



## **Procurement Operations**

Request for Competitive Sealed Proposals (RFCSP)

For Austin Street Improvements & San Jacinto Memorial Green

Project No. RFCSP 14-02

Proposal Submittal Deadline: January 17, 2014, 2:00 p.m. (local time)

# REQUEST FOR COMPETITIVE SEALED PROPOSALS

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**Note: Attachments 1, 8, and 10 must be signed and notarized.**

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Exhibit A:	Proposal /Award Form
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**HOUSTON COMMUNITY COLLEGE**

**REQUEST FOR COMPETITIVE SEALED PROPOSALS - SUMMARY**

**Section I.**

**Date: December 19, 2013**

**Project Title: Austin Street Improvements & San Jacinto Memorial Green**

**Project No.: 14-02**

**ISSUED BY:**

Houston Community College  
Procurement Operations  
3100 Main Street (11<sup>th</sup> Floor)  
Houston, Texas 77002

**SUBMIT INQUIRES TO:**

Name: Phillip Barker  
Title: Senior Buyer  
Telephone: (713) 718-5005  
Fax: (713) 718-2113  
Email: [phillip.barker@hccs.edu](mailto:phillip.barker@hccs.edu)

**1. Project Overview:**

Houston Community College ("HCC") and the Houston Community College Public Facility Corporation, collectively, (HCC) or (College) is seeking proposals from qualified firms to provide Construction Services for Austin Street Improvements & San Jacinto Memorial Green as described and specified in the Scope of Services, Attachment No. 3, and in accordance with the terms, conditions, requirements, plans and specifications attached hereto and made a part of the RFCSP.

**PROPOSERS ARE CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFCSP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.**

**2. Award / Contract Approval:**

This Procurement, any award under this procurement, and the resulting contract, if any, is subject to approval by HCC Board of Trustees. Subsequent to Board approval, the only person authorized to commit HCC contractually is the Chancellor or designee. This solicitation is a request for competitive sealed proposals and neither this solicitation nor the response or proposal from any prospective proposer shall create a contractual relationship that would bind HCC.

**3. Pre-Proposal Meeting:     Mandatory     Not mandatory     Not Applicable**

A pre-proposal meeting will be held by the Procurement Operations Department, 3100 Main Street (2<sup>nd</sup> Floor, Seminar A), Houston, TX 77002, on January 8, 2014 at 10:00 AM (local time).

**4. Proposal Due Date/Time:**

Interested firms shall submit one (1) original and one (1) digital copies of their proposal no later than 2:00 p.m. (local time) on January 17, 2014. Proposals will be received in the Procurement Operations Department, 3100 Main Street (11th Floor, Room 11A06), Houston, Texas 77002. The original and copies of the submission should be accompanied by one (1) CD or flash drive with electronic copies of the submission. The electronic copies should be in non-editable .PDF format and should include the entire submission. **Late proposals properly identified will be returned to Proposer unopened. Late proposals will not be considered under any circumstances.**

**5. Contract Duration:**

For the term of the project in accordance with the project schedules.

**6. Obligation and Waivers:**

**THIS RFCSP IS A SOLICITATION FOR PROPOSAL AND IS NOT A CONTRACT OR AN OFFER TO CONTRACT.**

**THIS REQUEST FOR COMPETITIVE SEALED PROPOSAL DOES NOT OBLIGATE HCC TO AWARD A CONTRACT OR PAY ANY COSTS INCURRED BY THE PROPOSER IN THE PREPARATION AND SUBMITTAL OF A PROPOSAL.**

**HCC, IN ITS SOLE DISCRETION, RESERVES THE RIGHT TO ACCEPT ANY PROPOSAL AND/OR REJECT ANY AND ALL PROPOSALS OR A PART OF A PROPOSAL, WITHOUT REASON OR CAUSE, SUBMITTED IN RESPONSE TO THIS SOLICITATION.**

**HCC RESERVES THE RIGHT TO REJECT ANY NON-RESPONSIVE OR CONDITIONAL PROPOSAL. HCC RESERVES THE RIGHT TO WAIVE ANY INFORMALITIES, IRREGULARITIES AND/OR TECHNICALITIES IN THIS SOLICITATION, THE PROPOSAL DOCUMENTS AND /OR PROPOSALS RECEIVED OR SUBMITTED.**

**BY SUBMITTING A PROPOSAL, PROPOSER AGREES TO WAIVE ANY CLAIM IT HAS, OR MAY HAVE, AGAINST HOUSTON COMMUNITY COLLEGE SYSTEM AND ITS TRUSTEES OR AGENTS ARISING OUT OF OR IN CONNECTION WITH (1) THE ADMINISTRATION, EVALUATION OR RECOMMENDATIONS OF ANY PROPOSAL; (2) ANY REQUIREMENTS UNDER THE SOLICITATION, PROPOSAL PACKAGE, OR RELATED DOCUMENTS; (3) THE REJECTION OF ANY PROPOSAL OR ANY PART OF ANY PROPOSAL; AND/OR (4) THE AWARD OF A CONTRACT, IF ANY.**

**HCC RESERVES THE RIGHT TO WITHDRAW THIS SOLICITATION AT ANY TIME FOR ANY REASON; REMOVE ANY SCOPE COMPONENT FOR ANY REASON AND TO ISSUE SUCH CLARIFICATIONS, MODIFICATIONS AND/OR AMENDMENTS AS DEEMED APPROPRIATE.**

**HCC IS AN EQUAL OPPORTUNITY/EDUCATIONAL INSTITUTION, WHICH DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, GENDER, AGE, DISABILITY, SEXUAL ORIENTATION OR VETERAN STATUS.**

**7. Vendor Registration:**

The Houston Community College Procurement Operations Department has developed an online vendor application. This is designed to allow firms or individuals that are interested in doing business with HCC to register online and become part of our vendor database.

Please take a moment to go to the Houston Community College Procurement Operations Department website and register as a vendor. The website address to access the vendor registration form is <https://hccs.sbcompliance.com/FrontEnd/VendorsIntroduction.asp>

If you do not have internet access you are welcome to use a computer at any HCC library to access the website and register.

**A PROPERLY COMPLETED VENDOR APPLICATION IS REQUIRED AND IS A CONDITION OF CONTRACT AWARD**

# INSTRUCTIONS TO PROPOSERS

## **Section II.**

### **1. Introduction**

HCC is seeking proposals from qualified firms interested in providing HCC with Construction Services/ Building Modifications in accordance with the Scope of Services contained in this solicitation (Attachment No. 3).

### **2. Proposal Submittal**

Proposer(s) shall submit one (1) original copy of the technical proposal and the price proposal to the address shown below by the date and time specified in this solicitation. One (1) electronic copy to be included as part of your proposal; either CD or flash drive in non-editable PDF format and include the entire submission. In addition to the technical and price proposal, each proposer must complete and return the following documents, if appropriate:

<b>Attachment No. 1</b>	<b>Proposal/Contract Award Form</b>
<b>Attachment No. 2</b>	<b>Schedule of Items and Prices</b>
<b>Attachment No. 4</b>	<b>Determination of Good Faith Effort Form</b>
<b>Attachment No. 5</b>	<b>Small Business Unavailability Certificate</b>
<b>Attachment No. 6</b>	<b>Contractor &amp; Subcontractor/Supplier Participation Form</b>
<b>Attachment No. 8</b>	<b>Proposer Certifications</b>
<b>Attachment No. 9</b>	<b>Conflict of Interest Questionnaire</b>
<b>Attachment No. 10</b>	<b>Financial Interests / Potential Conflicts of Interests</b>
<b>Attachment No. 11</b>	<b>Proposer Questionnaire</b>

**Note: Attachments 1, 8, and 10 must be signed and notarized.**

The envelope containing a proposal shall be addressed as follows:

- Name, Address and Telephone Number of Proposer;
- Project Description/Title;
- Project Number; and
- Proposal Due Date/Time.

All proposals shall be submitted to the following address:

Houston Community College  
Procurement Operations  
3100 Main Street (11th Floor)  
Houston, Texas 77002

Ref: Project No. RFCSP 14-02  
Attn: Phillip Barker, Senior Buyer

Late proposals properly identified will be returned to Bidder unopened. Late proposals will not be considered under any circumstances.

Telephone proposals are not acceptable when in response to the RFCSP.

Facsimile ("FAX") or electronic (email) proposals are not acceptable in response to this RFCSP.

Firms wishing to submit a "No-Response" are requested to return the first page of the Proposal/Contract

Award Form (ref. Attachment No. 1). The returned form should indicate your company's name and include the words "No-Response" in the right-hand column.

### **3. Eligibility for Award**

- a. In order for a proposer to be eligible to be awarded the contract, the proposal must be responsive to the solicitation and HCC must be able to determine that the proposer is responsible and has the resources and capacity to perform the resulting contract satisfactorily.
- b. Responsive proposals are those that comply with all material aspects of the solicitation, conform to the solicitation documents and meet the requirements set forth in this solicitation. Proposals, which do not comply with all the terms and conditions of this solicitation, will be rejected as non-responsive.
- c. Responsible proposers, at a minimum, must meet the following requirements:
  1. Have adequate financial resources, or the ability to obtain such resources as required during the performance of any resulting contract:
  2. Be able to comply with the required performance schedule, taking into consideration all existing business commitments:
  3. Have a satisfactory record of past performance:
  4. Have necessary personnel and management capability to perform any resulting contract:
  5. Be qualified as an established firm regularly engaged in the type of business necessary to fulfill the contract requirements:
  6. Certify that the firm is not delinquent in any tax owed the State of Texas under Chapter 171, Tax Code; and is not delinquent in taxes owed to the Houston Community College; signing and submitting the proposal is so certifying to such non-delinquency:
  7. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.
- d. Proposer(s) may be requested to submit additional written evidence verifying that the firm meets the minimum requirements described in the above Section 3 (c) and as necessary to perform the requirements of the solicitation and be determined a responsible proposer. Failure to provide any requested additional information may result in the proposer being declared non-responsive and the proposal being rejected.
- e. A person is not eligible to be considered for award of this solicitation or any resulting contract or to be a subcontractor of the proposer or prime contractor if the person assisted in the development of this solicitation or any part of this solicitation or if the person participated in a project related to this solicitation when such participation would give the person special knowledge that would give that person or a prime contractor an unfair advantage over other bidders.
- f. A person or proposer shall not be eligible to be considered for this solicitation if the person or proposer engaged in or attempted to engage in prohibited communications as described in Section 13 (Prohibited Communications), below.

### **4. Preparation of Proposal**

- a. Technical Proposal:  
Proposer shall prepare and submit as part of their response to this RFCSP a Technical Proposal in accordance with the requirements set forth in Attachment 11, Proposers Questionnaire.
- b. Price Proposal:  
Proposer shall prepare and submit as part of their response to this RFCSP a Price Proposal. (Refer to

**5. Evaluation Criteria**

An Evaluation Committee ("Committee") will review all proposals to determine which proposers have qualified for consideration according to the criteria stated herein. The committee's evaluations will be based on all available information, including qualification statements, subsequent interviews, if necessary, reports, discussions, reference checks, and other appropriate checks. The highest rated proposer(s) evaluated by the Committee **may** be invited to make an oral presentation of their written proposal to the Committee and/or the HCC Board of Trustees. Proposals will be evaluated using the following criteria:

<b>Evaluation Criteria</b>	<b>Available Points</b>
Firm's Financial Status And Bonding (See Attachment 11, Section 1.2)	5
Qualifications and experience of the firm (See Attachment 11, Section 3.2)	10
Past performance reference (See Attachment 11, Section 3.3)	10
Proposed approach and methodology (See Attachment 11, Section 3.4)	25
Small Business Practice (See Attachment 11, Section 3.5)	10
Schedule of Items and Prices (See Attachment 2)	40
<b>Total</b>	<b>100</b>

**6. Contract Award**

Award of a contract, if awarded, will be made to the proposer who (a) submits a responsive proposal; (b) is a responsible proposer; and (c) offers the best value to HCC, price and other factors considered. A responsive proposal and a responsible proposer are those that meet the requirements of and are as described in Section 3, above (Eligibility for Award) of this solicitation. HCC may award a contract, based on initial proposals received, without discussion of such proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and technical standpoint, which the proposer can submit to HCC.

Except as otherwise may be set forth in this solicitation, HCC reserves the right to waive any informalities, non-material errors, technicalities, or irregularities in the proposal documents submitted and consider the proposal for award.

**7. Postponement of Proposals Due Date/Time**

Notwithstanding the date/time for receipt of proposals established in this solicitation, the date and time established herein for receiving proposals may be postponed solely at HCC's discretion.

**8. Oral Presentations**

During the process of selecting a company to provide the required services, oral presentations may or may not be held. Each proposer should be prepared to make a presentation to HCC. The presentation

must show that the proposer clearly understands the requirements of the solicitation, and has a strategic plan and approach to complete the work.

**9. Small Business Development Program (SBDP)**

The Houston Community College System’s Small Business Development Program (“SBDP” or the “Program”) was created to provide business opportunities for local small businesses to participate in contracting and procurement at Houston Community College (HCC).

The SBDP is a goal-oriented program, requiring Contractors who receive Contracts from HCC to use Good Faith Efforts to utilize certified small businesses. The Program applies to all Contracts over \$50,000, except Contracts for sole-source items, federally funded Contracts, Contracts with other governmental entities, and those Contracts that are otherwise prohibited by applicable law or expressly exempted by HCC. The SBDP is a race and gender-neutral program, however HCC actively encourages the participation of minority and women-owned small businesses in the SBDP.

To participate, small businesses must be certified by an agency or organization whose certification is recognized by HCC. Certification is based on the firm’s gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. § 121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and 13 C.F.R. § 121.201.

HCC recognizes certification by the following governmental and private agencies: Port of Houston Authority SBE Certification, Metropolitan Transit Authority of Harris County (METRO) SBE Certification, City of Houston SBE Certification, Texas Department of Transportation SBE Certification, City of Austin SBE Certification, South Central Texas Regional Certification Agency SBE Certification. HCC has the right to revoke acceptance of a business as a certified or qualifying small business and to conduct certification reviews.

For this solicitation, HCC has established **Thirty-Five Percent (35%)** as its goal for Small Business participation.

Good Faith Efforts: HCC will make a good faith effort to utilize small businesses in all contracts.

The annual program goals may be met by contracting directly with small businesses or indirectly through subcontracting opportunities. Therefore, any business that contracts with HCC will be required to make a good faith effort to award subcontracts to small businesses. The subcontracting goal applies to all vendors regardless of their status. By implementing the following procedures, a contractor shall be presumed to have made a good faith effort:

- To the extent consistent with industry practices, divide the contract work into reasonable lots.
- Give notice to SBDP eligible firms of subcontract opportunities or post notices of such opportunities in newspapers and other circulars.
- Document reasons for rejecting a firm that bids on subcontracting opportunities.

Proposed SBE Subcontracting	Available Points
Less than 5%	0
5% - 12%	2
13% - 20%	4
21% - 28%	6



29% - 34%	8
35% & Higher	10

**10. Business Relationship Strength**

"Business Relationship Strength" for the purpose of this RFCSP shall mean the definition and commitment of the Proposer towards a mutually successful "relationship" between the selected contractor and HCC for the duration of the Project. Proposer/s Statement of Qualification must include their definition, proposal and commitment to forge, foster and maintain a mutually successful "relationship" with HCC. At a minimum, your response must include: (a) your definition of a mutually successful "relationship" between your firm and HCC; and (b) your firm/s commitment to a mutually successful "relationship" in the form of at least three, and not more than five, specific, obtainable criteria, activities, agreements or requirements that shall, subject to negotiation and mutual consent, become features of the awarded contract and shall guide the HCC-Contractor relationship for the duration of the Project.

Provide any other details regarding special services, products, advantages or other benefits offered to HCC by the Proposes.

**11. Prime Contractor/Contracts for Services**

The prime contractor must perform a minimum of 30% of any contract for services with its labor force and or demonstrate management of the contract for services to the satisfaction of HCC.

**12. Internship Program**

HCC is expanding its student internship program. All vendors are encouraged to make a commitment to utilize certain HCC student(s) in an internship capacity with the company under any resulting contract for services required under this solicitation. The selected contractor will be expected to pay the student(s) at least the minimum wage required by law. HCC will provide the selected contractor with the name of student(s) eligible to participate in the internship program.

**13. Prohibited Communications and Political Contributions**

Except as provided in exceptions below, political contributions and the following communications regarding this solicitation or any other invitation for bids, requests for proposal, requests for qualifications, or other solicitation are prohibited:

- [1] Between a potential vendor, subcontractor to vendor, service provider, proposer, offeror, lobbyist or consultant and any Trustee;
- [2] Between any Trustee and any member of a selection or evaluation committee; and
- [3] Between any Trustee and administrator or employee.

The communications prohibition shall be imposed from the day the solicitation is first advertised through thirty days after the contract is executed by the Chancellor or his/her designee, or when a determination is made that the contract will not be awarded. During this period, no HCC Trustee and no Vendor Shall communicate in any way concerning any pending solicitation involving that Vendor, subject to the penalties stated herein.

In the event the Board refers the recommendation back to staff for reconsideration, the communication prohibition shall be re-imposed.

The communications prohibition shall not apply to the following:

- [1] Duly noted pre-bid or pre-proposal conferences.
- [2] Communications with the HCC General Counsel.
- [3] Emergency contracts.
- [4] Presentations made to the Board during any duly-noticed public meeting.
- [5] Unless otherwise prohibited in the solicitation documents, any written communications between any parties, provided that the originator shall immediately file a copy of any written communication with the Board Services Office. The Board Services Office shall make copies available to any person upon request.
- [6] Nothing contained herein shall prohibit any person or entity from publicly addressing the Board during any duly-noticed public meeting, in accordance with applicable Board policies, regarding action on the contract.

Any potential vendor, subcontractor vendor, service provider, bidder, offeror, lobbyist or consultant who engages or attempts to engage in prohibited communications shall not be eligible for the award of any resulting contract under this solicitation. Any other direct or indirect actions taken to unduly influence competitive purposes, to circumvent equal consideration for competitive bidders, or to disregard ethical and legal trade practices will disqualify bidders, vendors, service providers, lobbyist, consultants, and contractors from both this current and any future consideration for participation in HCC orders and contracts.

**14. Drug Policy**

HCC is a drug-free workforce and workplace. The manufacture, sale, distribution, dispensation, possession or use of illegal drugs (except legally prescribed medications under physician's prescription and in the original container) or alcohol by vendors or contractors while on HCC's premises is strictly prohibited.

**15. Taxes**

HCC is tax exempt as a governmental subdivision of the State of Texas under Section 501C (3) of the Internal Revenue Code. Limited Sales Tax Number: 1-74-1709152-1. No proposal shall include any costs for taxes to be assessed against HCC.

**16. Explanation to Proposers**

Any explanation desired by a prospective proposer regarding the meaning or interpretation of the solicitation documents must be requested in writing via e-mail to Phillip Barker, Senior Buyer at [phillip.barker@hccs.edu](mailto:phillip.barker@hccs.edu) no later than 3:00p.m. (local time) on January 11, 2014, for a response to reach prospective proposers before the submission of their proposals. Any HCC response will be in the form of an amendment of the solicitation or an informational letter. The response will be made available to all prospective proposers via HCC website at [www.hccs.edu](http://www.hccs.edu).

**17. Texas Public Information Act**

HCC considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and/or non-proprietary nature, and therefore, shall be subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.) ("the Act") after a contract if any, is awarded. If the proposer considers any information submitted in response to this request for competitive sealed proposal to be confidential under law or constitute trade secrets or other protected information, the proposer must identify such materials in the proposal response. Notwithstanding the foregoing, the identification of such materials would not be construed or require HCC to act in contravention of its obligation to comply with the Act

and the proposer releases HCC from any liability or responsibility for maintaining the confidentiality of such documents.

**18. Appropriated Funds**

The purchase of service or product, which arises from this solicitation, is contingent upon the availability of appropriated funds. HCC shall have the right to terminate the resulting contract at the end of the current or each succeeding fiscal year if funds are not appropriated by the HCC Board of Trustees for the next fiscal year that would permit continuation of the resulting contract. If funds are withdrawn or do not become available, HCC reserves the right to terminate the resulting contract by giving the selected contractor a thirty (30) day written notice of its intention terminate without penalty or any further obligations on the part of HCC or the contractor. Upon termination of the contract HCC shall not be responsible for any payment of any service or product received that occurs after the end of the current contract period or the effective date of termination, whichever is the earlier to occur. HCC's fiscal year begins on September 1 and ends on August 31<sup>st</sup>.

**19. Conflict of Interest**

If a firm, proposer, contractor or other person responding to this solicitation knows of any material personal interest, direct or indirect, that any member, official or employee of HCC would have in any contract resulting from this solicitation, the firm must disclose this information to HCC. Persons submitting a proposal or response to this solicitation must comply with all applicable laws, ordinances, and regulations of the State of Texas Government Code, including, without limitation, Chapter 171 and 176 of the Local Government Code. The person or proposer submitting a response to this solicitation must complete (as applicable), sign and submit **Attachment No. 9, Conflict of Interest Questionnaire Form, and Attachment No. 10, Disclosures – Financial Interest and Potential Conflict of Interests** with the proposal package. HCC expects the selected contractor to comply with Chapter 176 of the Local Government Code and that failure to comply will be grounds for termination of the contract.

**Note: Attachment No. 9 and Attachment No. 10 shall be completed signed and returned to HCC. Enter N/A in those areas on the Attachments that are not applicable to your company. Failure to complete, sign and notarize Attachment No. 10 shall render your proposal non-responsive.**

**20. Ethics Conduct**

Any direct or indirect actions taken to unduly influence competitive purposes, to circumvent equal consideration for competitive bidders, or to disregard ethical and legal trade practices will disqualify vendors and contractors from current and future consideration for participation in HCC orders and contracts.

**21. No Third Party Rights**

This Contract is made for the sole benefit of the HCC and the Contractor and their respective successors and permitted assigns. Nothing in this Contract shall create or be deemed to create a relationship between the Parties to this Contract and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

**22. Indemnification**

Contractor shall indemnify, pay for the defense of, and hold harmless the College and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and

causes of actions of whatsoever kind, nature or sort which may be incurred by reason of Consultant's negligence, recklessness, or willful acts and/or omission in rendering any services hereunder. Contractor shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, Workers' Compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning Contractor or any employee and shall further indemnify, pay for the defense of, and hold harmless the College of and from any such payment or liability arising out of or in any manner connected with Contractor's performance under this Agreement.

