constructability, costs and schedules pursuant to the successful implementation of the Project construction.

6.1.3.2. A/E's Site visits and observations are subject to all the limitations on A/E's authority and responsibility, including but not necessarily limited to, the following:

6.1.3.2.1. A/E shall have no authority to supervise, direct, control, or have authority over, or be responsible for CMR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto; and

6.1.3.2.2. neither A/E's authority or responsibility under the A/E Agreement or under any other provision of the Contract Documents, nor any decision made by A/E in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by A/E shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by A/E to CMR, any Subcontractor, to any surety for or employee or agent of any of them.

6.1.3.3. CMR's deadlines for delivery of certain products and/or services as set out in Section 2.1 of this Contract shall be coordinated with the A/E deadlines set out in the A/E Agreement.

6.2. Acknowledgements, Covenants, and Agreements of CMR. CMR acknowledges, covenants, and agrees to the following:

6.2.1. Timely Delivery of Conforming Services. CMR will, subject to Force Majeure events, as defined in Section 12.11 below, timely provide the Construction Management Services and construct the Project in conformity with, and as specified in, this Contract, the UGC, the Supplementary General Conditions, any Special Conditions, and the Construction Documents. TFC reserves the right to impose liquidated damages as to each design/construction package.

6.2.2. Risk of Loss. CMR shall bear all losses, if any, resulting on account of the amount and character of the Work, or because the conditions under which the Work must be done are different from what were estimated or anticipated by CMR, or because of weather, floods, elements, or other causes.

6.2.3. Limitation of Authority. CMR agrees that the TFC Project Manager shall not have any express or implied authority to vary or otherwise amend the terms and conditions of this Contract in any way, or waive strict compliance with the terms and conditions of this Contract, except as to the deadlines set out in Section 2.1 above, any deviation from which must be evidenced by the TFC Project Manager in writing.

6.2.4. CMR Safety. CMR and all CMR Personnel conducting work or Services for TFC shall abide by all OSHA rules and regulations provided by the Department of Labor,

OSHA, Code of Federal Regulations, Chapter 29. Employees of CMR and Subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. CMR and Subcontractors shall inform the TFC Project Manager of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. CMR's procedure must meet or exceed TFC's procedure as determined by the TFC Project Manager. Work or services shall not be done on energized electrical circuits, components or equipment. When de-energizing is impractical due to possible harm to personnel, equipment or facility damage, negative onsite or offsite environmental impact, or business interruption, CMR must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399. TFC may at any time; in its sole discretion and in writing, order a temporary stand-down of CMR's performance of the services ("Safety Stand-Down Order") as a result of any one(1) or more safety incidents, whereupon CMR shall immediately direct all CMR Personnel to stop all services while CMR conducts a comprehensive review of CMR's safety management plan and any Site conditions affecting safety at any Project Site for the purpose of: (i) identifying any safety hazards and unsafe working conditions; (ii) conducting safety training of the CMR personnel involved in performance of the services who were or may have been exposed to harm in connection with such safety incident(s); and (iii) taking any corrective action that CMR determines to be necessary and appropriate to fulfill its obligations in accordance with this Contract. Upon receipt of TFC's Safety Stand-Down Order, CMR shall not resume performance of the services until it has issued to TFC a written report, which shall be due within forty-eight (48) hours of the receipt of TFC's Safety Stand-Down Order, detailing the course of action that CMR has taken, or plans to take, to resolve the safety incident(s) described therein, and to prevent the recurrence thereof. After reviewing such course of action with TFC, CMR shall, in the exercise of the CMR's reasonable judgment, propose the date by which CMR will complete all corrective action. Services shall resume only upon TFC's delivery of further written notice to CMR withdrawing the TFC's Safety Stand-Down Order, which notice of withdrawal shall not be issued until the TFC is reasonably satisfied that CMR has sufficiently implemented all appropriate corrective action as necessary to enable CMR to safely resume services, fulfill its contractual obligations set forth in this Contract, and thereby avoid recurrence of the safety incident(s). CMR shall not be entitled to an adjustment of the CMR's Compensation, or the Professional Services Schedule, as the result of TFC's issuance of a Safety Stand-Down Order. If CMR fails to implement the corrective action in the manner proposed by CMR and determined by TFC to be reasonably acceptable, such failure shall be deemed a material breach of this Contract and TFC may, without further notice, terminate this Contract for cause. In responding to any Safety Stand-Down Order, CMR's evaluation of the need for, and its plan of, corrective action shall be undertaken as an independent contractor, pursuant to Section 12.3 of this Contract and nothing herein shall be construed or interpreted to mean that TFC has assumed or agreed to assume any duty of care to the CMR Personnel, or to provide guidance or instruction as to the CMR's means and methods for managing safety as required by this Contract. Any action taken by TFC hereunder to enforce TFC's rights to require CMR to fulfill its safety obligations under this Contract shall be deemed to be undertaken solely for the purpose of fulfilling TFC's contractual expectation of results in terms of delivery of the Projects without causing injury or harm to persons or property.

6.2.5. Cooperation. All Project Managers, employees, and associated Subcontractors shall cooperate with and assist each other and all other Contractors and design professionals retained by TFC.

6.2.6. Cooperation by CMR.

6.2.6.1. CMR agrees to conduct all of its services under this Contract by and through appropriate communications with the TFC Project Manager. No work, installation or other services shall be under taken by CMR except with prior written authorization of the TFC Project Manager.

6.2.6.2. CMR understands and agrees that work, installation or any other service performed without the prior written authorization of the TFC Project Manager is work outside the scope of this Contract and shall be performed exclusively at CMR's risk.

6.2.6.3. CMR agrees to employ competent personnel meeting the requirements set forth herein, who shall be satisfactory to TFC. Personnel assigned to perform Services may not be reassigned without the prior written approval by the TFC Project Manager. TFC may request that CMR replace unsatisfactory personnel, which request shall not be unreasonably denied.

6.2.6.4. CMR agrees to cooperate and coordinate its Work and services with that of other members of the Project team. Upon discovery of an apparent conflict in the sequencing of Work or services with another service provider, CMR shall report the concern to the TFC Project Manager

6.2.7. Identification of CMR Project Executive, Project Manager, and Project Superintendents. The CMR Project Manager identified in the initial list of project executives, Project Managers, and project superintendents (hereinafter referred to as the "CMR List of Staff"), a digital copy of which is incorporated herein by reference for all purposes in PDF on the CD and labeled therein as "Exhibit F," will supervise the efforts of CMR to timely provide TFC with the Construction Management Services. The updated CMR List of Staff shall be delivered to TFC no later than the date of execution of the GMP Amendment Acceptance so as to reflect all of the CMR employees, including the project executive, the Project Manager, and the project superintendents that are engaged by CMR to provide TFC with the Construction Management Services. The updated CMR List of Staff shall automatically become, simultaneously upon the execution of the GMP Amendment Acceptance, and without further notice, the effective CMR List of Staff, which shall replace the initial CMR List of Staff.

