



**HOUSTON**  
HOUSING AUTHORITY

Transforming Lives & Communities

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2640 Fountain View Drive, Suite 400, Houston, Texas 77057 | 713.260.0500 P | Tory Gunsolley, **President & CEO**  
**Houston Housing Authority Board of Commissioners:** Lance Gilliam, *Chair* | LaRence Snowden, *Vice Chair*  
Nicola Fuentes Toubia | Shondra E. Wygal | Veronica R. Chapa | Kristy Kirkendoll | Phillis Wilson

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The Houston Housing Authority (HHA) has issued this Amendment No. 2 to QBS 16-15 Surveying Services for the purposes of:

1. Incorporating the attached Draft Contract into the solicitation as Attachment L.
2. Answering the following questions that were submitted to HHA in writing:

**Question 1:** Can you clarify your requirements or provide recommendations for addressing the Section 3 Employment requirement of the Solicitation, specifically *II. Solicitation Requirements and III. Section 3 Expectations* on the Houston Housing Authority Section 3 Requirements and Commitment Form?

**Answer 1:** To be in compliance with Section 3 requirements, please chose one of the four (4) Options available in Section V.

**Question 2:** What/Who is are considered lower income? What's salary minimum to be considered "lower Income"

**Answer 2:** Visit the webpage below to see the requirements for Extremely Low, Very Low, and Low income. Income levels are derived by calculating house-hold income.  
<http://section-8-housing-income-limits.credio.com/l/3921/Houston-Baytown-Sugar-Land-TX-HUD-Metro-FMR-Area>

**Question 3:** Would individuals on government assistants be considered lower income that would qualify them as part of section 3?

**Answer 3:** Yes, if the governmental assistant program is income based. However since this is a Housing Authority contract, our first priority is to have Section 3 clients that are utilizing our programs working this project.

**Question 4:** How should the submittal be put together? Staples, clipped, three-hole punched in a binder, punched and bound with a binding machine?

**Answer 4:** Spiral bounded for original, and three-hole punched for copy is preferred but not required.

**Question 5:** Is there a certain font, size, spacing or number of pages the submittal must be in?

**Answer 5:** Times New Roman size 12, is preferred but not required.

**Question 6:** What is the contract amount? We are asked to provide dollar amount and percent of contract amount of the sub-contractor W/MBE which we cannot calculate without amount of contract.

**Answer 6:** The contract amount is to be determined.

**Question 7:** Can you outline the anticipated projects or project types that will require professional surveying services over the next three years? (i.e. new construction, additions to existing facilities, utility improvements, etc.)

**Answer 7:** Mostly new construction.

**Question 8:** If the projects are knowns, can you disclose the locations of the anticipated projects?

**Answer 8:** Yes, to the successful proposer(s).

**Question 9:** If a Prime is a certified MBE/WBE/HUB, are they required to include MBE/WBE/HUB sub consultants on their team at a minimum of 15% of the contract value, or does the Prime firm's MBE/WBE/HUB status count toward the overall MBE/WBE/HUB 15% goal?

**Answer 9:** The Prime should make best efforts to obtain 15% participation from sub consultants.


**Question 10:** Will the HHA be providing title commitments necessary for ALTA/ACSM Land Title Surveys or will that be the responsibility of the surveyor.

**Answer 10:** Yes.

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

8-18-16

Date

  
\_\_\_\_\_  
Suenon Guimaraes  
Contract Administrator  
Houston Housing Authority



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

**ATTACHMENT L**

**DRAFT CONTRACT #16-15**

FOR

**LAND SURVEYING SERVICES**

BETWEEN

\_\_\_\_\_

AND

**HOUSTON HOUSING AUTHORITY**

This contract/agreement is entered into by and between **Houston Housing Authority** (“AGENCY”), which is a public housing authority pursuant to Section 392 of the Texas Local Government Code, having its principal place of business at 2640 Fountain View, Houston, Texas 77057, and \_\_\_\_\_ (“CONTRACTOR”), which is a \_\_\_\_\_ having its principal place of business at \_\_\_\_\_.