**23. Delegation**

Unless delegated, HCC Board of Trustees must approve all contracts valued at over \$50,000. The Board has granted the Chancellor authority to initiate and execute contracts valued up to \$50,000. The procurement of goods and services, including professional services and construction services shall be completed as per any applicable HCC policy and procedure and shall be in accordance with Section 44.031 of the Texas Education Code for the purchase of goods and services, Section 2254 of the Texas Government Code for the purchase of Professional and Consulting Services, and Section 2267 of the Texas Government Code for the purchase of construction services. The Board delegates its authority to the administration and the designated evaluation committee, to evaluate, score and rank the proposals. This includes the evaluation of all bids, proposals, or statements of qualification under procurement, regardless of contract amount, including the final ranking and selection which shall be made on the evaluation and scoring as per the published selection criteria and the final evaluation ranking. The Board of Trustees shall approve the final award of contracts to the firm based on the published selection criteria and as evidenced in the final evaluation, scoring and ranking.

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**ATTACHMENT NO: 1  
HOUSTON COMMUNITY COLLEGE  
REQUEST FOR COMPETITIVE SEALED PROPOSALS  
PROPOSAL/CONTRACT AWARD FORM**

.....  
**PROJECT TITLE: Austin Street Improvements & San Jacinto Memorial Green**  
**PROJECT NO.: RFCSP 14-02**

Name of Proposer/Contractor: \_\_\_\_\_

Federal Employer Identification Number \_\_\_\_\_  
(Note: please refer to RFCSP-Summary, Item 7: Vendor Registration Instructions)

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

E-mail: \_\_\_\_\_

.....  
In compliance with the requirements of this Request for Competitive Sealed Proposals for providing \_\_\_\_\_, the undersigned hereby proposes to furnish all necessary resources required to perform the services in accordance with our Technical Proposal and Price Proposal dated \_\_\_\_\_ and as mutually agreed upon by subsequent negotiations, if any.

The undersigned certifies that he/she has read, understands and agrees to be bound by the requirements and terms and conditions set forth in this Solicitation and any and all amendments issued and made a part hereof. The undersigned further certifies that he/she is legally authorized to make the statements and representations in the Solicitation and that said statements and representations are true and accurate to the best of his/her knowledge. The undersigned understands and agrees that when evaluating proposals and making an award decision, HCC relies on the truth and accuracy of the statements and representations presented in the proposal response. Accordingly, HCC has the right to suspend or debar the undersigned from its procurement process and/or terminate any contract award that may have resulted from this solicitation if HCC determines that any statements or representations made were not true and accurate.

Signed By: \_\_\_\_\_ Name: \_\_\_\_\_  
(Type or Print)

Title: \_\_\_\_\_  
(Type or Print)

State of \_\_\_\_\_

Sworn to and subscribed before me at \_\_\_\_\_, \_\_\_\_\_,  
(City) (State)

this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public for the State of: \_\_\_\_\_

**ACCEPTANCE AND CONTRACT AWARD FORM**

(Note: This page will be completed by HCC.)

.....  
Purchase Order No. \_\_\_\_\_ (for payment purposes only)

Project No. \_\_\_\_\_ Effective Date: \_\_\_\_\_  
.....

Contractor to perform the work required herein in accordance with Purchase Order(s) issued by HCC and the Terms and Conditions of Purchase posted on the HCC website at [www.hccs.edu](http://www.hccs.edu), incorporated herein by reference, and the prices, scope of services and general terms and conditions attached hereto and made a part hereof.

In the event of an inconsistency between this Contract, the RFSCP, and/or the Contractor's Proposal, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence first to this Contract, then the RFCSP and finally, the Contractor's Proposal.

HOUSTON COMMUNITY COLLEGE

Executed for and on behalf of the Houston Community College pursuant to approval by the Board of Trustees on \_\_\_\_\_, 2014.

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

Title: Chancellor

**Attachment No. 2**  
**Schedule of Items and Pricing**  
**Price Proposal Part I**  
**for Austin Street Improvements & San Jacinto Memorial Green**

The Proposer/Contractor shall furnish all necessary resources and services necessary and required to provide Austin Street Improvements & San Jacinto Memorial Green, in accordance with the Project Manual and Architectural Drawings hereby incorporated and mad a part of this RFCSP and the general terms and conditions of the sample contract for the prices listed below. Please provide a **Project Total Proposed Price** reflecting all project costs to successfully complete the Austin Street Improvements & San Jacinto Memorial Green. Work requirements will be specified in individual purchase orders issued by Houston Community College. **Please submit this form (Part I and II) in a separate sealed envelope and label it "Price Proposal".**

ITEM	DESCRIPTION OF WORK/ITEMS	PROPOSED PRICE
001	REMOVAL OF EXISTING PAVEMENTS, SIDEWALKS, CURBS, AND STRUCTURES	\$
002	STORM PIPES, INLETS, CLEAN OUTS, TIE INS, FRENCH DRAINS AND MANHOLES	\$
003	CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS INCL. SIGNAGE ALLOWANCE (TRAFFIC CONTROL SIGNAGE, DIRECTIONAL SIGNAGE) & TREE PROTECTION	\$
004	CONCRETE WALKWAYS (LT BROOM FIN & SANDBLASTED), CURBS, PLANTERS, DRIVES, STEPS, STAMPED CONCRETE & RAMPS	\$
005	PAVERS - CONCRETE, FLY ASH, EGYPTIAN LIMESTONE, SUGARI SAND STONE & STONE PLANTER CURBS	\$
006	DECOMPOSED GRANITE, BLACK STAR GRAVEL, & WASHED LIMESTONE INCL. FILTER FABRIC & METAL EDGING	\$
007	ELECTRICAL - LIGHT FIXTURES, POLES, BASES, CONDUIT, CABLE, & CONTROLS	\$
008	STONE VENEER CLAD WALLS, WOOD SEATING/BENCHES, WOOD DECKING, DECKING FOUNDATIONS, RAILINGS & TREE GRATES	\$
009	FLAG POLE PODIUM, FLAG POLES, MONUMENT SIGN & FURNISHINGS (INCL. PRE-FAB BENCHES, TABLES, RECEPTACLES, BICYCLE RACKS)	\$
010	LANDSCAPING - LANDSCAPE GRADING, NEW SOIL MIX, SOIL REMEDIATION, TREES, PLANTINGS, IRRIGATION, & URBAN FORESTOR	\$
011	LANDSCAPING – ONE (1) YEAR MAINTENANCE	\$
012	OTHER COSTS: ITEMIZE AND DESCRIBE ON SEPARATE PAGE	\$
013	OVERHEAD AND PROFIT	\$
<b>A</b>	<b>TOTAL PROPOSED PRICE (ITEMS 001-013)</b>	<b>\$</b>
B	ALTERNATE 1 – PVC DECK AT COFFEE SHOP (Drawing No. AS-1.02C)	\$
C	OWNERS CONTINGENCY	TBD
<b>D</b>	<b>PROPOSER’S MAXIMUM PROJECT DURATION IN CALENDAR DAYS:</b>	

**1.1**

A. Provide unit prices of **Cost to Add** as well as the **Credit to Deduct** for each of the items below:

ITEM	DESCRIPTION OF WORK/ITEMS	UNIT PRICE
<b>1</b>	<p><b>Concrete Pavers:</b></p> <p>Description: Cost to add 1 square foot of concrete pavers according to paver drawing detail and according to Division 32 Section "Unit Paving." Include concrete base, sand bed, and all other shown design components.</p> <p><b>Unit of Measurement: Per Square Foot.</b></p>	\$
<b>2</b>	<p><b>Fly Ash Pavers:</b></p> <p>Description: Cost to add 1 square foot of pavers according to paver drawing detail and according to Division 32 Section "Unit Paving." Include concrete base, sand bed, and all other shown design components.</p> <p><i>Provide separate price for engraving text per paver on Fly Ash Pavers as per sample on Drawing No. 9/AS-3.05.</i></p> <p><b>Unit of Measurement: Per Square Foot.</b></p>	\$
<b>3</b>	<p><b>Egyptian Limestone Pavers:</b></p> <p>Description: Cost to add 1 square foot of pavers according to paver drawing detail and according to Division 32 Section "Unit Paving." Include concrete base, sand bed, and all other shown design components.</p> <p><b>Unit of Measurement: Per Square Foot.</b></p>	\$
<b>4</b>	<p><b>Sugari Stone Pavers:</b></p> <p>Description: Cost to add 1 square foot of pavers according to paver drawing detail and according to Division 32 Section "Unit Paving." Include concrete base, sand bed, and all other shown design components.</p> <p><i>Provide price for engraving text per paver on Sugari Sand Stone Pavers as per sample on Drawing No. 17/AS-3.05.</i></p> <p><b>Unit of Measurement: Per Square Foot.</b></p>	\$
<b>5</b>	<p><b>Egyptian Limestone Clad Walls:</b></p> <p>Description: Cost to add 1 linear foot of stone veneer units according to drawing detail and according to Division 04 Section "ADHERED MASONRY VENEER SYSTEM."</p> <p><i>Provide individual add prices for each type of wall section as per drawings.</i></p> <p><b>Unit of Measurement: Per Linear Foot.</b></p>	\$
<b>6</b>	<p><b>Egyptian Limestone Clad Seating Walls:</b></p> <p>Description: Cost to add 1 linear foot of seating wall according to drawing detail and according to Division 04 &amp; 06. Include concrete base and all other shown design components.</p> <p><i>Provide individual add prices for each type of wall section as per drawings.</i></p> <p><b>Unit of Measurement: Per Linear Foot.</b></p>	\$



ITEM	DESCRIPTION OF WORK/ITEMS	UNIT PRICE
<b>7</b>	<b>Concrete Walkways:</b> Description: Cost to add one square foot of concrete sidewalk at the thickness shown on the plans, sand bedding according to sidewalk details and Division 32 Section "Concrete Walks and Ramps."  <i>Provide individual add prices for Light Broom Finish and Sand Blasted Finish concrete walkways...</i> <b>Unit of Measurement: Per Square Foot.</b>	\$
<b>8</b>	<b>Wood Deck:</b> Description: Cost to add 1 square foot of wood deck area (including framing) according to Division 06. <b>Unit of Measurement: Per Square Foot.</b>	\$
<b>9</b>	<b>PVC Deck:</b> Description: Cost to add 1 square foot of PVC deck area (including framing) according to Division 06. <b>Unit of Measurement: Per Square Foot.</b>	\$
<b>10</b>	<b>Deck Foundations:</b> Description: Cost to add 1 foundation for deck area according to drawing detail and Division 32. <b>Unit of Measurement: Per Unit.</b>	\$
<b>11</b>	<b>Seats with Table:</b> Description: Cost to add and install 1 Unit (4 Seats with Table) according to according to drawing detail and Division 12 Section "Furnishings." <b>Unit of Measurement: Per Unit.</b>	\$
<b>12</b>	<b>Bicycle Racks:</b> Description: Cost to add and install 1 Unit according to drawing detail and Division 12 Section "Furnishings."  Provide individual add prices for each type shown on drawings. <b>Unit of Measurement: Per Unit.</b>	\$
<b>13</b>	<b>Waste &amp; Ash Receptacles:</b> Description: Cost to add and install 1 Unit (Waste & Ash Receptacle) according to drawing detail and Division 12 Section "Furnishings."  Provide individual add prices for each type shown on drawings. <b>Unit of Measurement: Per Unit.</b>	\$
<b>14</b>	<b>Site Lighting:</b> Description: Cost to add fixture, provide foundation, pole, wire, and install 1 Unit according to Division 26 Section "Site Lighting." and construction drawings. Include 100 feet of underground conduit and wiring.  <i>Provide individual add prices for each type shown on drawings.</i> <b>Unit of Measurement: Per Unit.</b>	\$

ITEM	DESCRIPTION OF WORK/ITEMS	UNIT PRICE
<b>15</b>	<b>Decomposed Granite:</b> Description: Cost to provide, prep ground, and install 1 square foot of Decomposed Granite, details in construction drawings. <b>Unit of Measurement: Per Square Foot.</b>	\$
<b>16</b>	<b>Black Star Gravel:</b> Description: Cost to provide, prep ground, and install 1 square foot of Black Star Gravel, details in construction drawings. <b>Unit of Measurement: Per Square Foot.</b>	\$
<b>17</b>	<b>Washed Limestone:</b> Description: Cost to provide, prep ground, and install 1 square foot of Washed Limestone, details in construction drawings. <b>Unit of Measurement: Per Square Foot.</b>	\$
<b>18</b>	<b>Underground Utilities (Storm):</b> Description: Cost to provide material, excavate, install and backfill one (1) linear foot of underground storm sewer piping per Division 33 "Storm Sewage System". <i>Provide prices individually by pipe diameters and materials specified in the Construction Documents.</i> <b>Unit of Measurement: Per Linear Foot.</b>	\$
<b>19</b>	<b>Underground Utilities (Storm Sewer Manhole):</b> Description: Cost to provide material, excavate, install and backfill one (1) unit manhole per Division 33 "Storm Sewage System" and Construction Documents. <b>Unit of Measurement: Per Unit.</b>	\$
<b>20</b>	<b>Underground Utilities (Storm Sewer Inlet):</b> Description: Cost to provide material, excavate, install and backfill one (1) unit inlet per Division 33 "Storm Sewage System" and Construction Documents. <i>Provide prices individually by inlet type and materials specified in the Construction Documents.</i> <b>Unit of Measurement: Per Unit.</b>	\$
<b>21</b>	<b>Landscape Trees &amp; Plants:</b> Description: Cost to add 1 plant or 1 plant container if standard container contains multiple plants and install per Division 32 Sections "Planting" and "Operation and Maintenance of Planting" and construction drawing details. <i>Provide individual add prices for each plant listed in the Plant Schedule.</i> <b>Unit of Measurement: Per Container/Unit.</b>	\$

**Attachment No. 2 (Continued)**  
**Schedule of Items and Pricing**  
**Price Proposal Part I**  
**for La Branch Street Improvements**

**PART 2 - GENERAL**

**2.1 SUMMARY**

- A. Section includes administrative and procedural requirements for unit prices.
- B. Related Sections include:
  - 1. Division 01 Section "Allowances" for procedures for using unit prices to adjust quantity allowances.
  - 2. Division 01 Section "Contract Modification Procedures" for procedures for submitting and handling Change Orders.
  - 3. Division 01 Section "Quality Requirements" for general testing and inspecting requirements.

**2.2 DEFINITIONS**

- A. Unit price is an amount proposed by bidders, stated on the Bid Form, as a price per unit of measurement for materials or services added to or deducted from the Contract Sum by appropriate modification, if estimated quantities of Work required by the Contract Documents are increased or decreased.

**2.3 PROCEDURES**

- A. Unit prices include all necessary material, plus cost for delivery, installation, insurance, applicable taxes, overhead, and profit.
- B. Owner reserves the right to reject Contractor's measurement of work-in-place that involves use of established unit prices and to have this work measured, at Owner's expense, by an independent surveyor acceptable to Contractor.
- C. List of Unit Prices: A list of unit prices is included in Part 3. Specification Sections referenced in the schedule contain requirements for materials described under each unit price.

**Part 2- PRODUCTS (Not Used)**

**PART 3 - EXECUTION**

**3.1 LIST OF UNIT PRICES**

**ATTACHMENT NO: 3**  
**SCOPE OF SERVICES**  
**PROJECT NO. RFCSP 14-02**  
**PROJECT NAME: Austin Street Improvements & San Jacinto Memorial**

**Scope**

This Scope of Service covers the construction of the Austin Street & San Jacinto Memorial Green as outlined in the plans and the specifications.

The contractor shall furnish all labor, material, tools, equipment, transportation, bonds, permits, all applicable taxes, incidentals, and other facilities to perform all work for the said new construction for the following areas:

New Hardscape and landscape improvements along Austin Street & San Jacinto Memorial Green. Improvements include walkways, hard wood decking, seating, stone masonry, pavers, grading, planting, irrigation, amenities, lighting and storm water inlets.

**Austin Street**

The project consists of site work on an existing street and abandoned right of way on HCC's Central Campus. The street is already closed to through traffic from Holman Street to West Alabama. The work will extend to the area between the San Jacinto and HUB Building's as well and will tie into the work being done on the plaza space directly in front of the San Jacinto Building. There will be demolition of existing curbs, asphalt roadbeds, and adjacent sidewalks. Concrete pavers, decomposed granite, light standards, trees, box planters, landscape, irrigation, amenities, new grading, and storm water inlets will be added to the site as well. In addition site furnishings will also be added to Austin Street.

**San Jacinto Memorial Green**

The project consists of surface work to a 2.7 acre site that is now an existing parking lot and lawn area bounded on two sides by existing buildings. There is also a smaller site across Holman Street to the north that is adjacent to the coffee shop and bookstore. In front of the San Jacinto building the existing parking lot and curbs, some existing trees, and paving will be removed. Also there are some mature trees and a monument that will remain in place. At the site across the street the existing paving, masonry planter, and trash cans are to be removed. In front of the San Jacinto Building the work will extend to the right of way on Holman on the North, to San Jacinto Street on the West, and on the East it will tie into the work being done between the San Jacinto and HUB Buildings on Austin Street. Work will also be done to the block fronts on San Jacinto from Holman Street to West Alabama; and North of the site along San Jacinto from Holman to Francis. The block front on Francis Street will be upgraded as well from San Jacinto to the right of way on Caroline Street.

For the large site composite and stone pavers, low height stone clad walls, decomposed granite, light standards, trees, landscape, irrigation, amenities, new grading, and storm water inlets will be added to the site. There will also be stained wood decking, wood capped seating walls and all concrete paving will have sandblasted architectural finish. At the smaller site across the street composite pavers, decomposed granite, trees, box planters, composite wood decking, landscaping & irrigation, amenities, and new grading will be added. Finally for the block front work there will be new concrete curbs, grading and relocated curb inlets, sandblasted architectural finish concrete paving adjacent to the plaza space, and repair to existing concrete paving to block fronts south of the San Jacinto Building. On the north side broom finish concrete, concrete pavers and, and landscaping will be provided. There will be a stamped concrete drop off lane adjacent to the plaza space and stamped concrete parking lane to the block north of the site.

**ATTACHMENT NO: 4  
PROJECT NO. RFCSP 14-02  
DETERMINATION OF GOOD FAITH EFFORT**

Proposer \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Fax Number \_\_\_\_\_

In making a determination that a good faith effort has been made, HCC requires the Proposer to complete this form as directed below:

**Section 1.**

After having divided the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, the Proposer must determine what portion(s) of work, including goods or services, will be subcontracted. Check the appropriate box that identifies your subcontracting intentions:

\_\_\_\_\_ Yes, I will be subcontracting portion(s) of the contract.  
(If Yes, please complete Section 2, below and Attachments No. 6 and No. 7)

\_\_\_\_\_ No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.  
(If No, complete Section 3, below.)

**Section 2.**

In making a determination that a good faith effort has been made, HCC requires the Proposer to complete this form Section and submit supporting documentation explaining in what ways the Proposer has made a good faith effort to attain the goal. The Proposer will respond by answering "yes" or "no" to the following and provide supporting documentation.

\_\_\_\_\_ (1) Whether the Proposer provided written notices and/or advertising to at least five (5) certified small businesses or advertised in general circulation, trade association and/or small businesses focus media concerning subcontracting opportunities.

\_\_\_\_\_ (2) Whether the Proposer divided the work into the reasonable portions in accordance with standard industry practices.

\_\_\_\_\_ (3) Whether the Proposer documented reasons for rejection or met with the rejected small business to discuss the rejection.

\_\_\_\_\_ (4) Whether the Proposer negotiated in good faith with small businesses, not rejecting qualified subcontractors who were also the lowest responsive bidder.

NOTE: If the Proposer is subcontracting a portion of the work and is unable to meet the solicitation goal or if any of the above items (1-4) are answered "no", the Proposer must submit a letter of justification.

**Section 3.**

**SELF PERFORMANCE JUSTIFICATION**

If you responded "No" in SECTION 1, please explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

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\_\_\_\_\_  
Signature of Proposer

Title

\_\_\_\_\_

\_\_\_\_\_  
Date

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**ATTACHMENT NO. 6**

**PROJECT TITLE: AUSTIN STREET IMPROVEMENTS & SAN JACINTO MEMORIAL GREEN, PROJECT NO.: RFP 14-02**

**CONTRACTOR AND SUBCONTRACTOR PARTICIPATION FORM**

*RESPONDENT/OFFERER PRESENTS THE FOLLOWING PARTICIPANTS IN THIS SOLICITATION AND ANY RESULTING CONTRACT. ALL RESPONDENTS/OFFERORS, INCLUDING SMALL BUSINESSES SUBMITTING PROPSALS AS PRIME CONTRACTORS, ARE REQUIRED TO DEMONSTRATE GOOD FAITH EFFORTS TO INCLUDE SMALL BUSINESS IN THEIR PROPOSAL SUBMISSIONS.*

CONTRACTOR	TYPE OF WORK TO BE DONE	Small Business (SB) and Certification Status, if any (i.e. SB – COH, METRO, etc.)	PERCENT OF CONTRACT EFFORT	PRICE \$
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				
SMALL BUSINESS SUBCONTRACTOR(S)/ATTACH SEPARATE SHEET IF NEEDED				
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				
NON-SMALL BUSINESS SUBCONTRACTOR(S)/ATTACH SEPARATE SHEET IF NEEDED				
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				
BUSINESS NAME: _____ ADDRESS: _____ CONTACT NAME: _____ TELEPHONE #/E-MAIL ADDRESS: _____				

BUSINESS NAME: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 SUBMITTED BY: \_\_\_\_\_  
 TELEPHONE/FAX: \_\_\_\_\_  
 E-MAIL ADDRESS: \_\_\_\_\_

DATE SUBMITTED \_\_\_\_\_

CONTRACTOR'S PRICE/TOTAL SMALL BUSINESS	\$	_____
SUBCONTRACTOR(S) PRICE/TOTAL NON- SMALL BUSINESS	\$	_____
SUB-CONTRACTOR'S PRICE/TOTAL	\$	_____
GRAND TOTAL	\$	_____



**ATTACHMENT NO 7**

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**ATTACHMENT NO: 8**  
**PROPOSER CERTIFICATIONS**  
**PROJECT NO. RFCSP 14-02**

**1. NON-DISCRIMINATION STATEMENT:**

The undersigned certifies that he/she will not discriminate against any employee or applicant for employment or in the selection of subcontractors because of race, color, religion, gender, age, veteran's status, disability or national origin. The undersigned shall also take action to ensure that applicants are employed, and treated during employment, without regard to their race, color, religion, gender, age, veteran's status, disability or national origin. Such action shall include, but shall not be limited to, the following non-discriminatory employment practices: employment, upgrading or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other compensation and selection for training, including apprenticeship.