6.2.7.1. The "CMR Project Manager" and project superintendents must be committed to the Project on a full-time basis. TFC reserves the right to approve the appointment of the CMR Project Manager and to demand that the CMR Project Manager and the project superintendents, and any of CMR's employees, including the project superintendents or Subcontractors, be removed and replaced if, in the sole opinion of TFC, their performance on this Project or any other Projects, is and/or was not adequate or their continued involvement with

the Project will, is, or has become, detrimental to the timely and successful completion of the Project, including but not limited to, for such reasons as: (i) any past or present violation of any statute, rule, regulation, or ordinance of any city, county, the State of Texas or the United States, or any other Laws and Regulations; (ii) TFC's reasonable belief that failure to obtain an acceptable criminal background check will occur; (iii) prior unsatisfactory performance on other TFC projects; and (iv) any other like reasons.

6.2.7.2. The CMR Project Manager and the project superintendents identified in the CMR List of Staff shall not be replaced by CMR, nor shall any other Subcontractors be engaged by CMR, unless prior written consent is obtained from TFC, which consent shall not be unreasonably withheld, conditioned, or delayed. CMR shall bear the costs associated with the replacement of any of its staff listed on the CMR List of Staff.

6.2.8. Buy Texas. If CMR is authorized to make purchases under this Contract, CMR certifies that CMR will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time pursuant to Texas Government Code, Chapter 2155.

6.2.9. No Assumption. No approvals or acceptances by, or on behalf of, TFC shall be deemed to be an assumption of any responsibility by TFC for any defect, error, or omission in said Deliverables or Construction Management Services.

6.2.10. Debts or Delinquencies Owed to the State. Any payment due under this Contract may be withheld and applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support pursuant to Texas Government Code, Section 403.055.

6.2.11. General and Criminal Background Checks.

6.2.11.1. CMR represents and warrants that CMR and CMR's employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or that, if such a conviction has occurred, CMR has fully advised TFC as to the facts and circumstances surrounding the conviction.

6.2.11.2. All of CMR's employees and Subcontractors that will perform any work on-site at a state-owned property shall be subject to a criminal background check. Any expense associated with such criminal background check shall be borne by CMR.

6.2.11.2.1. All criminal background check forms for all of CMR's employees and Subcontractors that will initially commence any work on-site must be fully completed and submitted to TFC within fifteen (15) days of the date of the appropriate notice of award, and the process thereafter must be diligently pursued by CMR.

6.2.11.2.2. All criminal background checks must be completed before any employee or Subcontractor performs any services at the Site.

6.2.11.2.3. All criminal background checks must be accomplished by the Texas Department of Public Safety (hereinafter referred to as "DPS"), which includes fingerprint processing by an independent third-party company selected by DPS. Upon receipt of the fingerprints of CMR's employees and/or Subcontractors, DPS, or TFC, will adjudicate the results of the criminal background searches in accordance with the criteria set forth in the *Texas Facilities Commission Criminal Background Checks and Guidelines*, a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit G." Contractor's or Subcontractor's failure to timely secure criminal background check clearance shall not be considered a legitimate delay in the Work Progress Schedule.

6.2.12. Equal Opportunity. CMR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief. CMR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CMR shall post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination subsection. CMR shall include the above provisions in all Subcontracts pertaining to the Work.

6.2.13. 6.2.13. Employment Verification. (a.) By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, either the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, or other documents and verifiable means to determine the eligibility of all persons, including subcontractors, employed by, assigned by, or subcontracted by the Contractor to perform duties related to the Contract during the term of the Contract. (b.) If means other than E-Verify are utilized, they are to be services offered by industry recognized third party providers, engaged in the business of providing independent employment eligibility verifications to employers. These services are to be in addition to standard I-9 compliance measures performed by Contractor. Verification services shall be provided by businesses such as or similar in nature to Info Cubic, First Advantage, FC Background, or a combination of verification information provided by multiple entities. (c.) Contractor shall provide, upon request of TFC, an electronic or hardcopy screenshot of the confirmation or tentative non-conformation screen containing either the E-Verify case verification number or third party provider case document for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the Contractor, and Contractor's subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Contract may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Contract. (d.) For persons not eligible for E-Verifying screening, Contractor (including sub-contractors) shall provide, upon request by TFC,

the alternate form of documentation (as described above) of proof of eligibility to work in the United States of America.

6.2.14. No Advertising. CMR shall not advertise that it is doing business with TFC or use this Contract as any sort of marketing or sales tool without the prior written consent of TFC.

6.2.15. No Warranties by TFC. CMR ACKNOWLEDGES THAT ANY AND ALL TESTS, MAPS, REPORTS, AND DRAWINGS IN THE POSSESSION OF TFC THAT REFLECT OR DEPICT SITE BOUNDARIES, RECORDED EASEMENTS, TOPOGRAPHY, UTILITY LOCATIONS, AND OTHER SITE CONDITIONS AND/OR RESTRICTIONS WHICH MAY IMPACT THE DESIGN AND/OR CONSTRUCTION OF THE PROJECT WERE PREPARED SOLELY FOR TFC'S BENEFIT AND FOR INFORMATION ONLY PURPOSES, AND THAT CMR SHALL HAVE NO RIGHT TO RELY UPON SUCH AND THAT ANY RELIANCE THEREON SHALL BE AT CMR'S OWN RISK.

6.2.16. Sequencing of Construction. TFC reserves the right to: (i) direct the Construction Phase to commence prior to completion of the pre-construction phase, in which case the phases will proceed concurrently; or (ii) to complete the Project in phases.

6.2.17. Warranties and Guarantees. All warranties and guarantees required by the Specifications shall expressly run to the benefit of TFC. If required by TFC or A/E, CMR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

6.2.18. Prohibition Against Boycotting Israel. In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, A/E certifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement.

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

VII. WARRANTIES AND REPRESENTATIONS BY CMR.

7.1. Warranties and Representations by CMR. CMR hereby makes the following warranties, representations, and certifications, all of which are true, accurate, and complete at the time of the Effective Date and throughout the term of this Contract, and which shall be true, accurate, and complete with respect to each Deliverable. All representations, warranties and certifications discussed below shall survive the expiration or termination of this Contract.

7.1.1. Compliance with All Laws. CMR shall procure and maintain for the duration of this Contract any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by CMR to provide the goods or services required by this Contract. CMR will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. CMR agrees to be responsible for payment of any such government obligations not paid by its Subcontractors during performance of this Contract. As part of its delivery of the Construction Management Services, CMR shall make itself familiar with and at all times give all notices required by, and shall observe and comply with, all Laws and Regulations of all Governmental Authorities that in any manner affect performance under this Contract.