The purpose of this Agreement is for CONTRACTOR to carry out Land Surveying Services, in accordance with Qualifications-Based Solicitation (“QBS”) No. 16-15 (incorporated herein by reference). This Agreement is also entered into in accordance with CONTRACTOR’S Proposed Minority and Women’s Business Enterprise (“M/WBE”) Participation Plan (attached as **Exhibit 1**) and CONTRACTOR’S Section 3 Utilization & Commitment Plan (attached as **Exhibit 2**).

The Parties further agree to be bound by the terms and conditions set forth in form HUD 51915-A, as promulgated by the Department of Housing and Urban Development (“HUD”), and attached as **Exhibit 3**. For purposes of this Agreement, any references to “Design Professional” within **Exhibit 3** shall mean CONTRACTOR. In the event that this Agreement, QBS No. 16-15 as amended, or any other exhibits conflict with Form 51915-A, the provisions of Form 51915-A shall prevail. Otherwise, in the event of a conflict between the Agreement and QBS No. 16-15 as amended, the terms and conditions contained within this Agreement shall prevail. To the extent that the M/WBE Participation Plan (attached as **Exhibit 2**) shall conflict or contradict with any other portion of QBS No. 16-15, the M/WBE Participation Plan shall prevail as the superseding document with regard to CONTRACTOR’s M/WBE commitment. To the extent that the Section 3 Utilization & Commitment Plan (attached as **Exhibit 3**) shall conflict or contradict with any other portion of QBS No. 16-15, the Section 3 Utilization & Commitment Plan shall prevail as the superseding document with regard to CONTRACTOR’s Section 3 commitment.

**WITNESSETH:**

WHEREAS, AGENCY is a public body corporate and politic, duly organized and validly existing and in good standing under the laws of the State of Texas and currently engaged in such business as defined in the Housing Authorities Law in the Local Government Code of the State of Texas, and in providing decent, safe and sanitary housing to the residents of its facilities, low income families, the elderly, the handicapped and the disabled; and

WHEREAS, AGENCY is in need of a qualified firm that specializes in Land Surveying Services; and

WHEREAS, AGENCY issued QBS No. 16-15 soliciting responses from qualified firms providing Land Surveying Services; and

WHEREAS, the responses received were evaluated and the Response submitted by CONTRACTOR was determined to be the most advantageous to AGENCY based upon demonstrated competence and qualifications;

NOW THEREFORE, in consideration of the promises of the parties herein and the mutual covenants set forth in this Agreement, AGENCY and the CONTRACTOR agree to be legally bound as follows:

**1. TERM**

**1.1** This Agreement shall become effective upon execution by AGENCY and shall continue in effect for a period of one (1) year after execution, or until terminated sooner. The aforementioned one (1) year period shall be the "Initial Term." AGENCY, at its sole discretion, may extend the Agreement for up to two (2) additional years beyond the Initial Term, in one-year increments. If AGENCY decides to extend the Agreement beyond the Initial Term, AGENCY will provide written notice to CONTRACTOR of its decision to do so prior to the expiration of the Initial Term.

**2. TERMINATION**

**2.1** Irrespective of any default hereunder, AGENCY may terminate this contract in whole, or from time to time in part, for the AGENCY's convenience or the failure of the CONTRACTOR to fulfill the contract obligations (cause/default). The AGENCY shall terminate by delivering to the CONTRACTOR a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the CONTRACTOR shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the AGENCY all information, reports, papers, and other materials accumulated or generated in performing the contract, whether completed or in process.

2.2 If the termination is for the convenience of the AGENCY, the AGENCY shall be liable only for payment for services rendered before the effective date of the termination.