**2. ASSURANCE OF SBDP GOAL:**

The undersigned certifies that he/she has read, understands and agrees to be bound by the small business provisions set forth in this Solicitation. The undersigned further certifies that he/she is legally authorized to make the statements and representations in the Solicitation and that said statements and representations are true and accurate to the best of his/her knowledge. The undersigned will enter into formal agreement(s) for work identified on the CONTRACTOR AND SUBCONTRACTOR PARTICIPATION form conditioned upon execution of a contract with HCC. The undersigned agrees to attain the small business utilization percentages of the total offer amount as set forth below:

**Small Business Participation Goal = \_\_\_\_\_ percent ( %)**

The undersigned certifies that the firm shown below has not discriminated against any small business or other potential subcontractor because of race, color, religion, gender, age, veteran's status, disability or national origin, but has provided full and equal opportunity to all potential subcontractors irrespective of race, color, religion, gender, age, disability, national origin or veteran status.

The undersigned understands that if any of the statements and representations are made knowing them to be false or there is a failure to implement any of the stated commitments set forth herein without prior approval of HCC's Chancellor or the duly authorized representative, the Respondent may be subject to the loss of the contract or the termination thereof

**3. BLACKOUT PERIOD COMPLIANCE:**

The undersigned certifies that he/she has read, understands and agrees to be bound by the Prohibited Communications provision set forth in the RFSCP. The undersigned further understands that the PROPOSER shall not communicate with a HCC Trustee, employee, or any member of the selection/evaluation committee in any way concerning this Solicitation from the day it is first advertised through the day the contract documents are signed by all parties. This period is known as the "Blackout Period," as further defined in Section 1.7.10 and 3.3 of the Procurement Operations Manual. Violation of the Blackout Period is considered unethical conduct and will be handled as such with regard to a Trustee and all applicable federal and state laws and regulations, local ordinances, board policies and procurement procedures with respect to their conduct as public officials involved in the procurement process.

With regard to a Proposer, violation of the Blackout Period may result in the cancellation of the referenced transaction, debarment, disqualification from future procurement solicitations and prosecution in accordance with the Laws of the State of Texas.

**4. CERTIFICATION AND DISCLOSURE STATEMENT:**

A person or business entity entering into a contract with HCC is required by Texas Law to disclose, in advance of the contract award, if the person or an owner or operator of the business entity has been convicted of a felony. The disclosure should include a general description of the conduct resulting in the conviction of a felony as provided in section 44.034 of the Texas Education Code. The requested information is being collected in accordance with applicable law. This requirement does not apply to a publicly held corporation.

If an individual:

Have you been convicted of a felony? YES or NO

If a business entity: YES or NO

Has any owner of your business entity been convicted of a felony? \_\_\_\_\_

Has any operator of your business entity been convicted of a felony? \_\_\_\_\_

If you answered yes to any of the above questions, please provide a general description of the conduct resulting in the conviction of the felony, including the Case Number, the applicable dates, the State and County where the conviction occurred, and the sentence.

**5. DISCLOSURE OF OWNERSHIP INTEREST:**

The undersigned certifies that he/she has accurately completed the attached Exhibit 1 "Ownership Interest Disclosure List." For the purposes of this section, in accordance with Board Bylaws, the term "Contractors" shall include any member of the potential vendor's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, and any person with an ownership interest of 10% or more. This requirement shall also apply to any Subcontractor listed on the "Contractor and Subcontractor Participation Form."

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**6. PROHIBITED CONTRACTS/PURCHASES:**

The undersigned certifies that he/she has read, understands and is eligible to receive a contract in accordance with HCC Board of Trustees Bylaw regarding Prohibited Contracts/Purchases as further defined in the attached Exhibit 2.

I attest that I have answered the questions truthfully and to the best of my knowledge.

Signed: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Address of Company: \_\_\_\_\_

State of \_\_\_\_\_

Sworn to and subscribed before me at \_\_\_\_\_ (City) \_\_\_\_\_ (State),

this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_

Notary Public for the State of: \_\_\_\_\_

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**EXHIBIT 2 - TO ATTACHMENT NO. 8**

**PROHIBITED CONTRACTS/PURCHASES  
PROJECT NO. RFCSP 14-02**

The College shall not contract with a business entity in which a Board Member, Senior Staff Member, or a relative of a Board member or Senior Staff Member within the first degree of consanguinity or affinity, has any pecuniary interest. All such contracts executed prior to June 21, 2012 shall continue to be in full force and effect.

Further, the College shall not contract with a business entity that employs, hires, or contracts with, in any capacity, including but not limited to, a subcontractor, employee, consultant, advisor or independent contractor, a Board Member or a Senior Staff Member.

Further, the College shall not contract with a business entity that employs an officer or director who is a relative of a Board member or a Senior Staff Member within the first degree of consanguinity or affinity.

Definitions:

"Business entity" shall not include a corporation or a subsidiary or division of a corporation whose shares are listed on a national or regional stock exchange or traded in the over-the-counter market. "Business entity" shall not include non-profit corporations or religious, educational, and governmental institutions, except that private, for-profit educational institutions are included in the definition of Business entity.

"Director" is defined as an appointed or elected member of the board of directors of a company who, with other directors, has the responsibility for determining and implementing the company's policy, and as the company's agent, can bind the company with valid contracts.

"Officer" is defined as a person appointed by the board of directors of a company to manage the day-to-day business of the company and carry out the policies set by the board. An officer includes, but is not limited to, a chief executive officer (CEO), president, chief operating officer (COO), chief financial officer (CFO), vice-president, or other senior company official, as determined by the Board.

"Senior Staff Member" shall have the meaning as defined in Article A, Section 3 of the Board Bylaws which includes:

- a. Any member of the Chancellor's Advisory Council;
- b. HCC employees classified as E-10 and above;
- c. All procurement and purchasing personnel;
- d. Any employee who participates on an evaluation or selection committee for any HCC solicitation for goods or services; and
- e. Any employee who participates in the evaluation of goods or services provided by a vendor or contractor.

Absent other legal requirements, all contracts entered into by the College in violation of this policy shall be voided within 30 days of notice of the violation.

**ATTACHMENT NO. 9 – RFCSP 14-02**

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b>		<b>FORM CIQ</b>
For vendor or other person doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>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 person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<b>OFFICE USE ONLY</b>	
<p><b>1</b> Name of person who has a business relationship with local governmental entity.</p> <p><b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p>(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 the originally filed questionnaire becomes incomplete or inaccurate.)</p>	<p>Date Received</p>   	
<p><b>3</b> Name of local government officer with whom filer has employment or business relationship.</p> <p align="center">_____</p> <p align="center">Name of Officer</p> <p>This section (item 3 including subparts A, B, C &amp; D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?</p> <p align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p align="center"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>D. Describe each employment or business relationship with the local government officer named in this section.</p>		
<p><b>4</b></p> <p align="center">_____</p> <p align="center">Signature of person doing business with the governmental entity</p> <p align="right">_____</p> <p align="right">Date</p>		

Adopted 06/29/2007

**Note: When completing this Questionnaire, please be certain to answer each and every question; indicate "Not Applicable", if appropriate**

**ATTACHMENT NO. 10  
FINANCIAL INTERESTS AND POTENTIAL CONFLICTS OF INTERESTS**

**PROJECT TITLE: Austin Street Improvements & San Jacinto Memorial Green  
PROJECT NO.: RFCSP 14-02**

Texas Local Government Code Chapter 176 requires that vendors desiring to enter into certain contracts with a local governmental entity must disclose the financial and potential conflict of interest information as specified below.

Vendor shall disclose the financial interest and potential conflict of interest information identified in Sections 1 through 3 below as a condition of receiving an award or contract. Submit this information along with your bid, proposal, or offer.

**This form must be completed, signed and notarized. The Completed form must be submitted along with your proposal**

This requirement applies to contracts with a value exceeding \$50,000.

**Section 1 - Disclosure of Financial Interest in the Vendor**

**a.** If any officers or employees of HCC ("individuals") have one of the following financial interests in the vendor (or its principal) or its subcontractor(s), please show their name and address and check all that apply and (include additional documents if needed):

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**b.** For each individual named above, show the type of ownership/distributable income share:

- Ownership interest of at least 10% ( \_\_\_\_\_ )
- Ownership interest of at least \$15,000 or more of the fair market value of vendor ( \_\_\_\_\_ )
- Distributive Income Share from Vendor exceeding 10% of individual's gross income ( \_\_\_\_\_ )
- Real property interest with fair market value of at least \$2,500 ( \_\_\_\_\_ )
- Person related within the first degree of affinity to individual has the following ownership or real property interest in Vendor ( \_\_\_\_\_ )
  - 1. Ownership interest of at least 10%
  - 2. Ownership interest of at least \$15,000 or more of the fair market value of vendor
  - 3. Distributive Income Share from Vendor exceeding 10% of the individual's gross income
  - 4. Real property interest with fair market value of at least \$2,500
- No individuals have any of the above financial interests (If none go to Section 4) ( \_\_\_\_\_ )

sole proprietorship \_\_\_ stock \_\_\_ partnership \_\_\_  
other (explain): \_\_\_\_\_

**c.** For each individual named above, show the **dollar value or proportionate share** of the ownership interest in the vendor (or its principal) or its subcontractor (s) as follows:



If the proportionate share of the named individual(s) in the ownership of the vendor (or its principal) or subcontractor of vendor is 10% or less, and if the value of the ownership interest of the named individual(s) is \$15,000 or less of the fair market value of vendor, check here (\_\_\_).

If the proportionate share of ownership exceeds 10%, or the value of the ownership interest exceeds \$15,000 of the fair market value of vendor, show either:

the percent of ownership \_\_\_\_\_ %, or  
the value of ownership interest \$ \_\_\_\_\_ .

**Section 2 - Disclosure of Potential Conflicts of Interest**

For each of the individuals having the level of financial interest identified in Section 1 above, and for any other HCC individual not identified in Section 1 above check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes," please describe (use space under applicable section-attach additional pages as necessary).

a. Employment, currently or in the previous 3 years, including but not limited to contractual employment for services for vendor.

Yes \_\_\_\_\_ No \_\_\_\_\_

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b. Employment of individual's spouse, father, mother, son, or daughter, including but not limited to contractual employment for services for vendor in the previous 2 years.

Yes \_\_\_\_\_ No \_\_\_\_\_

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**Section 3- Disclosure of Gifts**

For each of the individuals having the level of financial interest identified in Section 1 above, and for any other HCC individual not identified in Section 1 above check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes," please describe (use space under applicable section-attach additional pages as necessary).

a. Received a gift from vendor (or principal), or subcontractor of vendor, of \$250 or more within the preceding 12 months.

Yes \_\_\_\_\_ No \_\_\_\_\_

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b. Individual's spouse, father, mother, son, or daughter has received a gift from vendor (or principal), or subcontractor of vendor, of \$250 of more within the preceding 12 months.

Yes \_\_\_\_\_ No \_\_\_\_\_

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**Section 4- Other Contract and Procurement Related Information**

Vendor shall disclose the information identified below as a condition of receiving an award or contract.

This requirement is applicable to only those contracts with a value exceeding \$50,000. You must submit this information along with your bid, proposal, or offer.

a. Vendor shall identify whether vendor (or its principal), or its subcontractor(s), has current contracts (including leases) with other government agencies of the State of Texas by checking:

Yes \_\_\_\_\_ No \_\_\_\_\_

b. If "yes" is checked, identify each contract by showing agency name and other descriptive information such as purchase order or contract reference number (attach additional pages as necessary).

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c. Vendor shall identify whether vendor (or its principal) or its subcontractor(s) has pending contracts (including leases), bids, proposal, or other ongoing procurement relationships with other government agencies of the State of Texas by checking:

Yes \_\_\_\_\_ No \_\_\_\_\_

d. If "yes" is checked, identify each such relationship by showing agency name and other descriptive information such as bid or project number (attach additional pages as necessary).

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This disclosure is submitted on behalf of:

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(Name of Vendor)

**Certification.** I hereby certify that to the best of my knowledge and belief the information provided by me in this disclosure statement is true and correct. I understand that failure to disclose the information requested may result in my bid, proposal, or offer, being rejected, and/or may result in prosecution for knowingly violating the requirements of **Texas Local Government Code Chapter 176**. I understand that it is my responsibility to comply with the requirements set forth by HCC as it relates to this disclosure. I also understand that I must submit an updated disclosure form within seven (7) days of discovering changes in the significant financial interests of the individuals I identified in Section 1 of this disclosure or if individuals that were not identified, later receive a financial interest in my company or is a subcontractor of my company.

Official authorized to sign on behalf of vendor:

Name (Printed or Typed) \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

State of \_\_\_\_\_

Sworn to and subscribed before me at \_\_\_\_\_  
(City) (State)

this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_

Notary Public for the State of: \_\_\_\_\_

**"NOTE: PROPOSER MUST COMPLETE THE ABOVE "FINANCIAL INTERESTS AND POTENTIAL CONFLICTS OF INTERESTS" FORM. FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR OFFER MAY RESULT IN YOUR OFFER BEING CONSIDERED AS "NON-RESPONSIVE" TO THIS SOLICITATION."**

For assistance with completing this form, please contact the **Office of Systemwide Compliance** at (713)718-2099.

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## ATTACHMENT NO. 11

### Proposer Questionnaire

**PROJECT TITLE: AUSTIN STREET IMPROVEMENTS & SAN JACINTO MEMORIAL GREEN  
PROJECT NO.: RFCSP 14-02**

#### **1.0 Company Profile:**

1.1 Provide details as to the following:

- Firm or Entity Name
- Years in Business
- Form of Business under which Proposer operates (i.e., corporation, partnership, sole proprietor)
- Key Contacts: List the names(s), telephone number, email addresses of the representative(s) who are to be contacted regarding your proposal
- Ownership: List the names of all officers and persons of organizations have a ten percent (10%) or greater ownership interest in the company. Indicate which persons are in day-to-day management of the company. Also, indicate if the business is a subsidiary of another entity or conglomerate.
- Sales Volume: Provide net sales data for the past three (3) years
- Describe your company's specific knowledge, experience and expertise in new construction.
- Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- Provide any details of all past or pending litigation or claims filed against your company that would affect your company's performance under an Agreement with HCC.
- Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.

1.2 Firm's Financial Status:

- a. Provide evidence of the firm's financial stability including but not limited, any one or more of the following: the firm's audited financial statement for the last two (2) years; a statement from at least one financial institution with validation of at least six (6) months working capital; recent annual reports or equivalent information and your short and long-term credit rating; a letter from the company's CPA attesting to the company's financial stability.
- b. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.
- c. A certification statement from your Surety showing your firm's total bonding capacity for public works payment and performance bonds, and the amount of your firm's available bonding capacity as of the date of the proposal deadline. Your Surety's name and contact information must be provided.
- d. A current ACCORD certificate showing your firm current insurance coverage for Commercial General Liabilities, Automotive, and Worker's Compensation.

#### **2.0 Customer References:**

2.1 Your response must include a listing of at least three (3) customers for which you have provided new construction for community colleges. A listing of customers for which you have provided new construction for other institutions of higher education as described within this RFCSP should also be provided. Your customer reference list shall include the entity name; contact person including telephone #; scope of services, annual sales volume (\$), and the period of time for which work was performed.

### **3.0 Proposal:**

Your Proposal should clearly define (i) your Company's total capabilities, (ii) your qualifications to perform the work, (iii) your ability to perform the services outlined in Attachment No. 1, (iv) your understanding of HCC, and (v) what differentiates you from your competitors. At a minimum, your Proposal shall include the following:

3.1 Cover letter: The cover letter shall not to exceed 2 pages in length, summarizing key points in the proposal.

3.2 Qualifications and experience of the firm:

#### Part I.

This section should establish the ability of the firm, and its sub-consultant, if any, to satisfactorily perform the required work. Provide examples of similar project experience; higher education, public institutions or public entities, preferred. HCC may verify all information furnished.

List at least three and not more than five projects or contracts for similar construction projects within the last 5 years, for which your firm has successfully provided services of the type and kind required by this RFCSP. List the projects in priority order, with the most related project listed first.

At a minimum, provide the following information for each project listed:

- a. Company Name, contact person, including telephone number, email addresses
- b. Project name and location
- c. Project Owner, title and current phone number
- d. Project cost or contract value
- e. Project size in gross square feet;
- f. Description of the project, scope of services, describing your experience, and work performed by your firm
- g. Description of how this project is similar and why the services provided are relevant to this project
- h. Period of time for which work was performed
- i. Describe the processes/outcomes that made this project successful

#### Part II.

- a. Provide a description of the firm including firm's history, size, staff composition;
- b. Explain how your firm is organized and how its resources will be applied to HCC's work;
- c. Describe your firm's professional philosophy and general methodology used in conducting construction projects;
- d. Provide the address of the corporate headquarters, list of all offices in Texas, and total number of employees within Texas;
- e. Describe your firm's ability to manage complex construction projects.
- f. Describe what lessons were taken away and business process improvements made to prevent unsuccessful instances from recurring;
- g. Demonstrate your firm's understanding, knowledge and experience to provide the services described in the Scope of Services;
- h. Provide evidence of at least three (3) years of experience providing similar services as described in this RFCSP;
- i. Describe level of effort and steps taken to perform the services of the like and kind described in this solicitation; and

- j. Describe your experience in providing the services described in this RFCSP for large, multi-campus, urban organizations such as HCC.

### 3.3 Past performance reference:

- a. Provide a list of all projects awarded during the past three (3) years; including the name of the client, location, size of the installation, and narrative description of the project and any problems that may have been encountered during the engagement. In developing your list, please include all Community College, Higher Education, K-12 and private sector new construction contracts awarded;
- b. Provide a list of all new construction projects that your firm may have completed during the past three (3) years for community colleges and other institutions of higher education; define any contractual requirements that may restrict your firm from providing construction services to HCC;
- c. Provide a list of all contracts that your firm has lost during the past three (3) years including name of the client and narrative description as to why the business was lost;
- d. Define how you measure and monitor customer satisfaction; describe the method used, frequency, and how results are reported; and
- e. Provide a list and description of any work you have done at HCC.

### 3.4 Proposed Approach and Methodology

#### 3.4.1 Project management & implementation plan:

- a. Provide a project-staffing plan including resumes for all proposed "key" staff members who will be assigned to this account and defining their role in supporting the HCC account;
- b. Provide your criteria for hiring including screening, criminal background checks, or any other means of verification of employee information, or explain other means for ensuring the integrity and suitability of the Proposer's employees;
- c. Provide a detailed Project Plan identifying key tasks and milestones commencing date of contract award. Your response should clearly define both your and HCC's responsibilities and resources required during the term of the engagement; and
- d. Describe what guarantees you offer with regards to new construction performed and/or service level commitments.

#### 3.4.2 Quality of service and extent they meet HCC's needs:

- a. Proposer shall clearly define its in-house capability and capacity to perform the work identified in Attachment No. 1. Your response must describe the various technologies, tools, methods, and technical expertise that you will provide to HCC and/or that will be used in the delivery of the services and how that will be of benefit in the delivery of services to HCC; and
- b. Please identify the key metrics you propose to use to measure your performance in delivering services to HCC. Your response should indicate the frequency of the measurement, how it will be used to continually improve performance, and how this information will be shared with HCC. Your response should include how do you measure and monitor production quality, ensure delivery/turnaround times are being met, and how problems are tracked, escalated (if required) both internally and with the customer.

3.4.3 Communication Plan: Please provide a sample communication plan of how, if your company is selected for contract award, you will introduce your company to HCC in initiating the communication process.

3.4.4 Safety Plan: Your response shall include policies and procedures that the firm has in place to ensure employee safety, compliance with OSHA regulation standards, firm's code of safety practices and safety policy statement outlining the goals of the program. Firm shall identify the safety program coordinator and the methods by which your firm will utilize to communicate the importance of safety to the employees. Firm must provide procedure for accident investigation and reporting policies with instructional materials used when conducting accident investigations.

3.4.5 Student Intern Participation: This section shall include a clear statement of the firm's commitment and plan to utilize HCC students in an internship capacity.

3.4.6 Miscellaneous:

- a. Please identify any challenges and/or difficulties you anticipate in providing services to HCC and how you plan to manage them; what assistance will you require from HCC.
- b. Please describe any special benefits or advantages in selecting your company

3.5 Small Business Practice:

- a. This section shall include a clear statement of the firm's commitment and plan to meet the small business goal specified in this solicitation, if any;
- b. Describe your previous experience and involvement working with Small Business certified firms. Please describe your firm's approach to working with Small Business certified construction related firms, including level of effort, division of duties and providing opinions.
- c. For this Project HCC has a small business participation goal of Thirty-Five Percent (35%). At a minimum, your response must include: (a) a description of previous projects where your firm has successfully subcontracted work to small businesses including the percentage (%) of work subcontracted to these firms under each project; (b) a narrative outlining your overall approach to subcontracting and how you will solicit and select small businesses for participation as part of this Project; and (c) indicate what challenges you anticipate in attaining HCC's goal.
- d. Describe what opportunities you foresee to utilize sub-consultants/subcontractors to perform portions of the work contemplated under this RFP.
- e. Describe your company's process for the selection sub-consultants/subcontractors and process for evaluating sub-consultants/subcontractors performance.

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**ATTACHMENT NO. 12**  
**SPECIFICATIONS and DRAWINGS**  
**PROJECT NO. RFCSP 14-02**

Please copy the link below and paste in your browser to access the drawings and the project manual for this project.

