

Solicitation Amendment No. 002

To: Prospective Bidder/Offeror:	Date:
Prospective Proposers	March 31, 2014
Project Title:	Project No.:
Job Order Contract Services	RFP 14-15

The Request For Proposal (Project RFP No. 14-15) is hereby amended as set forth below:

1. Updated link to Terms and Condition found on page 10 of 54 is provided: www.hccs.edu/contract-terms.
2. A link for downloading a copy of the Uniform General Conditions and Division One is provided: <https://app.e-builder.net/public/publicLanding.aspx?QS=49cd5f4081554287881591d93479a1f7>.
3. A copy of the sample contract is provided below.
4. On page 23 of 54, please delete Section IV (C), Training, in the solicitation. It will not be required.
5. On page 30 of 54, please delete Section V (B) (6) (a), Subcontract, in the solicitation. It will not be required.
6. **IV. Scope of Services A. General Overview** found on page 23 of 54 is amended as followed:

Except as may be specified elsewhere in the contract, the Contractor shall furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management and shall perform all operations necessary and required for the job order contracting work, which shall be defined in each Job Order. All work shall be performed in accordance with the requirements set forth in this RFP and the contract and in each mutually agreed upon Job Order issued by HCC (also referred to as "Owner").

The Director of Maintenance or designee will be responsible for inspecting and accepting the work performed by the contractor under this contract.

HCC intends to award two (2) contracts to the two highest ranked proposers.

7. **III. Proposal Evaluations 1. Evaluation Criteria** found on page 21 of 54 is amended and attached below.

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

Acknowledgement of Amendment No. by:	Date:

Company Name (Bidder/Offerer):	
Signed by:	
Name (Type or Print):	Title:

I. PROPOSAL EVALUATIONS

1. 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:

Evaluation Criteria (Revised)	Available Points
Firm’s Profile, Overview, Demonstrated Qualifications and Experience Section II,5,1.1, 1.3	10
Demonstrated Qualifications and Experience of Personnel and Team Section II,5,1.4	10
Approach and Methodology Section II,5,1.5	15
Past Performance & References Section II,5,1.6	10
Safety and Quality Control Section II,5,1.10	5
Business Relationship Strength Section II,5,1.9	5
Firm’s Financial Status Section II,5,1.2	10
Price Proposal Section II,5,1.7	25
Small Business Practices Section II,5,1.8	10
Total Points	100



Procurement Operations

Sample Contract

Documents By and Between

Houston Community

College And

For

Job Order Contracts (JOC)

This Job Order Contract is made by and between Houston Community College System ("Owner"), a public community college district organized under Chapter 130 of the Texas Education Code, whose main office address is 3100 Main Street, Houston, TX 77002, and _____ ("Contractor"), whose main office address is _____ for Job Order Contracting Services, effective as of _____ (date).

RECITALS

Whereas, Owner is in need of job order contracting services; and

Whereas, this Contract is for the provision of specified job order contracting services, to be performed on a non-exclusive, indefinite quantity basis, as requested by Owner, in accordance with the terms of this Contract and Chapter 2269, Subchapter I of the Texas Government Code; and

Whereas, Contractor represents that he has the knowledge, ability, skills and resources to provide such job order contracting services in accordance with the terms and requirements of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Contract, the receipt and sufficiency of which are hereby acknowledged, Owner and Contractor, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS

1.1 The term "**Owner**" means Houston Community College System and includes Owner's senior manager, Contracting Officer or a duly authorized representative of Houston Community College System, including any person specifically authorized to act for Owner by executing the Contract and any modification thereto. Owner's duties include administration of the Contract, including the negotiation of Job Order(s) and modifications and assessing progress; inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptance of the Work in its entirety or any portion thereof, as required by the Contract.

1.2 The term "**Contractor**" means _____ and includes Contractor's senior manager or its duly authorized representative, including any person specifically authorized to act for Contractor by executing the Contract and any modifications thereto. Contractor's duties include administration of the Contract and performance of the Work.

1.3 The term "**Contract**" as used herein means the documents that form the agreement between Owner and Contractor. The Contract consists of this agreement, including its exhibits and any modifications thereto, any Job Order(s) that may be issued, Request for Proposals for Project No. 14-15, including any addenda thereto, and Contractor's proposal submitted in response to Request for Proposals for Project No. 14-15, which are fully incorporated herein for any and all purposes. The term "Contract" also

includes Owner's Uniform General Conditions and Division One, as applicable to the Job Order, which are fully incorporated herein for any and all purposes.

1.4 The term "**Subcontract**" as used herein means any agreement, including purchase orders (other than one involving an employer-employee relationship) entered into by Contractor calling for equipment, supplies or services required for Contract performance, including any modifications thereto.

1.5 The term "**job order contracting**" means maintenance, repair, alteration, renovation, remediation or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of the work required are indefinite.

1.6 The term "**Job Order**" means a specific written agreement between the Owner and the Contractor for Work to be performed under this Contract.

1.7 The term "**Unit Price Guide**" means a compilation of real property repair, rehabilitation, alteration, maintenance, and minor construction tasks, along with associated units of measure and unit prices designated or provided by Owner to be used in administration of this Contract. Unit prices include direct material, labor and equipment cost, but not indirect costs or profit. The Unit Price Guide for this Contract is R.S. Means, which is hereby incorporated by reference. The most current edition of the Unit Price Guide shall be adopted for each renewal option exercised by Owner, if any.

1.8 The term "**Coefficient Multiplier**" means a numerical factor which is applied to the Unit Price Guide unit prices to cover all of Contractor's other costs in performing the Work of a Job Order, including, but not limited to, general and administrative and other overhead costs, insurance costs, equipment rental, protective gear and clothing, contingencies such as changes in wage rates and inflation, Contractor's profit, and indirect costs. Separate coefficients may be used for Work performed during normal working hours and for Work performed during non-normal working hours. The Coefficient Multipliers for this Contract are (See **Exhibit A**):

Normal Hours: _____
Non-normal Hours: _____
Initial Term: _____

1.8 The term "**Non-Pre-priced items**" means the necessary, but incidental, parts of a Job Order that are not susceptible to unit pricing using the pre-priced tasks in the Unit Price Guide.

1.9 The term "**Work**" means the doing of all things described in, reasonably related to, and necessary, proper, or incidental to the work and services required by this Contract and/or a Job Order, whether in whole or in part, and includes all labor, materials, tools, resources, supplies, equipment, permits, insurance, transportation, supervision, management, operations, and performance of all tasks provided or to be provided by Contractor to fulfill Contractor's obligations under this Contract, including any specific project requirements defined and further described in any Job Order.

1.10 The term "**pre-priced item**" means pre-described and pre-priced tasks based on a unit price guide and coefficient multiplier.

II. TERM OF AGREEMENT

2.1 **Term:** The initial term of this Contract is two (2) years and shall be effective _____(date) through _____(date). Owner may exercise renewal options for up to three additional one-year terms, in Owner's sole discretion. Job Orders may be issued at any time during the term of this Contract. This Contract will remain in full force and effect during the performance of any Job Order issued by Owner.

2.2 **Completion of Work in Progress:** Owner has the option to extend the term of this Contract, or any renewal period, as necessary for Contractor to complete work on any Job Order approved by Owner prior to the expiration of the Contract.

III. AUTHORIZED CONTRACT SUM

3.1 **Contract Sum:** The maximum aggregate contract price is \$30,000,000.00, subject to the contractual authority delegated by the HCCS Board of Trustees. The cost of each specifically authorized Job Order will be established in an "Authorization to Commence Work" issued by Owner. Established cost amounts shall not be increased except by written change order to a previously issued Job Order and/or Authorization to Commence Work executed by Owner and Contractor. As required by Texas Government Code Section 2269.403, the HCCS Board of Trustees must approve any Job Order that exceeds \$500,000.