7.1.1.1. Neither CMR, nor any firm, corporation, partnership, or institution represented by CMR, or anyone acting for them has: (i) violated the antitrust laws of the State of Texas under the Texas Business and Commerce Code, Chapter 15 or the federal antitrust laws; or (ii) communicated directly or indirectly its response to the RFP for this Project to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

7.1.1.2. TFC reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary to address TFC's or CMR's required compliance with all Laws and Regulations.

7.1.1.3. CMR has determined what licenses, patents and permits are required under the Contract and will have acquired all such licenses, patents and permits prior to commencement of construction.

7.1.2. Responses to RFQ. All statements, representations and certifications contained in, or otherwise set out in, CMR's response(s) to the RFQ for this Project were true and correct when made, and shall remain true and correct throughout the term of this Contract.

7.1.3. Immigration Reform. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and Subcontractors who contract with the State. CMR shall not place any employee of CMR at a worksite, nor shall CMR permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, TFC without first confirming said employee's authorization to lawfully work in the United States. CMR warrants that CMR: (i) maintains and follows an established policy to verify the employment authorization if its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to CMR's senior management; and (iv) is without knowledge of any fact that would render any employee

or Subcontractor ineligible to legally work in the United States. CMR further acknowledges, agrees, and warrants that Contractor: (i) has complied, and shall at all times during the term of the Contract comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Contract properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS–ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of CMR's employees; and (iii) has responded, and shall at all times during the term of the Contract respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Contract, CMR shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of CMR or any of its employees. CMR acknowledges, agrees and warrants that all Subcontractors permitted by it to perform work will be required to agree to these same terms as a condition to being awarded a Subcontract for such work.

7.1.4. Proficiency in Systems. CMR is proficient in the use of CAD systems and the EPMCS utilized by TFC.

7.1.5. Warranty of Deliverables. All Deliverables shall be: (i) completed and delivered in a timely manner and in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; (ii) conform to or exceed the specifications set forth in the Contract Documents; and (iii) be fit for ordinary use, of good quality, and with no material defects.

7.1.5.1. Where Shop Drawings or a sample is required by the Contract Documents or the Submittal Register, as defined in UGC, Section 1.40, any related Work performed prior to A/E's review and approval of the pertinent submittal will be at the sole expense and responsibility of CMR.

7.1.5.2. Any provisions in the UGC to the contrary notwithstanding, including, but not necessarily limited to Section 13.2, the creation of CMR's general one (1) year warranty shall not be construed to constitute a waiver of CMR's obligation to correct, or otherwise be responsible for, any latent defects beyond the above-mentioned one (1) year corrective period.

7.1.5.3. Any provision in the UGC to the contrary notwithstanding, no warranty periods shall commence unless and until a Certificate of Substantial Completion has been issued for the corresponding Work or portion thereof.

7.1.6. Warranty of Improvements. Any provisions herein to the contrary notwithstanding, CMR expressly warrants that all improvements, including workmanship and materials incorporated into the Project, shall be free from defects.

7.1.7. Eligibility.

7.1.7.1. Eligibility. 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 pursuant to the Texas Government Code, Section 2155.004(b).

7.1.7.2. Disaster Relief Contract Violation. Under Sections 2155.006 and 2261.053 of the Texas Government Code, CMR certifies that the individual or business entity named in the response or 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.

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

7.1.7.4. 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.

7.1.8. Family Code Disclosure of Ownership. Pursuant to the requirements of the Texas Family Code, Section 231.006, regarding delinquent child support, the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, CMR has provided, prior to its execution of this Contract, the name and social security number of each such person (sole proprietors, firm owners, partners, or shareholders) holding at least twenty-five percent (25%) ownership of the business entity entering into this Contract. CMR acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

7.1.9. Deceptive Trade Practices Act; Unfair Business Practices Disclosures. CMR represents and warrants that it has not been found liable of Deceptive Trade Practices Act violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practice in any administrative hearing or court suit. CMR further certifies that it has no officers who have served as officers of other entities who have been found liable of Deceptive Trade Practices violations or of any unfair business practices in an administrative hearing or court suit. In the event that allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code or of any unfair business practices against either CMR or any of CMR's officers have occurred or are currently pending in an administrative proceeding or in a lawsuit filed with any court, then CMR has disclosed all such matters to TFC and provided a brief description of each allegation, information regarding the administrative body or court before which the matter is pending, and the current status of the matter.

7.1.10. Disclosure of Former State Executives. Pursuant to the Texas Government Code, Section 669.003 relating to contracting with an executive of a state agency, no person who, in the past four (4) years served as an executive of TFC or any other state agency was involved with or has any interest in this Contract or any Contract resulting from this Contract. If CMR employs or has used the services of a former executive head of TFC or any other state agency, then CMR has provided the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with CMR, and the date of employment with CMR.

7.1.11. 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.

7.1.12. Financial Interests/Gifts. Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, CMR has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract. In addition, pursuant to Texas Government Code Chapter 573 and Section 2254.032, if applicable, CMR certifies that CMR knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in CMR's company or corporation. CMR further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which CMR will be dealing on behalf of TFC.

7.1.13. Prior Employment. CMR knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in CMR's firm or corporation. CMR further certifies that no partner, corporation, or unincorporated association that employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which CMR will be dealing on behalf of TFC pursuant to the Texas Government Code, Chapter 573 and Section 2254.032. Furthermore, CMR certifies and agrees that if it employs any former employee of TFC, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at TFC.

7.1.14. Affirmation As to Submittals. Upon submittal to TFC of any documentation or data that was created or modified by CMR, including but not limited to Drawings, Specifications, and the Budget, all representations contained therein shall be true and accurate as to each such creation or modification.

7.1.15. Drawings and Specifications. CMR is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but CMR shall promptly report to A/E and TFC, in writing, any nonconformity discovered by or made known to CMR in the form of an RFI.

7.1.16. Site Inspection. Subject to the provisions set forth below, CMR has had an opportunity to examine, and prior to the submission of its GMP Proposal will have carefully examined, all of the Contract Documents including, but not limited to, the Drawings and the Specifications, and has fully acquainted itself with the scope of Work, design, availability of materials, existing facilities, the general topography, soil structure, substructure conditions, obstructions, and all other conditions pertaining to the Work, the site of the Work and its surrounding; that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work; and that anything in any of the Contract Documents or in any representations, statements or information made or furnished by TFC or its representatives notwithstanding, CMR will regardless of any such conditions pertaining to the Work, the site of the Work or its surroundings, complete the Work for the compensation stated in this Contract, and pursuant to the extent of CMR's liability under this Contract, assume full and complete responsibility for any such conditions pertaining to the Work, the site of the Work or its surroundings, and all risks in connection therewith.

7.1.16.1. As part of its examination of the Site conditions, CMR has made and/or will make, reasonable and appropriate efforts to discover the presence of any subsurface or otherwise concealed Hazardous Materials. The scope of said examination must include a reasonable amount of invasive and/or destructive exploration behind walls and ceilings. The results thereof shall be delivered to TFC in writing at or prior to the delivery of the GMP Proposal.

