in the Act, in federally assisted procurements and that the instant procurement is a federally assisted procurement subject to that prohibition. Contractors represents and warrants that it has performed a due diligence review of its supply chain and that no such “covered telecommunications equipment or services” shall be provided to the District that would cause the Agency to be in violation of the prohibition contained in the Act.

DATE: _____

SIGNATURE: _____

RESPONDENT/CONTRACTOR: _____

NAME/TITLE: _____

APPENDIX “E” – State Certifications and Forms

**State Certifications and Forms
Conflict of Interest Questionnaire**

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.
 This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).
 By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.
 A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY	
Date Received	

1 Name of vendor who has a business relationship with local governmental entity.

2 **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

House Bill 89 Verification

I, _____ (Person name), the undersigned representative of _____(Company or Business Name) hereafter referred to as "Company"; being an adult over the age of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

- 1. Does not boycott Israel currently; and
- 2. Will not boycott Israel during the term of the contract.

Pursuant to Section 2270.001, Texas Government Code:

- 1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- 2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

Date

Signature of Company Representative

On this day, BEFORE ME, the undersigned, personally appeared _____, the _____ of Company, and personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument for purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2023.

NOTARY SEAL

Notary Signature

Date

Delinquent State Business Tax Certification

All Respondents shall certify that Respondent is not delinquent in a tax owed the state under Chapter 171, Tax Code, pursuant to the Texas Business Corporation Act, Texas Statutes, Article 2.45.

DATE: _____

SIGNATURE: _____

RESPONDENT/
CONTRACTOR: _____

NAME/TITLE: _____