**Austin Street Improvements & San Jacinto Memorial Green Project:**

<https://app.e-builder.net/public/publicLanding.aspx?QS=a01ed20780af4f5b82a6bf661035b5dc>

**Drawings Availability**

Drawings & specifications may be viewed at following locations:

Associated General Contractors  
8450 Waterpark, Suite 100  
Houston, TX 77092      800-364-2059 ex. 8059

Dodge FW McGraw Hill Information Services  
10606 Hempstead Rd.  
Houston, TX 77092      (713) 316-9411

Virtual Builders Exchange/ABC  
7035 West Tidwell, Suite J112  
Houston, TX 77098      (832) 613-0201

Drawings & specifications may be purchased at the following location:

A&E The Graphics Complex  
4235 Richmond Avenue  
Houston, TX 77027  
Telephone: (713) 579-1234



**Uniform General and Supplementary General Conditions  
for Houston Community College  
Building Construction Contracts**

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# Uniform General and Supplementary General Conditions for Houston Community College Building Construction Contracts

## Article 1. Definitions

Unless the context clearly requires another meaning, the following terms have the meaning assigned herein.

- 1.1 **Architect/Engineer (A/E)** means a person registered as an architect pursuant to Tex. Occ. Code Ann., Chapter 1051, as a landscape architect pursuant to Tex. Occ. Code Ann., Chapter 1052, a person licensed as a professional engineer pursuant Tex. Occ. Code Ann., Chapter 1001 and/or a firm employed by Owner or Design-Build Contractor to provide professional architectural or engineering services and to exercise overall responsibility for the design of a Project or a significant portion thereof, and to perform the contract administration responsibilities set forth in the Contract.
- 1.2 **Change Order** means a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor and the Architect/Engineer.
- 1.3 **Change Order Proposal** means a Contractor -generated document in response to a Change Order Request (COR).
- 1.4 **Change Order Request (COR)** means a document which informs the Contractor of a proposed change in the Work, and appropriately describes or otherwise documents such change.
- 1.5 **Close-out Documents** means the product brochures, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, as-built record documents, affidavit of payment, release of lien and claim, and as may be further defined, identified, and required by the Contract Documents.
- 1.6 **Contract** means the entire agreement between the Owner and the Contractor, including all of the Contract Documents.
- 1.7 **Contract Date** is the date when the Contract between the Owner and the Contractor becomes effective.
- 1.8 **Contract Documents** means those documents identified as a component of the Contract between the Owner and the Contractor. These may include, but are not limited to, Drawings, Specifications, General, Supplementary and Special Conditions, all pre-bid and/or pre-proposal Addenda, and other documents enumerated in the Contract as forming part of the Contract Documents.
- 1.9 **Contractor** means the individual, corporation, company, partnership, firm or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes a Contractor or a Design-Build firm as well as a General or Prime Contractor. The Contract Documents refer to Contractor as if singular in number.
- 1.10 **Contract Sum** means the total compensation payable to the Contractor for completion of the Work in accordance with the terms of the Contract Documents.
- 1.11 **Contract Time** means the period between the Date of Commencement identified in the Notice to Proceed and the Substantial Completion deadline identified in the Notice to Proceed or as subsequently amended by Change Order.
- 1.12 **Date of Commencement** means the date designated in the Notice to Proceed for the Contractor to commence the Work.
- 1.13 **Day** means a calendar day, unless otherwise specifically stipulated.
- 1.14 **Drawings** mean that product of the Architect/Engineer which graphically depicts the Work.
- 1.15 **Final Completion** means the date determined and certified by the Architect/Engineer and Owner on which the Work is fully and satisfactorily complete and all Close-out Documents have been submitted in accordance with the Contract Documents.

- 1.16 **Owner** means Houston Community College, the State of Texas and any Agency of the State of Texas, acting through the responsible entity of Houston Community College identified in the Contract as the Owner.
- 1.17 **Owner's Designated Representative (ODR)** means the individual assigned by the Owner to act on its behalf, and to undertake certain activities as specifically outlined in the Contract. The ODR is the only party authorized to direct changes to the scope, cost, or time of the Contract.
- 1.18 **Project** means all activities necessary for realization of the Work. This includes design, contract award(s), execution of the Work itself, and fulfillment of all contractual and warranty obligations.
- 1.19 **Samples** means representative physical examples of materials, equipment or workmanship, used to confirm compliance with requirements and/or to establish standards for use in execution of the Work.
- 1.20 **Schedule of Values** means the detailed breakdown of the cost of the materials, labor and equipment necessary to accomplish the Work as described in the Contract Documents, submitted by Contractor for approval by Owner and Architect/Engineer.
- 1.21 **Shop Drawings** means the drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared by the Contractor or its agents, which detail a portion of the Work.
- 1.22 **Site** means the geographical area of the location of the Work.
- 1.23 **Special Conditions** means the documents containing terms and conditions, which may be unique to the Project. Special Conditions are a part of the Contract Documents and have precedence over the Uniform General Conditions.
- 1.24 **Specifications** means the written product of the Architect/Engineer that establishes the quality and/or performance of products utilized in the Work and processes to be used, including testing and verification for producing the Work.
- 1.25 **Subcontractor** means a business entity that enters into an agreement with the Contractor to perform part of the Work or to provide services, materials or equipment for use in the Work.
- 1.26 **Substantial Completion** means the date determined and certified by the Contractor, Architect/Engineer and Owner when the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract, so as to be operational and fit for the use intended by the Owner.
- 1.27 **Supplementary General Conditions** means procedures and requirements that modify the Uniform General Conditions. Supplementary General Conditions, when used, have precedence over the Uniform General Conditions.
- 1.28 **Unit Price Work** means Work or a portion of the Work paid for based on incremental units of measurement.
- 1.29 **Unilateral Change Order (ULCO)** means a Change Order issued by the Owner without the agreement of the Contractor.
- 1.30 **Work** means the administration, procurement, materials, equipment, construction and all services necessary for the Contractor, and/or its agents, to fulfill the Contractor's obligations under the Contract.

## **Article 2. Laws Governing Construction**

2.1 **Environmental Regulations.** The Contractor conducts activities in compliance with applicable laws and regulations and other requirements of the Contract relating to the environment, and its protection at all times. Unless otherwise specifically determined, the Owner is responsible for obtaining and maintaining permits related to stormwater run-off. The Contractor shall conduct operations consistent with stormwater run-off permit conditions. Contractor is responsible for all items it brings to site, including hazardous materials, and all such items brought to the site by its subcontractor and suppliers, or by other entities subject to direction of the Contractor. The Contractor shall

not incorporate hazardous materials into the Work without prior approval of Owner, and shall provide an affidavit attesting to such in association with request for Substantial Completion inspection.

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2.2 **Wage Rates.** The Contractor shall not pay less than the wage scale of the various classes of labor as shown on the “Prevailing Wage Schedule” provided by the Owner and published in the Project Manual. The specified wage rates are minimum rates only. The Owner is not bound to pay any claims for additional compensation made by any Contractor because the Contractor pays wages in excess of the applicable minimum rate contained in the Contract. The “Prevailing Wage Schedule” is not a representation that qualified labor adequate to perform the Work is available locally at the prevailing wage rates.

2.2.1 **Notification to Workers.** The Contractor shall notify each worker, in writing, of the following as they commence work on the contract: the worker’s job classification, the established minimum wage rate requirement for that classification, as well as the worker’s actual wage. The notice must be delivered to and signed in acknowledgement of receipt by the employee and must list both the wages and fringe benefits to be paid or furnished for each classification in which the worker is assigned duties. When requested by the Owner, the Contractor shall furnish evidence of compliance with the Texas Prevailing Wage Law.

2.2.1.1 Submit a copy of each worker wage-rate notification to the ODR with the application for progress payment for the period during which the worker was engaged in activities on behalf of the Project.

2.2.1.2 The “**Prevailing Wage Schedule**” is determined by the Owner in compliance with Tex. Gov’t Code, Chapter 2258. Should the Contractor at any time become aware that a particular skill or trade not reflected on the Owner’s Prevailing Wage Schedule will be or is being employed in the Work, whether by the Contractor or by a Subcontractor, the Contractor shall promptly inform the ODR of the proposed wage to be paid for the skill along with a justification for same. The Contractor is responsible for determining the most appropriate wage for a particular skill in relation to similar skills or trades identified on the Prevailing Wage Schedule. In no case shall any worker be paid less than the wage indicated for Laborers.

2.2.1.3 **Penalty for Violation.** The Contractor will pay to the Owner a penalty of sixty dollars (\$60) for each worker employed for each calendar day, or portion thereof, that the worker is paid less than the wage rates stipulated in the Prevailing Wage Schedule. It is understood that Contractor may opt to seek subsequent reimbursement of these amounts from responsible subcontractors/direct employers.

2.2.1.4 **Complaints of Violations.**

2.2.1.4.1 **Owner’s Determination of Good Cause.** Upon receipt of information concerning a violation of Tex. Gov’t Code, Chapter 2258, the Owner will, within 31 days, make an initial determination as to whether good cause exists that a violation occurred. The Owner will send documentation of the initial determination to the Contractor against whom the violation was alleged, and to the worker involved. Upon making a good-cause finding, the Owner will retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the Prevailing Wage Schedule and any supplements thereto, together with the applicable penalties, such amounts being subtracted from successive progress payments pending a final decision on the violation.

2.2.1.4.2 If the Contractor and claimant worker reach an agreement concerning the claim, the Contractor shall promptly notify the Owner in a written document countersigned by the worker.

2.2.1.4.3 **Arbitration Required.** If the violation is not resolved within 14 days following initial determination by the Owner, the Contractor and the claimant worker must participate in binding arbitration in accordance with the Texas General Arbitration Act, Texas Civil Practice & Remedies Code Chapter 171. For a period not to exceed 10 days, after which, if no agreement reached, a district court may be petitioned by any of the parties to the arbitration to appoint an arbitrator whose decision will be binding on all parties.

2.2.1.4.4 **Arbitration Award.** If an arbitrator assesses an award against the Contractor, the Contractor shall promptly furnish a copy of said award to the Owner. The Owner may use any amounts retained under Article 2.2.1.4.1 to pay the worker the amount as designated in the arbitration award. If the retained funds are insufficient to pay the worker in accordance with the arbitration award, the worker has a right of action against the Contractor, and/or the surety to receive the amount owed, plus attorneys' fees and court costs. The Owner has no duty to release any funds to either the claimant or the Contractor until it has received the notices of agreement or the arbitration award.

2.2.1.4.5 **No Extension of Time.** If the Owner's determination proves valid that good cause existed to believe a violation had occurred, the Contractor is not entitled to an extension of time for any delay arising directly or indirectly from of the arbitration procedures set forth herein.

2.3 **Venue for Suits.** The venue for any suit arising from this contract will be in a court of competent jurisdiction in Houston, Harris County, Texas, or as may otherwise designated in the Supplementary General Conditions.

2.4 **Licensing of Trades.** The Contractor shall comply with all applicable provisions of state law related to license requirements for skilled tradesmen, Contractors, suppliers and or laborers, as necessary to accomplish the Work. In the event the Contractor, or one of its Subcontractors, loses its license during the term of performance of the Contract, the Contractor shall promptly hire or contract with a licensed provider of the service at no additional cost to the Owner.

2.5 **Royalties, Patents & Copyrights.** The Contractor shall pay all royalties and license fees, defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

2.6 **State Sales and Use Taxes.** The Owner qualifies for exemption from certain State and Local Sales and Use Taxes pursuant to the provisions of Tex. Tax Code, Chapter 151. The Contractor may claim exemption from payment of applicable State taxes by complying with such procedures as prescribed by the State Comptroller of Public Accounts. Owner is not required to reimburse Contractor for taxes paid on items that qualify for tax exemption.

### **Article 3. General Responsibilities of Owner & Contractor**

3.1 **Owner's General Responsibilities.** The Owner is the entity identified as such in the Contract and referred to throughout the Contract Documents as if singular in number.

3.1.1 **Preconstruction Conference.** Prior to, or concurrent with, the issuance of Notice to Proceed, a conference will be convened for attendance by the Owner, Contractor, Architect/Engineer (AE) and appropriate Subcontractors. The purpose of the conference is to establish a working understanding among the parties as to the Work, the operational conditions at the Project Site, and general administration of the Project. Topics include communications, schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, maintaining required records and all other matters of importance to the administration of the Project and effective communications between the Project team members.

3.1.2 **Owner's Designated Representative.** Prior to the start of construction, Owner will identify the Owner's Designated Representative (ODR), who has the express authority to act and bind the Owner to the extent and for the purposes described in the Contract, including responsibilities for general administration of the Contract.

3.1.2.1 Unless otherwise specifically defined elsewhere in the Contract Documents, the ODR is the single point of contact between the Owner and Contractor. Notice to the ODR, unless otherwise noted, constitutes notice to the Owner under the Contract.

3.1.2.2 All directives on behalf of the Owner will be conveyed to the Contractor by the ODR in writing.

3.1.3 **Owner Supplied Materials and Information.**

3.1.3.1 The Owner will furnish to the Contractor those surveys describing the physical characteristics, legal description, limitations of the site, site utility locations, and other information used in the preparation of the Contract Documents.

3.1.3.2 The Owner will provide information, equipment, or services under the Owner's control to the Contractor with reasonable promptness.

3.1.4 **Availability of Lands.** The Owner will furnish, as indicated in the Contract, all required rights to use the lands upon which the Work occurs. This includes rights-of-way and easements for access and such other lands that are designated for use by the Contractor. The Contractor shall comply with all Owner identified encumbrances or restrictions specifically related to use of lands so furnished. The Owner will obtain and pay for easements for permanent structures or permanent changes in existing facilities, unless otherwise required in the Contract Documents.

3.1.5 **Limitation on Owner's Duties.**

3.1.5.1 The Owner will not supervise, direct, control or have authority over or be responsible for Contractor's means, methods, technologies, sequences or procedures of construction or the safety precautions and programs incident thereto. The Owner is not responsible for any failure of Contractor to comply with laws and regulations applicable to the Work. The Owner is not responsible for the failure of Contractor to perform or furnish the Work in accordance with the Contract Documents. Owner is not responsible for the acts or omissions of Contractor, or any of its Subcontractor, suppliers or of any other person or organization performing or furnishing any of the Work on behalf of the Contractor.

3.1.5.2 The Owner will not take any action in contravention of a design decision made by the AE in preparation of the Contract Documents, when such actions are in conflict with statutes under which the AE is licensed for the protection of the public health and safety.

3.2 **Role of Architect/Engineer.** Unless specified otherwise in the Contract between the Owner and the Contractor, the AE shall provide general administration services for the Owner during the construction phase of the Project. Written correspondence, requests for information, and shop drawings/submittals shall be directed to the AE for action. The AE has the authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument, which will be furnished to the Contractor by the ODR, upon request.

3.2.1 **Site Visits.**

3.2.1.1 The AE will make visits to the site at intervals as provided in the AE's contract agreement with the Owner, to observe the progress and the quality of the various aspects of Contractor's executed Work and report findings to the Owner.

3.2.1.2 The AE has the authority to interpret Contract Documents and inspect the Work for compliance and conformance with the Contract. Except as referenced in Article

3.1.5.2 The Owner retains the sole authority to accept or reject Work and issue direction for correction, removal, or replacement of Work.

3.2.2 **Clarifications and Interpretations.** It may be determined that clarifications or interpretations of the Contract Documents are necessary. Upon direction by the ODR such clarifications or interpretations will be provided by the AE consistent with the intent of the Contract Documents. The AE will issue these clarifications with reasonable promptness to the Contractor as Architect's Supplemental Instruction (ASI) or similar instrument. If the Contractor believes that such clarification or interpretation justifies an adjustment in the Contract Sum or the Contract Time, the Contractor shall so notify the Owner in accordance with the provisions of Article 11.

3.2.3 **Limitations on Architect/Engineer Authority.** The AE is not responsible for:

3.2.3.1 The Contractor's means, methods, techniques, sequences, procedures, safety, or programs incident to the Project nor will the AE supervise, direct, control or have authority over the same.

3.2.3.2 The Failure of Contractor to comply with laws and regulations applicable to the furnishing or performing the Work.

3.2.3.3 The Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

3.2.3.4 Acts or omissions of the Contractor, or of any other person or organization performing or furnishing any of the Work.

3.3 **Contractor's General Responsibilities.** The Contractor is solely responsible for implementing the Work in full compliance with all applicable laws and the Contract Documents and shall supervise and direct the Work using the best skill and attention to assure that each element of the Work conforms to the Contract Documents. The Contractor is solely responsible for all construction means, methods, techniques, safety, sequences, coordination and procedures. ***The Contractor is responsible for visiting the site and being familiar with local conditions such as the location, accessibility, and general character of the site and/or building.***

3.3.1 **Project Administration.** The Contractor shall provide Project administration for all Subcontractors, vendors, suppliers, and others involved in implementing the Work and shall coordinate administration efforts with those of the AE and ODR in accordance with these General Conditions and provisions of Division 1 Specifications, and as outlined in the Pre-construction Conference.

3.3.1.1 ***The Contractor shall furnish to the ODR one copy of the current edition of Means Facility Cost Data at no additional cost. This document shall be in either hard copy format or electronic CD, at option of the ODR.***

3.3.1.2 ***The Contractor shall furnish to the ODR one copy of the current edition of the "Rental Rate Blue Book for Construction Mobilization Costs" at no additional cost. This document shall be in either hard copy format or electronic CD, at option of the ODR.***

3.3.2 **Contractor's Superintendent.** Contractor shall employ a competent resident superintendent who will be present at the Project Site during the progress of the Work. The superintendent is subject to the approval of the ODR. Contractor may not change approved superintendents during the course of the Project without the written approval of the ODR unless the superintendent leaves the employ of the Contractor.

3.3.3 **Labor.** Contractor shall provide competent, suitably qualified personnel to survey, lay-out, and construct the Work as required by the Contract Documents. Maintain good discipline and order at the Site at all times.

3.3.4 **Services, Materials, and Equipment.** Unless otherwise specified, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities, incidentals, and services necessary for the construction, performance, testing, start-up, inspection and completion of the Work.

3.3.5 **Non-Compliant Work.** Should the AE and/or the ODR identify Work as noncompliant with the Contract Documents, the ODR will communicate the finding to the Contractor and the Contractor will correct such Work at its expense. The approval of Work by either the AE or ODR does not relieve the Contractor from the obligation to comply with all requirements of the Contract Documents.

3.3.6 **Subcontractors.** Contractor shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom the Owner may have reasonable objection. The Owner will communicate such objections in writing. The Contractor is not required to employ any Subcontractor, supplier or other person or organization to furnish any of the work to whom the Contractor has reasonable objection. The Contractor will not substitute Subcontractors without the acceptance of the Owner.

3.3.6.1 All Subcontracts and supply contracts shall be consistent with and bound to the terms and conditions of the Contract Documents including provisions of the Contract between the Contractor and the Owner.

3.3.6.2 The Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor. The Contractor shall require all Subcontractors, suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner only through the Contractor. The Contractor shall furnish to the Owner a copy of each first-tier subcontract promptly after its execution. The Contractor agrees that the Owner has no obligation to review or approve the content of such contracts and that providing the Owner such copies in no way relieves the Contractor of any of the terms and conditions of the Contract, including, without limitation, any provisions of the Contract which require the Subcontractor to be bound to the Contractor in the same manner in which the Contractor is bound to the Owner.

3.3.7 **Continuing the Work.** The Contractor shall carry on the Work and adhere to the progress schedule during all disputes, disagreements or alternative resolution processes with the Owner. The Contractor shall not delay or postpone any Work because of the pending resolution of any disputes, disagreements or processes, except as the Owner and the Contractor may agree in writing.

3.3.8 **Cleaning.** At all times, the Contractor shall keep the Site and the Work clean and free from accumulation of waste materials or rubbish caused by the construction activities under the Contract. The Contractor shall ensure that the entire Project is thoroughly cleaned prior to requesting Substantial Completion Inspection and, again, upon completion of the Project prior to the final inspection.

3.3.9 **Acts and Omissions of Contractor, its Subcontractors and Employees.** The Contractor is responsible for acts and omissions of his employees and all its Subcontractors, their agents and employees. The Owner may, in writing, require the Contractor to remove from the Project any of Contractor's or its Subcontractors employees that the ODR finds to be careless, incompetent, or otherwise objectionable.

3.3.10 **Indemnification of Owner.** The Contractor covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Owner and the elected officials, employees, officers, directors, volunteers, and representatives of the Owner, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees (including attorney's fees), fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Owner directly or indirectly arising out of, resulting from or related to Contractor's activities under this Contract, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or the Subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph does not apply to any liability resulting from the negligence of the Owner, officers or employees, or separate contractors in instances where such negligence causes personal injury, death or property damage. IN THE EVENT CONTRACTOR AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE STATE UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

3.3.10.1 The provisions of this Indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.



3.3.10.2 The Contractor shall, no later than ninety (90) days following the event giving rise to a claim, advise the Owner in writing of any claim or demand against the Owner or the Contractor known to the Contractor related to or arising out of the Contractor's activities under this Contract.

3.3.11 **Ancillary Areas.** The Contractor shall operate and maintain operations and associated storage areas at the site of the Work in accordance with the following:

3.3.11.1 Confine all Contractor operations, including storage of materials and employee parking upon the Site of Work, to areas designated by the Owner.

3.3.11.2 The Contractor may erect, at its own expense, temporary buildings that will remain its property. Remove such buildings and associated utility service lines upon completion of the Work, unless the Contractor requests and the Owner provides written consent that it may abandon such buildings and utilities in place.

3.3.11.3 Use only established roadways or construct and use such temporary roadways as may be authorized by the Owner. Do not allow load limits of vehicles to exceed the limits prescribed by appropriate regulations or law. Provide protection to road surfaces, curbs, sidewalks, trees, shrubbery, sprinkler s, drainage structures and other like existing improvements to prevent damage and repair any damage thereto at the expense of the Contractor.

3.3.11.4 The Owner may restrict the Contractor's entry to the site to specifically assigned entrances and routes.

3.3.12 **Separate Contracts.** Additional Contractor responsibilities when the Owner awards separate Contracts:

3.3.12.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under these or similar contract conditions.

3.3.12.2 The Owner reserves the right to perform operations related to the Project with the Owner's own forces.

3.3.12.3 If Owner awards a separate contract, the conditions described herein continue to apply except as may be amended by Change Order.

3.3.12.4 ***The Contractor shall cooperate with other Owner's separate Contractors employed on the Project, including providing access to Site and Project information as requested.***

#### **Article 4. Small Business (SB) Development Plan**

4.1 **General Description.** The purpose of the Small Business (SB) Development Program is to promote equal business opportunities for economically disadvantaged businesses to contract with the HCC in accordance with the goals specified in HCC Small Business Requirements.