2.3 If the termination is due to the failure of CONTRACTOR to fulfill its obligations under the contract (cause/default), the AGENCY may (1) require CONTRACTOR to deliver to it, in the manner and to the extent directed by the AGENCY, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract or otherwise, and CONTRACTOR shall be liable for any additional cost incurred by the AGENCY; and (3) withhold any payments to CONTRACTOR, for the purpose of set-off or partial payment, as the case may be, of amounts owed by AGENCY to the Contractor. In the event of termination for cause/default, the AGENCY shall be liable to CONTRACTOR for reasonable costs incurred by CONTRACTOR before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.

**3. CONSIDERATION**

3.1 In consideration of the services to be performed by CONTRACTOR under this Agreement, AGENCY shall pay CONTRACTOR

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3.2 CONTRACTOR shall submit detailed invoices to AGENCY on a monthly basis no later than fifteen (15) business days following the end of a month in which services are provided. The amount of the invoices must be commensurate with the amount of work that has been performed by CONTRACTOR and must be based on the value of the work performed by CONTRACTOR (in light of the amount of work that remains to be performed by CONTRACTOR under this Agreement). The invoices shall describe the services provided and the amount due. AGENCY will make payment within thirty (30) calendar days of the receipt of proper invoice. AGENCY shall have no liability for payment of any invoice not submitted in accordance with all of the provisions of this paragraph.

3.3 All applicable federal (including Davis Bacon wage rates), state, county and municipal taxes are included in the consideration herein. CONTRACTOR warrants that it will comply with all federal and state laws including, but not limited to, the Davis-Bacon Act and Prompt Pay Act in the payment of CONTRACTOR's workers.

3.4 CONTRACTOR is solely responsible for the payment of wages and any applicable benefits to workers for work performed under this contract. CONTRACTOR shall be responsible for withholding federal and state income taxes, paying Federal Social Security taxes, maintaining unemployment insurance and maintaining workers' compensation insurance, in an amount and under such terms as required by the applicable laws of the State of Texas. AGENCY'S PAYMENT IS TO THE CONTRACTOR. AGENCY SHALL HAVE NO LIABILITY, DIRECTLY OR INDIRECTLY, FOR PAYMENT TO

**CONTRACTOR'S WORKERS OR TO SUBCONTRACTORS. CONTRACTOR SHALL INDEMNIFY AND HOLD AGENCY, ITS EMPLOYEES, REPRESENTATIVES, AND AFFILIATES HARMLESS FROM ANY AND ALL SUCH CLAIMS.**

**3.4 AGENCY is not responsible to CONTRACTOR or CONTRACTOR's workers for payment of any overtime compensation or any additional payments pursuant to the Fair Labor Standards Act; the Texas Pay Day Act; the Equal Pay Act; Title VII of the Civil Rights Act of 1964, 42 U.S.C 2000e, et al., as amended; or any provisions of the Texas Labor Code Ann., as amended. AGENCY will not be responsible for overtime wages.**

#### **4. SCOPE OF WORK**

**4.1** The scope of work shall be as stated in Attachment J to QBS 16-15, and attached hereto as Exhibit 4.

*[For purposes of this DRAFT, see section 6.0 of QBS 16-15 for the published scope of work. A finalized scope of work shall appear herein in the executable version of this DRAFT agreement, after all responses have been provided, considered, and any edits to the final scope have been made. HHA reserves any and all rights to modify any terms, conditions, requirements and the scope of work in this DRAFT agreement or any other terms or conditions contained herein, as it deems necessary.]*

#### **5. INSURANCE**

**5.1** Before commencing work, CONTRACTOR shall furnish AGENCY with complete copies of the relevant certificates of insurance, complete copies of the relevant policies required herein, the required endorsements, and copies of all respective policy declarations, showing that the following insurance is in force and will insure all operations under this Agreement as follows:

- a. Workers' Compensation insurance in accordance with the State of Texas rules and regulations for all of CONTRACTOR's employees providing services hereunder. This policy must be endorsed to contain a waiver of subrogation and a thirty (30) day notice of cancellation or material change in favor of AGENCY.
- b. Commercial General Liability ("CGL") insurance with a single limit for bodily injury of at least \$1,000,000.00 per occurrence and property damage limit of no less than \$1,000,000.00 per occurrence. The insurance may have a combined aggregate of coverage amounting to no less than \$1,000,000.00. Such insurance shall protect CONTRACTOR against claims of bodily injury or death, including specifically such claims resulting from any form of sexual misconduct and for property damage to others. Such insurance shall also include coverage for products/completed operations and contractual liability. The insurance shall cover the use of all equipment, hoists and vehicles used on the site(s) not covered by automobile liability under (c) below. The AGENCY must be named as an additional insured for both ongoing and completed

operations under the CGL and any umbrella policies, and these policies must be endorsed to be primary/noncontributory, contain waivers of subrogation in favor of the AGENCY, and contain a thirty (30) day notice of cancellation or material change in favor of AGENCY. If the CONTRACTOR has a "claims made policy," then the policy must provide a "retroactive date" which must be on or before the execution date of the Agreement and the extended reporting period may not be less than five years following the completion date of the Agreement.

- c. Automobile Liability insurance covering owned, non-owned, hired and all vehicles used by CONTRACTOR with a combined single limit of not less than \$1,000,000.00 applicable to bodily injury, sickness or death and loss of, or damage to, property in any one occurrence. The AGENCY must be named as an additional insured under this policy and this policy must be endorsed to be primary/noncontributory, contain a waiver of subrogation in favor the AGENCY, and contain a thirty (30) day notice of cancellation or material change in favor of AGENCY.
- d. Errors and omissions professional liability insurance in an amount no less than \$1,000,000.00 and for a continuous period of at least three years following the completion of CONTRACTOR's services under this Agreement. The policy shall provide for coverage for all work performed by CONTRACTOR, and contain a thirty (30) day notice of cancellation or material change in favor of AGENCY. CONTRACTOR shall ensure that any subcontractors hired by CONTRACTOR that perform work on the CONTRACTOR's behalf will maintain their own Errors and Omissions Professional Liability Insurance coverage in the amount of no less than \$1,000,000.00 and CONTRACTOR shall obtain evidence of such insurance in a manner satisfactory to AGENCY and provide such evidence to AGENCY upon the OWNER's request.

**5.2** All insurance shall be carried with companies that are financially responsible and admitted to do business in the State of Texas. CONTRACTOR shall not permit the insurance policies required for this Agreement to lapse during any period for which this Agreement is in effect. CONTRACTOR is responsible for satisfying any and all deductibles or self-insured retentions that may apply to any of the policies referenced herein.

**5.3** Before commencing its performance of any work or services under this Agreement, the CONTRACTOR shall provide the AGENCY with the applicable policies, declarations, endorsements, and a certificate of insurance for the required coverages listed above so that the AGENCY may confirm: (a) that said coverages are valid and in effect; (b) that AGENCY is named as additional insured under the CONTRACTOR's CGL and automobile liability insurance policies; (c) that none of the required policies may be cancelled or non-renewed until at least thirty (30) days prior written notice has been provided to the AGENCY; (d) that the CONTRACTOR's CGL and automobile policies are primary; and that (e) the CONTRACTOR's workers' compensation policy, CGL policy and automobile policy, contain waivers of subrogation in favor of the AGENCY. For all additional insured endorsements required herein, the additional insured language shall not be limited to the fault of CONTRACTOR or those acting on its behalf, and the provisions in this Agreement requiring AGENCY or its affiliates to be provided additional insured coverage are

incorporated into and made a part of CONTRACTOR respective policies by reference. This Agreement is voidable at the sole discretion of AGENCY, if CONTRACTOR fails to comply with any requirements for maintaining or providing any proof of insurance. Additionally, and without waiving anything herein, AGENCY further reserves the right to withhold any and all payments to CONTRACTOR if CONTRACTOR begins work without having procured and provided the required insurance documentation (with all proper endorsements) to AGENCY.

**5.4** The insurance requirements in this section are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by CONTRACTOR under this Contract, including, but not limited to, liability assumed by CONTRACTOR pursuant the Indemnification and Hold Harmless section of this Contract or any other indemnity provision herein.