3.2 **No Minimum Amount of Work:** It is expressly understood that Owner is under no obligation to request any services from Contractor and no minimum amount of work is required under this Contract. All service requests will be made by Owner on an as-needed basis, subject to future agreement on the scope of the work and its cost(s), detailed in a specific Job Order. However, as an inducement for Contractor to offer a lower pricing coefficient, Owner agrees to use its best efforts to issue Job Order Contract(s) to Contractor with a cumulative value of at least Fifty Thousand and 00/100 Dollars (\$50,000.00) during the term of this Contract.

IV. SPECIFICATIONS AND DRAWINGS

4.1 **Retention of Drawings:** Contractor shall keep on the Work site a copy of any drawings and/or specifications for a Job Order and shall at all times give Owner access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the drawings shall govern. In case of discrepancy, either in the figures, drawings, or the specifications, the matter shall be promptly submitted to Owner, who shall promptly make a determination in writing regarding such discrepancy. Any adjustment by Contractor without such prior written determination shall be at Contractor's own risk and expense and without any liability to Owner for any adjustment made by Contractor. Owner shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

4.2 **Shop Drawings:** Shop drawings means drawings submitted to Owner by Contractor showing in detail:

- a. the proposed fabrication and assembly of structural elements;
- b. the installation (i.e., form, fit and attachment details) of materials or equipment; and
- c. the construction and detailing of elements of the Work.

Shop drawings include sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Contractor to explain specific portions of the Work. Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract.

4.3 Contractor shall coordinate all shop drawings, if any, and review them for accuracy, completeness, and compliance with Contract and Job Order requirements and shall indicate its approval thereon as evidence of such coordination and review. Owner will indicate its approval or disapproval of the shop drawings in writing and if not approved as submitted shall indicate Owner's reasons therefore. Any work done before such prior written approval by Owner shall be at Contractor's own risk and without any liability whatsoever to Owner.

4.3 Contractor shall submit to Owner for approval in writing an appropriate number of copies of all shop drawings. Sets of all shop drawings will be retained by Owner and one set will be returned to Contractor.

4.4 "As-built" Drawings and Shop Manuals: Contractor is required to submit two complete sets of "as-built" drawings to Contractor within 30 days after project acceptance. "As builds" shall be submitted on paper as well as electronically. Contractor must also submit three copies of shop manuals at that time if equipment has been installed as part of the Job Order.

4.5 Omissions from the drawings or specifications or the incorrect description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications shall not relieve Contractor from performing such omitted or mis-described details of the Work.

4.6 Contractor shall check all of Owner's furnished drawings immediately upon receipt and shall promptly notify Owner of any discrepancies. Figures marked on drawings shall be followed in preference to scale measurements. Large scale drawings shall govern small scale drawings. Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby.

V. USE OF SPECIFICATIONS, DRAWINGS AND NOTES

5.1 All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to Contractor or developed by Contractor pursuant to the Contract and all photographs, negatives,

reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of Owner and may be used by Owner without any claim by Contractor for additional compensation, unless such material developed by Contractor does not result in an issued Job Order. In such cases, Contractor will receive reasonable reimbursement for the development of such materials before Owner uses them in any manner whatsoever. If Owner chooses not to use such materials and no Job Order was issued, Contractor shall not be entitled to any compensation by Owner for any expenses incurred by Contractor for the preparation or development of any of said materials, which includes any and all general overhead costs for preparation of the materials.

VI. MATERIAL AND WORKMANSHIP

6.1 All equipment, material, and articles incorporated in the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Job Order. References in the Job Order and/or its specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition.

6.2 Contractor shall obtain Owner's prior written approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, Contractor shall furnish to Owner in writing the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by the Contract or by Owner, Contractor shall also obtain Owner's written approval of the material or articles which Contractor contemplates incorporating into the Work. When requesting approval, Job Order Contractor shall provide full information concerning the material or articles. Machinery, equipment, material and articles that do not have the required prior approval by Owner shall be installed or used at the Contractor's risk of subsequent rejection and Owner shall not be liable for any costs incurred by Contractor for said Machinery, equipment, material, articles.

VII. CONTRACTOR'S GENERAL RESPONSIBILITIES

7.1 **In General:** Contractor agrees to provide general and specific job order contracting services on a per-project basis as requested by Owner in accordance with the terms of this Contract. Contractor shall furnish all of the materials and perform all of the Work described in a Job Order. Contractor shall do everything required by this Contract, the Job Order and any other requirements incorporated into this agreement or a specific Job Order by reference.

7.2 **Project Manager:** Contractor shall manage and provide all labor and material necessary and reasonably inferable for the complete performance of the Work on any project and/or Job Order authorized pursuant to this Contract.

7.3 **Standard of Care:** Contractor agrees to use commercially reasonable best efforts, skill, judgment, and abilities to perform the Work detailed in the Job Order in an

expeditious and timely manner. Contractor shall at all times provide a sufficient number of qualified, skilled personnel, who shall be supervised by Contractor, to accomplish the Work within the time limits set forth in the Job Order. Contractor shall also be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. All Work under the Contract shall be performed in a skillful and workmanlike manner. Contractor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Contract and all Work detailed in a Job Order. Unless otherwise specified in a Job Order, Contractor shall be responsible for any required testing of materials prior to incorporation into the Work.

7.4 **Compliance with Laws:** Contractor shall comply with all applicable federal, state, and local laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the project detailed in the Job Order. Contractor shall comply with all state and local building code requirements unless otherwise specifically detailed in the Job Order. Contractor is required to adhere to all applicable local, state, and national design codes and requirements as well as Owner's construction design standards.

7.5 **Existing Conditions:** Contractor shall use commercially reasonable best efforts to verify the accuracy and suitability of any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to Contractor by Owner, or any other party, that Contractor uses for the Job Order.

7.6 **Correction of Work:** Contractor shall promptly correct any known or discovered error, omission, or other defect in the Work without any additional cost or expense to Owner.

7.7 **Phasing:** Contractor shall not proceed beyond any previously authorized phase of the Work for a project unless authorized by Owner in writing, except at the Contractor's own financial risk. Applicable phases of the scope of work shall be identified in the Job Order Proposal.

7.8 **Representative:** Contractor shall designate a representative primarily responsible for the Work under this Contract and a specific Job Order. The designated representative shall act on behalf of Contractor with respect to all phases of the Work and shall be available as required for the benefit of any Job Order and Owner. The designated representative shall not be changed without prior written approval of Owner, which approval shall not be unreasonably withheld.

7.9 **Documentation:** Contractor shall fully document its project activities, in drawings, reports or other methods as appropriate to the scope of work and as identified in the Job Order Proposal and/or Job Order. Unless otherwise stated in the Job Order or provided by Owner, Contractor shall bear the cost of providing all plans, specifications and other documents used by Contractor and its consultants. **Owner will reimburse Contractor for the actual, documented costs of construction permits required for the performance of the Work as specified in the Job Order.** Unless otherwise stated in the Job Order, Contractor shall secure and pay for all governmental fees, licenses, and inspections

necessary for the proper execution and completion of the Work.