7.1.16.2. In the event CMR discovers the presence of other Hazardous Materials during the Construction Phase of the Project, CMR shall promptly, but in no event later that seven (7) days after each such discovery, provide written notice thereof to TFC and A/E. CMR shall not disturb said conditions.

7.1.16.3. Any remediation of such Hazardous Materials shall be considered outside the scope of Work.

VIII. STATE FUNDING.

8.1. State Funding. This Contract shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of the Texas Constitution, Article III, Section 49. In compliance with the Texas Constitution, Article VIII, Section 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination. Furthermore, any damages due under

this Contract should not exceed the amount of funds appropriated for payment under this Contract, but not yet paid to CMR, for the fiscal year budget in existence at the time of the breach.

IX. COPYRIGHTS AND TRADEMARKS.

9.1. Copyrights. CMR agrees that all Deliverables provided pursuant to this Contract are subject to the rights of TFC in effect on the date of execution of this Contract. These rights include the right to use, duplicate and disclose such subject matter and data, in whole or in part, in any manner for alterations, additions, remodels or maintenance; and to have others do so including production of Deliverables in response to a public information request pursuant to Texas Government Code, Chapter 552. If the Deliverables produced by CMR are subject to copyright protection, CMR hereby grants to TFC a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such and to authorize others to do so. CMR shall include appropriate provisions to achieve the purpose of this condition in all Subcontracts entered into that produce information subject to copyright protection.

9.1.1. Disclaimers. All such Deliverables furnished by CMR pursuant to this Contract shall be considered instruments of its services in respect to the Project. It is understood that CMR does not represent such Deliverables to be suitable for reuse on any other study or for any other purpose(s). If A/E, at TFC's request and authorization, verifies or adapts CMR's Deliverables for TFC's use on another study, CMR shall be compensated for redesign or new design, bidding, and construction management services.

9.1.2. Delivery to TFC. CMR shall promptly provide copies of the Deliverables to TFC upon completion, termination, or cancellation of this Contract for any reason, including all copies of the Deliverables in any form or medium specified by TFC in this Contract, whether written, digital, or electronic.

9.1.3. TFC Right to Use. Any provision herein to the contrary notwithstanding, TFC shall be authorized to make subsequent use of the Deliverables for any and all future renovations, modifications, alterations, maintenance, repairs, and the like of the Project.

9.2. No Use of Name or Trademark. CMR agrees not to make any written use of or reference to TFC's name or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's facilities for any activity related to the express business purposes and interests of TFC pursuant to this Contract, without the prior written consent of TFC, which consent may be withheld or granted in TFC's sole discretion.

X. RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE.

10.1. Books and Records. CMR shall keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to TFC or the United

States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal regulations and statutes.

10.2. Inspections and Audits. CMR agrees that all relevant records related to this Contract or any work product under this Contract, including practices of its Subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of CMR where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Office of the Attorney General of Texas, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All Subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, Section 2262.154, the SAO may conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to CMR and indirect payments under a Subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

10.3. Records Retention. All records relevant to this Contract shall be retained for a minimum of seven (7) years. This retention period runs from the date of payment for the relevant goods or services by TFC, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

10.4. Confidentiality Provisions Applicable to CMR. The following confidentiality provision shall apply to CMR.

10.4.1. Protection of Confidential Information. CMR hereby acknowledges, understands and agrees: (i) that in the course of conducting its due diligence regarding the provision of Construction Management Services to TFC, certain Confidential Information (as defined below) will be disclosed to CMR; and (ii) that whether developed by TFC or others employed by or associated with TFC, all Confidential Information is, and shall remain, the exclusive and confidential property of TFC, and shall be at all times regarded, treated and protected as such by CMR in accordance with this Contract. Failure to mark any information "Confidential" shall not affect the confidential nature of such information.

10.4.2. Definition of Confidential Information. "Confidential Information" shall mean all information, whether or not originated by TFC, which is used in, or a part of, TFC's business and operations and is: (i) proprietary to, about, or created by TFC; (ii) gives TFC some competitive advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of TFC; (iii) designated as "Confidential Information" by TFC, or from all the relevant circumstances should reasonably be assumed by CMR to be

confidential and proprietary to TFC; or (iv) not generally known by CMR. "Confidential Information" shall not include information that: (i) is or becomes available to the public generally, other than as a result of disclosure by CMR in breach of the terms of this Contract; (ii) becomes available to CMR from a source (other than TFC) which source is not, to the best of CMR's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by CMR. Such Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing or designated as confidential).

10.4.2.1. Work product resulting from, or related to, work, projects, or services performed or to be performed by TFC for CMR and/or for actual and potential Using Agencies that are related to the business and/or operations of TFC, including but not limited to, methods, processes, procedures, analysis, techniques, and audits used in connection therewith.

10.4.2.2. Computer software of any type or form in any stage of actual or anticipated research and development, including, but not limited to, programs and program modules, routines and subroutines, processes, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches, and system designs.

10.4.2.3. Information relating to TFC's proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights, and trade secrets).

10.4.2.4. Internal personnel and financial information, vendor names and other vendor information (including vendor characteristics, services, and agreements), customer lists and contacts, business plan(s), purchasing and internal cost information, internal services and operational manuals, pricing, marketing, and all other manner and methods of conducting TFC's business.

10.4.2.5. Marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of TFC which have been or are being discussed.

10.4.2.6. Any information obtained from TFC regarding its pursuit or negotiation of agreements with any potential "Contracting Person" regarding a potential "Qualifying Project" as those terms are defined in the Texas Government Code, Section 2267.001, as the same may be amended from time to time, including, but not necessarily limited to: (i) the names of the Contracting Person, including their representatives (collectively referred to as "Business Customers"); (ii) the parties to and substance of any agreements between TFC and said Business Customers; (iii) services and data provided, or to be provided, by or to said Business Customers; and (iv) the type, quantity and specifications of products and services

purchased, leased, licensed or received, or to be purchased, leased, licensed or received, by Business Customers.

10.4.2.7. In accordance with 13 TAC § 6.94(a)(9), CMR shall provide to TFC the descriptions of its business continuity and disaster recovery plan as it regards TFC's vital state records as defined in Section 441.180(13) of the Texas Government Code.

10.4.3. Covenants. As a consequence of CMR's acquisition or anticipated acquisition of Confidential Information, CMR will occupy a position of trust and confidence to TFC with respect to TFC's affairs and business. In view of the foregoing and of the mutual consideration to be provided to each party, CMR agrees that it is reasonable and necessary that it make the following covenants.