## **6. BACKGROUND CHECKS**

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

## **7. NON-APPROPRIATION**

**7.1** CONTRACTOR understands that AGENCY is a governmental entity and should it not be funded for any period during the term of this Agreement, any sums due for the remainder of the term shall be forgiven and AGENCY shall not be liable for payment. The AGENCY is required to give CONTRACTOR written notice within thirty (30) days after learning that the funds will not be available. Upon such written notice from the AGENCY, this Agreement will automatically terminate.

## **8. PROPRIETARY INFORMATION**

**8.1** CONTRACTOR shall maintain the confidentiality of all proprietary information provided to it by AGENCY. Information in the public domain, or otherwise obtained independently by CONTRACTOR, is not considered confidential.

**8.2** Any programs, data, or other materials furnished by AGENCY for use by CONTRACTOR concerning the services performed under this Agreement shall remain the sole property of AGENCY.

**8.3** AGENCY shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by CONTRACTOR pursuant to the terms of this Agreement, including, but not limited to, reports, memoranda or letters concerning the research and reporting tasks of the Agreement.



**9. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT**

**9.1 TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SET OUT BELOW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE AGENCY, AND ALL OF THE AGENCY'S OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (THE "INDEMNITEE(S)"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS CONTRACT OR THE CONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF THE CONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR OR ANYONE FOR WHOSE ACTS THE CONTRACTOR MAY BE LIABLE.**

**9.2 NOTWITHSTANDING THE FOREGOING PARAGRAPH, TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNITEE(S) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE OR DEATH OF, ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF THE CONTRACTOR OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART BY THE NEGLIGENCE, OTHER FAULT OR STRICT LIABILITY OF ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF THE AGENCY AND THE CONTRACTOR THAT IN SUCH EVENT THE CONTRACTOR IS TO INDEMNIFY, HOLD HARMLESS THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE ACTIVE, PASSIVE, SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF THE CONTRACTOR'S EMPLOYEE OR THE EMPLOYEE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. THE CONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**9.3 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY LEGAL LIMITATIONS AFFECTING THE SCOPE OF PERMISSIBLE INDEMNITY SHALL BE READ INTO THESE CLAUSES SUCH THAT THE CLAUSE PROVIDES**

**THE MAXIMUM INDEMNITY PURSUANT TO ITS TERMS WHILE STILL COMPLYING WITH THE LEGAL LIMITATIONS.**

**10. LEGAL CONSTRUCTION**

**10.1** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Whenever context requires, the singular will include the plural and references to gender shall include the masculine and feminine. Article, section, and/or paragraph headings in this Agreement are for reference only and are not intended to restrict or define the text of any section or article herein. This Agreement shall not be construed more or less favorably by reason of the authorship or origin of its language; this Agreement shall not be construed against the drafter in the event of an ambiguity (or otherwise).

**11. DISPUTES**

**11.1** In the event of any controversy, claim, or dispute between AGENCY and CONTRACTOR affecting or relating to the subject matter or the performance of this Agreement, the prevailing party will be entitled to recover from the non-prevailing party all the prevailing party's reasonable expenses, including but not limited to reasonable attorney's fees, expert witness fees, and court costs, pursuant to Texas Local Government Code Section 271.159, or as otherwise permitted by law. Notwithstanding anything herein to the contrary, the preceding sentence shall not apply to attorney's fees incurred which are subject to CONTRACTOR's obligations to indemnify and defend any indemnitor.

**12. COURT ACTIONS**

**12.1** CONTRACTOR agrees to give AGENCY immediate notice in writing of any actions or suits filed and prompt notice of any claims made against AGENCY or any of the parties involved in the implementation and administration of this Agreement.

