

TFC Contract No. 17-002-000
J. T. Vaughn Construction, LLC
Amendment No. 4
Project No. 18-022-2501
RFQ No. 303-6-01590

**AMENDMENT NO. 4
TO
CONSTRUCTION MANAGER-AT-RISK CONTRACT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
J. T. VAUGHN CONSTRUCTION, LLC**

The Texas Facilities Commission (hereinafter referred to as “TFC”), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, as Owner (as defined in UGC Section 1.28) and J. T. Vaughn Construction, LLC (hereinafter referred to as “CMR”), located at 3920 North Interstate 35, Austin, Texas 78751 (hereinafter referred to collectively as the “Parties”), enter into the following *Amendment No. 4 to the Construction Manager-at-Risk Contract between the Texas Facilities Commission and J. T. Vaughn Construction, LLC* (hereinafter referred to as the “Amendment No. 3”), as amended.

Recitals:

WHEREAS, on September 9, 2016, the Parties entered into that one certain *Construction Manager-at-Risk Contract Between the Texas Facilities Commission and J. T. Vaughn Construction, LLC* (hereinafter referred to as the “Contract”); and

WHEREAS, on October 26, 2017, August 21, 2018, and April 30, 2019, the Parties executed Amendment No. 1, Amendment No. 2, and Amendment No. 3, respectively, for the purpose of providing additional Construction Management Services; and

WHEREAS, subject to Contract Section 2.1.4, TFC Approvals, the Parties desire to enter into this Amendment No. 4 in order to reduce the Contract Sum by One Thousand Four Hundred Seventy-Two and No/100 Dollars (\$1,472.00), this reduction includes One Thousand Four Hundred and No/100 Dollars (\$1,400.00) for the Cost of Work and Seventy-Two and No/100 Dollars (\$72.00) for the Construction Management Fee, for funds not spent during the project; and

WHEREAS, the Parties also desire to modify certain provisions of ARTICLE X, Insurance, and to include additional provisions, terms and conditions that were adopted subsequent to the execution of the Contract, in order to comply with actions or requirements of the Texas Legislature, the State Auditor’s Office, the Office of the Attorney General, the Comptroller of Public Accounts, and for such other purposes as are addressed herein;

NOW, THEREFORE, the Parties agree to amend the Contract, as amended, 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.

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2. The Parties agree to modify 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.gob2.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 (“PARs”). See Section 12.2., Historically Underutilized Businesses, and Subsection 12.2.1, Requirement to Utilize HUB Compliance Reporting System.”

3. The Parties agree to modify ARTICLE III – TERM, SUSPENSION, AND TERMINATION, Section 3.3, Termination Prior to Establishment of the GMP, by adding Subsections 3.3.1 and 3.3.2., as follows:

“3.3.1. Rights Upon Termination or Expiration of Contract. In the event that the Contract is terminated for any reason, or upon its expiration, TFC shall retain ownership of all associated work products and documentation obtained from the CMR under this Contract.

3.3.2. No Liability Upon Termination. If this Contract is terminated for any reason, TFC and the State of Texas shall not be liable to CMR for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.”

4. The Parties hereby agree to amend ARTICLE IV – CONSIDERATION, SECTION 4.2 – CONTRACT SUM-COMPONENTS, of the Contract, as amended, by reducing the Contract Sum by One Thousand Four Hundred Seventy-Two and No/100 Dollars (\$1,472.00), thus decreasing the Contract Sum from Fifteen Million Six Hundred Forty-Eight Thousand Two Hundred Seventy-Two and No/100 Dollars (\$15,648,272.00), to a new total not to exceed amount of Fifteen Million Six Hundred Forty-Six Thousand Eight Hundred and No/100 Dollars (\$15,646,800.00), reflecting the reduction indicted in CMR’s Proposed Change Order Form B and Change Proposal No. 244801-0174, attached hereto as “Exhibit A-4,” incorporated herein for all purposes. Section 4.2 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 Fifteen Million Six Hundred Forty-Six Thousand Eight Hundred and No/100 Dollars (\$15,646,800.00), which is the sum of the following components.

4.2.1. Pre-Construction Management Fee. The Pre-Construction Management Fee as indicated in Section 4.1, above, not to exceed Thirty-Seven Thousand One Hundred Twenty-Three and No/100 Dollars (\$37,123.00).