VIII. Job Order Procedures

8.1 Job Order Procedures

- a. In Owner's discretion, Owner will submit a Job Order Proposal Request to Contractor for the individual project(s). This request will include, at a minimum, the following: project number, project title, name of HCC project manager, HCC customer point of contact, location, the project architect and/or engineer, if any, and a general description of the project. If a Job Order requires architectural or engineering services that constitute the practice of architecture or engineering within the meanings of the Texas Occupations Code, Owner shall select or designate an architect or engineer to prepare the construction documents for the project. For Job Orders with an anticipated cost of more than \$100,000, Owner shall determine whether subcontracting opportunities exist and may require a Small Business subcontracting plan as part of Contractor's Proposal.
- b. Within one (1) business day of receipt of the Job Order Proposal Request, Contractor shall schedule a site visit with the HCC Project Manager. The site visit will be conducted at a mutually agreed upon time, normally not later than three (3) business days from the time of notification.
- c. During the site visit, the following will be accomplished:
 1. Pre-construction site inspection
 2. Review and validate the description of work
 3. Develop draft detailed statement of work
 4. Mark-up existing drawings to show required work (when existing drawings are readily available)
 5. Discuss project with end-user customer, ensure proposed work meets their objectives
 6. Establish Contractor's due date for the Job Order Proposal
- d. Contractor will keep adequate notes of the site visit, including a before picture, in color, of the conditions, and provide a copy to Owner within two (2) business days from the completion of the site visit.
- e. Unless otherwise agreed to by the parties, Contractor shall submit Contractor's Job Order Proposal within ten (10) business days of receipt of Owner's Job Order Proposal Request. Contractor's Job Order Proposal shall include the following:
 - i. A narrative description of Contractor's understanding of the project's scope of work;
 - ii. A description of particular phases of the scope of the work;
 - iii. A cost proposal detailing:
 1. the cost of the 'pre-priced' items as taken from the unit price guide (The cost proposal for each Job Order should be based substantially on the use of pre-priced items). If Contractor believes that unit price guide pricing does not provide the best value for Owner, Contractor

- may provide alternative pricing for consideration and show a cost comparison (cost/benefit) option to Owner for consideration;
2. the cost of any 'non-pre-priced' items (The proposed cost of all non-pre-priced items in the cost proposal shall include all of Contractor's cost items otherwise included in the coefficient multiplier used for pre-priced items. No coefficient multiplier shall be applied to non-pre-priced items. Non-pre-priced items shall not exceed ten percent (10%) of the total cost proposal for a Job Order.);
 3. any other costs that the Contractor intends to charge to the project (Note that other costs include extraordinary costs that are unique to a specific project and not generally or reasonably included in the coefficient multiplier; other costs may be added only if authorized or confirmed in writing by Owner. Other costs may be calculated as a lump sum for the Job Order or on a "not to exceed" basis.);
 4. a statement that all Contractor fees, overhead expenses and general conditions are included in the cost proposal; and
 5. a lump sum figure for performing the Work, if appropriate;
- iv. A description of all plans, specifications and other documents, including construction permits, to be used by Contractor in the performance of the Work;
 - v. A proposed time schedule showing the sequence in which Contractor proposes to perform the Work and dates on which Contractor proposes to complete each phase of the scope of the work, including a proposed date to commence the Work and a proposed completion date of the Job Order.
 - vi. If required by Owner, Contractor must submit a schedule chart, which may be a formal computerized schedule or a progress chart in a bar chart format of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. The schedule chart, if required, must contain:
 - a. A list of the different types of work activities or work elements.
 - b. Show the logical dependencies (ties) to indicate what Work must be accomplished before other Work can begin.
 - c. Include proposed start and completion dates or time frames for each work activity or work element.
 - d. Calculate the "weighting" or relative worth each work activity or work element is of the total project either as a percentage or dollar amount.
 - e. Proposed traffic control methods providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc.
 - vii. Contractor's designated representative primarily responsible for the Work;
 - viii. A list of all subcontractors who Contractor proposes to use in the performance of the Work;
 - ix. A Small Business Subcontracting plan, if required by Owner;
 - x. Any qualifications or conditions applicable to the Job Order Proposal;

- and
- xi. A summary statement of the amount of all previous Job Orders entered into under this Contract to date.
- f. After Contractor's submission of its Job Order Proposal, Owner will review the Job Order Proposal and either approve the Job Order Proposal or schedule a time to review the Job Order Proposal with Contractor and negotiate any changes, clarifications or modifications.
- g. Following the review of Contractor's Job Order Proposal, Contractor shall submit a draft Job Order in writing, incorporating any changes, clarifications or modifications to Contractor's Job Order Proposal made in the review process. Owner may accept, reject or seek modification of any draft Job Order submitted by Contractor. Once the Job Order is approved by Owner, Owner will issue a signed Job Order to Contractor. The Job Order will include, at a minimum, the following: the dollar amount of the Job Order, the approved statement/scope of work, the approved project drawings (if any), the required completion date, and any special conditions that apply to the project (such as exclusion periods, special working hours, special coordination requirements, etc.).
- h. Once issued, the Job Order is a firm, fixed-price, lump sum contract. No line item will be added to a Job Order because a line item was excluded by Contractor in Contractor's Job Order Proposal or draft or final Job Order.
- i. **Authorization to Commence Work:** If an Authorization to Commence Work is not included in the specific Job Order, Owner shall issue a written Authorization to Commence Work. The Authorization to Commence Work authorizes the Contractor to begin the Work identified in the Job Order on the date specified in the Authorization to Commence Work. Upon the date specified in the Authorization to Commence Work, Contractor is fully responsible for the scheduling, quality control, safety, and all other aspects of the management of the project detailed in the Job Order. Owner may make periodic inspections of the job site to ensure compliance; however, quality control is ultimately the Contractor's responsibility.
- j. **Quality Assurance/Quality Control Plan:** Contractor shall submit, for Owner approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after issuance of the initial Job Order. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with the Owner's inspectors.
- k. **Weekly Reports:** Contractor is required to submit weekly progress reports on each active Job Order electronically or in paper form to Owner at the end of each work week, which shall include a current schedule.
- l. **Schedule:** Time is of the essence in rendering the services hereunder. The Job Order shall include a time schedule for each phase of the Work for the Job

Order, and Contractor agrees to perform all obligations and render services in accordance with the schedule(s) established in the Job Order. Most Job Orders will be required to be completed within 90 days of the issuance of a Job Order. In emergency or non-standard situations, Owner may require Contractor to complete a Job Order on an expedited basis. All Job Orders are to be completed within the timelines agreed to by Owner and Contractor as detailed in the Job Order. If Contractor falls behind the schedule detailed in the Job Order, Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by Owner. Without additional cost to Owner, Owner may require Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant or equipment, and to submit for approval any supplementary schedule or schedules in chart form as Owner deems necessary to demonstrate how the approved rate of progress will be regained.

- m. **Documentation:** Contractor shall upload Job Order project documentation into Owner's Building Management System, which is currently E-Builder.
- n. **Emergency Work:** Contractor will give top priority to any emergency work Owner may have and will allocate all resources necessary to accomplish such work in accordance with Owner's schedule requirements.

IX. OWNER'S RESPONSIBILITIES

9.1 **Job Order Proposal Request:** Owner shall provide a Job Order Proposal Request setting forth Owner's project number, project title, name of HCC project manager, HCC customer point of contact, location, the project architect, if any, and a general description of the project.

9.2 **Representative:** Owner designates the HCC Chief Facilities Officer or his/her designee as its representative authorized to act in Owner's behalf with respect to the Job Order(s). Contractor shall coordinate its work solely through the designated representative. Owner designates HCCS General Counsel as its representative for the purpose of administering this Contract and as its representative in any dispute resolution procedures.

9.3 **Special Information:** Unless otherwise detailed herein or in the Job Order, Owner shall furnish available property, boundary, easement, right-of-way, topographic and utility surveys; plans and specifications; and special data and conditions relevant to the project. Owner makes no warranties or representations as to the accuracy or suitability of information provided to Contractor by Owner or by others.

9.4 **Entry on Land:** Owner shall assist Contractor in gaining entry to state-owned or controlled property as necessary for Contractor to perform its services under this Contract.

