

TFC Contract No. 19-013-000
J. T. Vaughn Construction, LLC
RFQ No. 303-8-02099
Amendment No. 3
Project No. 15-003-0405

**AMENDMENT NO. 3
TO THE
CONSTRUCTION MANAGER-AT-RISK CONTRACT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
J. T. VAUGHN CONSTRUCTION, LLC**

This Amendment No. 3 to the Construction Manager-At-Risk Contract (hereinafter referred to as “Amendment No. 3”) is entered into by and between 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 *2015 Uniform General Conditions*, Section 1.28) and J. T. Vaughn Construction, LLC, a Texas Limited Liability Company located at 6604 North Lamar Boulevard, Austin, Texas 78752 (hereinafter referred to as “Construction Manager-At-Risk” or “CMR”) (hereinafter referred to collectively at the “Parties”), enter into the following *Amendment No. 3 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 October 19, 2018, 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 8, 2019, the Parties executed Amendment No. 1 in order to extend the Term of the Contract, and to add statutorily required clauses; and

WHEREAS, on January 16, 2020, the Parties entered into Amendment No. 2 in order to provide for additional funding by increasing the Contract Sum and TFC Controlled Contingency for the purpose of completing GMP No.2; and

WHEREAS, in keeping with Contract Sections 2.1.4, TFC Approvals, and 12.29, Entire Agreement and Modification, the Parties desire to enter into this Amendment No. 3 to provide for additional funding for GMP No.2 and to add certain Contract provisions;

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 modify ARTICLE IV – CONSIDERATION, Section 4.2, Contract Sum-Components, to reflect the addition of One Hundred Thousand and No/100 Dollars (\$100,000.00), thus increasing the total Contract amount from One Million Eight Hundred Forty-

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Two Thousand Two Hundred Ninety-Seven and No/100 Dollars (\$1,842,297.00) to a new total not to exceed amount of One Million Nine Hundred Forty-Two Thousand Two Hundred Ninety-Seven and No/100 Dollars (\$1,942,297.00). 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 One Million Nine Hundred Forty-Two Thousand Two Hundred Ninety-Seven and No/100 Dollars (\$1,942,297.00), which is the sum of the following components.

4.2.1. Pre-Construction Management Fee. The Pre-Construction Management Fee which shall not exceed the sum of Twenty Thousand Eighty-Four and No/100 Dollars (\$20,084.00).

4.2.2. Construction Management Fee. The Construction Management Fee not to exceed three and one-half percent (3.5%) of the Cost of Work, or Forty-Seven Thousand Two Hundred Fifty and No/100 Dollars (\$47,250.00), which sum 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 Hundred Seventy-One Thousand and No/100 Dollars (\$171,000.00), 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 One Million Three Hundred Fifty Thousand and No/100 Dollars (\$1,350,000.00).

4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of Three Hundred Fifty-Three Thousand Nine Hundred Sixty-Three and No/100 Dollars (\$353,963.00), 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.”

3. The Parties agree to modify ARTICLE VI – ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS, Section 6.2 Acknowledgements, Covenants, and Agreements of CMR, by adding Subsections 6.2.20 Human Trafficking Prohibition and 6.2.21 Use of State Property, as follows:

“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 certification in this matter is inaccurate. TFC may not award a contract, including a contract for which

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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 agreement 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 agreement and the pursuit of other remedies available to TFC under contract, at law, or in equity.

4. The Parties agree to modify ARTICLE X – RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE, by adding Section 10.8 Cybersecurity Training Required, as follows:

“10.8 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.”

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3. Except as expressly amended above, the Contract remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment No. 3 to be effective as the date of the last party to sign.

TEXAS FACILITIES COMMISSION J. T. VAUGHN CONSTRUCTION, LLC

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By: Mike Novak
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DocuSigned by:
By: J. Thomas Vaughn
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Mike Novak

J. Thomas Vaughn

Executive Director

CEO

Date of Execution: 03/29/2020 | 12:48 PM CDT

Date of Execution: 03/29/2020 | 8:58 AM CDT

GC 

Dir 

DED 