10.4.3.1. Both during and forever after the performance of its due diligence investigation, CMR will not disclose Confidential Information to any Person or entity other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining TFC's prior, written consent, and CMR will take all reasonable precautions to prevent inadvertent disclosure of such Confidential Information. This prohibition against CMR's disclosure of Confidential Information includes, but is not limited to, disclosing the fact that any similarity exists between the Confidential Information and information independently developed by another Person or entity, and CMR understands that such similarity does not excuse CMR from abiding by its covenant or other obligations pursuant to this Contract.

10.4.3.2. Both during and after the conduct of its due diligence investigation, CMR will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining prior written consent of TFC, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against CMR's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing, or otherwise exploiting, directly or indirectly, any products or services, including software in any form, that embody or are derived from Confidential Information.

10.4.3.3. CMR agrees not to utilize, either directly or indirectly, any Confidential Information in order to facilitate or create direct business relationships with Business Customers of TFC.

10.5. Confidentiality Provisions Applicable to TFC. Subject to the provisions of Section 10.6 below, TFC shall keep confidential all information, in whatever form, produced, prepared, or observed by CMR to the extent that such information is confidential by law.

10.6. Public Records. Notwithstanding any provisions of this Contract to the contrary, CMR understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, CMR will cooperate with TFC in the production of documents responsive to the request. CMR agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. CMR may request that TFC

seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, CMR will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. This Contract and/or any amendment to this Contract and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. CMR agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, CMR is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

10.7. Electronic and Information Resources Accessibility Standards. Effective September 1, 2006, all state agencies and institutions of higher education shall procure products which comply with the State of Texas accessibility requirements for electronic and information resources specified in Title 1 of the Texas Administrative Code, Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If applicable, CMR shall provide the Texas Department of Information Resources ("DIR") with the universal resource locator ("URL") to its Voluntary Product Accessibility Template ("VPAT") for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (*https://app.buyaccessible.gov/baw/Main.jsp*). CMRs not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at *http://www.section508.gov/*.

XI. BONDS AND INSURANCE.

11.1. Bonds. For all phases of the Project, at or prior to the execution of each respective GMP Amendment Acceptance, CMR shall timely obtain and deliver to TFC the bonds required by Section 5.1 of the UGC for each such phase, provided however, the provisions of Section 5.1.3.1 of the UGC to the contrary notwithstanding, CMR shall have obtained and delivered the Security Bond contemporaneously with submission of CMR's response to an RFP or other TFC solicitation process.

11.2. Insurance Requirements. CMR shall timely obtain and maintain insurance in the following types and amounts for the duration of this Contract unless specifically provided otherwise herein, and must timely comply with the following insurance requirements.

11.2.1. Workers' Compensation and Employers' Liability Coverage. CMR hereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that CMR provides or will provide at, or prior to, execution of the GMP Amendment Acceptance, workers' compensation and employers' liability insurance for employees employed on this public project with limits of not less than: (i) $1,000,000 each accident; (ii) $1,000,000 disease each employee; and (iii) $1,000,000 disease policy limit.

11.2.1.1. Coverage must meet the statutory requirements of Texas Labor Code, Section 401.011(44).

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.

11.2.1.3. The policy must include Other States Endorsement to include the State of Texas if CMR's business is domiciled outside the State of Texas.

11.2.1.4. The policy shall be endorsed to include Waiver of Subrogation in favor of TFC.

11.2.2. Commercial General Liability. CMR shall provide commercial general liability insurance coverage including premises; operations; blanket contractual liability coverage assumed under the Contract and all contracts relative to the Project, including independent contractor's liability pursuant to an unamended ISO (Insurance Services Offices, Inc.) endorsement, or its equivalent; products and completed operations; and extended to include explosion, collapse, and underground hazards, with a combined single limit of $1,000,000 per occurrence and a general aggregate limit of $2,000,000.

11.2.2.1. The policy shall include endorsement CG2503, Amendment of Aggregate Limits of Insurance (per Project), or its equivalent.

11.2.2.2. The policy shall be endorsed to include Additional Insured status in favor of TFC.

11.2.2.3. The policy shall be endorsed to include Waiver of Subrogation in favor of TFC.

11.2.2.4. The policy shall be endorsed to include 30 Day Notice of Cancellation, 10 Days for Non-Payment of Premium, in favor of TFC.

11.2.3. Asbestos Abatement Liability Insurance. If applicable, CMR shall provide asbestos abatement liability coverage including coverage for liability for bodily injury and property damage arising from the encapsulation, removal, handling, storage, transportation, and

disposal of asbestos containing materials with a limit of $1,000,000 per accident; $1,000,000 disease per employee; and $1,000,000 disease policy limit, with a combined single limit of at least $2,000,000 per occurrence.

11.2.3.1. The policy must be a claims-made policy and the coverage period shall be determined by the following formula: continuous coverage for life of the Contract, plus one (1) year (to provide coverage for the warranty period), with an extended discovery period for a minimum of five (5) years which shall not commence until the expiration of the longest warranty period(s).

11.2.3.2. In the event this Contract provides for only asbestos abatement, neither all-risk builder's risk nor an all-risk installation floater shall be required.

11.2.3.3. In the event CMR elects to engage a Subcontractor to perform any asbestos abatement, said Subcontractor must timely obtain and maintain the same asbestos abatement liability coverage as set forth above. In addition thereto:

11.2.3.3.1. said asbestos abatement liability insurance must comply with all requirements set forth in: (i) the General Requirements for All Insurance; and (ii) the No Cancellation or Lapse sections, below; and

11.2.2.3.2. on or before the effective date of the first GMP Amendment Acceptance, CMR must deliver, or cause to be delivered, to TFC, at no expense to TFC, a duly executed proof of satisfaction with respect to the Subcontractor's asbestos abatement liability coverage and timely deliver, or cause to be delivered, the insurance documentation described therein.

11.2.4. Business Automobile Liability Insurance. CMR shall provide business automobile liability coverage for all owned, non-owned, and hired vehicles with a minimum combined single limit of $1,000,000 per accident for bodily injury and property damage.

11.2.4.1. No aggregate shall be permitted.

11.2.4.2. Such insurance must include coverage for loading and unloading hazards.

11.2.4.3. The policy shall be endorsed to include Additional Insured status in favor of TFC.

11.2.4.4. The policy shall be endorsed to include Waiver of Subrogation in favor of TFC.

11.2.4.5. The policy shall be endorsed to include 30 Day Notice of Cancellation, 10 Days for Non-Payment of Premium, in favor of TFC.

11.2.5. Builder's Risk Insurance. At, or prior to, execution of the GMP Amendment Acceptance, CMR shall obtain and maintain special form builder's risk insurance, or special form installation floater for those instances in which the Project involves solely the installation of material and/or equipment.

11.2.5.1. Coverage shall include, but not limited to, fire, extended coverage, vandalism and malicious mischief, theft and, flood, earth movement and named storm.

11.2.5.2. Builder's risk and installation floater limits shall be equal to one hundred percent (100%) of the Contract Sum.

