

**AMENDMENT NO. 1  
TO THE  
CONSTRUCTION MANAGER-AT-RISK CONTRACT  
BETWEEN  
THE TEXAS FACILITIES COMMISSION  
AND  
AMERICAN CONSTRUCTORS HOLDING COMPANY**

**THIS AMENDMENT NO. 1** is entered into by and between the Texas Facilities Commission, a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 (hereinafter referred to as “TFC”), as Owner (as defined in UGC, Section 1.28) and American Constructors Holding Company, located at 11900 West Parmer Lane, Suite 200, Cedar Park, Texas 78613 (hereinafter referred to as “CMR”), (hereinafter collectively referred to as the “Parties”) to amend the original Construction Manager-at-Risk Contract (hereinafter referred to as the “Contract”).

WHEREAS, on March 15, 2017, the Parties entered into that one certain *Construction Manager-at-Risk Contract*; and

WHEREAS, the Parties desire to extend the Contract and to include additional provisions, terms and conditions that have been adopted subsequent to the execution of the Contract, in order to reflect the will of the Texas Legislature or to comply with action(s) or requirement(s) of the State Auditor’s Office, the Office of the Attorney General, the Comptroller of Public Accounts, and/or other authorizing entities of the state;

NOW, THEREFORE, the Parties agree to amend the Contract, as follows:

1. Unless clearly provided, all terms and phrases in initial caps herein shall have the same meaning as the terms and phrases with initial caps in the Contract.
2. The Parties agree to modify ARTICLE I – DEFINITIONS, Section 1.1, Definitions, by adding the following definition:

“*HUB Compliance Reporting System* means the Texas Facilities Commission Historically Underutilized Business (“HUB”) online reporting system located at <https://tfc.gob2g.com>. The *HUB Compliance Reporting System* is used to maintain business records documenting compliance with the HUB Subcontracting Plan (“HSP”) by submission of monthly Progress Assessment Reports. See Section 12.2, Historically Underutilized Businesses (“HUBs”).”

3. The Parties agree to modify ARTICLE III – TERM, SUSPENSION, AND TERMINATION, Section 3.1. Contract Term, by replacing Section 3.1 in its entirety, as follows:

“3.1 Contract Term. This Contract shall be effective as of the Effective Date and shall terminate on December 31, 2020, unless extended by the Parties by amendment to this Contract or terminated earlier, as provided below.

4. The Parties agree to modify ARTICLE VII – WARRANTIES AND REPRESENTATIONS BY CMR, by adding Sections 7.1.16 through 7.1.22, which shall read in their entirety as follows:

“7.16. Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. CMR certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving CMR within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

7.17. Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053, Texas Government Code, CMR certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

7.18. No Conflicts. CMR represents and warrants that CMR has no actual or potential conflicts of interest in providing services to the State of Texas under this Agreement and that CMR’s provision of services under this Agreement would not reasonably create an appearance of impropriety.

7.19. Excluded Parties. CMR certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

7.20. Suspension and Debarment. CMR certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

7.21. Entities that Boycott Israel. Pursuant to Section 2270.002 of the Texas Government Code, CMR certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Contract.

7.22. Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations. In accordance with Section 2251.152 of the Texas Government Code, TFC is prohibited from entering into a governmental contract (as defined in Texas Government Code Section 2252.151(3)) with a company that is identified on a list prepared and maintained under Texas Government Code Section 806.051, 807.051, or 2252.153. If CMR is

on the above-referenced list the Contract will be considered void or voidable and TFC will not be responsible to pay CMR for any work performed.”

5. The Parties agree to modify ARTICLE XI – BONDS AND INSURANCE, by deleting Subsection 11.2.1.2 in its entirety and replacing it with Subsection 11.2.1.2, as follows:

“11.2.1.2. Pursuant to the Texas Labor Code, Section 406.096(b), CMR shall require each Subcontractor to certify in writing to the CMR that said Subcontractor provides workers’ compensation and employers’ liability insurance for all of Subcontractor’s employees employed on this public project. CMR shall forward said certifications to TFC within ten (10) days of the Effective Date of the Contract.

6. The Parties agree to modify ARTICLE XII – MISCELLANEOUS PROVISIONS, by adding Subsection 12.2.1, as follows:

“12.2.1. Requirement to Utilize HUB Compliance Reporting System. Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(1)(2) and 20.287(b), TFC administers monthly HUB Subcontracting Plan (“HSP”) to include the Progressive Assessment Report (“PAR”) compliance monitoring through a HUB Compliance Reporting System known as B2G. CMR and CMR’s Subcontractors must submit required PAR information into the B2G system as a condition of payment. Any delay in the timely submission of PAR information into the B2G system will be treated as a deficiency and the payment request will be subject to suspension until such deficiency has been resolved.”

Except as expressly amended above, all provisions, terms and conditions of the Contract remain in full force and effect.

In Witness Whereof, the Parties hereto have made and executed this Amendment No. 1 to the Contract to be effective as of the date of the last Party to sign.

**TEXAS FACILITIES COMMISSION**

**AMERICAN CONSTRUCTORS HOLDING COMPANY**

By:    
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By:    
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Mike Novak

Martin A. Burger

Executive Director

CEO

Date of Execution: 12/05/2019 | 12:40 PM CST

Date of Execution: 12/05/2019 | 12:38 PM CST

GC 

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