**13. CONCURRENT REMEDIES**

**13.1** No right or remedy herein conferred on or reserved to a party hereto is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

**14. DEFAULT**

**14.1** If CONTRACTOR fails to execute the work with diligence and/or fails to complete the work within the time required under this Agreement, AGENCY may, by a written notice to CONTRACTOR, terminate this Agreement. In this event, AGENCY may complete the work as

necessary and may take possession of and use any materials or equipment on the work site which is necessary for completing the work. CONTRACTOR shall be liable for any damages suffered by AGENCY resulting from CONTRACTOR'S failure to complete the work within the required time, whether or not CONTRACTOR continues to work under the terms of this Agreement. This liability includes any increased costs incurred by AGENCY in completing the work.

### **15. MATERIALS AND WORKMANSHIP**

**15.1** CONTRACTOR agrees to perform the services with that standard of professional care, skill, and diligence normally provided in the performance of similar services and shall exercise its best efforts in the performance of services rendered pursuant to this Agreement. Any changes the CONTRACTOR might seek with regard to the scope of work or the specifications therein shall be submitted to AGENCY through a Change Order. The requested changes shall be submitted in writing, complete with pricing and sufficient detail of the requested change for AGENCY to review. Before any additional work can commence, CONTRACTOR must have AGENCY's written approval, authorizing and consenting to the requested change.

**15.2** CONTRACTOR agrees to perform the services with that standard of professional care, skill, and diligence normally provided in the performance of similar services and shall exercise its best efforts in the performance of services rendered pursuant to this Agreement. CONTRACTOR shall perform all work under this Agreement to the satisfaction of AGENCY.

### **16. COOPERATION WITH AGENCY**

**16.1** CONTRACTOR agrees to cooperate with AGENCY and its staff, including the Section 3 Coordinator.

### **17. NON-WAIVER**

**17.1** It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedy set forth in this Agreement does not preclude pursuit of other remedies in this Agreement or that are provided by law. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party to which the same may apply, and until complete performance of any covenant or condition, the aggrieved party shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite such forbearance or indulgence.

### **18. RETAINAGE**

**18.1** With regard to the fees referred to in section 3 of this Agreement, HHA shall, until CONTRACTOR has completed all work and fully performed all of CONTRACTOR's obligations under this Agreement, retain ten percent (10%) of the fees.

**19. SPECIAL REQUIREMENTS**

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

**20. TIME**

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

**21. NOTICE**

21.1 All notices and communications regarding this Agreement must be in writing and shall be directed to the following representatives:

AGENCY

Peter Clark  
Houston Housing Authority  
2640 Fountain View Drive, Ste. 406  
Houston, Texas 77057  
Bus: (713) 260-0615  
Fax: (713) 260-0815

CONTRACTOR

Bus:  
Fax:

**22. VENUE & GOVERNING LAW**

22.1 The laws of the State of Texas shall govern the validity and interpretation of this Agreement and the legal relation of the parties. Venue in any action brought shall lie exclusively in a court of competent jurisdiction in Harris County, Texas.

**23. TAX EXEMPT STATUS**

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

**24. COMPLIANCE WITH FEDERAL REGULATIONS**

24.1 CONTRACTOR shall comply with the following:

- The requirements of Title VII of the Civil Rights Act of 1968 and Title VI of the Civil Rights

Act of 1964, relating to prohibitions against discrimination in housing and the benefits of federally funded programs because of race, color, religion, sex, or national origin;

- The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, the prohibition against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act;
- The requirements of Executive Order 11246 relating to equal employment opportunity in connection with federally funded programs, and incorporating herein by reference the equal opportunity clause provided under 41 CFR § 60-1.4(b);
- The requirements of Section 3 of the Housing and Urban Development Act of 1968 relating to training and employment of individuals and contracting for business opportunities in metropolitan areas in which federally funded programs are being operated; and
- The requirements of Executive Orders 11625, 12432 and 12138 to implement Minority Business Enterprise (“MBE”) and Women’s Business Enterprise (“WBE”) participation goals in federal agencies’ programs.
- The requirements of Executive Orders 12549 and 12689 concerning a prohibition against awarding a contract to parties listed on the government-wide Excluded Parties List System.