4.1.1 State agencies are required by statute to make a good faith effort to assist SBs in participating in contract awards issued by the State. 1 TAC §111.11-111.28, outline the state's policy to encourage outreach to and potential utilization of SBs in state contracting opportunities through race, ethnic and gender neutral means.

4.1.2 A Contractor who contracts with the HCC in an amount of \$100,000 is required to make a good faith effort to award subcontracts to SBs in accordance with HCC Board policy by submitting a SB Subcontracting Plan at the time of bidding and complying with the SB Subcontracting Plan after it is accepted by the Owner and during the term of the contract.

4.2 **Compliance with Approved SB Subcontracting Plan.** Contractor, having been awarded this Contract in part by complying with the SB Development Program policies, hereby covenants to continue to comply with the SB Program as follows:

4.2.1 Prior to substituting a SB Subcontracting Plan the Contractor will promptly notify the Owner in the event a change is required for any reason; the Owner must approve and accept the substituted SB Subcontracting Plan.

4.2.2 Conduct the good faith effort activities required and provide the Owner with necessary documentation to justify approval of a change to the approved SB Subcontracting Plan.

4.2.3 Cooperate in the execution of a Change Order or such other approval of the change in the SB Subcontracting Plans as the Contractor and Owner may agree to.

4.2.4 Maintain and make available to Owner upon request business records documenting compliance with the accepted SB Subcontracting Plan.

4.2.5 Upon receipt of payment for performance of Work, submit to Owner a compliance report, in the format required by the Owner that demonstrates Contractor's performance of the SB Subcontracting Plan.

4.2.6 Promptly and accurately explain and provide supplemental information to Owner to assist in the Owner's investigation of the Contractor's good faith effort to fulfill the SB Subcontracting Plan and the requirements under 1 TAC §111.14.

4.3 **Failure to Demonstrate Good Faith Effort.** Upon a determination by Owner that Contractor has failed to demonstrate a good faith effort to fulfill the SB Subcontracting Plan or any contract covenant detailed above, the Owner may, in addition to all other remedies available to it, may bar the Contractor from future contracting opportunities with the Owner.

## **Article 5. Bonds & Insurance**

5.1 **Construction Bonds.** The Contractor is required to tender to Owner, prior to commencing the Work, public works performance and payment bonds, as required by Texas Government Code Chapter 2253.

5.1.1 A **Performance Bond** is required if the Contract Sum is in excess of \$100,000. The Performance Bond is solely for the protection of the Owner. The penal sum of the Performance Bond is to be for 100 % of the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. The form of the bond shall be the form of bond approved by Attorney General of Texas. The Performance Bond shall be effective through the Contractor's warranty period.

5.1.2 A **Payment Bond** is required if the Contract Sum is in excess of \$25,000. The penal sum of the payment bond is to be for 100 % of the Contract Sum and is payable to the Owner solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Contractor or a Subcontractor. The form of the bond shall be the bond approved by the Attorney General of Texas.

5.1.3 **Bond Requirements.** Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner, on the Owner's form, and in compliance with the relevant provisions of the Texas Insurance Code. If any bond is for more than 10 percent of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized to do business in the State. A reinsurer may not reinsure for more than 10 percent of its capital and surplus. If a surety upon a bond loses its authority to do business in the State, the Contractor shall, within thirty (30) days after such loss, furnish a replacement bond at no added cost to the Owner.

5.1.4 **Power of Attorney.** Each bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

5.1.5 **Bond Indemnification.** The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Texas Government Code Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.

5.1.6 **Furnishing Bond Information.** Owner shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Texas Government Code §2253.026.

5.1.7 **Claims on Payment Bonds.** Claims on payment bonds must be sent directly to the Contractor and his surety in accordance with Texas Government Code § 2253.041. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the Contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

5.1.8 **Payment Claims when Payment Bond not Required.** The rights of Subcontractors regarding payment are governed by Texas Property Code §§ 53.231 – 53.239 when the value of the Contract between the Owner and the Contractor is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to the Contractor as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

5.1.9 **Sureties** shall be listed on the US Department of the Treasury's Listing Approved Sureties stating companies holding Certificates of Authority as A- acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).

5.2 **Insurance Requirements.** The Contractor shall carry insurance in the types and amounts indicated in this Article for the duration of the Contract. The required insurance shall include coverage for Owner's property in the care, custody and control of Contractor prior to construction, during construction and during the warranty period. The insurance shall be evidenced by delivery to the Owner of certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the Owner, and/or its agents, shall be entitled to receive without expense, copies of the policies and all endorsements. The Contractor shall update all expired policies prior to submission for monthly payment. Failure to update policies shall be reason for withholding of payment until renewal is provided to the Owner.

5.2.1 The Contractor shall provide and maintain the insurance coverage with the minimum amounts described below until the end of the warranty period unless otherwise stated in Supplementary General Conditions. Failure to maintain insurance coverage, as required, is grounds for Suspension of Work for Cause pursuant to Article 14. The Contractor will be notified of the date on which the Builder's Risk insurance policy may be terminated through Substantial Completion Notices, Acceptance Notices and/or other means as deemed appropriate by the Owner.

5.2.2 Coverage shall be written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company or otherwise acceptable to Owner.

5.2.2.1 **Insurance coverage required includes:**

5.2.2.1.1 Workers' Compensation. Insurance with limits as required by the Texas Workers' Compensation Act, with the policy endorsed to provide a waiver of subrogation as to the Owner, Employer's Liability insurance of not less than:

\$1,000,000 each accident  
\$1,000,000 disease each employee  
\$1,000,000 disease policy limit

5.2.2.1.2 Commercial General Liability Insurance. Including Independent Contractor's liability, Products and Completed Operations and Contractual Liability, covering, but not limited to, the liability assumed under the indemnification provisions of this contract, fully insuring Contractor's (or Subcontractors) liability for bodily injury and property damage with a combined bodily injury (including death) and property damage minimum limit of:

\$1,000,000 per occurrence  
\$1,000,000 general aggregate  
\$1,000,000 products and completed operations aggregate

Coverage shall be on an "occurrence" basis.

The policy shall include coverage extended to apply to completed operations and explosion, collapse, underground hazards. The policy shall include endorsement CG2503 Amendment-Aggregate Limits of Insurance (Per Project) or its equivalent.

5.2.2.1.3 Asbestos Abatement Liability Insurance, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. \*This requirement applies if the Work or the Project includes asbestos containing materials

The Combined single limit for bodily injury and property damage will be a minimum of \$1,000,000 per occurrence.

Specific Requirement for Claims-Made Form: Required period of coverage will be determined by the following formula: Continuous coverage for life of the contract, plus one (1) year (to provide coverage for the warranty period), and an extended discovery period for a minimum of five (5) years which shall begin at the end of the warranty period.

If this contract is for asbestos abatement only, the All-Risk Builder's Risk or All-Risk Installation Floater (e) is not required.

5.2.2.1.4 Comprehensive Automobile Liability Insurance, covering owned, hired, and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance is to include coverage for loading and unloading hazards.

5.2.2.1.5 All Risk Builder's Risk Insurance (or All Risk Installation Floater for instances in which the Project involves solely the installation of equipment). Coverage shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood, Earthquake, Theft and damage resulting from faulty workmanship, design or materials. If Builder's Risk, limit shall be equal to 100 percent of the contract. If Installation Floater, limit shall be equal to 100 percent of the contract cost. The policy shall be written jointly in the names of the Owner, the Contractor, Subcontractors and, Sub-subcontractors shall be named as additional insured. The policy shall have endorsements as follows:

5.2.2.1.5.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

5.2.2.1.5.2 This insurance shall not contain an occupancy clause suspending or reducing coverage should the Owner occupy, or begin beneficial occupancy before the Owner has accepted final completion.

5.2.2.1.5.3 Loss, if any, shall be adjusted with and made payable to the Owner as Trustee for the insureds as their interests may appear; the right of subrogation under the Builder's Risk policy shall be waived as to the Owner. The Owner shall be named as Loss Payee. For renovation Projects or Projects that involve portions of work contained within an existing structure, refer to Special Conditions for possible additional Builder's Risk insurance requirements.

5.2.2.1.6 "Umbrella" Liability Insurance. The Contractor shall obtain, pay for and maintain umbrella liability insurance in an amount acceptable to Owner depending on the size of the Project, which shall be effective during the Contract term, insuring the Contractor (or Subcontractor) for an amount of not less than amount specified in the Supplementary General Conditions or Special Conditions that provides coverage at least as broad as and applies in excess and follows form of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

If this contract is for asbestos abatement only, the "Umbrella" Excess Liability is not required

5.2.3 Policies must include the following clauses, as applicable:

5.2.3.1 This insurance shall not be canceled, materially changed, or non-renewed until after thirty (30) days prior written notice has been given to the Owner.

5.2.3.2 It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the Owner for liability arising out of operations under the Contract with the Owner.

5.2.3.3 The Owner, its officials, directors, employees, representatives, and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured performed under contract with the Owner. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation policy.

5.2.3.4 The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner.

5.2.4 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall require each Subcontractor performing work under the Contract, at the Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the Contractor may include its Subcontractors as additional insured on its own coverage as prescribed under these requirements. The Contractor's certificate of insurance shall note in such event that the Subcontractors are included as additional insured's and that Contractor agrees to provide Workers' Compensation for the Subcontractors and their employees. The Contractor shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The Contractor must retain the certificates of insurance for the duration of the Contract plus 5 years and shall have the responsibility of enforcing these insurance requirements among its Subcontractors. The Owner shall be entitled, upon request and without expense, to receive copies of these certificates.

5.2.5 Workers' Compensation Insurance Coverage must meet the statutory requirements of the Texas Labor Code §401.011(44) and specific to construction Projects for public entities as required by Texas Labor Code §406.096.

**A. Definitions:**

***Certificate of coverage ("certificate").*** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Project, for the duration of the Project.

***Duration of the Project*** - includes the time from the beginning of the work on the Project until the Contractor's/person's work on the Project has been completed and accepted by the governmental entity.

***Persons providing services on the Project ("Subcontractor" in §406.096)*** - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, Subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

**B.** The ***Contractor*** shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

**C.** The ***Contractor*** must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

**D.** If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

**E.** The ***Contractor*** shall obtain from each person providing services on a Project, and provide to the governmental entity:

***(1) a certificate of coverage, prior to that person beginning work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and***

***(2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.***

**F.** The ***Contractor*** shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

**G.** The ***Contractor*** shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

H. The **Contractor** shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The **Contractor** shall contractually require each person with whom it contracts to provide services on a Project, to:

(1) *provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;*

(2) *provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;*

(3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;*

(4) *obtain from each other person with whom it contracts, and provide to the Contractor:*

(a) *a certificate of coverage, prior to the other person beginning work on the Project; and*

(b) *a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;*

(5) *retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;*

(6) *notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and*

(7) *contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.*

J. *By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.*

K. *The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.*

## Article 6. Contract Documents

## 6.1 Drawings and Specifications.

6.1.1 **Copies Furnished.** The Contractor will be furnished, free of charge, the number of complete sets of the Drawings and Specifications as provided in the Supplementary General Conditions or Special Conditions. Additional complete sets of Drawings and Specifications, if requested, will be furnished at reproduction cost to the one requesting such additional sets.

6.1.2 **Ownership of Drawings and Specifications.** All Drawings, Specifications and copies thereof furnished by the AE are to remain AE's property. These documents are not to be used by Contractor on any other Project, and with the exception of one Contract set for the Contractor, are to be returned to the Architect/Engineer, upon request, following completion of the Work.

6.1.3 **Interrelation of Documents.** The Contract Documents as referenced in the Agreement between the Owner and the Contractor are complimentary, and what is required by one shall be as binding as if required by all.

6.1.4 **Resolution of Conflicts in Documents.** Where conflicts may exist between and/or within the Contract Documents, the higher quality, greater quantity, more restrictive, and/or more expensive requirement shall be **required**. The Contractor shall notify the AE and the ODR **of any conflict before** executing the work in question.

6.1.5 **Contractor's Duty to Review Contract Documents.** In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to pricing or commencing the Work, the Contractor shall examine and compare the Contract Documents, information furnished by the Owner, relevant field measurements made by the Contractor and any visible or reasonably anticipated conditions at the site affecting the Work. This duty extends throughout the construction phase prior to commencing each particular work activity and/or installation.



## 6.1.6 Discrepancies and Omissions in Drawings and Specifications

6.1.6.1 ***The Owner does not warrant or make any representations as to the accuracy or completeness of the information furnished to the Contractor by the Owner.*** The Contractor shall promptly report to the ODR and to the AE the discovery of any apparent or suspected error, omission or inconsistency in the Contract Documents prior to execution of the Work.

6.1.6.2 It is recognized that the Contractor is not acting in the capacity of a licensed design professional..

6.1.6.3 It is further recognized that the Contractor's examination of contract documents is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions or inconsistencies or to ascertain compliance with applicable laws, building codes or regulations.

6.1.6.4 The Contractor has a shared responsibility for reporting and resolution of discrepancies, errors, and omissions in the Contract Documents. In such case, the Contractor's responsibility pertains to review, coordination, and recommendation of resolution strategies within budget constraints, but does not establish a liability for design.

6.1.6.5 The Contractor has no liability for errors, omissions, or inconsistencies unless the Contractor knowingly failed to report a recognized problem to the Owner or the Work is executed under a Design-Build or Contractor contract as outlined above. Should the Contractor fail to perform the examination and reporting obligations of these provisions, the Contractor is responsible for avoidable costs, direct, and/or consequential damages.

6.2 **Requirements for Record Documents.** The Contractor shall maintain at the Site one copy of all Drawings, Specifications, addenda, approved Submittals, Contract modifications, and all Project correspondence. The Contractor shall keep current and maintain Drawings and Specifications in good order with postings and markings to record actual conditions of Work and show and reference all changes made during construction. The Contractor shall provide Owner and AE access to these documents.

6.2.1 The Contractor shall maintain this record set of Drawings and Specifications which reflect the "As Constructed" conditions and representations of the Work performed, whether it be directed by addendum, Change Order or otherwise. The Contractor shall make available all records prescribed herein for reference and examination by the Owner and its representatives and agents.

6.2.2 The Contractor shall update the "As-Constructed" Drawings and Specifications monthly prior to submission of periodic partial pay estimates. Contractor's failure to maintain such records constitutes cause for denial of a progress payment otherwise due.

6.2.3 Prior to requesting Substantial Completion Inspection by the ODR and AE, the Contractor shall furnish a complete set of the marked up "As-Constructed" set maintained at the site and one photocopy of same. Concurrently with furnishing these record drawings, the Contractor shall furnish a preliminary copy of each operating and maintenance manual (O&M) required by the Contract Documents, for review by the AE and the ODR.

6.2.4 Once determined acceptable, the Contractor shall provide one set of prints of professionally drafted "As-Constructed" drawings, along with electronic copy on CD, "As-Constructed" specifications in bound volume(s) along with electronic copy on CD, four sets of operating and maintenance manuals and one electronic copy on CD, two sets of approved submittals, and other record documents as required elsewhere in the Contract Documents. ***All electronic copies shall be provided in a format acceptable to the ODR.***

## Article 7. Construction Safety

7.1 **General.** It is the duty and responsibility of the Contractor and all of its Subcontractors to be familiar with, enforce and comply with all requirements of Public Law 91-596, 29 U.S.C. §§651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto. The Contractor shall prepare a Safety Plan specific to the Project and submit a file copy to the ODR and AE prior to commencing Work. In addition, the Contractor and all of its Subcontractors shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and erect and maintain all necessary safeguards for such safety and protection.

7.2 **Notices.** The Contractor shall provide notices as follows:

7.2.1 Notify owners of adjacent property including those that own or operate utility services and/or underground facilities, and utility owners, when prosecution of the Work may affect them or their facilities, and cooperate with them in the protection, removal, relocation and replacement, and access to their facilities and/or utilities.

7.2.2 Coordinate the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations. Maintain a complete file of MSDS for all materials in use on site throughout the construction phase and make such file available to the Owner and its agents as requested.

7.3 **Emergencies.** In any emergency affecting the safety of persons or property, the Contractor shall act to minimize, mitigate, and prevent threatened damage, injury or loss.

7.3.1 Have authorized agents of Contractor respond immediately upon call at any time of day or night when circumstances warrant the presence of Contractor to protect the Work or adjacent property from damage or to take such action pertaining to the Work as may be necessary to provide for the safety of the public.

7.3.2 Give the ODR and AE prompt notice of all such events.

7.3.3 If Contractor believes that any changes in the Work or variations from Contract Documents have been caused by its emergency response, promptly notify the Owner within 72 hours of the emergency response event.

7.3.4 Should Contractor fail to respond, Owner is authorized to direct other forces to take action as necessary and Owner may deduct any cost of remedial action from funds otherwise due the Contractor.

7.4 **Injuries.** In the event of an incident or accident involving outside medical care for an individual on or near the Work, Contractor shall notify the ODR and other parties as may be directed within twenty-four (24) hours of the event.

7.4.1 Record the location of the event and the circumstances surrounding it, by using photography or other means, and gather witness statements and other documentation which describes the event.

7.4.2 Supply the ODR and AE with an incident report no later than 36 hours after the occurrence of the event. In the event of a catastrophic incident (one fatality or three workers hospitalized), barricade and leave intact the scene of the incident until all investigations are complete. A full set of incident investigation documents, including facts, finding of cause, and remedial plans shall be provided within one week after occurrence, unless otherwise directed by legal counsel. Contractor shall provide the ODR with written notification within one week of such catastrophic event if legal counsel delays submission of full report.

7.5 **Environmental Safety.** Upon encountering any previously unknown potentially hazardous material, or other materials potentially contaminated by hazardous material, Contractor shall immediately stop work activities impacted by the discovery, secure the affected area, and notify the ODR immediately.

7.5.1 Bind all Subcontractors to the same duty.

7.5.2 Upon receiving such notice, the ODR will promptly engage qualified experts to make such investigations and conduct such tests as may be reasonably necessary to determine the existence or extent of any environmental hazard. Upon completion of this investigation, the ODR will issue a written report to the Contractor identifying the material(s) found and indicate any necessary steps to be taken to treat, handle, transport or dispose of the material.

7.5.3 The Owner may hire third-party Contractors to perform any or all such steps.

7.5.4 Should compliance with the ODR's instructions result in an increase in the Contractor's cost of performance, or delay the Work, the Owner will make an equitable adjustment to the Contract price and/or the time of completion, and modify the Contract in writing accordingly.

7.6 **Trenching Plan.** When the Project requires excavation which either exceeds a depth of four feet, or results in any worker's upper body being positioned below grade level, the Contractor is required to submit a trenching plan to the ODR prior to commencing trenching operations. The plan is required to be prepared and sealed by a professional engineer registered in the State of Texas, and employed by the Contractor. Said engineer cannot be anyone who is otherwise either directly or indirectly engaged on this Project.

## **Article 8 Quality Control**

8.1 **Materials & Workmanship.** The Contractor shall execute Work in a good and workmanlike matter in accordance with the Contract Documents. The Contractor shall develop and provide a Quality Control Plan specific to this Project and acceptable to the Owner. Where Contract Documents do not specify quality standards, complete and construct all Work in compliance with generally accepted construction industry standards. Unless otherwise specified, incorporate all new materials and equipment into the Work under the Contract.

### **8.2 Testing.**

8.2.1 Contractor Testing. Except where required by law to be furnished directly by the Owner, the Contractor is responsible for coordinating and paying for all routine and special tests required to confirm compliance with quality and performance requirements of the Contract Documents. This "quality control" testing shall include any particular testing required by the Specifications and the following general tests.

8.2.1.1 Any test of basic material or fabricated equipment included as part of a submittal for a required item in order to establish compliance with the Contract Documents.

8.2.1.2 Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to establish compliance with the Contract Documents.

8.2.1.3 Routine, preliminary, start-up, pre-functional and operational testing of building equipment and s as necessary to confirm operational compliance with requirements of the Contract Documents.

8.2.1.4 All subsequent tests on original or replaced materials conducted as a result of prior testing failure.

8.2.2 **Owner Testing.** The Owner reserves the right to subject materials incorporated into the Project to routine tests as may be specified or as deemed necessary by the ODR or the AE to ensure compliance with the quality and/or

performance requirements of the Contract Documents and/or with laws, ordinances, rules, regulations and/or orders of any public authority having jurisdiction. The results of such “quality assurance” testing will be provided to the Contractor and, to the extent provided, the Contractor may rely on findings.

8.2.3 All testing shall be performed in accordance with standard test procedures by an accredited laboratory, or special consultant as appropriate, acceptable to the Owner. Results of all tests shall be provided promptly to the ODR, Architect/Engineer and the Contractor.

8.2.4 **Non-Compliance (Test Results).** Should any of the tests indicate that a material and/or does not comply with the contract requirements, the burden of proof remains with the Contractor, subject to:

8.2.4.1 Contractor selection and submission of the laboratory for Owner acceptance.

8.2.4.2 Acceptance by the Owner of the quality and nature of tests.

8.2.4.3 All tests taken in the presence of the Architect/Engineer and/or ODR, or their representatives.

8.2.4.4 If tests confirm that the material/s comply with Contract Documents, the Owner will pay the cost of the test.

8.2.4.5 If tests reveal noncompliance, the Contractor will pay those laboratory fees and costs of that particular test and all future tests, of that failing Work, necessary to eventually confirm compliance with Contract Documents.

8.2.4.6 Proof of noncompliance with the Contract Documents will make the Contractor liable for any corrective action which the ODR determines appropriate, including complete removal and replacement of noncompliant work or material.

8.2.5 **Notice of Testing.** The Contractor shall give the ODR and the AE timely notice of its readiness and the date arranged so the ODR and AE may observe such inspection, testing or approval.

8.2.6 **Test Samples.** The Contractor is responsible for providing samples of sufficient size for test purposes and for coordinating such tests with their Work Progress Schedule to avoid delay.

8.2.7 **Covering Up Work** - If the Contractor covers up any Work without providing the Owner an opportunity to inspect, the Contractor shall, if requested by ODR, uncover and recover the work at Contractor’s expense.