4.2.2. Construction Management Fee. The Construction Management Fee not to exceed three and three quarter’s percent (3.75%) of the Cost of Work, which sum shall not

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exceed Four Hundred Fifty-Two Thousand Four Hundred Sixteen and No/100 Dollars (\$452,416.00) and will be finalized as part of the Contract Sum in the GMP Acceptance.

4.2.3. General Conditions Fee. The General Conditions Fee not to exceed One Million Seven Hundred Twenty-Six Thousand Two Hundred Thirty-Eight and No/100 Dollars (\$1,726,238.00), which sum will be finalized as part of the Contract Sum in the GMP Acceptance.

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 Twelve Million Sixty-Five Thousand Four and No/100 Dollars (\$12,065,004.00).

4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of One Million Three Hundred Sixty-Six Thousand Nineteen and No/100 Dollars (\$1,366,019.00), which sum shall be maintained through construction, and included in the Contract Sum and finalized in the GMP Acceptance.

4.2.6. Unused Contingencies. Any unused portion of the CMR Contingency and the TFC Controlled Contingency shall be returned to TFC at the completion of the Project through a credit Change Order to the Contract Sum.”

5. Pursuant to Contract Section 7.1.1, Compliance with All Laws the Parties agree to modify ARTICLE VII – WARRANTIES AND REPRESENTATIONS BY CMR, Section 7.1, Acknowledgements, Covenants, and Agreements of TFC, Subsection 7.1.6, Prohibition Against Boycotting Israel and 7.1.7 Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations, by deleting Subsections 7.1.6 and 7.1.7 as amended in Amendment No. 2 in their entirety and replacing them with Subsections 7.1.16 and 7.1.17 as follows:

“7.1.16. 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 Agreement. CMR shall state any facts that make it exempt from the boycott certification.”

“7.1.17. 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.”

6. Pursuant to Contract Section 7.1.1, Compliance with All Laws, the Parties further agree to modify ARTICLE VII – WARRANTIES AND REPRESENTATIONS BY CMR, Section 7.1

Warranties and Representations by CMR, by adding Subsections 7.1.18 through and including 7.1.22, which shall read in their entirety as follows:

“7.1.18. 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.

7.1.19. 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 Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

7.1.20. 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 Contract and that CMR’s provision of services under this Contract would not reasonably create an appearance of impropriety.

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

7.1.22. 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. The Parties agree to modify ARTICLE XI – BONDS AND INSURANCE, Section 11.2.1, Workers’ Compensation and Employers’ Liability Coverage, 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. In accordance with Tex. Lab. Code §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. Owner is entitled, upon request and without expense, to receive copies of Subcontractor’s written certifications.”

8. The Parties agree to modify ARTICLE XI – BONDS AND INSURANCE, Section 11.2.7, General Requirements for All Insurance, by deleting Subsection 11.2.7.3.2 in its entirety and replacing it with Subsection 11.2.7.3.2, as follows:

“11.2.7.3.2 the policy, or such other document(s) as may be acceptable to TFC, must obligate the insurer, or a third party acceptable to TFC, to notify the Texas

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Facilities Commission, Attention: Insurance Specialist, P. O. Box 13047, Austin, Texas 78711 (e-Email: Insurance@tfc.state.tx.us), of any (i) non-renewal; (ii) cancellation; or (iii) material changes, in writing, as soon as is reasonably possible prior to any such non-renewal, cancellation, or change.”

9. The Parties agree to modify ARTICLE XII – MISCELLANEOUS PROVISIONS, Section 12.2, Historically Underutilized Businesses (“HUBs”), by adding Subsection 12.2.1, Requirement to Utilize HUB Compliance Reporting System, 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.”

10. The Parties agree to modify ARTICLE XII – MISCELLANEOUS PROVISIONS, Section 12.8, Name and Organizational Changes, by adding Subsection 12.8.1, Termination Due to Material Change, as follows:

“12.8.1. Termination Due to Material Change. TFC may terminate this Contract due to any change to CMR that materially alters CMR’s ability to perform under the Contract.”