11.2.5.3. For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include coverage in the additional sum of $1,000,000.00, or the value of the total contact sum, whichever is less. These policy limits are in addition to the builder's risk policy limit that is equal to the total contract sum for Existing Property and TFC-furnished equipment, if any, specified by TFC. For purposes herein, "Existing Property" means existing buildings or structures, as well as, all personal property contained therein. "Existing Property" does not include personal property owned or operated by CMR or any Subcontractors.

11.2.5.4. For TFC furnished equipment or materials that will be in care, custody or control of CMR, CMR shall be responsible for any and all damages and losses thereto.

11.2.5.5. The policy must be written jointly in the names of TFC and CMR. Subcontractors must be named as additional insureds.

11.2.5.6. The policy shall have endorsements as follows:

11.2.5.6.1. this insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property;

11.2.5.6.2. this insurance shall not contain an occupancy clause suspending or reducing coverage should Owner partially occupy the Site and before the parties have determined Substantial Completion; and

11.2.5.6.3. loss, if any, shall be adjusted with and made payable to TFC as trustee for the insureds as their interests may appear, and TFC shall be named as loss payee; and

11.2.5.6.4. valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.

11.2.5.7. Policy shall remain in effect until Substantial Completion is achieved as to all phases of the Project.

11.2.6. Umbrella Liability Insurance. CMR shall provide umbrella liability insurance for a period not to expire or terminate prior to the expiration of all warranty periods, insuring CMR for an amount of not less than $1,000,000.00, which provides coverage at least as broad as, and applies in excess and follows form of, the primary liability coverages required herein above. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss.

11.2.7. General Requirements for All Insurance. The following provisions shall apply to all insurance requirements.

11.2.7.1. CMR shall be responsible for all deductibles and self-insured retentions, if any, stated in policies. All deductibles and self-insured retentions shall be disclosed on the certificates of insurance.

11.2.7.2. If coverage is underwritten on a claims-made basis, the retroactive date for the policy and all renewals shall be coincident with the Effective Date of this Contract and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. Any premiums for this extended reporting period shall be paid by CMR.

11.2.7.3. In the event the primary insurance policy does not so provide, CMR shall obtain and maintain endorsements as to each deficient policy, or provide such other document(s) as may be approved in advance by TFC, that satisfy all of the following requirements:

11.2.7.3.1. naming the "Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711, its officials, directors, employees, representatives, and volunteers" as additional insureds, provided however, this requirement does not apply to workers' compensation insurance;

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, notify the Texas Facilities Commission, Attn: Insurance Analyst, P.O. Box 13047, Austin, Texas 78711, of any: (i) non-renewal; (ii) cancellations; or (iii) material changes, in writing, as soon as is reasonably possible prior to any such non-renewal, cancellation, or change;

11.2.7.3.2.1. "Material Change" means any of the following changes to the policy during the term of the policy:

11.2.7.3.2.1.1. a change in the policy period;

11.2.7.3.2.1.2. a material revision to, or removal of, a coverage section;

11.2.7.3.2.1.3. a reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses; or

11.2.7.3.2.1.4. an increase of the amount of any self-insured retentions.

11.2.7.3.3. as to those policies wherein TFC is an additional insured, said insurance coverages must be primary and non-contributing with respect to insurance or self-insurance carried by TFC, if any; and

11.2.7.3.4. the policy must provide a waiver of subrogation rights to TFC for the workers' compensation, employers' liability, commercial general liability, and business automobile liability policies.

11.2.8. No Commencement of Work. CMR shall not, nor allow any Subcontractor(s) to commence Work until the proof of satisfaction of the insurance requirements has been received and approved by TFC. However, any approval of the insurance requirements by TFC shall not relieve or reduce the liability of CMR hereunder.

11.2.9. Qualifications of Insurer. All insurance must be written by a company licensed to do business in the State of Texas at the time the policy and any renewals are issued, and must be written by a company with an A.M. Best rating of A- or better.

11.2.10. No Cancellation or Lapse. CMR shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods, provided however, policy duration for builder's risk (or as applicable, an installation floater) is not governed by this provision. CMR must update all expired policies prior to submission of any pay application.

11.2.11. Notice of Erosion. CMR shall provide TFC thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Contract.

11.2.12. Right to Review. TFC reserves the right to review the insurance requirements of Article XI during the effective period of the Contract and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions, or the claims history of the industry and/or of CMR, provided however, such modifications must be commercially available to CMR. TFC shall make an equitable adjustment to the Contract Sum for any additional cost resulting therefrom.

11.2.13. Losses Paid by CMR. Actual losses not covered by insurance as required by this Contract shall be paid by CMR.

11.2.14. Failure to Obtain or Maintain. Failure to timely obtain and maintain the insurance coverages as required under this Contract may subject CMR to, among other remedies, the following.

11.2.14.1. Disqualification from eligibility to participate in any other or future projects with TFC.

11.2.14.2. Suspension of Work for cause pursuant to UGC Article 14.

11.2.14.3. In the event CMR fails to timely renew or pay any of the renewal premiums for any expiring policies, TFC shall have the right (but not the obligation) to: (i) make such payments; and/or (ii) acquire replacement coverage, and set off the amount(s) or costs thereof against the next payment(s) coming due to CMR under the Contract or under any other contract between TFC and CMR.

11.2.14.4. TFC may withhold any payments due to CMR from this Project or any other TFC project until satisfaction is achieved.

11.2.15. TFC a Third-Party Beneficiary. It is hereby acknowledged and agreed that TFC is a third-party beneficiary of any agreement(s) between CMR and any and all Persons who procure, or cause to be procured, the above-described insurance coverages, and all renewals thereof, for the Project.

XII. MISCELLANEOUS PROVISIONS.

12.1. **INDEMNIFICATION. CMR SHALL INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CMR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CMR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CMR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CMR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

12.1.1 **INFRINGEMENTS. CMR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TFC, AND/OR THEIR EMPLOYEES,**

AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CMR PURSUANT TO THIS CONTRACT. CMR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CMR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CMR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CMR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CMR SHALL HAVE NO LIABILITY UNDER THIS SECTION IF THE ALLEGED INFRINGEMENT IS CAUSED IN WHOLE OR IN PART BY: (i) USE OF THE PRODUCT OR SERVICE FOR A PURPOSE OR IN A MANNER FOR WHICH THE PRODUCT OR SERVICE WAS NOT DESIGNED, (ii) ANY MODIFICATION MADE TO THE PRODUCT WITHOUT CMR'S WRITTEN APPROVAL, (iii) ANY MODIFICATIONS MADE TO THE PRODUCT BY THE CMR PURSUANT TO TFC'S SPECIFIC INSTRUCTIONS, (iv) ANY INTELLECTUAL PROPERTY RIGHT OWNED BY OR LICENSED TO TFC, OR (v) ANY USE OF THE PRODUCT OR SERVICE BY TFC THAT IS NOT IN CONFORMITY WITH THE TERMS OF ANY APPLICABLE LICENSE AGREEMENT. IF CMR BECOMES AWARE OF AN ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CMR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CMR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CMR'S SOLE OPTION AND EXPENSE; (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE, OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGING.