### 8.3 **Submittals**

8.3.1 **Contractor’s Submittals.** Submit with reasonable promptness consistent with the Project Schedule and in orderly sequence all Shop Drawings, Samples, or other information required by the Contract Documents, or subsequently required by Change Order. Prior to submitting, the Contractor shall review each submittal for compliance with Contract Documents and certify by approval stamp affixed to each copy. Submittal data presented without the Contractor’s certification will be returned without review or comment, and any delay resulting from such certification is the Contractor’s responsibility.

8.3.1.1 Within twenty-one (21) calendar days of the effective date of the Notice To Proceed with construction, submit to the ODR, and the AE, a submittal schedule/register, organized by specification section, listing all items to be furnished for review and approval by the Architect/Engineer and Owner. The list shall include shop drawings, manufacturer’s literature, certificates of compliance, materials samples, materials colors, guarantees, and all other items identified throughout the specifications.

8.3.1.2 Indicate the type of item, contract requirements reference, and Contractor's scheduled dates for submitting the item along with the requested dates for approval answers from the Architect/Engineer and Owner. The submittal register shall indicate the Projected dates for procurement of all included items and shall be updated at least monthly with actual approval and procurement dates. Show and allow a minimum of thirty (30) calendar days duration after receipt by the Architect/Engineer and ODR for review and approval. If re-submittal is required, allow a minimum of an additional fifteen (15) calendar days for review. Submit the updated submittal register with each request for progress payment. The Owner may establish routine review procedures and schedules for submittals at the preconstruction conference and/or elsewhere in the Contract Documents. ***Failure to update and provide the submittal schedule/register as required shall constitute cause for Owner to withhold payment otherwise due.***

8.3.1.3 Coordinate the submittal register with the Work Progress Schedule. Do not schedule Work requiring a submittal to begin prior to scheduling review and approval of the related submittal. Revise and/or update both schedules monthly to ensure consistency and current Project data. Provide to the ODR the updated submittal register and schedule with each application for progress payment. Refer to requirements for the Work Progress Schedule for inclusion of procurement activities therein. Regardless, the submittal register shall identify dates submitted and returned and shall be used to confirm status and disposition of particular items submitted, including approval or other action taken and other information not conveniently tracked through the Work Progress Schedule.

8.3.1.4 By submitting Shop Drawings, Samples or other required information, the Contractor represents and certifies that they have determined and verified all applicable field measurements, field construction criteria, materials, catalog numbers and similar data; and has checked and coordinated each Shop Drawing and Sample with the requirements of the Work and the Contract Documents.

8.3.2 **Review of Submittals.** AE and ODR review is only for conformance with the design concept and the information provided in the Contract Documents. Responses to submittals will be in writing. The approval of a separate item does not indicate approval of an assembly in which the item functions. The approval of a submittal does not relieve the Contractor of responsibility for any deviation from the requirements of the Contract unless the Contractor informs the AE and ODR of such deviation in a clear, conspicuous, and written manner on the submittal transmittal and at the time of submission, and obtains the Owner's written specific approval of the particular deviation.

8.3.3 **Correction and Resubmission.** Make any corrections required to a submittal and resubmit the required number of corrected copies promptly so as to avoid delay, until submittal approval. Direct attention in writing to the AE and the ODR, when applicable, to any new revisions other than the corrections requested on previous submissions.

8.3.4 **Limits on Shop Drawing Approvals.** The Contractor shall not commence any Work requiring a submittal until approval of the submittal. Construct all such work in accordance with approved submittals. Approval of Shop Drawings and Samples is not authorization to Contractor to perform extra work or changed work unless authorized through a Change Order. The AE's and ODR's approval, if any, does not relieve Contractor from responsibility for defects in the Work resulting from errors or omissions of any kind on the submittal, regardless of any approval action.

8.3.5 **No Substitutions Without Approval.** The ODR and the AE may receive and consider the Contractor's request for substitution if the Contractor agrees to reimburse the Owner for review costs and if the request satisfies the conditions stated in 8.3.5.1, 8.3.5.2, and 8.3.5.3 below. A request must be based on one of the reasons stated in 8.3.5.4 through 8.3.5.11 below, as determined by the Owner. If the Contractor does not satisfy these conditions, the ODR and AE will return the request without action except to record noncompliance with these requirements. The Owner will not consider the request if the Contractor cannot provide the product or method because of failure to pursue the Work promptly or coordinate activities properly.

8.3.5.1 The substitution must not result in extensive revisions to the Contract Documents.

8.3.5.2 The proposed substitution must conform to the general intent of the Contract Documents and the AE's design intent, and must not result in an increase in cost to the Owner.

8.3.5.3 The request must be timely, fully documented, and properly submitted.

8.3.5.4 The Contractor cannot provide the specified product, assembly or method of construction within the Contract Time.

8.3.5.5 The request directly relates to an "or-equal" clause or similar language in the Contract Documents.

8.3.5.6 The request directly relates to a "product design standard" or "performance standard" clause in the Contract Documents.

8.3.5.7 The requested substitution offers the Owner a substantial advantage in cost, time, energy conservation or other considerations, after deducting additional responsibilities the Owner must assume.

8.3.5.8 The specified product or method of construction cannot receive necessary approval by an authority having jurisdiction, and the ODR can approve the requested substitution.

8.3.5.9 The Contractor cannot provide the specified product, assembly or method of construction in a manner that is compatible with other materials and where the Contractor certifies that the substitution will overcome the incompatibility.

8.3.6 **Unauthorized Substitutions at Contractor's Risk.** The Contractor is financially responsible for any additional costs or delays resulting from using materials, equipment or fixtures other than those specified. The Contractor shall reimburse the Owner for any increased design or contract administration costs resulting from such unauthorized substitutions.

#### 8.4 **Field Mock-up**

8.4.1 Mockups shall be constructed prior to commencement of a specified scope of work to confirm acceptable workmanship.

8.4.1.1 As a minimum, field mock-ups shall be constructed for roofing s, exterior veneer / finishes, glazing, and any other Work requiring a mock-up as identified throughout the Contract Documents. Mockups for s not part of the Project scope shall not be required.

8.4.1.2 Mock-ups may be incorporated into the Work if allowed by the Contract Documents and if acceptable to the ODR. If mock-ups are freestanding, they shall remain in place until otherwise directed by the Owner.

8.4.1.3 The Contractor shall include field mock-ups in their Work Progress Schedule and shall notify the ODR and Architect/Engineer of readiness for review sufficiently in advance to coordinate review without delay.

#### 8.5 **Inspection During Construction**

8.5.1 The Contractor shall provide sufficient, safe, and proper facilities, including equipment as necessary for safe access, at all reasonable times for observation and/or inspection of the Work by the Owner and its agents.

8.5.2 The Contractor shall not cover up any work with finishing materials or other building components prior to providing the Owner and its agents an opportunity to perform an inspection of the Work.

8.5.2.1 Should corrections of the Work be required for approval, do not cover up corrected Work until the Owner indicates approval.

8.5.2.2 Provide notification of at least five (5) working days or otherwise as mutually agreed, to the ODR of the anticipated need for a cover up inspection. Should the ODR fail to make the necessary inspection within the agreed period, the Contractor may proceed with cover up Work, but is not relieved of responsibility for Work to comply with requirements of the Contract Documents.

## Article 9. Project Scheduling Requirements

9.1 **Contract Time.** TIME IS AN ESSENTIAL ELEMENT OF THE CONTRACT. The Contract Time is the time between the dates indicated in the Notice to Proceed for Commencement of the Work and for achieving Substantial Completion and Final Completion. The Contract Time can be modified only by Change Order. The Contractor's failure to achieve Substantial Completion the deadline stated in the Contract, or to achieve Final Completion within thirty (30) days following Substantial Completion or as otherwise agreed to in writing will cause damage to the Owner and may subject the Contractor to Liquidated Damages as provided in the Contract Documents.

9.2 **Notice to Proceed.** The Owner will issue a Notice to Proceed which shall state the dates for Commencement of the Work and the deadline for achieving Substantial Completion and Final Completion of the Work.

9.3 **Work Progress Schedule.** Refer to Special Conditions and Division 1 General Administration Specifications for additional schedule requirements. ***This Article pertains to construction phase schedules. Additional requirements for design phase scheduling for Contractor and Design Build contracts are outlined in Division 1 Project Planning and Scheduling Specification.*** Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project not later than twenty-one (21) days after the effective date of the Notice to Proceed to the ODR and the AE. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be computerized Critical Path Method (CPM) with full reporting capability. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, and acceptance of all the Work of the Contract. When acceptable to the Owner, the initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the contract duration.

9.3.1 **Schedule Requirements.** The Contractor shall submit electronic and paper copy of the initial Work Progress Schedule reflecting accurate and reliable representations of the planned progress of the Work, the Work to date if any, and of the Contractor's actual plans for its completion. The Contractor shall organize and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.

9.3.1.1 The Contractor shall re-submit initial Schedule as required to address review comments from AE and ODR until such Schedule is accepted as the Baseline Schedule.

9.3.1.2 Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner of the accurate depiction of all progress to date and that the Contractor will follow the schedule as submitted in performing the Work.

9.3.2 **Schedule Updates.** The Contractor shall update the Work Progress Schedule and the Submittal Schedule monthly, as a minimum, to reflect progress to date and current plans for completing the Work, and submit paper and electronic copy of the update to the AE and ODR as directed. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. The Contractor shall show the anticipated date of completion reflecting all extensions of time granted through Change Order as of the date of the update. The Contractor may revise the Progress Schedule logic only with the Owner's concurrence when in the Contractor's judgment it becomes necessary for the management of the Work. The Contractor shall identify all proposed changes to schedule logic to Owner and to the AE via an Executive Summary accompanying the updated schedule for review prior to implementation of revisions.

9.3.3 **The Work Progress Schedule** is for the Contractor's use in managing the Work and submittal of the Schedule, and successive updates or revisions, is for the information of the Owner and to demonstrate that the Contractor has complied with requirements for planning the Work. The Owner's acceptance of a schedule, schedule update or revision constitutes the Owner's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.

9.3.3.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto does not indicate any approval of the Contractor's proposed sequences and duration.

9.3.3.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute the Owner's consent, alter the terms of the Contract, or waive either the Contractor's responsibility for timely completion or the Owner's right to damages for the Contractor's failure to do so.

9.3.3.3 The Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the contract. Change Orders are the only method of modifying the completion Date(s) and Contract time.

9.4 **Ownership of Float.** Unless indicated otherwise in the Contract Documents, the Contractor shall develop the schedule and their execution plan to provide a minimum of 10 percent total float at the Project level at acceptance of the Baseline Schedule. Float time contained in the Work Progress Schedule is not for the exclusive benefit of the Contractor or the Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.

9.5 **Completion of Work.** The Contractor is accountable for completing the Work in the time stated in the Contract, or as otherwise amended by Change Order.

9.5.1. If, in the judgment of the Owner, the work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of work placement by:

9.5.1.1 An increase in working forces.

9.5.1.2 An increase in equipment or tools.

9.5.1.3 An increase in hours of work or number of shifts.

9.5.1.4 Expedite delivery of materials.

9.5.1.5 Other action proposed if acceptable to Owner.



9.5.2 Within ten (10) calendar days after such notice from the ODR, the Contractor shall notify the ODR in writing of the specific measures taken and/or planned to increase the rate of progress. Include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the Project. Should the ODR deem the plan of action inadequate, take additional steps or make adjustments as necessary to its plan of action until it meets with the ODR's approval.

## 9.6 **Modification of the Contract Time**

9.6.1 Delays and extension of time as hereinafter described are valid only if executed in accordance with provisions set forth in Article 11.

9.6.2 When a delay defined herein as excusable prevents the Contractor from completing the Work within the Contract Time, the Contractor is entitled to an extension of time. The Owner will make an equitable adjustment and extend the number of calendar days lost because of excusable delay, as measured by the Contractor's progress schedule. All extensions of time will be granted in calendar Days. In no event, however, will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which only consume float without delaying the Project completion date.

9.6.2.1 A "**Weather Day**" is a day on which the Contractor's current schedule indicates Work is to be done, and on which inclement weather and related site conditions prevent the Contractor from performing seven continuous hours of Work between the hours of 7:00 a.m. and 6:00 p.m. Weather days are excusable delays. When weather conditions at the site prevent work from proceeding, immediately notify the ODR for confirmation of the conditions. At the end of each calendar month, submit to the ODR and AE a list of Weather Days occurring in that month along with documentation of the impact on critical activities. Based on confirmation by the ODR, any time extension granted will be issued by Change Order. If the Contractor and Owner cannot agree on the time extension, the Owner may issue a ULCO for fair and reasonable time extension.

9.6.2.2 **Excusable Delay.** The Contractor is entitled to an equitable adjustment of time, issued via change order, for delays caused by the following:

9.6.2.2.1 Errors, omissions and imperfections in design which the AE corrects by means of changes in the drawings and specifications.

9.6.2.2.2 Unanticipated physical conditions at the Site which the AE corrects by means of changes to the drawings and specifications or for which the ODR directs changes in the Work identified in the Contract Documents.

9.6.2.2.3 Changes in the Work that effect activities identified in the Contractor's schedule as "critical" to completion of the entire Work, if such changes are ordered by the ODR or the AE.

9.6.2.2.4 Suspension of Work for unexpected natural events (sometimes called "acts of God"), civil unrest, strikes or other events which are not within the reasonable control of the Contractor.

9.6.2.2.5 Suspension of Work for convenience of the ODR, which prevents Contractor from completing the Work within the Contract Time.

9.6.3 The Contractor's relief in the event of such delays is the time impact to the critical path as determined by analysis of the Contractor's schedule. In the event that the Contractor incurs additional direct costs because of the delay, they are to be determined pursuant to the provisions of Article 11.

9.7 **No Damages for Delay.** The Contractor has no claim for monetary damages for delay or hindrances to the work from any cause except when the delay is solely caused by the Owner or Architect.

9.8 **Concurrent Delay.** When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, the Contractor may not be entitled to a time extension for the period of concurrent delay.

9.9 **Other Time Extension Requests.** Time extensions requested in association with changes to the Work directed or requested by the Owner shall be included with the Contractor's proposed costs for such change. Time extensions requested for inclement weather are covered by paragraph 9.6.2.1 above. If the Contractor believes that the completion of the Work is delayed by a circumstance other than for changes directed to the Work or weather, they shall give the ODR written notice, stating the nature of the delay and the activities potentially affected, within five (5) calendar days after the onset of the event or circumstance giving rise to the excusable delay. Provide sufficient written evidence to document the delay. In the case of a continuing cause of delay, only one *notice of delay* is necessary. State claims for extensions of time in numbers of whole or half calendar Days.

9.9.1 Within ten (10) calendar days after the cessation of the delay, the Contractor shall formalize its request for extension of time in writing to include a full analysis of the schedule impact of the delay and substantiation of the excusable nature of the delay. All Changes to the Contract Time or made as a result of such claims is by Change Order, as set forth in Article 11.

9.9.2 No extension of time releases the Contractor or the Surety furnishing a performance or payment bond from any obligations under the contract or such a bond. Those obligations remain in full force until the discharge of the Contract.

9.9.3 **Contents of Time Extension Requests.** Provide with each Time Extension Request a quantitative demonstration of the impact of the delay on Project completion time, based on the Work Progress Schedule. Include with Time Extension Requests a reasonably detailed narrative setting forth:

9.9.3.1 The nature of the delay and its cause; the basis of the Contractor's claim of entitlement to a time extension.

9.9.3.2 Documentation of the actual impacts of the claimed delay on the critical path indicated in the Contractor's Work Progress Schedule, and any concurrent delays.

9.9.3.3 Description and documentation of steps taken by the Contractor to mitigate the effect of the claimed delay, including, when appropriate, the modification of the Work Progress Schedule.

9.9.4 **Owner's Response.** The Owner will respond to the Time Extension Request by providing to the Contractor written notice of the number of Days granted, if any, and giving its reason if this number differs from the number of Days requested by the Contractor.

9.9.4.1 The Owner will not grant time extensions for delays that do not affect the critical path for the Substantial Completion deadline.

9.9.4.2 The Owner will respond to each properly submitted Time Extension Request within fifteen (15) calendar days following receipt. If the Owner cannot reasonably make a determination about the Contractor's entitlement to a time extension within that time, the Owner will notify the Contractor in writing. Unless otherwise agreed by the Contractor, the Owner has no more than fifteen (15) additional calendar days to prepare a final response. If the Owner fails to respond within forty-five (45) calendar days from the date the Time Extension Request is received, the Contractor is entitled to a time extension in the amount requested.

9.10 **Failure to Complete Work Within the Contract Time. TIME IS OF THE ESSENCE OF THIS CONTRACT.** The Contractor's failure to Substantially Complete the Work within the Contract Time or to achieve Final Completion as required will cause damage to the Owner. These damages may be liquidated by agreement of the Contractor and the Owner, as set forth in the Contract Documents.

9.11 **Liquidated Damages.** The Owner may collect Liquidated Damages due from the Contractor directly or indirectly by reducing the Contract Sum in the amount of Liquidated Damages stated in the Contract Documents. The Owner may issue a Unilateral Change Order deducting these costs from Final Payment.

## **Article 10. Payments**

10.1 **Schedule of Values.** The Contractor shall submit to the ODR and the AE for acceptance a Schedule of Values, or Work Breakdown, accurately itemizing material and labor for the various classifications of the Work based on the organization of the specification sections and using the same activity names and terms as the Work Progress Schedule. The accepted Schedule of Values will be the basis for the progress payments under the Contract.

10.1.1 No progress payments will be made prior to receipt and acceptance of the Schedule of Values, provided in such detail as required by the ODR, and submitted not less than twenty-one calendar (21) days prior to the first request for payment. The Schedule of Values shall follow the order of trade divisions of the specifications and include costs for general conditions, fees, contingencies, and Owner cash allowances, if applicable, so that the sum of the items will equal the contract price. As appropriate, assign each item labor and/or material values, the subtotal thereof equaling the value of the work in place when complete.

10.1.2 The Contractor shall retain a copy of all worksheets used in preparation of its bid or proposal, supported by a notarized statement that the worksheets are true and complete copies of the documents used to prepare the bid or proposal. Make the worksheets available to the ODR at the time of Contract execution. Thereafter grant the Owner during normal business hours access to said notarized copy of worksheets at any time during the period commencing upon execution of the Contract and ending one year after final payment.

10.2 **Progress Payments.** The Contractor will receive periodic progress payments for Work performed, materials in place, suitably stored on site, or as otherwise agreed to by the Owner and the Contractor. Payment is not due until receipt by the ODR or his designee of a correct and complete Pay Application in electronic and/or hard copy format as set forth in Supplementary General Conditions, Special Conditions or Division 1 Specifications, and certified by the AE. Progress payments are made provisionally and do not constitute acceptance of work not in accordance with the Contract Documents. The Owner will not process progress payment applications for Change Order work until all parties execute the Change Order.

10.2.1 **Preliminary Pay Worksheet** once each month that a progress payment is to be requested, the Contractor shall submit to the Architect/Engineer and the ODR a complete, clean copy of a preliminary pay worksheet or Preliminary Pay Application, to include the following:

10.2.1.1 The Contractor estimate of the amount of Work performed, labor furnished and materials incorporated into the Work, using the established Schedule of Values.

10.2.1.2 An updated Work Progress Schedule including the Executive Summary and all required schedule reports.

10.2.1.3 Small Business Subcontracting Plan reports

10.2.1.4 Such additional documentation as Owner may require as set forth in the Supplementary General Conditions or elsewhere in the Contract Documents.

10.2.2 **Contractor's Application for Progress Payment.** As soon as practicable, but in no event later than seven days after receipt of the Preliminary Pay Worksheet, the AE and ODR will meet with the Contractor to review the Preliminary Pay Worksheet and to observe the condition of the Work. Based on this review, the ODR and the AE may require modifications to the Preliminary Pay Worksheet prior to the submittal of an application for progress payment, and will promptly notify the Contractor of revisions necessary for approval. As soon as practicable, the Contractor shall submit its Invoice on the appropriate and completed form, reflecting the required modifications to the Schedule of Values required by the AE and/or ODR. Attach all additional documentation required by the ODR and/or AE, as well as an affidavit affirming that all payrolls, bills for labor, materials, equipment, subcontracted work and other indebtedness connected with the Contractor's invoice are paid or will be paid within the time specified in Texas Government Code Chapter 2251. No invoice is complete unless it fully reflects all required modifications, and attaches all required documentation including the Contractor's affidavit.

10.2.3 **Certification by Architect/Engineer.** Within five days or earlier following the AE's receipt of the Contractor's formal invoice, the AE will review the application for progress payment for completeness, and forward to the ODR. The AE will certify that the application is complete and payable, or that it is incomplete, stating in particular what is missing. If the Invoice is incomplete, the Contractor shall make the required corrections and resubmit the Invoice for processing.

10.3 **Owner's Duty to Pay.** The Owner has no duty to pay the Contractor except on receipt by the ODR of; 1) a complete Invoice certified by the AE and 2) the Contractor's updated Work Progress Schedule, and 3) confirmation that the Contractor's as-built documentation at the site is kept current.

10.3.1 Payment for stored materials and/or equipment confirmed by the Owner and AE to be on-site or otherwise properly stored may be limited to 85 percent of the invoice price or 85 percent of the scheduled value for the materials or equipment, whichever is less.

10.3.2 **Retainage.** The Owner will withhold from each progress payment, as retainage, five percent (5%) of the total earned amount, the amount authorized by law, or as otherwise set forth in the Supplementary General Conditions. Retainage is managed in conformance with Texas Government Code Chapter 2252, Government Code, subchapter B.

10.3.2.1 The Contractor shall provide written consent of its Surety for any request for reduction or release of retainage.

10.3.2.2 At least sixty-five (65) percent of the total Contract must be completed before the Owner can consider a retainage reduction or release.

10.3.3 **Price Reduction to Cover Loss.** The Owner may reduce any Periodic Invoice, or application for Progress Payment, prior to payment to the extent necessary to protect the Owner from loss on account of actions of the Contractor including, but not limited to:

10.3.3.1 Defective or incomplete Work not remedied.

10.3.3.2 Damage to Work of a separate Contractor.

10.3.3.3 Failure to maintain scheduled progress or reasonable evidence that the Work will not be completed within the Contract Time.