11. The Parties agree to modify ARTICLE XII – MISCELLANEOUS PROVISIONS, by inserting Sections 12.26 through and including 12.29, and re-numbering existing Section 12.26, Entire Agreement and Modification, so that the inserted Sections and the existing Section read in their entirety, as follows:

“12.26. False Statements; Breach of Representations. By signature to this CMR, CMR makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If CMR signs this Contract with a false statement or it is subsequently determined that CMR has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, CMR shall be in default under this Contract, and TFC may terminate or void this Contract for cause and pursue other remedies available to TFC under this Contract and applicable law.

12.27. Abandonment and Default. If CMR defaults on this Contract, TFC reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible respondent. The defaulting CMR will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

12.28. Antitrust and Assignment of Claims. CMR represents and warrants that neither CMR nor any firm, corporation, partnership, or institution represented by CMR, or

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anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract. CMR assigns to the State of Texas all of CMR's rights, title, and interest in and to all claims and causes of action CMR may have under the antitrust laws of Texas or the United States for overcharges associated with the Contract.

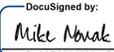
12.29. Entire Agreement and Modification. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistently with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.”

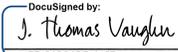
12. Except as expressly amended by this Amendment No. 4, all other terms, conditions and provisions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment No. 4 to be effective as the date of the last party to sign.

TEXAS FACILITIES COMMISSION

J. T. VAUGHN CONSTRUCTION, LLC

By:  _____
B1C9FC0A8020417...

By:  _____
7F4B6DD9DF1045E...

Mike Novak

J. Thomas Vaughn

Executive Director

Chief Executive Officer

Date of execution: 10/09/2019 | 2:49 PM CDT

Date of execution: 10/09/2019 | 2:39 PM CDT

GC NRG

Dir MW

DED M

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Exhibit A-4

**CMR's Proposed Change Order Form B and
Change Proposal No. 244801-0164**



CONTRACTOR'S Proposed Change Order Form	B
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TO: Architect / Engineer

The following is a detailed cost breakdown, including both materials and labor for all additions to and/or deductions from the contract sum if the change described on form A is accepted. (Additional data necessary to support itemized figures is attached and identified below.)

18-022-2501
TFC PROJECT NO.
PCO-007
Change Proposal 174
PROPOSED CHANGE ORDER NO.

6/26/2019
DATE

Pursuant to TFC contract # 17-002-000, Vaughn respectfully submits the following Change Proposals for the Elevator Repairs/Replacement in 4 State Office Buildings.

CP-174 - SFB Offered Savings

Total Contract Amount: \$754,713.00

Cost of Work:	(\$1,400.00)
Fee	(\$72.00)
General Conditions	\$0.00
CM Contingency	\$0.00
Pre-Construction	\$0.00
Total Change	(\$1,472.00)
Transfer from Contingency	\$0.00

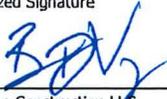
*** The date of substantial completion is February 20, 2020 ***

In accordance with contract # 17-002-000, approval of CM and Owner's Contingency is required to be approved as \$0 PCOs through IMPACT. Please see attached.

Total Addition / Deduction (circle one) to CONTRACT SUM if accepted: (\$1,472)

Request is made for addition of 0 CALENDAR DAYS to the contract period.

The above proposal is submitted for your consideration. The undersigned contractor understands and agrees that this proposal is validated only by the approved CHANGE ORDER attached hereto

Authorized Signature


J.T. Vaughn Construction LLC

TFC Contract No. 17-002-000

Exhibit A-4

Amendment No. 4

VAUGHN
CONSTRUCTION

300 E 15th Street
Austin, TX 78701

T: (512) 318-1332

June 24, 2019

Dorothy Spearman
Texas Facilities Commission
1711 San Jacinto Blvd
Austin, TX 78701

Re: State Office Bldg Elevators

Job No: 244801

Subj: Change Proposal No. 244801-0174

Dear Sir or Madam:

We respectfully submit our proposal for a decrease to our contract in the amount of \$1,472 (one thousand four hundred seventy-two) dollars to provide offered savings for unspent COW / Allowances for the SFB Boiler & Elevator Replacements for the above referenced project.

Please indicate your acceptance of this change proposal by signing and returning one copy of the attached Form B breakdown of our cost.