9.5 **Review of Work:** Owner will review the Work in progress as appropriate. At the completion of the Job Order, Owner shall do a walk through to ensure that the Work is

completed in accordance with the Job Order. At such time, a Job Order Evaluation Sheet shall be completed between Owner and Contractor. Owner will notify Contractor in writing of any material error or omission or other defect in the Work or any conflict in the contract documents that Owner becomes aware of, but Owner shall have no obligation or duty to investigate whether such faults, defects, or conflicts exist.

9.6 Time for Response: Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of Contractor's services and of the Work.

X. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

10.1 Contractor's acceptance of a Job Order entered into pursuant to this Contract shall constitute Contractor's acknowledgement that Contractor has taken steps reasonably necessary to ascertain the nature and location of the Work for the specific Job Order, and that Contractor has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to:

- a. Conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. The availability of labor, water, electric power, and roads;
- c. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- d. The conformation and conditions of the ground; and
- e. The character of equipment and facilities needed preliminary to and during work performance.

10.2 Contractor's acceptance of a Job Order entered into pursuant to this Contract shall constitute Contractor's acknowledgement that Contractor has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the drawings and specifications made a part of this Contract.

10.3 **Owner Furnished Utilities:** Owner shall provide, at no cost to Contractor, utilities and toilet facilities that are existing and available at each site for Work performed under the Job Order. If utilities and/or toilet facilities are not existing and available, an equitable price will be negotiated and included in the Job Order to compensate Contractor for providing such items.

10.4 **Water:** Owner shall furnish to Contractor from existing Owner facilities and without cost to Contractor, a supply of water necessary for the performance of work under this Contract. Owner will in no case furnish or install any required supply connections or piping for the purpose of implementing the availability of the water supply. It is the responsibility of Contractor to determine the extent to which existing Owner water supply source is adequate for the needs of the Contract.

All taps, connections, and accessory equipment required in making the water supply

source available will be accomplished by and at the expense of Contractor. All work in connection therewith shall be coordinated, scheduled, and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained by Contractor in a workmanlike manner in accordance with the rules and regulations of the local authority.

Upon completion of the Job Order, the removal of all taps, connections and accessories will be accomplished by and at the expense of Contractor so as to leave the water supply source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

10.5 **Electricity:** Owner shall furnish to Contractor from existing Owner facilities and without cost to Contractor, electricity necessary for the performance of work under this Contract. It is the responsibility of Contractor to determine the extent to which existing Owner electrical facilities are adequate for the needs of this Contract. All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of Contractor. All work in connection therewith shall be coordinated, scheduled and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained by Contractor in a workman- like manner in accordance with the rules and regulations of the local authority. Upon completion of the Job Order, the removal of all taps, connections and accessories will be accomplished by and at the expense of Contractor.

10.6 **Asbestos Certification Statement:** If required by Owner, Contractor shall provide a certification statement for each Job Order, stating that no asbestos-containing materials or work is included within the scope of the Job Order. If required by Owner, Contractor shall provide, at completion of the Job Order, a notarized affidavit to Owner stating that no asbestos-containing materials or work was provided, installed, furnished or added to the project.

10.7 If required, Owner shall provide a survey in accordance with the Texas Asbestos Health Protection Rules prior to the commencement date of the Job Order. 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 a Job Order shall be certified as non-Asbestos Containing Building Materials (ACBM). Contractor shall insure compliance with the following acts from Contractor and all of Contractor's subcontractors and assigns:

- a. Asbestos Hazard Emergency Response Act (AHERA—40 CFR 763-99 (7));
- b. National Emission Standards for Hazardous Air Pollutants (NESHAP—EPA 40 CFR 61, National Emission Standard for Asbestos;
- c. 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 a Job Order. Contractor shall provide, in hard copy and electronic form, all necessary material safety data sheets (MSDS) of all products

used in the Job Order to the Texas Department of Health licensed inspector or Owner's architect or engineer, if any, who will compile the information from the MSDS and, finding no asbestos in any of the product, make a certification statement.

10.8 **Differing Site Conditions:** Contractor shall promptly, and before the conditions are disturbed, give a written notice to Owner of:

- a. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract, or
- b. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

10.9 **Investigation by Owner:** Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially differ and cause an increase or decrease in Contractor's cost or the time required for performing any part of the Work, an equitable adjustment shall be made and the Job Order modified in writing accordingly.

10.10 **Equitable Adjustment:** No request by Contractor for an equitable adjustment to the Job Order under this Article shall be allowed, unless Contractor has given the written notice required. No request by Contractor for an equitable adjustment to the Job Order for differing site conditions shall be allowed if made after final payment under such Job Order.

XI. INSPECTION OF CONSTRUCTION AND OWNER'S ACCEPTANCE OF WORK

11.1 **Contractor Inspection System:** Contractor shall maintain an adequate inspection system and perform such inspections as well as ensure that the Work called for conforms to the Job Order. Contractor shall maintain complete inspection records and make them available to Owner. All work is subject to inspection and testing by Owner at all places and at all reasonable times before final acceptance of the Work to ensure strict compliance with the terms of the Contract and the Job Order.

11.2 **Owner's Satisfaction:** All Work performed under this Contract shall be completed to the satisfaction of Owner's representative assigned to the Job Order. Owner's representative shall decide all questions regarding Contractor's performance under the Contract and Job Order, and such decisions shall be final and conclusive.

11.3 **Non-Conformance:** Contractor shall, without charge, replace or correct Work found by Owner not to conform to a Job Order's requirements, unless Owner consents to accept the Work with an appropriate adjustment in contract price. Contractor shall promptly segregate and remove rejected material from the premises, if required by Owner.

11.4 **Failure to Conform:** If Contractor does not promptly replace or correct rejected

Work, Owner may:

- a. By contract or otherwise, replace or correct the Work and charge the cost to Contractor, and/or
- b. Terminate, for default, Contractor's right to proceed.

11.5 **Liability:** Owner's approval or acceptance of Contractor's Work shall not release Contractor from any liability for any defects in the Work.

11.6 Owner inspections and tests, if any, are for the sole benefit of Owner and do not:

- a. Relieve Contractor of responsibility for providing adequate quality control measures;
- b. Relieve Contractor of responsibility for damage to or loss of the material before acceptance;
- c. Constitute or imply acceptance; or
- d. Affect the continuing rights of Owner after acceptance of the complete work.

11.7 The presence or absence of an inspector does not relieve Contractor from any Contract or Job Order requirement, nor is the inspector authorized to change any term or condition of the Job Order without Owner's written authorization.

11.8 Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge to Contractor any additional cost of inspection or test when Work is not ready at the time specified by Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. Owner shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size and performance tests shall be performed as described in the Job Order.

11.9 If, before acceptance of the entire Work, Owner decides to examine already-completed Work by removing it or tearing it out, Contractor, on request, shall promptly furnish all necessary facilities, labor, and material for this task. If the Work is found to be defective or nonconforming in any material respect due to the fault of Contractor or its Subcontractors, Contractor shall bear the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Owner shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of time for performance.

11.10 Substantial Completion means the date on which the Work, or an agreed-upon portion of the Work, is sufficiently complete so that Owner can occupy and use the Work or a portion thereof for its intended purposes. Unless otherwise specified in the Job Order, Owner shall accept, as promptly as practicable after completion and inspection, all Work required by the Job Order or that portion of the Work Owner determines can be accepted separately. Acceptance shall be final and conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or Owner's rights under any warranty or

guarantee.

