

**AMENDMENT NO. 1
TO THE
CONSTRUCTION MANAGER-AT-RISK CONTRACT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
GAEKE CONSTRUCTION COMPANY, INC.**

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 below and in *2015 Uniform General Conditions*, Section 1.28) and Gaeke Construction Company, Inc., located at 2910 East Austin Street, Giddings, Texas 78942 (hereinafter referred to as “Construction Manager-Agent” or “CMR”), to amend the original Construction Manager-at-Risk Contract known as TFC Contract No. 19-041-000 (hereinafter referred to as the “Contract”) pursuant Tex. Gov’t Code Ann. §§2166.2525 and §2267.151 (West 2018).

RECITALS

WHEREAS, on May 21, 2019, the Parties entered into that one certain *Construction Manager-at-Risk Contract for TDA Giddings Lab Renovation Project Between the Texas Facilities Commission and Gaeke Construction Company Inc.*; and

WHEREAS, Subject to Sections 2.1.4, TFC Approvals, and 12.30, Entire Agreement and Modification, the Parties now desire to amend the Contract to reflect increased funding in the amount of Two Hundred Eighty-Five Thousand Six Hundred Twenty and No/100 Dollars (\$285,620.00), and to include provisions adopted by TFC subsequent to the execution of the Contract in order to comply with the Texas Legislature, the State Auditor’s Office, the Office of the Attorney General, the Comptroller of Public Accounts, and for such other purposes addressed herein;

NOW THEREFORE, the Parties hereby agree as follows:

1. Unless clearly provided otherwise herein, 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 amend ARTICLE I – 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 amend ARTICLE II – SCOPE OF SERVICES, by adding Section 2.2, Additional Project Scope, as follows.

“2.2. Additional Project Scope.

2.2.1. The Project includes foam insulation, overhead door canopies, facility water infiltration system, and ancillary work identified to enhance performance of the Metrology Laboratory in order to ensure system viability while maintaining NIST 143 required Echelon levels for certifiability.”

4. The Parties agree to amend ARTICLE IV – CONSIDERATION, as follows.

(a) Section 4.2, Contract Sum-Components, is deleted in its entirety and replaced with Section 4.2, as follows.

“4.2. Contract Sum-Components. Upon execution of a GMP Acceptance, the Contract Sum shall not exceed One Million Five Hundred Forty-Seven Thousand Nine Hundred Ninety-Six and No/100 Dollars (\$1,547,996.00), which is the sum of the following components.”

(b) Subsection 4.2.2, Construction Management Fee, is deleted in its entirety and replaced with Subsection 4.2.2, as follows.

“4.2.2. Construction Management Fee. The Construction Management Fee not to exceed eight percent (8%) of the Cost of Work, which sum will be finalized as part of the Contract Sum in the GMP Acceptance and shall not exceed the sum of Ninety-One Thousand Eight Hundred Twenty-Three and No/100 Dollars (\$91,823.00).”

(c) Subsection 4.2.3, General Conditions Fee, is deleted in its entirety and replaced with Subsection 4.2.3, as follows.

“4.2.3. General Conditions Fee. The General Conditions Fee not to exceed One Hundred Sixty-Nine Thousand Four Hundred Forty and No/100 Dollars (\$169,440.00), which sum will be finalized as part of the Contract Sum in the GMP Acceptance.”

(d) Subsection 4.2.4, Cost of Work, is deleted in its entirety and replaced with Subsection 4.2.4, as follows.

“4.2.4. Cost of Work. The Cost of Work will be adjusted and finalized as part of the Contract Sum in the GMP. The budget for the Cost of Work shall not exceed One Million One Hundred Forty-Seven Thousand Seven Hundred Eighty-Two and No/100 Dollars (\$1,147,782.00).”

(e) Subsection 4.2.5, TFC Controlled Contingency, is deleted in its entirety and replaced with Subsection 4.2.5, as follows.

“4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of One Hundred Twenty-Nine Thousand Four Hundred Eighty-Four and No/100 Dollars (\$129,484.00), which sum shall be maintained through construction, and included in the Contract Sum and finalized in the GMP Acceptance.”

5. The Parties agree to amend ARTICLE VI – ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS, Section 6.2, Acknowledgements, Covenants, and Agreements of CMR, as follows.

(a) Subsection 6.2.18, Prohibition Against Boycotting Israel, is deleted in its entirety and replaced with Subsection 6.2.18, as follows.

“6.2.18. Entities that Boycott Israel. Pursuant to Section 2270.002 of the Texas Government Code, CMR certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Contract. CMR shall state any facts that make it exempts from the boycott certification.”

(b) The following two (2) provisions are added as Subsections, 6.2.20, and 6.2.21.

“6.2.20. Human Trafficking Prohibition. Pursuant to Section 2155.0061 of the Texas Government Code, CMR certifies that it is not ineligible to receive this Contract and acknowledges that this Contract may be terminated and payment withheld if CMR’s certification in this matter is inaccurate. TFC may not award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year (5) period preceding the date of the award, has been convicted of any offense related to the direct support or promotion of human trafficking.

6.2.21. Use of State Property. CMR is prohibited from using State Property for any purpose other than performing services authorized under the Contract. State Property includes, but is not limited to: TFC’s office space, identification badges, TFC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TFC issued software, and the TFC Virtual Private Network (VPN client), and any other resources of TFC. CMR shall not remove State Property from the continental United States. In addition, CMR may not use any computing device to access TFC’s network or e-mail while outside of the continental United States. CMR shall not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of CMR, CMR shall be responsible for (i) all repair and replacement charges incurred by TFC that are associated with loss of State Property or damage beyond normal wear and tear; and (ii) all charges attributable to CMR’s use of State Property that exceeds the scope of the Contract. CMR shall

fully reimburse such charges to TFC within ten (10) calendar days of CMR’s receipt of TFC’s notice of amount due. Use of State Property for a purpose not authorized by agreement shall constitute breach of contract and may result in termination of the Contract and the pursuit of other remedies available to TFC under contract, at law, or in equity.”

6. The Parties agree to amend ARTICLE VII – WARRANTIES AND REPRESENTATIONS BY CMR, by adding Subsection 7.1.17, as follows.

“7.1.17. Cybersecurity Training Required. If CMR has “access,” as that term is defined in 1 Tex. Admin. Code § 202.1, to any state computer system or database, then, pursuant to Tex. Gov’t Code § 2054.5192, CMR and its subcontractors, officers, and employees shall complete a cybersecurity training program certified under Tex. Gov’t Code §2054.519. The cybersecurity training program must be completed by the CMR and its subcontractors, officers and employees during the term and any renewal period of the Contract. CMR shall verify completion of the training program to TFC pursuant to, and in accordance with, Tex. Gov’t Code § 2054.5192.”

All other terms and conditions of the Contract not expressly amended herein shall remain in full force and effect.

This Amendment No. 1 shall be effective as of the date of the last Party to sign it.

TEXAS FACILITIES COMMISSION

GAEKE CONSTRUCTION COMPANY, INC.

By: DocuSigned by:
Mike Novak, Executive Director
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By: DocuSigned by:
Louis Gaeke, President
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Mike Novak

Louis Gaeke

Executive Director

President

Date of Execution: 10/14/2020 | 1:15 PM CDT

Date of Execution: 10/14/2020 | 1:13 PM CDT

PM DS
PJO

GC DS
SEHGL

Dir DS
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DED DS
JRD/ED