12.1.2. **<u>TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY.</u> CMR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CMR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CMR'S AND CMR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CMR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO THE CMR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. CMR AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR**

ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. CMR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CMR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CMR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

12.1.3. No Additional Rights. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

12.1.4. Notice of Claims. CMR shall promptly advise Owner in writing of any claim or demand against Owner or against CMR which involves Owner and known to CMR and related to or arising out of CMR's activities under this Contract.

12.2. Historically Underutilized Businesses ("HUBs"). In accordance with state law, it is TFC's policy to assist HUBs, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling CMR's obligations with TFC. If CMR subcontracts with others for some or all of the services to be performed under this Contract, CMR shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code. A digital copy of the Initial Approved HUB Subcontracting Plan ("HSP") is incorporated herein for all purposes in PDF on the Exhibit CD and named therein as "Exhibit H." When required, CMR shall submit an updated HSP. Upon TFC approval of HSP update(s), such update(s) shall become, without further notice or action, a part of the incorporated "Exhibit H." A digital copy of the HSP form is incorporated herein for all purposes in PDF on the Exhibits CD and named therein as "Exhibit H-1." Upon execution of a GMP Amendment Acceptance, an updated HSP must be approved. CMR shall provide the HUB program of TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HSP Progress Assessment Reporting ("PAR") Form, a digital copy of the form for which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit H-2."

12.3. Relationship of the Parties. CMR is associated with TFC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, CMR is and shall be an independent contractor. Subject only to the terms of this Contract, CMR shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. TFC has no right or obligation to control the methods and means of performing the Work except as to the obligation

to ensure compliance with the Contract Documents. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CMR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of CMR or any other party. CMR shall be solely responsible for, and TFC shall have no obligation with respect to the following: (i) withholding of income taxes, FICA, or any other taxes or fees; (ii) industrial or workers' compensation insurance coverage; (iii) participation in any group insurance plans available to employees of the State of Texas; (iv) participation or contributions by the State to the State Employees Retirement System; (v) accumulation of vacation leave or sick leave; and (vi) unemployment compensation coverage provided by the State.

12.4. No Assignment and Subcontracts. CMR shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Contract without the prior written consent of TFC. Notwithstanding the foregoing, it is mutually understood and agreed that CMR may subcontract with third parties for some or all of the Construction Management Services to be performed. In any approved Subcontracts, CMR shall legally bind such Subcontractor to perform and make such Subcontractor subject to all the duties, requirements, and obligations of CMR specified herein. Nothing herein shall be construed to relieve CMR of the responsibility for ensuring that the goods delivered and/or the services rendered by CMR and/or any of its Subcontractors comply with all the terms and provisions of this Contract. CMR will provide written notification to TFC of any such Subcontractor performing work under this Contract, including the name and taxpayer identification number of Subcontractor, the task(s) being performed, and the number of Subcontractor employees expected to work on the task.

12.5. Drug-Free Work Place. CMR, CMR's employees, and Subcontractors shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law No. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and CMR, CMR's employees, and Subcontractors shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

12.6. No Smoking. All facilities where work is to be performed are nonsmoking buildings. CMR's employees and Subcontractors are prohibited from smoking in all areas except in areas designated for smoking.

12.7. Notices. All notices, demands, and requests required in this Contract shall be in writing and shall be deemed to have been properly delivered and received: (i) three (3) business days after deposit in a regularly maintained receptacle for the United States mail, certified mail, return receipt requested and postage prepaid; or (ii) one (1) business day after deposit with Federal

Express or comparable overnight delivery service for overnight delivery with all costs prepaid. All notices, demands and requests hereunder shall be addressed as follows:

If to TFC:	Texas Facilities Commission Attention: Legal Services Division 1711 San Jacinto Blvd., Suite 400 Austin, Texas 78701
With a Copy to:	Texas Facilities Commission Attention: John S. Raff, Deputy Executive Director 1711 San Jacinto Blvd., Suite 400 Austin, Texas 78701
If to CMR:	J. T. Vaughn Construction, LLC Attention: Jose Villarreal, Sr. Project Manager 6604 North Lamar Boulevard Austin, Texas 78752 Telephone: (512) 318-1332 E-mail: jvillarreal@vaughnconstruction.com

Either party hereto may change its address by giving the other party written notice thereof at least five (5) business days in advance of the effective date for such new address.

12.8 Name and Organizational Changes. (1) CMR must provide TFC with written notification of all name changes and organizational changes relating to the CMR including, but not limited to, merger, acquisition, or sale, no later than ten (10) business days of such change. CMR, in its notice, shall describe the circumstances of the name change or organizational change, state its new name, provide the new Tax Identification Number, and describe how the change will impact its ability to perform under the Contract. If the change entails personnel changes for personnel performing the responsibility of the Contract for CMR, CMR shall identify the new personnel and provide resumes to TFC, if resumes were originally required by the solicitation. TFC may request other information about the change and its impact on the Contract and CMR shall supply the requested information within five (5) working days of receipt of the request. All written notifications of organizational change must include a detailed statement specifying the change and supporting documentation evidencing continued right of CMR or successor entity, as applicable, to maintain its status as a party to this Contract.

12.9. Governing Law and Venue. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought pursuant to this Contract shall be in a court of competent jurisdiction in Travis County, Texas. CMR hereby irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of, or responding to, any action or proceeding in such jurisdiction with respect to this Contract or any document related hereto.

12.10. Proper Authority. The parties hereto represent and warrant that the Person executing this Contract on behalf of each party has full power and authority to enter into this Contract. CMR acknowledges that this Contract is effective for the period of time specified in the Contract. Any services performed by CMR before this Contract is effective or after it ceases to be effective are performed at the sole risk of CMR.

12.11. Force Majeure. Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused solely by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure" including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster, or governmental actions.

12.11.1. Notice. In any such event, the party claiming Force Majeure shall notify the other party of the Force Majeure event in writing within forty-eight (48) hours of the commencement of the Force Majeure event, and within forty-eight (48) hours of the termination of the Force Majeure event. In the event said party fails to timely provide either of the above-described notices, such failure shall constitute, without further notice or action, a waiver of the right to claim Force Majeure for such event. If possible, such notice shall set forth the extent and duration thereof.

12.11.2. Due Diligence. CMR shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if nonperformance continues for more than thirty (30) days, TFC may terminate this Contract immediately upon written notification to CMR. Changes in the schedule or in the design or scope of the Project as a result of any Force Majeure which affect the cost of the CMR's services under this Contract require approval by TFC by amendment to this Contract.