11.11 **Use and Possession Prior to Completion:** Owner shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any work, Owner shall furnish Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that Owner intends to take possession of or use. However, failure of Owner to list any item of work shall not relieve Contractor of responsibility for complying with the terms of this Contract or the Job Order. Owner possession or use shall not be deemed an acceptance of any work under this Contract. While Owner has such possession or use, Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Owner's possession or use. If prior possession or use by Owner delays the progress of the Work or causes additional expense to Contractor, an equitable adjustment shall be made in the Job Order price or the period of performance, and the Job Order shall be modified in writing accordingly.

11.12 **Close-Out Documentation:** Contractor shall provide the following as part of the close-out documentation:

- a. Color pictures of the completed project shall be submitted with close-out documents.
- b. An electronic file of all documentation specific to every job order project shall be submitted with close-out documents.
- c. All forms below must be included with the final payment documentation of the project:
 - 1) Job Order Final Completion Form (Contractor provide)
 - 2) Certificate of Substantial Completion
 - 3) Owner's Manual
 - 4) MSDS
 - 5) Submittals (Ex: Paint colors, carpet, equipment, supplies, and etc.)
 - 6) Environmental Clearance Form
 - 7) Lien Waiver Form
 - 8) Warranty statement form shall be included with close-out documents (start date, completion date, and signed warranty letter)
 - 9) Contractor & Subcontract Participation Form
 - 10) Sub-consultants/Subcontracts/Supplier Payment Certification Form
 - 11) Subcontractor Progress Assessment Form
 - 12) Certified Payroll Document
 - 13) Copies of all applicable permits, licenses, and/or other regulatory documents.
- d. Contractor shall be required to submit any / all documentation that is related to any project awarded to the contractor upon request by the Director of Maintenance.
- e. Attic Stock submission forms shall be included with close-out documents with signature line.

XII. PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES AND IMPROVEMENTS; TRAFFIC CONTROL

12.1 **Preservation:** Contractor shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs, and grass) on or adjacent to the Job Order site, which

is not to be removed and which does not unreasonably interfere with the Work required under the Job Order. Contractor shall **only remove trees when specifically authorized by Owner to do so**, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance by the operation of equipment, or by workmen, Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound as directed by Owner.

12.2 **Existing Improvements:** Contractor shall protect from damage all existing improvements and utilities at or near the Job Order site and on adjacent property of third parties, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage to those facilities, including those that are the property of third parties, resulting from failure to comply with the requirements of this Contract or the Job Order or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary repair work performed and charge the cost to Contractor.

12.3 **Traffic Control:** Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each Job Order. Proposed traffic control methods shall be submitted to Owner for approval in Contractor's Job Order Proposal.

XIII. CLEANING UP AND REFUSE DISPOSAL

13.1 Contractor shall at all times keep the Job Order site, including storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Owner. Upon completing the Work, Contractor shall leave the site in a clean and orderly condition satisfactory to Owner. Contractor shall be responsible and liable for all construction refuse disposal containers and their removal from the site. Disposal of any hazardous materials not addressed and priced in the Job Order will be segregated for disposal by Owner unless Owner requires Contractor to dispose of the materials, in which case, an equitable adjustment in the price will be negotiated and agreed upon. Contractor shall not use Owner's trash containers for any reason.

XIV. WARRANTY OF CONSTRUCTION

14.1 **Warranty:** In addition to any other warranties specified in any Job Orders, Contractor warrants, except as otherwise specifically provided herein, that Work performed conforms to the Job Order and is free of any defect in equipment, material or design furnished, or workmanship performed by Contractor or any of its subcontractors or suppliers at any tier. This warranty shall continue for a period of one (1) year from the date of final acceptance of the Work. If Owner takes possession of any part of the Work before final acceptance, this warranty shall continue for a period of one (1) year from the date possession is taken.

14.2 **Non-Conformance:** Contractor shall remedy, at Contractor's sole expense, any failure of the Work to conform to the Job Order, or any construction defect occurring

during the warranty period. In addition, the Contractor shall remedy, at Contractor's expense, any damage to Owner's real or personal property, when that damage is the result of:

- a. Contractor's failure to conform to requirements in this Contract or the Job Order; or
- b. Any defect of equipment, material, workmanship, or design furnished by the Contractor.

If Contractor, after notice, fails to proceed promptly and remedy the problem within thirty (30) calendar days or within another period of time which has been agreed to in writing, in compliance with the terms of the warranty, Owner may have the defects corrected and the Contractor and its surety shall be liable for all expenses incurred.

14.3 **Restoration:** Contractor shall restore any work damaged in fulfilling the terms and conditions of this Section. Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement. Owner shall notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. If Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Owner shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at Contractor's expense, and Contractor shall be liable to owner for any damages sustained by Owner as a result of the failure, defect, or damage.

14.4 **Third-Party Warranties:** With respect to all warranties, expressed or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished for Job Orders issued under this Contract, Contractor shall:

- a. Obtain all warranties required by the Job Order;
- b. Require all warranties to be executed, in writing, for the benefit of Owner; and
- c. Enforce all warranties for the benefit of Owner;

14.5 **Warranty Expiration:** In the event Contractor's warranty under paragraph 14.1 of this Article has expired, Owner may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

14.6 **Owner Liability:** Unless a defect is caused by the negligence or intentional act or failure to act of Contractor or subcontractor or supplier at any tier, Contractor shall not be liable for the repair of any defects of material or design furnished by Owner or for the repair of any damage which results from any defect in Owner-furnished material or design. Contractor is not responsible for and does not warranty pre-existing work or facilities that may be assigned to Contractor except as stated in the Job Order.

14.7 This warranty shall not limit Owner's rights under this Contract and/or applicable law with respect to latent defects, gross mistakes, or fraud.

XV. PAYMENT

15.1 **Compensation:** Costs for equipment, material, and labor shall be in accordance with the Contract, including Owner's Request for Proposals for Project No. 14-15. Owner shall pay Contractor for Work performed on Job Orders authorized by Owner in writing, subject to allowable additions and deductions, and make payment on account as provided by the Uniform General Conditions. Owner shall pay all unpaid amounts due Contractor under this Contract within thirty (30) days of receipt of invoice. If payment is later than forty-five (45) days, interest will be set no higher than the statutory maximum of 1% per month. If Work or any portion thereof has not met the satisfactory approval of Owner's Representative, current and future payments shall not be made until both parties agree that the Work or the portion thereof has been completed in a satisfactory manner or the Work is acceptable. Notwithstanding any provision herein to the contrary, no payment of amounts owed hereunder shall be considered past due or not paid when due except in accordance with Section 2251.021 of the Texas Government Code.

15.2 **Progress Payments:** If required by the Job Order, Owner shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Owner, on estimates of Work completed submitted by Contractor and approved in writing by Owner. Contractor shall use an acceptable invoice form and shall include supporting documents to reflect a written breakdown of the total price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the estimation of Work completed, Owner will authorize payment for material delivered on the site and preparatory work done if Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform the Work.

15.3 **Application for Payment:** With each Application for Payment, Contractor must attach/detail the following information:

- (1) Defective Work not remedied.
- (2) Legal claims filed against Contractor or reasonable evidence indicating probable filing of claims;
- (3) Failure of Contractor to make payments properly to any subcontractor or supplier for material or labor;
- (4) A reasonable doubt that the Job Order can be completed for the unpaid Job Order balance; and
- (5) Damage to another contractor.

15.4 **Payment Retention:** In the processing of progress payments, Owner shall retain five percent (5%) of the estimated amount until final completion and acceptance of all Work performed under the Job Order. Retention applicable to each Job Order shall be released within sixty (60) days after final completion of the Job Order and acceptance of the Work under the Job Order.