## **25. COMPLIANCE WITH CONTRACTOR M/WBE AND SECTION 3 POLICY**

**25.1** When subcontracting, CONTRACTOR agrees to utilize its good faith and best efforts to subcontract a sufficient dollar amount with M/WBE’s certified as such or recognized by AGENCY as certified M/WBE in an effort to meet the AGENCY goal of a minimum of 30% of the final contract dollars being expended on one or more M/WBEs. All adjustments that cause the contract price to increase will also increase the total amount that the CONTRACTOR must expend on M/WBEs.

**25.2** CONTRACTOR hereby specifically agrees to adhere to the Proposed M/WBE Participation Plan as submitted by CONTRACTOR (attached as **Exhibit 1**).

**25.3** CONTRACTOR further agrees to adhere to the Section 3 Utilization & Commitment Plan as submitted by CONTRACTOR (attached as **Exhibit 2**).

**25.4.** For all Section 3 covered work, the following terms apply:

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and

very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The CONTRACTOR agrees to send to each labor organization or representative of workers with which the CONTRACTOR has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the CONTRACTOR's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The CONTRACTOR agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The CONTRACTOR will certify that any vacant employment positions, including training positions, that are filled (1) after the CONTRACTOR is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the CONTRACTOR's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii)

preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## **26. RECORDS**

**26.1** Without limitation to any other provision of this Agreement, CONTRACTOR shall maintain all records concerning the program or project financed under this Agreement, which AGENCY reasonably requires for three (3) years from the expiration date of the Agreement unless a longer period is required under Title 24, CFR §85.42. CONTRACTOR shall maintain records required by 24 CFR §135.120 for the period that HUD requires the records to be maintained. CONTRACTOR will give AGENCY, HUD, the Comptroller General of the United States, the General Accounting Office, and any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the project financed under this Agreement and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained.

## **27. INDEPENDENT CONTRACTOR**

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

**27.2** CONTRACTOR agrees to comply with all applicable federal and state laws pertaining to the proper classification of workers. Additionally, CONTRACTOR is aware that in accordance with Section 214.008 of the Texas Labor Code, contractors and subcontractors who fail to properly classify individuals performing work under a governmental contract will be penalized \$200.00 for each individual that has been misclassified.

## **28. MISCELLANEOUS**

**28.1** QBS No. 16-15 (incorporated by reference), the Proposed M/WBE Participation Plan (attached as **Exhibit 1**), the Section 3 Utilization & Commitment Plan (attached as **Exhibit 2**), Form 51915-A (attached as **Exhibit 3**), the scope of work (attached as **Exhibit 4**), which are all incorporated herein as if copied verbatim, and this Agreement constitute the sole and entire agreement of the parties and supersede any other prior or contemporaneous oral or written understandings or agreements. The Parties agree that there are no oral Contracts,

representations, or warranties that are not expressly set forth in this Contract.

**28.2** This Agreement cannot be amended or otherwise altered except upon the written agreement of both parties.

**28.3** This Agreement is not assignable without the express written agreement of both parties.

**28.4** The provisions of this Agreement are severable.

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

**28.6** CONTRACTOR is prohibited from placing a lien on any of AGENCY's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers, if any.

**28.7** In no event shall AGENCY be liable to CONTRACTOR for any indirect, special, incidental, or exemplary damages.

**28.8** This Agreement shall be signed by the AGENCY and the CONTRACTOR. The CONTRACTOR shall sign the Agreement first, and after signing, shall deliver the signed Agreement—along all required proofs of insurance—to the AGENCY for signature by the AGENCY. This Agreement is not effective until signed by the AGENCY. The effective date of this Agreement shall be the date of signature by the AGENCY.

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

**HOUSTON HOUSING AUTHORITY**

\_\_\_\_\_

By: \_\_\_\_\_  
**Tory Gunsolley, President & CEO**

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



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

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

**[DRAFT Contract # 16-15]**

DRAFT