10.3.3.4 Persistent failure to carry out the Work in accordance with the Contract Documents.

10.3.3.5 Reasonable evidence that the Work cannot be completed for the unpaid portion of the contract sum.

10.3.3.6 Assessment of fines for violations of Prevailing Wage Rate law;

10.3.3.7 Failure to include the appropriate amount of retainage for that periodic progress payment.

10.3.4 Title to all material and Work covered by progress payments transfers to the Owner upon payment.

10.3.4.1 Transfer of title to Owner does not relieve the Contractor of the sole responsibility for the care and protection of materials and Work upon which payments have been made until final acceptance of the entire Work, or the restoration of any damaged Work, or waive the right of the Owner to require the fulfillment of all the terms of the Contract.

10.4 **Progress payments to the Contractor** do not release the Contractor or its surety from any obligations under this Contract.

10.4.1 Upon the Owner's request, the Contractor shall furnish proof of the status of Subcontractor's accounts in a form acceptable to the Owner.

10.4.2 Pay estimate certificates must be signed by a corporate officer or a representative duly authorized by the Contractor.

10.4.3 Provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials in requesting payment for materials.

10.4.4 For purposes of Tex. Gov't Code § 2251.021 (a) (2), the date the performance of service is complete is the date when the Owner's representative approves the application for payment.

10.5 **Off-Site Storage**. With prior approval by the Owner and in the event Contractor elects to store materials at an off-site location, abide by the following conditions, unless otherwise agreed to in writing by the Owner.

10.5.1 Store materials in a Bonded Commercial Warehouse.

10.5.2 Provide separate Insurance Coverage adequate not only to cover materials while in storage, but also in transit from the off-site storage areas to the Project site. Copies of duly authenticated Certificates of Insurance, made out to insure the State Agency which is signatory to the contract, must be filed with the Owner's representative.

10.5.3 Inspection by Owner's representative is allowed at any time. The Owner's Inspectors must be satisfied with the security, control, maintenance, and preservation measures.

10.5.4 Materials for this Project are physically separated and marked for the Project in a sectioned-off area. Only materials which have been approved through the submittal process are to be considered for payment.

10.5.5 Owner reserves the right to reject materials at any time prior to final acceptance of the complete Contract if they do not meet Contract requirements regardless of any previous progress payment made.

10.5.6 With each monthly payment estimate, submit a report to the ODR, AE, and Inspector listing the quantities of materials already paid for and still stored in the off-site location.

10.5.7 Make warehouse records, receipts and invoices available to Owner's representatives, upon request, to verify the quantities and their disposition.

10.5.8 In the event of Contract termination or default by Contractor, the items in storage off-site, upon which payment has been made, will be promptly turned over to Owner or Owner's agents at a location near the jobsite as directed by the ODR. The full provisions of Performance and Payment Bonds on this Project cover the materials off-site in every respect as though they were stored on the Project Site.

## Article 11. Changes

11.1 **Change Orders.** A Change Order issued after execution of the Contract is a written order to the Contractor, signed by the ODR, the Contractor, and the Architect/Engineer, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time can only be changed by Change Order. A Change Order signed by the Contractor indicates his agreement with it, including the adjustment in the Contract Sum and/or the Contract Time. The ODR may issue written authorization for the Contractor to proceed with work of a change order in advance of final execution by all parties. ***In the absence of an agreement with the Contractor on a Change Order, the Owner may issue a Unilateral Change Order that will have the full force and effect of a contract modification. The issuance of a Unilateral Change Order does not prejudice the Contractor's rights to make claims or to appeal disputed matters under terms of the Contract.***

11.1.1 The Owner, without invalidating the Contract, ***and without approval of the Contractor's Surety***, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the Contract Sum and the Contract Time will be adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment shall be made and confirmed in writing in a Change Order.

11.1.2 The parties acknowledge that the specifications and drawings may not be complete or free from errors, omissions or imperfections and that they may require changes or additions in order for the work to be completed to the satisfaction of Owner. Therefore, and notwithstanding any other provisions in this Contract, the parties agree that any errors, omissions or imperfections in the specifications and drawings, or any changes in or additions to them or to the work ordered by Owner and any resulting delays in the work or increases in Contractor's costs and expenses, shall not constitute or give rise to any claim, demand or cause of action of any nature whatsoever in favor of Contractor, whether for breach of contract, *quantum meruit*, or otherwise; provided, however, that Owner shall be liable to Contractor for the sum stated to be due Contractor in any Change Order approved and signed by both parties. The parties agree that the Change Order sum, together with any extension of time contained in the Change Order, shall constitute full compensation to Contractor for all costs, expenses and damages to Contractor, whether direct, consequential or otherwise that are incident to, arise out of, or result directly or indirectly from or indirectly from the work performed by Contractor under such Change Order.

11.1.3 Procedures for administration of Change Orders shall be established by the Owner and stated in Supplementary General Conditions, Special Conditions, or elsewhere in the Contract Documents.

11.1.4 Except as provided above, no order, oral statement, or direction of the Owner or his duly appointed representative shall be treated as a change under this article or entitle the Contractor to an adjustment.

11.1.5 The Contractor agrees that the Owner or any of its duly authorized representatives shall have access and the right to examine any directly pertinent books, documents, papers, and records of the Contractor. Further, the Contractor agrees to include in all its subcontracts a provision giving the Owner or any of its duly authorized representative's access to and the right to examine any directly pertinent books, documents, papers and records of any Subcontractor relating to any claim arising from this Contract, whether or not the Subcontractor is a party to the claim. The right of access and examination described herein shall continue for the duration of any claims brought under the Disputes article of the Contract, litigation, or the settlement of claims arising out of the performance of this Contract until final disposition of such claims, appeals or litigation.

11.2 **Unit Prices.** The Contract Documents may require the Contractor to provide certain work or materials on the basis of unit prices. If the quantity originally contemplated in determining any unit price is **materially** changed such that application of the agreed unit price to the actual quantity of work required will cause substantial inequity to the Owner or the Contractor, the applicable unit price shall be equitably adjusted as provided in the Special Conditions or as agreed to by the parties and incorporated into Change Order.

11.3 **Claims for Additional Costs**

11.3.1 The Contractor shall provide written notice to the Owner and the Architect/Engineer within ninety (90) days of the occurrence of any event or the discovery of any condition that the Contractor claims will cause an increase in the Contract Sum or Contract Time that is not related to a requested change. The Contractor shall not proceed with any work for which it will assert a claim for additional cost or time before providing the written notices, except for emergency situations governed by Article 7.3. Failure to provide the required notices is sufficient grounds for rejecting any claim for an increase in the Contract Sum or the Contract Time arising from the event or the condition. Any adjustment in the Contract Sum or Contract Time for any additional Work shall be authorized by Change Order.

11.3.2 The notice provisions of Article 11.3.1 apply to, but are not limited to, any claims for additional cost or time brought by the Contractor as a result of: 1) any written interpretation of the Contract Documents, 2) any order by the Owner to stop the Work pursuant to Article 14 where the Contractor was not at fault, or 3) any written order for a minor change in the Work issued pursuant to Article 11.4.

11.3.3 Should the Contractor or his Subcontractors fail to call attention of the AE to obvious discrepancies or omissions in the Bid/Proposal Documents during the pre-bid/pre-proposal period, but claim additional costs for corrective work after contract award, the Owner may assume intent to circumvent competitive bidding for necessary corrective work. In such case, the Owner may choose to let a separate contract for the corrective work, or issue a Unilateral Change Order to require performance by the Contractor. Claims for time extensions or for extra cost resulting from delayed notice of contract document discrepancies or omissions will not be considered by the Owner.

11.4 **Minor Changes.** The AE, with concurrence of the ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order which the Contractor shall carry out promptly and record on as-built record documents.

11.5 **Concealed Site Conditions.** If, in the performance of the Contract, subsurface, latent or concealed conditions at the site are found to be materially different from the information included in the bid/proposal documents, or if unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified, the ODR and the Architect/Engineer shall be notified in writing of such conditions before they are disturbed. Upon such notice, or upon its own observation of such conditions, the Architect/Engineer, with the approval of the ODR, will promptly make such changes in the Drawings and Specifications as they deem necessary to conform to the different conditions, and any increase or decrease in the cost of the Work, or in the time within which the Work is to be completed, resulting from such changes will be adjusted by Change Order, subject to the prior approval of the ODR.

11.6 **Extension of Time.** All Changes to the Contract Time shall be made as a consequence of requests as required under Article 9.6, and as documented by Change Order as provided under Article 11.1.

11.7 **Administration of Change Order Requests.** All changes in the Contract shall be administered in accordance with procedures approved by the Owner, and when required make use of such electronic information management (s) as the owner may employ.

11.7.1 Routine changes in the Construction Contract shall be formally initiated by the Architect/Engineer by means of a Change Request form detailing requirements of the proposed change for pricing by the Contractor. This action may be preceded by communications between the Contractor, AE and ODR concerning the need and nature of the change, but such communications shall not constitute a basis for beginning the proposed

Work by the Contractor. Except for emergency conditions described below, approval of the Contractor's cost proposal by the Architect/Engineer and ODR will be required for authorization to proceed with the Work being changed. The Owner will not be responsible for the cost of work changed without prior approval and the Contractor may be required to remove work so installed.

11.7.2 Any unexpected circumstance which necessitates an immediate change in order to avoid a delay in progress of the Work may be expedited by verbal communication and authorization between the Contractor and Owner, with written confirmation following within twenty-four (24) hours. A limited scope not-to-exceed estimate of cost and time will be requested prior to authorizing Work to proceed. Should the estimate be impractical for any reason, the ODR may authorize the use of detailed cost records of such work to establish and confirm the actual costs and time for documentation in a formal Change Order.

11.7.3 Emergency changes to save life or property may be initiated by the Contractor alone (see Article 7.3) with the claimed cost and/or time of such work to be fully documented as to necessity and detail of the reported costs and/or time.

**11.7.4 *The method of incorporating approved changes into the parameters of the accepted Schedule of Values must be coordinated and administered in a manner acceptable to the ODR.***

## 11.8 **Pricing Change Order Work**

11.8.1 All proposed costs for change order work must be supported by itemized accounting of material, equipment and associated itemized installation costs in sufficient detail, following the outline and organization of the established Schedule of Values, to permit analysis by the AE and ODR using current estimating guides and/or practices.

11.8.1.1 Photocopies of Subcontractor and vendor proposals shall be furnished unless specifically waived by the ODR.

11.8.1.2 Contractor shall provide written response to change request within twenty-one (21) calendar days of receipt.

**11.8.1.3 *If the parties cannot agree on an equitable adjustment for labor hours attributable to a change, they shall use the Means Facility Cost Data as a guide for labor hours as a basis of negotiation.***

**11.8.1.4 *If the parties cannot agree on an equitable adjustment for equipment rental charges attributable to a change, they shall use the Rental Rate Blue Book for Construction Mobilization as a basis of negotiation.***

11.8.2 The amounts that the Contractor and/or its Subcontractors add to a Change Order for profit and overhead will also be considered by the Owner before approval is given. The amounts established hereinafter are the maximums that are acceptable to the Owner.

11.8.2.1 For work performed by its forces, the Contractor will be allowed their actual costs for materials, the total amount of wages paid for labor, the total cost of Federal Old Age Benefit (Social Security Tax) and of Worker's Compensation and Comprehensive General Liability Insurance, plus Bond cost if the change results in an increase in the Bond premium paid by the Contractor. To the total of the above costs, the Contractor will be allowed to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general Home Office expenses, and no separate allowance will be made therefore. Allowable percentages for overhead and profit on



changes will not exceed 15 percent if the total of self-performed work is less than or equal to \$10,000, 10 percent if the total of self-performed work is between \$10,000 and \$20,000 and 7.5 percent if the total of self-performed work is over \$20,000, for any specific change priced.

**11.8.2.1.1 On contracts based on a Guaranteed Maximum Price (GMP), the Contractor or Design Build Firm shall NOT be entitled to a percentage mark-up on any change order work unless the Change Order increases the Guaranteed Maximum Price.**

11.8.2.2 For subcontracted Work each affected Subcontractor shall figure its costs, overhead and profit as described above for Contractor's work, all Subcontractor costs shall be combined, and to that total Subcontractor cost the Contractor will be allowed to add a maximum mark-up of 10 percent if the total of all subcontracted work is less than or equal to \$10,000, 7.5 percent if the total of all subcontracted work is between \$10,000 and \$20,000 and 5 percent if the total of all Subcontractor work is over \$20,000.

11.8.2.3 On changes involving both additions and deletions, percentages for overhead and profit will be allowed only on the net addition. The Owner does not accept and will not pay for additional contract cost identified as indirect, consequential, or as damages caused by delay.

## Article 12. Project Completion and Acceptance

### 12.1 Closing Inspections

12.1.1 **Substantial Completion Inspection.** When the Contractor considers the entire Work or part thereof Substantially Complete, it shall notify the ODR in writing that the Work will be ready for Substantial Completion Inspection on a specific date. The Contractor shall include with this notice the Contractor's Punchlist to indicate that it has previously inspected all the Work associated with the request for inspection, has corrected items where possible, and includes all items scheduled for completion or correction prior to final inspection. The failure to include any items on this list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. If any of the items on this list prevents the building from the use to which it is intended, the Contractor shall not request a Substantial Completion Inspection. The Owner and its representatives will review the list of items and schedule the requested inspection, or inform the Contractor in writing that such an inspection is premature because the Work is not sufficiently advanced or conditions are not as represented on the Contractor's list.

12.1.1.1 Prior to the Substantial Completion Inspection, the Contractor shall furnish a copy of its marked-up As-Built Drawings and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties and like publications or parts for all installed equipment, s and like items. Delivery of these items is a prerequisite for requesting the Substantial Completion Inspection.

12.1.1.2 On the date requested by Contractor, or as mutually agreed upon, the AE, ODR, the Contractor and other Owner representatives as determined by the Owner, will jointly attend the Substantial Completion Inspection, which shall be conducted by the ODR or their delegate. If the ODR **concurs with the AE and Contractor in a determination** that the Work is Substantially Complete, the ODR will issue a Certificate of Substantial Completion to be signed by the AE, Owner and Contractor, establishing the date of Substantial Completion **and identifying responsibilities for security, maintenance, and insurance.** AE will provide with this certificate a list of punchlist items (the Pre-Final Punchlist) for completion prior to final inspection. This list may include items in addition to those on the Contractor's punchlist, which the inspection team deems necessary to correct or complete prior to Final Inspection. If the Owner occupies the facility upon determination of Substantial Completion, the Contractor shall complete all corrective Work at the convenience of the Owner, without disruption to Owner's use of the facility for its intended purposes. Owner's use of occupancy of any portion of the Work, whether before or after Substantial Completion, shall not constitute acceptance of defective or non-conforming Work.

12.1.2 **Final Inspection.** The Contractor shall complete the list of items identified on the Pre-Final Punchlist prior to requesting a Final Inspection. Unless otherwise specified, or otherwise agreed in writing by the parties as documented on the Certificate of Substantial Completion, the Contractor shall complete and/or correct all Work within thirty (30) days of the Substantial Completion date. Upon completion of the Pre-Final Punchlist work, the Contractor shall give written notice to the ODR and AE that the Work will be ready for Final Inspection on a specific date. The Contractor shall accompany this notice with a copy of the updated Pre-Final Punchlist indicating resolution of all items. On the date specified or as soon thereafter as is practicable, the ODR, AE and the Contractor will inspect the Work. The AE will submit to the Contractor a Final Punchlist of open items that the inspection team requires corrected or completed before final acceptance of the Work.

12.1.2.1 Correct or complete all items on the Final Punchlist before requesting Final Payment. Unless otherwise agreed to in writing by the parties, complete this work within seven (7) days of receiving the Final Punchlist. Upon completion of the Final Punchlist, notify the AE and ODR in writing stating the disposition of each Final Punchlist item. The AE, Owner and Contractor shall promptly inspect the completed items. When the Final Punchlist is complete, and the Contract is fully satisfied according to the Contract Documents the ODR will issue a certificate establishing the date of Final Completion. Completion of all Work is a condition precedent to the Contractor's right to receive Final Payment.

12.1.3 **Annotation.** Any Certificate issued under this Article may be annotated to indicate that it is not applicable to specified portions of the Work, or that it is subject to any limitation as determined by the Owner.

12.1.4 **Purpose of Inspection.** Inspection is for determining the completion of the Work, and does not relieve the Contractor of its overall responsibility for completing the Work in a good and workmanlike manner, in compliance with the Contract Documents. Work accepted with incomplete punchlist items or failure of the Owner or other parties to identify Work that does not comply with the Contract Documents or is defective in operation or workmanship does not constitute a waiver of the Owner's rights under the Contract or relieve the Contractor of its responsibility for performance or warranties.

#### 12.1.5 **Additional Inspections**

12.1.5.1 If the Owner's inspection team determines that the Work is not Substantially Complete at the Substantial Completion Inspection, the ODR or AE will give the Contractor written notice listing cause(s) of the rejection. The **Contractor** will set a time for completion of incomplete or defective work **as acceptable to the ODR**. Complete or correct all work so designated prior to requesting a second Substantial Completion Inspection.

12.1.5.2 If the Owner's inspection team determines that the Work is not complete at the Final Inspection, the ODR or the AE will give the Contractor written notice listing the cause(s) of the rejection. The **Contractor** will set a time for completion of incomplete or defective work **as acceptable to the ODR**. The Contractor shall complete or correct all Work so designated prior to again requesting a Final Inspection.

12.1.5.3 The Contract contemplates three (3) comprehensive inspections: the Substantial Completion Inspection, the Final Completion Inspection, and the Inspection of Completed Final Punchlist Items. The cost to the Owner of additional inspections resulting from the Work not being ready for one or more of these inspections is the responsibility of the Contractor. The Owner may issue a Unilateral Change Order deducting these costs from Final Payment. Upon the Contractor's written request, the Owner will furnish documentation of any costs so deducted. Work added to the Contract by Change Order after Substantial Completion Inspection is not corrective work for purposes of determining timely completion, or assessing the cost of additional inspections.

12.1.6 **Phased Completion.** The Contract may provide, or Project conditions may warrant, as determined by the ODR, that designated elements or parts of the Work be completed in phases. Where phased completion is required or specifically agreed to by the parties, the provisions of the Contract related to Closing Inspections, Occupancy and Acceptance apply independently to each designated element or part of the Work. For all other purposes, unless otherwise agreed by the parties in writing, Substantial Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Substantially Completion certificate. Final Completion of the Work as a whole is the date on which the last element or part of the Work completed receives a Final Completion certificate *or notice*.

12.2 **Owner's Right of Occupancy.** The Owner may occupy or use all or any portion of the Work following Substantial Completion, or at any earlier stage of completion. Should the Owner wish to use or occupy the Work, or part thereof, prior to Substantial Completion, the ODR will notify the Contractor in writing ***and identify responsibilities for security, maintenance, and insurance***. Work performed on the premises by third parties on the Owner's behalf does not constitute occupation or use of the Work by the Owner for purposes of this Article. All Work performed by the Contractor after occupancy, whether in part or in whole, shall be at the convenience of the Owner so as to not disrupt Owner's use of, or access to occupied areas of the Project.

## 12.3 **Acceptance & Payment**

12.3.1 **Request for Final Payment.** Following the certified completion of all Work, including all punch list items, cleanup, and the delivery of record documents, the Contractor shall submit a certified Application for Final Payment that includes all sums held as retainage and forward to the AE and the ODR for review and approval.

12.3.2 **Final Payment Documentation.** Prior to or with the Application for Final Payment, Contractor shall submit final copies of all Close-out documents, maintenance and operating instructions, guarantees and warranties, certificates, record documents and all other items required by the Contract. The Contractor shall submit Consent of Surety to Final Payment and an affidavit that all payrolls, bills for materials and equipment, subcontracted work and other indebtedness connected with the Work, except as specifically noted, are paid, will be paid, or otherwise satisfied within the period of time required by Texas Government Code Chapter 2251. The Contractor shall furnish documentation establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims and liens arising out of the Contract. The Contractor may not subsequently submit a claim on behalf of a Subcontractor or vendor unless the Contractor's affidavit notes that claim as an exception.

12.3.3 **Architect/Engineer Approval.** The AE will review a submitted Application for Final Payment promptly but in no event later than ten (10) days after its receipt. Prior to the expiration of this deadline, the AE will either 1) return the Application for Final Payment to Contractor with corrections for action and resubmission or 2) accept it, note their approval and send to Owner.

12.3.4 **Offsets and Deductions.** The Owner may deduct from the Final Payment all sums due from the Contractor. If the Certificate of Final Completion notes any Work remaining, incomplete, or defects not remedied, the Owner may deduct the cost of remedying such deficiencies from the Final Payment. On such deductions, the Owner will identify each deduction, the amount, and the explanation of the deduction on or by the 21st day after Owner's receipt of an approved Application for Final Payment. Such offsets and deductions shall be incorporated via a final Change Order, including Unilateral Change Order as may be applicable.

12.3.5 **Final Payment Due.** Final Payment is due and payable by the Owner, subject to all allowable offsets and deductions, on the 31<sup>st</sup> day following the Owner's approval of the Application for Payment. If the Contractor disputes any amount deducted by the Owner, the Contractor shall give notice of the dispute on or before the ninetieth (90th) day following receipt of Final Payment. Failure to do so will bar any subsequent claim for payment of amounts deducted.

12.3.6 **Effect of Final Payment.** Final Payment constitutes a waiver of all claims by the Owner, relating to the condition of the Work except those arising from:

12.3.6.1 Faulty or defective Work appearing after Substantial Completion (latent defects); and/or

12.3.6.2 Failure of the Work to comply with the requirements of the Contract Documents; and/or

12.3.6.3 Terms of any warranties required by the Contract, or implied by law; and/or

12.3.6.4 Claims arising from personal injury or property damage to third parties.

12.3.7 **Waiver of Claims.** *Submission of an Application for Final Payment by the Contractor* constitutes a waiver of all claims and liens by the Contractor except those specifically identified in writing and submitted to the ODR prior to the application for Final Payment.

12.3.8 **Effect on Warranty.** Regardless of approval and issuance of Final Payment, the Contract is not deemed fully performed by the Contractor and closed until the expiration of all warranty periods.