15.5 **Liquidated Damages:** Contractor is expected to complete each Job Order on a timely basis. Liquidated damages may be assessed at Owner's option for Contractor's failure to timely complete each Job Order and/or phase of the scope of work detailed in a Job Order. Owner may withhold as liquidated damages, or require Contractor to pay, One Hundred Fifty (\$150.00) per day for any Work not completed by the completion day set forth in the Job Order. These liquidated damages are not a penalty but are

compensation to Owner for additional expenses incurred and inconvenience caused by Contractor's failure to allow Owner to receive the premises at the designated time of completion.

15.6 **Ownership after Payment Received:** All material and work covered by progress payments made shall, at the time of payment, become the sole property of Owner, but this provision shall not be construed as:

- a. Relieving Contractor from the sole responsibility for all material and Work upon which payments have been made or the restoration of any damaged Work; or
- b. Waiving the right of Owner to require the fulfillment of all of the terms of the Contract or Job Order.

15.7 An estimate of the Work submitted shall be deemed approved and certified for payment after seven (7) calendar days from the date of submission unless before that time the Owner or Owner's representative prepares and issues a specific written finding setting forth those items in detail in the estimate of the Work that are not approved for payment under this Contract or the Job Order. The Owner may withhold an amount from the progress payment sufficient to pay the expenses the Owner reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before thirty (30) calendar days after the estimate of the Work is certified and approved. The estimate of the Work shall be deemed received by the Owner on submission to any person designated by the Owner for the submission, review or approval of the estimate of the Work.

XVI. TERMINATION FOR CONVENIENCE OF OWNER

16.1 **Termination:** Owner may, with or without cause, terminate performance of the Work under this Contract or any Job Order in whole or, from time to time, in part, if Owner determines that termination is in Owner's interest. Owner shall effect such termination by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date.

16.2 After receipt of a Notice of Termination, and except as directed by Owner, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:

- a. Stop work as specified in the notice;
- b. Place no further subcontracts or orders (referred to as subcontracts in this Article) for materials, services or facilities, except as necessary to complete any Work not terminated;
- c. Assign to Owner, as directed by Owner, all right, title, and interest of Contractor under the subcontracts to the extent they relate to the Work terminated, in which case Owner shall have the right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by Owner, Contractor shall

settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this Section;

- d. As directed by Owner, transfer title and deliver to Owner:
 - i. The fabricated or un-fabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated, and
 - ii. The completed or partially completed plans, drawings, information, and other property that, if the Contract and/or Job Order had been completed, would be required to be furnished to Owner;
- e. Complete performance of the Work not terminated;
- f. Take any action that may be necessary, or that Owner may direct, for the protection and preservation of the property related to this Contract and/or the Job Order that is in the possession of Contractor and in which Owner has or may acquire an interest;
- g. Use its best efforts to sell, as directed or authorized by Owner, any property of the types referred to in paragraph 16.2(c) above; provided, however, that Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Owner under the Contract and/or Job Order, credited to the price or cost of the Work, or paid in any other manner directed by Owner.

XVII. DEFAULT

17.1 **Termination of Right to Proceed:** If Owner determines that Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order, or fails to complete the Work within this time, Owner may terminate the Contractor's right to proceed with the Work (or separable part of the Work), upon seven (7) calendar days' written notice to the Contractor. In this event, Owner may take over the Work and complete it by contract or otherwise and may take possession of and use any materials, appliances, and plant on the site necessary for completing the Work.

Contractor's right to proceed shall not be terminated under this Section, if:

- a. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include:
 - i. acts of God or of the public enemy,
 - ii. acts of Owner in its contractual capacity,
 - iii. acts of another Contractor in the performance of a written Contract

- with Owner,
 - iv. fires,
 - v. floods,
 - vi. epidemics,
 - vii. quarantine restrictions,
 - viii. strikes,
 - ix. freight embargoes, or
 - x. unusually severe weather
- b. Contractor, within seven (7) calendar days from the beginning of any such delay (unless extended by Owner), shall notify Owner in writing of the causes of delay. Owner shall ascertain the facts and the extent of delay. If, in the judgment of Owner, the findings of fact warrant such action, the time for completing the Work under the Job Order shall be extended.

If, after termination of Contractor's right to proceed, it is determined that Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Owner. The rights and remedies of Owner in this Article are in addition to any other rights and remedies provided by law or under this Contract.

17.2 **Termination for Default:** In the event Contractor fails to carry out or comply with any of the terms and conditions of this Contract or any Job Order, Owner may notify Contractor of such failure or default in writing and demand that the failure or default be remedied within ten (10) calendar days; in the event Contractor fails to remedy such failure or default within ten (10) day period, Owner shall have the right to terminate this Contract and/or the Job Order. Without limiting the foregoing, the following shall constitute a material breach by Contractor, upon the occurrence of which Contractor shall immediately notify Owner: Contractor: (i) ceases its business operations; (ii) makes a general assignment for the benefit of creditors; (iii) is adjudged bankrupt; or (iv) becomes insolvent.

17.3 **Effect of Termination:** Termination of this Contract or any Job Order under any circumstances whatsoever shall not effect or relieve Contractor from any obligation or liability that may have been incurred or will be incurred, and such termination by Owner shall not limit any other right or remedy available to Owner at law or in equity.

XVIII. CANCELLATION FOR CONFLICT OF INTEREST

18.1 Pursuant to applicable law, Owner may cancel this Contract, without penalty or further obligation to Contractor, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Contract on behalf of the Owner was at any time while this Contract or extension of this Contract is in effect, an employee or agent of any other party to this Contract in any capacity or consultant

to any other party of this Contract. A cancellation made pursuant to this provision shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.

XIX.INSURANCE

19.1 Contractor shall purchase and maintain in effect during the term of this Contract insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Contractor from claims which may arise out of or result from Contractor's operations whether such operations are performed by Contractor or by any subcontractor or by anyone for whose acts any of them may be liable.

a. WORKERS' COMPENSATION INSURANCE providing statutory benefits in accordance with the laws of the State of Texas or any federal statutes as may be applicable to the Work being performed under this Contract.

b. EMPLOYER'S LIABILITY INSURANCE with limits of liability not less than:

\$1,000,000	Each Accident
\$1,000,000	Policy Limits
\$1,000,000	Each Employee

c. COMMERCIAL GENERAL LIABILITY INSURANCE including products/Completed Operations and Contractual Liability with limits of liability not less than:

Occurrence / Personal Injury / Advertising /	
\$1,000,000 CSL	Products / Completed Operations
\$2,000,000 CSL	Annual Aggregate
\$2,000,000 CSL	Products Aggregate
\$1,000,000 CSL	Fire, Lightning or Explosion
\$5,000 Per Person	Medical Expense

d. AUTOMOBILE LIABILITY INSURANCE covering all owned, hired and non-owned motor vehicles used in connection with the Work being performed under this Contract with limits of liability not less than:

\$1,000,000	Bodily Injury / Property Damage
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19.2 Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance available to Owner.

19.3 All policies providing Contractor's insurance as required in paragraph 19.1 above shall be endorsed to provide the following:

a. Ninety (90) days written notice of cancellation or non-renewal given to Owner at the address designated in Section 23.

b. Owner be named as Additional Insured on all policies except Workers Compensation (Prohibited by Law).

- c. Waiver of Subrogation added by endorsement on all policies.

19.4 The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. In no event, however, shall the total limits of liability available for any one occurrence or accident be less than the amount(s) required above.

19.5 Proof of compliance with these insurance requirements shall be furnished to Owner in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company(ies) within ten (10) days of execution of this Contract. Renewal or replacement certificates shall be furnished to Owner not less than twenty-one (21) days prior to the expiration or termination date of the applicable policy(ies). If Contractor fails to maintain the required amounts of insurance or allows the policies to lapse or expire during the term of the Contract, Owner may purchase said insurance and deduct the cost of obtaining the insurance from Contractor's contract sum.