12.12. Dispute Resolution. Subject to Texas Government Code, Section 2260.002, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by the parties to attempt to resolve all disputes arising under this Contract. In accordance with the Texas Civil Practice and Remedies Code, Section 114.005, the parties agree claims encompassed by Texas Government Code, Section 2260.002(3) and Texas Civil Practice and Remedies Code, Section 114.002 shall be governed by the following dispute resolution process.

12.12.1. Claims for Breach of Contract and Counterclaims. CMR may make a claim against TFC for breach of a contract between TFC and CMR. TFC may assert a counterclaim against CMR.

12.12.1.1. CMR must provide written notice to TFC of a claim for breach of contract not later than one hundred eighty (180) days after the date of the event giving rise to the

claim. The notice must state with particularity: (i) the nature of the alleged breach; (ii) the amount CMR seeks as damages; and (iii) the legal theory of recovery.

12.12.1.2. TFC must assert, in a writing delivered to CMR, any counterclaim not later than the sixtieth (60th) day after the date of notice of a claim under Section 12.12.1.1 above.

12.12.2. Damages. The total amount of money recoverable on a claim for breach of contract under this Section 12.12 may not, after deducting the amount specified below, exceed an amount equal to the sum of: (i) the balance due and owing on the Contract price; (ii) the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and (iii) any delay or labor-related expense incurred by the CMR as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

12.12.2.1. Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Section 12.12.2 above.

12.12.2.2. Any award of damages under this Contract may not include: (i) consequential or similar damages, except delays or labor-related expenses described by Section 12.12.2 above; (ii) exemplary damages; (iii) any damages based on an unjust enrichment theory; (iv) attorney's fees; or (v) home office overhead.

12.12.3. Negotiation. TFC's general counsel shall examine the claim and any counterclaim and negotiate with CMR in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) days after the date the claim is received. TFC's administrative rules located at Title l, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the negotiation of any dispute arising from this Contract. In the event negotiation results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the settlement to writing, and each party shall sign the settlement. A partial settlement or resolution of a claim does not waive a party's rights as to the parts of the claim that are not resolved.

12.12.4. Mediation. Before the one hundred twentieth (120th) day after the date the claim is filed with TFC and before the expiration of any extension of time mutually agreed upon, the parties may agree to mediate a claim made under this Contract. TFC's administrative rules located at Title l, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the mediation of any dispute arising from this Contract.

12.12.5. Adjudication. On or after the two hundred seventieth (270th) day following the date the claim is filed with TFC, unless the parties agree in writing to an extension of time, CMR may adjudicate any claim in accordance with and to the extent permitted under the Texas Civil Practice and Remedies Code, Chapter 114 or the Texas Government Code, Chapter 2260.

12.12.6. Payment of Claims. In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under this Section 12.12 only from money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim. Chapter 304 of the Texas Finance Code applies to a judgment awarded to a claimant except that the applicable rate of interest may not exceed six percent (6%). Consistent with the Texas Civil Practice and Remedies Code, Section 114.011, property owned by the State or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

12.12.7. Representation of TFC. The Office of the Attorney General of Texas shall defend TFC in any proceeding or adjudication conducted in conjunction with a claim brought under this Section 12.12.

12.13. Legal Construction and Severability. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision herein, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision there shall be substituted a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

12.14. Multiple Counterparts. This Contract may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

12.15. Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their representatives, successors, and assigns.

12.16. Limitation on Authority and No Other Obligations. CMR shall have no authority to act for or on behalf of TFC or the State of Texas except as expressly provided for in this Contract; no other authority, power, or use is granted or implied. CMR may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of TFC or the State of Texas.

12.17. No Waiver of Sovereign Immunity. Nothing in the Contract shall be construed as a waiver of sovereign immunity; nor constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas, TFC, or the Using Agency. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

12.18. No Implied Waiver. The failure of a party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Contract shall not be construed as a waiver or a relinquishment thereof for the future.

12.19. No Third-Party Beneficiaries. This Contract is made solely and specifically among and for the benefit of the parties named herein and the Using Agency, and their respective successors and assigns, and no other Person shall have any right, interest, or claims hereunder or be entitled to any benefits pursuant to or on account of this Contract as a third-party beneficiary or otherwise.

12.20. Further Assurances. CMR shall take such actions and execute such other and additional documents as are reasonably necessary or desirable in order to carry out the purposes and intent of this Contract.

12.21. No Presumptions for Ambiguities. Each party hereby represents and warrants that although the initial draft of this Contract may have been prepared by one party, both parties have been given the opportunity to review this Contract with counsel of their choice, and have made additions, revisions, and amendments hereto. Therefore, each party hereby covenants and agrees that they are co-drafters of this Contract such that any ambiguities cannot be construed against any party.

12.22. Time Is of the Essence. Time is of the essence with respect to this Contract; provided however, in the event that any of the deadlines set forth herein end on a Saturday, Sunday, or legal state or federal holiday, such deadline shall automatically be extended to the next day which is not a Saturday, Sunday, or legal state or federal holiday.

12.23. Work Made for Hire. All Work shall constitute the exclusive property of TFC. All right, title and interest in and to said Work shall automatically and without further notice or action vest in TFC upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to this Contract. To the extent that title to any such Work may not, by operation of law, vest in TFC, or such Work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably and unconditionally assigned to TFC. TFC shall also have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. CMR must give TFC and/or the State of Texas, as well as any person designated by TFC and/or the State of Texas, all assistance reasonably necessary to effectuate the intent of this section and to perfect the rights and interests defined herein without any charge or expense to TFC beyond those amounts payable to CMR for the services rendered under this Contract.

12.24. Schedule of Exhibits. The following shall be the exhibits to this Contract, digital copies of which are contained on the Exhibits CD in PDF, or will be contained on the Exhibits CD upon execution of the GMP Amendment Acceptance, and are hereby incorporated herein by reference.

12.24.1. Exhibit A. 2015 Uniform General Conditions.

12.24.2. Exhibit B. 2018 Supplementary General Conditions.

12.24.3. Exhibit C. Special Conditions.

12.24.4. Exhibit D. GMP Proposal [Template].

12.24.5. Exhibit E. GMP Acceptance [Template].

12.24.6. Exhibit F. CMR List of Staff.

12.24.7. Exhibit G. Criminal Background Check and Application Guidelines.

12.24.8. Exhibit H. Initial Approved HUB Subcontracting Plan.

12.24.9. Exhibit H-1. HUB Subcontracting Plan Form.

12.24.10. Exhibit H-2. HUB Subcontracting Plan PAR Form.

12.25. Survival of Terms. Termination of the Agreement for any reason shall not release CMA from any liability or obligation set forth in the Agreement that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

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12.26. 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.

TEXAS FACILITIES COMMISSION

By: JSR

John S. Raff

Interim Executive Director

Date of Execution: 10.19.18

G.C. NRG

Dir. MN

D.E.D. MN

J. T. VAUGHN CONSTRUCTION, LLC

By: _____

J. Thomas Vaughn

CEO

Date of Execution: 10-11-18

EXHIBITS CD