## Article 13. Warranty & Guarantee

13.1 **Contractor's General Warranty and Guarantee.** Contractor warrants to the Owner that all Work is executed in accordance with the Contract, complete in all parts and in accordance with approved practices and customs, and of the best finish and workmanship. The Contractor further warrants that unless otherwise specified, all materials and equipment incorporated in the Work under the Contract are new. The Owner may, at its option, agree in writing to waive any failure of the Work to conform to the Contract, and to accept a reduction in the Contract Price for the cost of repair or diminution in value of the Work by reason of such defect. Absent such a written agreement, the Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute and is not waived by any inspection or observation by the Owner, Architect/Engineer or others, by making any progress payment or final payment, by the use or occupancy of the Work or any portion thereof by the Owner, at any time, or by any repair or correction of such defect made by the Owner.

13.2 **Warranty Correction Period.** Except as may be otherwise specified or agreed, the Contractor shall repair all defects in materials, equipment, or workmanship appearing within one year from the date of Substantial Completion of the Work. ***If less than all of the Work is accepted as substantially complete (Partial Substantial Completion), the warranty period for the Work accepted begins on the date of Partial Substantial Completion, or as otherwise stipulated on the Certificate of Partial Substantial Completion for the Work.***

13.3 **Limits on Warranty.** Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

13.3.1 Modification or improper maintenance or operation by persons other than Contractor, Subcontractors, or any other individual or entity for whom Contractor is not responsible, unless Owner is compelled to undertake maintenance or operation due to the neglect of the Contractor.

13.3.2 Normal wear and tear under normal usage after acceptance of the Work by the Owner.

13.4 **Events Not Affecting Warranty.** Contractor's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

13.4.1 Observations by Owner and/or AE.

13.4.2 Recommendation to pay any progress or final payment by AE.

13.4.3 The issuance of a certificate of Substantial Completion or any payment by Owner to Contractor under the Contract Documents.

13.4.4 Use or occupancy of the Work or any part thereof by Owner.

13.4.5 Any acceptance by Owner or any failure to do so.

13.4.6 Any review of a Shop Drawing or sample submittal; or

13.4.7 Any inspection, test or approval by others.

13.5 **Separate Warranties.** If a particular piece of equipment or component of the Work for which the contract requires a separate warranty is placed in continuous service before Substantial Completion, the Warranty Period for that equipment or component will not begin until Substantial Completion, regardless of any warranty agreements in place between suppliers and/or Subcontractors and the Contractor. The ODR will certify the date of service commencement in the Substantial Completion Certificate.

13.5.1 In addition to the Contractor's warranty and duty to repair, the Contractor expressly assumes all warranty obligations required under the Contract for specific building components and equipment.

13.5.2 The Contractor may satisfy any such obligation by obtaining and assigning to the Owner a complying warranty from a manufacturer, supplier, or Subcontractor. Where an assigned warranty is tendered and accepted by the Owner which does not fully comply with the requirements of the Contract, the Contractor remains liable to the Owner on all elements of the required warranty not provided by the assigned warranty.

13.6 **Correction of Defects.** Upon receipt of written notice from the Owner, or any agent of the Owner designated as responsible for management of the Warranty Period, of the discovery of a defect, the Contractor shall promptly remedy the defect(s), and provide written notice to the Owner and designated agent indicating action taken. In case of emergency where delay would cause serious risk of loss or damage to the Owner, or if the Contractor fails to remedy within 30 days, or within another period agreed to in writing, the Owner may correct the defect and be reimbursed the cost of remedying the defect from the Contractor or its Surety.

13.7 **Certification of No Asbestos Containing Materials or Work.** The Contractor shall ensure compliance with the Asbestos Hazard Emergency Response Act (AHERA– 40 CFR 763-99 (7)) from all Subcontractors and materials suppliers, and shall provide a notarized certification to the Owner that all equipment and materials used in fulfillment of their contract responsibilities are non Asbestos Containing building Materials (ACBM). This certification must be provided no later than the Contractor's application for Final Payment.

#### **Article 14. Suspension and Termination**

14.1 **Suspension of Work for Cause.** The Owner may, at any time without prior notice, suspend all or any part of the Work if the Owner determines it is necessary to do so to prevent or correct any condition of the Work which constitutes an immediate safety hazard or which may reasonably be expected to impair the integrity, usefulness or longevity of the Work when completed.

14.1.1 The Owner will give the Contractor a written notice of suspension for cause, setting forth the reason for the suspension and identifying the Work suspended. Upon receipt of the notice, the Contractor shall immediately cease all activities related to the identified Work. As soon as practicable following the issuance of a suspension notice, the Owner will conduct an investigation into the circumstances giving rise to the suspension, and issue a written determination of the findings.

14.1.2 If the cause of the suspension is due to actions or omissions within the control of the Contractor, the Contractor will not be entitled to an extension of time for delay resulting from the suspension. If the cause of the suspension is something not within the control of the Contractor and the suspension will prevent the Contractor from completing the Work within the Contract Time, the suspension is an Excusable Delay and a reasonable Time Extension will be granted through a Change Order.

14.1.3 Suspension of work under this provision will be no longer than is reasonably necessary to remedy the conditions giving rise to the suspension.

14.2 **Suspension of Work for Owner's Convenience.** Upon seven (7) calendar Days written notice to the Contractor, the Owner may at any time without breach of the Contract suspend all or any portion of the Work for its own convenience. Upon resumption of the Work, if the suspension prevents the Contractor from completing the Work within the Contract Time, it is an Excusable Delay. A notice of suspension for convenience may be modified by the Owner at any time on seven (7) calendar Days written notice to the Contractor. If the Owner suspends the Work for its convenience for more than 60 consecutive calendar Days, the Contractor may elect to terminate the Contract pursuant to the provisions of the Contract.

14.3 **Termination by Owner for Cause**

14.3.1 **Upon thirty (30) days written notice to the Contractor and its Surety**, the Owner may, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor, under any of the following circumstances:

14.3.1.1 Persistent or repeated failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials; and/or

14.3.1.2 Persistent disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, including the ODR; and/or

14.3.1.3 Persistent failure to prosecute the work in accordance with the Contract, and to insure its completion within the time, or any approved extension thereof, specified in this Contract; and/or

14.3.1.4 Failure to remedy defective work condemned or rejected by the ODR; and/or

14.3.1.5 Failure to pay Subcontractors, laborers, and material suppliers pursuant to Texas Government Code Chapter 2251; and/or

14.3.1.6 Persistent endangerment to the safety of labor or of the Work; and/or

14.3.1.7 Failure to supply or maintain statutory bonds or to maintain required insurance, pursuant to the contract; and/or

14.3.1.8 Any material breach of the Contract; and/or

14.3.1.9 The Contractor's insolvency, bankruptcy, or demonstrated financial inability to perform the work.

14.3.2 Failure by the Owner to exercise the right to terminate in any instance is not a waiver of the right to do so in any other instance.

14.3.3 Upon receipt of a termination notice, the Contractor or its Surety has seven (7) Days to cure the reasons for the termination or demonstrate to the satisfaction of the Owner that it is prepared to remedy to the condition(s) upon which the notice of termination was based. If the Owner is satisfied that the Contractor or its Surety can remedy the reasons for the termination and complete the Work as required, the notice of termination shall be rescinded in writing by the Owner and the Work shall continue without an extension of time.

14.3.4 If at the conclusion of the seven (7) Day cure period the Contractor or its Surety is unable to demonstrate to the satisfaction of the Owner its ability to remedy the reasons for termination, the Owner may **immediately terminate the employment of the Contractor**, make alternative arrangements for completion of the Work and deduct the cost of completion from the unpaid Contract Sum.

14.3.4.1 Recoverable costs include additional Owner expenses for items such as AE services, other consultants, and contract administration.

14.3.5 The Owner will make no further payment to the Contractor or its Surety until all costs of completing the Work are paid and the Project is finally completed. If the unpaid balance of the Contract Sum exceeds the costs of administering and finishing the Work, the Contractor will receive the excess funds. If costs of

completing the Work exceed the unpaid balance of the Contract Sum, the Contractor or its Surety will pay the difference to the Owner.

14.3.5.1 This obligation for payment survives the termination of the Contract.

14.3.6 The Owner reserves the right, in a termination for cause, to take assignment of all contracts between the Contractor and its Subcontractors, vendors and suppliers. The ODR will promptly notify the Contractor of the contracts the Owner elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.

14.4 **Termination for Convenience of Owner.** Upon seven (7) Days written notice to the Contractor and the AE, the Owner may, without breach, terminate the Contract for any reason.

14.4.1 The notice will specify the effective date of contract termination. The notice may also contain instructions necessary for the protection, storage or decommissioning of incomplete work.

14.4.2 Upon receipt of the notice of termination, the Contractor shall immediately proceed with the following obligations:

14.4.2.1 Stop all Work.

14.4.2.2 Place no further subcontracts or orders for materials or services.

14.4.2.3 Terminate all subcontracts.

14.4.2.4 Cancel all materials and equipment orders as applicable.

14.4.2.5 Take appropriate action to protect and preserve all property related to this Contract which is in the possession of the Contractor.

14.4.3 When the Contract is terminated for the Owner's convenience, the Contractor may recover from the Owner payment for all Work executed **before the notice of termination along with the actual and reasonable cost of any additional work required to secure the Project, the Site and property related to the Contract following the notice of termination. The Contractor will not be entitled to recover any other costs or damages arising from the termination for convenience of the Owner including, but not limited to, claims for lost profits, overhead and profit on Work not performed, or lost business opportunities.**

14.5 **Termination By Contractor.** If the Work is stopped for a period of ninety (90) Days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon thirty (30) additional Days' written notice to the ODR, terminate the Contract and recover from the Owner payment for all Work executed **before the work stoppage and the actual and reasonable cost of securing the Project and property related to the Contract during the work stoppage. The Contractor will not be entitled to recover any other costs or damages arising from the work stoppage including, but not limited to, claims for lost profits, overhead and profit on Work not performed or lost business opportunities.** If the cause of the work stoppage is removed prior to the end of the thirty (30) Day notice period, the Contractor may not terminate the Contract.

14.6 **Settlement on Termination.** Within one hundred and eighty 180 Days of the effective date of Contract termination for any reason, the Contractor shall submit a final termination settlement proposal to the Owner based



upon recoverable costs as provided under the Contract. If the Contractor fails to submit a settlement proposal within the time allowed, the Owner may ***unilaterally*** determine the amount due to the Contractor because of the termination.

#### **Article 15. Dispute Resolution**

15.1 **Unresolved Contractor Disputes.** The dispute resolution process provided for in Texas Government Code Chapter 2260, shall be used by the Owner and the Contractor to attempt to resolve any claim for breach of contract made by the Contractor, that is not resolved under procedures described throughout the Uniform General Conditions, Supplemental Conditions, or Special Conditions of the Contract.

15.2 **Alternative Dispute Resolution Process.** The Owner may establish a dispute resolution process to be utilized in advance of that outlined in Texas Government Code Chapter 2260.

15.3 Before submitting any matter not resolved in the ordinary course of business to the dispute resolution process provided for in Texas Government Code Chapter 2260, the Contractor shall make a written request to the Owner's designated official in charge of construction contract administration for a determination of the matter in dispute. The written request shall clearly state the disputed issue and include or incorporate by specific reference all information or documents that the Contractor wants the official to consider in reaching his/her determination. The official shall issue a written notice of decision on the request. Within 30 days of the notice of decision, the Contractor may submit a request for reconsideration to the official that particularly states the factual and legal basis for the Contractor's objections to the official's decision. The official will review his/her decision and consider the basis for reconsideration asserted in the request. The official will issue a written notice of decision following reconsideration which shall be final and conclusive on all matters except for claims of breach of contract which are then subject to the dispute resolution process provide by Chapter 2260.

15.4 ***Nothing herein shall hinder, prevent or be construed as a waiver of Owner's right to seek redress on any disputed matter in a court of competent jurisdiction.***

15.5 ***Nothing herein shall waive or be construed as a waiver of the Owner's sovereign immunity.***

#### **Article 16. Miscellaneous**

16.1 **Supplemental and Special Conditions.** When the Work contemplated by the Owner is of such a character that the foregoing Uniform General Conditions of the Contract cannot adequately cover necessary and additional contractual relationships, the Contract may include Supplemental and Special Conditions as described below:

16.1.1 Supplemental Conditions may describe the standard procedures and requirements of contract administration followed by a contracting agency of the State. Supplemental Conditions may expand upon matters covered by the Uniform General Conditions, where necessary, provided the expansion does not weaken the character or intent of the Uniform General Conditions. Supplemental Conditions are of such a character that it is to be anticipated that a contracting agency of the State will normally use the same, or similar, conditions to supplement each of its several Projects.

16.1.2 Special Conditions shall relate to a particular Project and be peculiar to that Project but shall not weaken the character or intent of the Uniform General Conditions.

16.2 **Federally Funded Projects.** On Federally funded Projects, the Owner may waive, suspend or modify any Article in these Uniform General Conditions which conflicts with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by the Owner of such Federal funds for the Project. In the case of any Project wholly financed by Federal funds, any standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling.

16.3 **Internet-based Project Management.** At its option, the Owner may administer its design and construction management through an Internet-based management. In such cases, the Contractor shall conduct communication through this media and perform all Project related functions utilizing this database. This includes correspondence,

submittals, requests for information, vouchers or payment requests and processing, amendments, Change Orders and other administrative activities.

16.3.1 **Accessibility And Administration.**

16.3.1.1 When used, the Owner will make the software accessible via the Internet to all Project team members.

16.3.1.2 The Owner shall administer the software.

16.3.2 **Training.** When used, the Owner shall provide training to the Project team members.

**Procurement  
Operations**

**Sample Contract Documents**

**By and Between**

**Houston Community College**

**And**

INSERT CONTRACTOR NAME HERE

**For**

**Construction Services: INSERT PROJECT TITLE**

**Project No. INSERT PROJECT NO.**

**CONTRACT BETWEEN HOUSTON COMMUNITY COLLEGE**

**And**

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**HCC Project No. 14-02**

This Contract ("Contract") is made by and between Houston Community College ("HCC," "Owner"), a public community college district organized under Chapter 130 of the Texas Education Code, and \_\_\_\_\_, hereinafter known as (the "Consultant"), whose address is \_\_\_\_\_ (individually, "Party" and collectively, "Parties"), effective as of \_\_\_\_\_

\_\_\_\_\_ ("Effective Date").

WITNESSETH, that the Contractor and the Owner for the consideration hereinafter named agree as follows:

**ARTICLE 1. SCOPE OF WORK:** The Contractor shall furnish all of the materials and perform all of the work shown on the drawings and described in the specifications for the project entitled \_\_\_\_\_ (Project No. \_\_\_\_\_). These drawings and specifications prepared for Houston Community College by \_\_\_\_\_, acting as and in these Contract Documents entitled the Project Architect. The Contractor shall do everything required by this Agreement, the General and Supplemental Conditions of the Contract, the Special Conditions, the Addenda, the Specifications, the Drawings, the Historically Underutilized Business (HUB) Subcontracting Plan, and the Proposal attached as Exhibit 1 (including any unit prices stated therein).

The Specifications and Drawings are enumerated as follows:

UNIFORM GENERAL and SUPPLEMENTARY GENERAL CONDITIONS	Exhibit 1
SECTION 010000 MISCELLANEOUS REQUIREMENTS	Exhibit 2
CONTRACT FORMS AND GENERAL REQUIREMENTS	Exhibit 3
DRAWING LIST	Exhibit 4
ADDENDUM No.1	Exhibit 5
ADDENDUM No. 2	Exhibit 6
ALLOWANCES	Exhibit 7
GENERAL CONDITIONS, REQUIREMENTS, INSURANCES, TAXES & BOND LINE ITEMS	Exhibit 8
INSURANCE REQUIREMENTS	Exhibit 9
PAYMENT AND PERFORMANCE BONDS, DOCUMENTS BF & BG	Exhibit 10
OWNER'S SPECIFICATIONS	Exhibit 11
ASSURANCE OF SBDP GOAL	Exhibit 12
POLICY ON UTILIZATION OF SMALL BUSINESS (SB) PROGRAM	Exhibit 13
CONTRACTOR/SUBCONTRACTOR PARTICIPATION FORM	Attachment A
SUBCONTRACTOR PAYMENT CERTIFICATION FORM	Attachment B
SUBCONTRACTOR PROGRESS ASSESSMENT FORM:	Attachment C
SMALL BUSINESS DEVELOPMENT PROGRAM	Attachment D
PAYROLL FOR CONTRACTOR'S OPTIONAL USE (U.S.) DEPT OF LABOR)	Exhibit 14

**ARTICLE 2. TIME OF COMPLETION:** The Owner shall provide a Notice to Proceed in which a date for commencement of the work shall be stated; such commencement date shall be 10 or more days after the date of the notice. The Contractor shall achieve substantial completion of the work within \_\_\_\_\_ (\_\_\_\_) calendar days after such commencement date, as such completion date may be extended by approved Change Orders. The time set forth for completion of the work is an essential element of the Contract.

**ARTICLE 3. THE CONTRACT SUM:** The Owner shall pay the Contractor for performance of the Contract, subject to additions and deductions provided therein, the sum of \_\_\_\_\_ (\$) \_\_\_\_\_), and make payment on account as hereinafter provided.

**ARTICLE 4. HUB SUBCONTRACTING PLAN:** The Owner has adopted **Document DG, Assurance of SBDP Goal** ("Policy"), which is incorporated herein by reference. Contractor, as a provision of the Agreement must comply with the requirements of the Policy and adhere to the Small Business ("SB") Subcontracting Plan submitted with Contractor's Proposal and attached as **Exhibit 10, Exhibit 11, and Exhibit 12**. No changes to the SB

Subcontracting Plan can be made by the Contractor without the prior written approval of the Owner in accordance with the Policy.

ARTICLE 5. LIQUIDATED DAMAGES: For each consecutive calendar day after the substantial completion period set forth in Article 2 above that any work, including the correction of deficiencies found during the final testing and inspection, is not completed, the amount of five hundred dollars (\$500.00) will be deducted from the money due or becomes due the Contractor, not as a penalty but as liquidated damages representing the parties' estimate at the time of contract execution of the damages which the Owner will sustain for late completion.

ARTICLE 6. CERTIFICATION OF NO ASBESTOS CONTAINING MATERIALS OR WORK: The Contractor shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

The Contractor shall insure that Texas Department of Health licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

The Contractor shall provide at Substantial Completion, a notarized affidavit to the Owner and the Architect stating that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

The Contractor shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns, comply with this requirement.

All materials used on this Project shall be certified as non-Asbestos Containing Building Materials (ACBM). The Contractor shall insure compliance with the following acts from all of his subcontractors and assigns:

Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));

National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos;

Texas Asbestos Health Protection Rules (TAHRP—Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection

Every subcontractor shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

The Contractor shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products used in the construction of the Project to the Texas Department of Health licensed inspector or Project Architect or Engineer who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

At Final Completion the Contractor shall provide a notarized certification statement per TAC Title 25 Part 1, Ch. 295.34, par. c.1 that no ACBM was used during construction of the Project.

ARTICLE 7. ACCEPTANCE OF BID OR AWARD OF CONTRACT: By signing this Agreement, the undersigned certifies as follows:

Assignment. This Agreement is a personal service contract for the services of Construction, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party.

Records of expenses pertaining to Additional Services and services performed on the basis of a Worker Wage Rate or Monthly Salary Rate shall be kept on the basis of generally accepted accounting principles and in accordance with cost accounting standards promulgated by the Federal Office of Management and Budget Cost Accounting Standards Board

and shall be available for audit by the Owner or the Owner's authorized representative on reasonable notice.

**Family Code Child Support Certification.** Pursuant to Section 231.006, Texas Family Code, Service Provider certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**Eligibility Certification.** Pursuant to Section 2155.004, Texas Government Code, Service Provider certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Franchise Tax Certification.** A corporate or limited liability company Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

**Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

**Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and Owner and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Contractor and Owner.

**Captions.** The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

**Governing Law and Venue.** This Agreement and all of the rights and obligations of the parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas without reference to its conflicts of law provisions. The county where the Project is located, Houston, Texas, Harris County, shall be the sole place of venue for any legal action arising from or related to this Agreement or the Project in which the Owner is a party.

**Waivers.** No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement shall not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

**Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

**Appointment.** Owner hereby expressly reserves the right from time to time to designate by notice to Contractor a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Contractor shall act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

**Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Contractor in writing.

Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the Contractor or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by fax machine to the last know business fax number of the designated representative. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Fax notices are deemed effective the next business day after faxing.

Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

Illegal Dumping. The Contractor shall ensure that it and all of its Subcontractors and assigns prevent illegal dumping of litter in accordance with Title 5, Texas Health and Safety Code, Chapter 365.

Ethics Matters/No Financial Interest. Contractor and its employees, agents, representatives and subcontractors have read and understand HCC's Ethics Policy, [http://www.hccs.edu/hcc/System%20Home/Departments/Procurement\\_Operations/About\\_Procurement/Ethics%20Policy.pdf](http://www.hccs.edu/hcc/System%20Home/Departments/Procurement_Operations/About_Procurement/Ethics%20Policy.pdf), available at and the HCC Vendor Conflict Interest Questionnaire, [http://www.hccs.edu/hcc/System%20Home/Departments/Procurement\\_Operations/About\\_Procurement/Conflict%20of%20Interest%20Questionnaire.pdf](http://www.hccs.edu/hcc/System%20Home/Departments/Procurement_Operations/About_Procurement/Conflict%20of%20Interest%20Questionnaire.pdf) and is in compliance with said policies and applicable state ethics laws and rules. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause HCC employees to violate HCC's Ethic's Policy, provisions described by HCC Standards of Conduct Guide, , or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement. By signature hereon, Contractor certifies that no member of the Board of Trustees of Houston Community College, or Executive Officers, has a financial interest, directly or indirectly, in the transaction that is the subject of this contract.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the day and year first above written.

ATTEST: Contractor

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

\_\_\_\_\_  
*Insert Contractor's Name*

By: \_\_\_\_\_  
(Original Signature)

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

CONTENT APPROVED:  
Office of Facilities Planning and Construction

HOUSTON COMMUNITY COLLEGE  
(Owner)

Houston Community College

By: \_\_\_\_\_  
(Original Signature)

Name: Winston Dahse  
Title: Chief Administration Officer  
Facilities Planning and Construction

By: \_\_\_\_\_  
(Original Signature)

Name: Renee Byas  
Title: Acting Chancellor

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

CONTENT APPROVED:  
Office of General Counsel  
Houston Community College

By: \_\_\_\_\_  
(Original Signature)

Name: Destinee Waiter  
Title: Acting General Counsel