19.6 Contractor shall require any and all subcontractors performing Work under this Contract to carry insurance of the types and with limits of liability as Contractor shall deem appropriate and adequate for the Work being performed. Contractor shall obtain and make available for inspection by Owner upon request current certificates of insurance evidencing insurance coverage carried by such subcontractors.

19.7 Mail the original certificate of insurance to:

Houston Community
College Risk
Management Office
Post Office Box 667517
(MC-1119) Houston, TX
77266

XX. CHANGES

20.1 Owner may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of a Job Order, including changes:

- a. In the specifications (including drawings and designs);
- b. In Owner-furnished facilities, equipment, materials, services, or site; or
- c. Directing acceleration in the performance of the Work, or otherwise altering the schedule for performance of the Work.

20.2 Any other written order (which, as used in this paragraph, includes direction, instruction, interpretation, or determination) from Owner that causes a change shall be treated as a change order under this Article; provided, that Contractor gives Owner timely written notice stating the date, circumstances, and source of the order and that Contractor regards the order as a change order.

20.3 Except as provided in this Article, no order, statement, or conduct of Owner shall be treated as a change under this Article or entitle Contractor to an equitable adjustment hereunder.

20.4 Contractor must submit any proposal under this Article within thirty (30) calendar days after:

- a. Receipt of a written change order under Paragraph 20.1 above or;
- b. The furnishing of a written notice under Paragraph 20.2 above,

by submitting to Owner a written statement describing the general nature and amount of the proposal, unless this period is extended by Owner. The statement of proposal for adjustment may be included in the notice under Paragraph 20.2 above.

20.5 No proposal by Contractor for an equitable adjustment shall be allowed if asserted after final payment under the Job Order.

XXI. DISPUTE RESOLUTION

21.1 **Government Code Chapter 2260 Controls:** Contractor's claims for breach of this Contract that are not resolved informally are governed by Texas Government Code, Chapter 2260, as it may be amended from time to time, unless preempted by other applicable law. The submission, processing and resolution of Contractor's claims are governed by rules adopted by the Texas Attorney General at 1 Tex. Admin. Code, Chapter 68, as currently effective or subsequently amended.

XXII. MISCELLANEOUS PROVISIONS

22.1 **Independent Contractor:** Contractor acknowledges that it is engaged as an independent contractor and that Owner shall have no responsibility to provide Contractor or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Contractor is responsible for all income taxes required by applicable law. It is the intention of the parties that Contractor is independent of Owner and is not an employee, agent, joint venture, or partner of Owner. Contractor acknowledges that Owner has no responsibility for any conduct of any Contractor's employees, agents, representatives, contractors, or subcontractors.

22.2 **Confidentiality:** Contractor shall treat any information supplied by Owner or information pertaining to Owner as confidential and shall not disclose any such information to others except as necessary for the performance of this Contract or a Job Order or as authorized by Owner in writing or except when required by law.

22.3 **Successors and Assigns:** Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the

terms and conditions of this Contract. This Contract is a personal service contract for the services of Contractor, and Contractor's interest in this Contract, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party without written consent of Owner. The benefits and burdens of this Contract are, however, assignable by Owner.

22.4 **Subcontracting:** Contractor agrees not to subcontract any part of the work without the prior written consent of Owner. If subcontracting is permitted, Contractor must identify the subcontractor(s) to Owner prior to any subcontractor beginning work. Submission and approval of a Small Business Sub Contractor Plan is considered consent under this Article. If Contractor uses subcontractors in the performance of the Work or any portion thereof, Contractor shall be fully responsible to Owner for all acts and omissions of the subcontractors. Contractor represents and warrants that it is willing, able, and capable of obtaining, supervising, and being responsible for any subcontractor who performs and/or provides products or services related to this Contract.

22.5 **Loss of Funding:** Performance by Owner under this Contract may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the HCCS Board of Trustees. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then Owner shall issue written notice to Contractor and Owner may terminate this Contract without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Owner. The parties agree that this Contract and any Job Order issued by Owner are commitments of Owner's current revenue only. Every payment obligation of Owner under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract or any Job Order, this Contract or any Job Order may be terminated by Owner at the end of the period for which funds are available.

22.6 **Open Records:** Contractor acknowledges that Owner is subject to the Texas Public Information Act, and Contractor waives any claim against and releases from liability Owner, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by Contractor or Owner and determined by Owner, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

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

22.8 **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.

22.9 **Payment of Debt or Delinquency to the State:** Pursuant to Section 2107.008, Texas Government Code, Contractor agrees that any payments owing to Contractor under this Contract 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.

22.10 **Taxes:** Owner is a tax exempt State of Texas agency under Chapter 151, Texas Tax Code, and an institution of higher education. Contractor shall avail itself of all tax exemptions applicable to Contractor's work or expenses. Owner shall provide a tax exemption certificate to Contractor upon Contractor's request. Owner shall not be liable for any taxes resulting from this Contract, except where otherwise required by law.

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

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

22.13 **Severability:** Should any provisions(s) of this Contract be held invalid or unenforceable in any respect, that provision shall not affect any other provisions, and this Contract shall be construed as if the invalid or unenforceable provision(s) had not been included.

22.14 **Waivers:** No delay or omission by either party in exercising any right or power provided under the provisions of this Contract shall impair any such right or power or be construed to be a waiver of the right or power. A written waiver granted by either of the parties of any provision of this Contract shall not be construed as a future waiver of that provision or a waiver of any other provision of the Contract.

22.15 **Force Majeure:** No party shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform under this Contract due to causes beyond its reasonable control, including, but not limited to, acts of God, employee strikes, epidemics, war, riots, flood, fire, sabotage, terrorist acts or any other circumstances of like character.

22.16 **Governing Law and Venue:** This Contract shall be construed, interpreted and applied in accordance with the laws of the State of Texas without regard for choice of law principles. All obligations of the parties created hereunder are enforceable in Harris County, Texas, and the parties hereby submit to the exclusive jurisdiction of the state and federal courts located in Houston, Harris County, Texas.

22.17 **Entire Contract:** This Contract, as defined herein, constitutes the sole and only agreement between the parties with respect to the services contracted for and supersedes any prior understandings, written or oral. No modification, alteration or waiver

of this Contract or any of its provisions shall be effective unless in writing and signed by both parties. No course of prior dealings, no usage of trade, and no course of performance shall be used to modify, supplement or explain any terms used in this Contract.

22.18 **Financial Interest:** By signature hereon, Contractor certifies that no member of Owner's Board of Trustees, including Owner's satellite institutions, has a financial interest, directly or indirectly, in the transaction that is the subject of this Contract.

22.19 **Products and Materials Produced in Texas:** If Contractor will provide services under this Contract, Contractor covenants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Contract, Contractor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

22.20 **Authority to Act:** If Contractor is a corporation or a limited liability company, Contractor warrants, represents, and agrees that (1) it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization; (2) it is duly authorized and in good standing to conduct business in the State of Texas; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Contract; and (4) the individual executing this Contract on behalf of Contractor has been duly authorized to act for and bind Contractor.

22.21 **Records:** Records of expenses pertaining to additional services, services performed on the basis of a Worker Wage Rate or Monthly Salary Rate, or reimbursable expense, if allowed, 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 Owner or Owner's authorized representative on reasonable notice.

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

22.23 **Interpretation:** Contractor agrees that the normal rules of construction that require that any ambiguities in the Contract are to be construed against the drafter shall not be employed in the interpretation of this Contract or any Job Order.

22.24 **Modification:** This Contract may only be modified by a written instrument executed by the parties to be incorporated into this Contract.