Very truly yours,
VAUGHN CONSTRUCTION



Brian DeVaney

Attachments:

CC:

Change Proposal Detail Sheet

Rev. 1.12

Project No. & Name: 16-002-5191 TFC State Office Building Elevators Change Proposal No. 174
 Contractor Name: Vaughn Construction Prepared By: Carmen Gust Change Proposal Date 26-Jun-19
 Description of Change: Offered savings from SFB Boiler & Elevator Replacements

Line Item	Description	Quantity	Units	Unit Labor Cost	Approved Labor Burden Rate: 0.000%			Mat/Equip Unit Cost	Material Equipment Total	Subcontract	
					Labor Hours	Labor Rate	Labor Total				
1	Offered Savings - COW	1.00	LS				0.00	0.00		-1,400.00	
2	Fee	1.00	LS				0.00	0.00		-72.00	
3							0.00	0.00		0.00	
4							0.00	0.00		0.00	
5							0.00	0.00		0.00	
6							0.00	0.00		0.00	
7							0.00	0.00		0.00	
8							0.00	0.00		0.00	
9							0.00	0.00		0.00	
10							0.00	0.00		0.00	
11							0.00	0.00		0.00	
12							0.00	0.00		0.00	
13							0.00	0.00		0.00	
14							0.00	0.00		0.00	
15							0.00	0.00		0.00	
16							0.00	0.00		0.00	
17							0.00	0.00		0.00	
18							0.00	0.00		0.00	
19							0.00	0.00		0.00	
20							0.00	0.00		0.00	
21							0.00	0.00		0.00	
22							0.00	0.00		0.00	
23							0.00	0.00		0.00	
24							0.00	0.00		0.00	
25							0.00	0.00		0.00	
26							0.00	0.00		0.00	
27							0.00	0.00		0.00	
28							0.00	0.00		0.00	
29							0.00	0.00		0.00	
30							0.00	0.00		0.00	
31							0.00	0.00		0.00	
32							0.00	0.00		0.00	
33							0.00	0.00		0.00	
34							0.00	0.00		0.00	
35							0.00	0.00		0.00	
36							0.00	0.00		0.00	
37							0.00	0.00		0.00	
38							0.00	0.00		0.00	
39							0.00	0.00		0.00	
40							0.00	0.00		0.00	
41							0.00	0.00		0.00	
42							0.00	0.00		0.00	
43							0.00	0.00		0.00	
44							0.00	0.00		0.00	
45							0.00	0.00		0.00	
SUBTOTAL					0		0	0		-1,472	0

Work performed by Subcontractors own employees (per Contract)		SUBTOTAL	\$	(1,472.00)
FEE (includes Profit and Overhead) 3.75%			\$	-
Managing subcontracted work (per Contract)		SUB TOTAL	\$	-
FEE (includes Profit and Overhead) 3.75%			\$	-
		SUB TOTAL	\$	(1,472.00)
No	To Be Funded With-In Cost of Work (Yes / No) (If Yes, then 0% Fee, if No, then 3.75% fee)	Bond / GL / Builder's Risk Included?	No	\$ -
TOTAL FOR THIS CHANGE PROPOSAL			\$	(1,472)

FORM B

PROJECT: State Office Bldg Elevators

CHANGE PROPOSAL NO: 244801-0174

QUOTATION :

Item	Labor	Materials	Subs	Total
Offered Savings	\$0.00	\$(1,400.00)	\$0.00	\$(1,400.00)
Fee	\$0.00	\$(72.00)	\$0.00	\$(72.00)
Totals	\$0.00	\$(1,472.00)	\$0.00	\$(1,472.00)
				Insurance, Tax, Benefits on Labor \$0.00
				Overhead \$0.00
				Fee on Subs \$0.00
				Fee on JTV \$0.00
				Bond \$0.00
				Remodel Tax \$0.00
				TOTAL \$(1,472.00)

TIME EXTENSION TO CONTRACT: 0 Days

Submitted Date: 6/26/2019

Accepted

VAUGHN CONSTRUCTION

By: _____

By: _____
Brian DeVaney

Date _____

Proposal Valid for Days _____

*Acceptance shall be pursuant to execution of
Amendment No. 4 to TFC Contract No. 17-002-000.*