

TFC Contract No. 19-013-000
J. T. Vaughn Construction, LLC
RFQ No. 303-8-02099
Amendment No. 1
Project No. 15-003-0405

**AMENDMENT NO. 1
TO THE
CONSTRUCTION MANAGER-AT-RISK CONTRACT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
J. T. VAUGHN CONSTRUCTION, LLC**

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. 1 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. 1”).

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, the Parties desire to extend the Contract Term as more particularly set forth below; 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 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 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

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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 hereby agree to amend ARTICLE III – TERM, SUSPENSION, AND TERMINATION, Section 3.1 – Contract Term, by deleting the section in its entirety and replacing it 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 amend ARTICLE VI – ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS, Section 6.2, Acknowledgements, Covenants, and Agreements of CMR, Subsection 6.2.18, Prohibition Against Boycotting Israel, by deleting Subsection 6.2.18, in its entirety and replacing it with Subsection 6.2.18 as follows:

“6.2.19. 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.”

5. The Parties agree to modify ARTICLE VII – WARRANTIES AND REPRESENTATIONS BY CMR, Section 7.1, Warranties and Representations by CMR, Subsection 7.1.7, Eligibility, by adding Paragraph 7.1.7.5, No Conflicts, which shall read in its entirety as follows:

“7.1.7.5. 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.”

6. The Parties agree to modify ARTICLE XI – BONDS AND INSURANCE, Section 11.2., Insurance Requirements, Subsection 11.2.1, Workers’ Compensation and Employers’ Liability Coverage, by deleting Paragraph 11.2.1.2, in its entirety and replacing it with Paragraph 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.”

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7. The Parties agree to modify ARTICLE XI – INSURANCE, Section 11.2, Insurance Requirements, Subsection 11.2.7, General Requirements for All Insurance, by deleting Paragraph 11.2.7.3.2 in its entirety and replacing it with Paragraph 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 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.”

8. 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.”

9. 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:

“12.9.1. 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.”

10. 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.

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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 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.”

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11. 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. 1 to be effective as the date of the last party to sign.

TEXAS FACILITIES COMMISSION J. T. VAUGHN CONSTRUCTION, LLC

By: DocuSigned by:
Mike Novak
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By: DocuSigned by:
J. Thomas Vaughn
7F4B6DD9DF1045E...

Mike Novak

J. Thomas Vaughn

Executive Director

CEO

Date of Execution: 10/08/2019 | 11:42 AM CDT

Date of Execution: 10/08/2019 | 9:57 AM CDT

GC NRG

Dir smw

DED JK