22.25 **Assignment:** Contractor may not assign this Contract or any of its rights, duties or obligations hereunder without the prior written approval of Owner. Any attempted assignment of this Contract by Contractor shall be null and void. Any Job Order made as a result of this Contract may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Contractor without the prior written approval of Owner.

vests.

24.3 Contractor shall provide its employees safety training to include special training prior to working with hazardous materials or operations.

24.4 Contractor shall provide warning signs, barricades and verbal warnings as required.

24.5 Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening situations.

24.6 Contractor shall promptly notify Owner of any accident involving personnel or damage to material and equipment. Copies of any injury reports or accident investigation reports shall be provided to Owner.

24.7 Contractor shall maintain a set of OSHA articles at the jobsite as they apply to the Work being performed. Copies shall be provided to Owner when requested.

24.8 Contractor shall submit to Owner a copy of its safety policies and program procedures which establish the safety rules and regulations as they are to be applied to performance of the Work. These documents shall be submitted by Contractor within fourteen (14) calendar days after issuance of a Job Order and prior to the commencement of the Work.

24.9 Contractor shall designate, during performance of the Work, a safety representative to develop and monitor the project safety program. The name, company address, and telephone number of the assigned individual shall be submitted to Owner by Contractor along with its safety policies and program procedures.

24.10 Contractor shall provide and maintain on the jobsite, at all times, a completely stocked first aid kit which contains all standard emergency medical supplies.

24.11 Contractor shall make available for its employees and those of its subcontractors, while they are performing Work on the site, emergency medical treatment either at the site or at a nearby medical facility.

24.12 Owner reserves the right to approve and monitor Contractor's safety policies and program procedures as applied during performance of the Work. Failure to comply with safety policies and program procedures, once approved by Owner, shall be cause for the termination of the Job Order.

XXV. OTHER CONTRACTS

25.1 Owner may undertake or award other contracts for additional work at or near the site of Work under this Contract or a Job Order. Contractor shall fully cooperate with the other contractors and with Owner's employees and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by Owner. Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Owner's

employees.

25.2 Owner may award or enter into other contracts in its sole discretion, and nothing in this Contract may be construed to imply that Contractor has the exclusive right to provide job order contracting services to Owner.

XXVI. DISSEMINATION OF CONTRACT INFORMATION

26.1 Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning this Contract, any Job Order or the Work performed under this Contract, without the prior consent of Owner.

XXVII. PERFORMANCE AND PAYMENT BONDS

27.1 Payment Bond:

Contractor shall furnish a Payment Bond in the amount equal to one hundred percent (100%) of the contract amount if the Job Order is in excess of \$25,000.

27.2 Performance Bond:

Contractor shall furnish a Performance Bond in the amount equal to one hundred percent (100%) of the Job Order amount if the Job Order is in excess of \$100,000.00. The bonds must be executed by a corporate surety authorized to do business in Texas and licensed in Texas to issue surety bonds, and must be executed by a surety company that is authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000.00, the surety must:

- (a) Hold a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law; or
- (b) Have obtained reinsurance for any liability in excess of \$100,000.00 from a reinsurer that is authorized and admitted as a reinsurer in Texas and is the holder of a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

27.3 The Performance and/or Payment Bonds must be submitted to Owner before commencement of any work and no later than fourteen (14) calendar days after Contractor's receipt of the Authorization to Commence Work. The bonds must be made payable to Houston Community College System.

XXVIII. PREVAILING WAGE RATES

28.1 Contractor shall comply with, and ensure each subcontractor complies with, all applicable laws regarding prevailing wage rates, including, but not limited to, Chapter 2258 of the Texas Government Code and any related federal requirements applicable to a Job Order. Contractor and all subcontractors shall comply with all state and federal laws including, but not limited to, laws of labor, minimum wage, safety, and equal employment opportunity. Contractor and all subcontractors must pay not less than the general prevailing wage rate plus any applicable fringe benefits. Contractor shall pay not less than the wage scale of the various classes of labor as detailed in the prevailing wage schedule detailed in Owner's Uniform General Conditions, which incorporates the City of Houston Prevailing Wage Rates.

XXIX. INDEMNIFICATION

29.1 CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE HOUSTON COMMUNITY COLLEGE SYSTEM, ITS AGENTS, EMPLOYEES, TRUSTEES AND OTHER OFFICERS FROM ANY AND ALL CLAIMS, LIABILITY, COSTS, SUITE OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES, OR DAMAGES ASSERTED AGAINST IT BY REASON OF THE INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, ITS AGENTS, SERVANTS, SUBCONTRACTORS, AND EMPLOYEES IN THE PERFORMANCE OF THE CONTRACT.

XXX. CONTRACT ORDER OF PRECEDENCE

30.1 In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- a. Contract Modifications, if any;
- b. the Contract Articles, including exhibits;
- c. Owner's Uniform General Conditions, as applicable;
- d. Division One, as applicable;
- e. Job Order(s);
- f. Drawings;
- g. Specifications;
- h. Request for Proposals for Project No. 14-15, including any addenda thereto;
- i. Contractor's proposal submitted in response to Request for Proposals for Project No. 14-15

XXXI. HCC INTERNSHIP PROGRAM

31.1 Contractor hereby agrees to establish a student internship program. The Contractor will appropriate five (5) HCC student(s) in an internship capacity with the company or on certain jobs under any resulting Job Order. Contractor will pay the student(s) at least the minimum wage required by law and cooperate with

Owner in the evaluation of the student's performance in the possible award of college credit. Owner will provide Contractor with names of students eligible to participate in the internship program. Contractor will maintain documentation identifying students contacted, enrolled in the internship program, and duties being performed by students.

XXXII. THIRD PARTY ANTITRUST VIOLATIONS

32.1 Contractor assigns to Owner any claim for overcharges, resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to Contractor toward fulfillment of this Contract.

XXXIII. ASSURANCE OF SBDP GOAL

33.1 Contractor agrees to comply with Owner's Small Business Development Program ("SBDP") and to make good-faith effort to award subcontracts to small businesses certified by an agency or organization whose certifications is recognized by Owner, in accordance with Owner's SBDP. Contractor hereby agrees to attain small business goal participation in the amount of **35%** of the subcontract work each year of the Contract. Contractor's failure to comply with the provisions of the SBDP and/or Contractor's failure to attain the annual goal of 35% may result in:

- a. Withholding of payment until such compliance is achieved or a waiver of the provisions is provided by Owner; and/or
- b. Revocation of any benefits or incentives provided under the program or suspension or termination of the Contract or any Job Order in whole or in part.

XXXIV. AUDIT OF RECORDS

34.1 Pursuant to applicable laws, the Contractor shall retain and shall contractually require each subcontractor to retain all data, books, documents and other records ("records") relating to this Contract for a period of five (5) years after completion of this Contract. This includes all books and other evidence bearing on Contractor's costs and expenses under this Contract or the Job Order. All records shall be subject to inspection and audit by the Owner at reasonable times, without cost to Owner. Upon request, Contractor shall produce the original of any or all such records. If approved by Owner, photographs, microphotographs or any authentic reproductions may be maintained instead of original records and documents. If an audit or a compliance review has been announced, Contractor shall retain its records and accounts until such audit or compliance review has been completed.

IN WITNESS WHEREOF, Owner and Contractor have executed and delivered this Contract effective as of the date identified above.

HOUSTON COMMUNITY COLLEGE SYSTEM

By: _____ Date _____
Name: _____
Title: _____

By: _____ Date _____
Name: _____
Title: HCC General Counsel

CONTRACTOR

By: _____ Date _____
Name: _____
Title: _____

SAMPLE CONTRACT

EXHIBITS

The Following Exhibit(s) is/are incorporated by reference for all purposes:

Exhibit A Contract Pricing
Coefficients

SAMPLE CONTRACT