CONSTRUCTION MANAGER-AT-RISK CONTRACT BETWEEN THE TEXAS FACILITIES COMMISSION AND J. T. VAUGHN CONSTRUCTION, LLC

The Texas Facilities Commission, a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 (hereinafter referred to as "TFC"), as Owner (as defined in UGC, Section 1.28) and J. T. Vaughn Construction, LLC, a Texas Limited Liability Company located at 6604 North Lamar Boulevard, Austin, Texas 78752 (hereinafter referred to as "Construction Manager-At-Risk," or "CMR"), enter into the following contract for Construction Management Services pursuant to Tex. Gov't Code Ann. §§ 2166.2525 and 2269.251 (West 2016), (hereinafter referred to as the "Contract") as defined in Article I, and generally described as: providing for the repair and/or replacement of selected mechanical equipment and roofing systems beyond expected service life at the El Paso State Office Building located at 401 East Franklin Avenue, El Paso, Texas 79901, and provide for minor structural repairs to the El Paso State Office Building Garage (hereinafter referred to as the "Project").

I. DEFINITIONS.

1.1. Definitions. Unless specifically provided otherwise, all words and phrases in this Contract in initial caps shall have the meanings set out in this Section 1.1. In the event of any conflict between the definitions in the 2015 Uniform General Conditions (hereinafter referred to as "UGC"), the 2018 Supplementary General Conditions to the 2015 Edition of the Uniform General Conditions (hereinafter referred to as the 2018 Supplementary General Conditions), and the Special Conditions, a digital copy of each of which is incorporated herein by reference for all purposes in portable document format ("PDF") on the compact disk ("CD") attached hereto and labeled "TFC Contract No. 19-015-000 / J T Vaughn Construction / Exhibits CD"(hereinafter referred to as the "Exhibits CD"), and named therein as "Exhibit A," "Exhibit B," and "Exhibit C," respectively, or in any other document that is referenced herein and incorporated for all purposes, and the definitions in this Contract, the definitions used in this Contract shall control.

1.1.1. *A/E.* A/E means the architect and/or engineer with whom TFC has entered into a professional services agreement for the Project.

1.1.2. *Bid Bond.* Bid Bond has the same meaning as Security Bond as described in UGC Sections 5.1 and 5.1.2, and shall be in the form of an approved surety bond, cash, or other immediately available funds.

1.1.3. *Budget.* Budget means the construction budget for the Project, as set out in the RFQ, as defined below, as may be amended from time to time by TFC.

1.1.4. *C&A.* C&A means any and all clarifications and/or assumptions made by CMR in the preparation of its GMP Proposal, as defined below, to supplement the information provided by TFC as contained in the Drawings, as defined in UGC Section 1.22, and Specifications, as defined in UGC Section 1.41.

1.1.5. *CAD.* CAD means AutoCAD DWG format.

1.1.6. *Certificate of Substantial Completion.* Certificate of Substantial Completion means the certificate signed by the CMR, A/E, and TFC establishing the date of Substantial Completion, as defined in UGC Section 1.44, for the applicable part of the Work, as defined in UGC Section 1.48, and identifying responsibilities for security and maintenance as set out in UGC Section 12.1.1.2.

1.1.7. *CMR Contingency.* CMR Contingency means the amount to be approved by TFC that will be allocated by CMR as a component of the Cost of Work, as defined below, in CMR's GMP, as defined below, for CMR's exclusive use and benefit to cover any additional costs that may be discovered or otherwise arise during the design and construction documents phases, but which costs are nevertheless the responsibility of CMR as part of the Cost of Work.

1.1.8. *Communication Protocol.* Communication Protocol means the communication and tracking procedures to be utilized for interaction and reporting between TFC, CMR, A/E and Subcontractors, including but not limited to, the use of any EPMCS, as defined below, utilized by TFC for the Project.

1.1.9. *Consideration.* Consideration means the funds and any and all, as defined below, other forms of valid, legal consideration as discussed in Article IV of this Contract.

1.1.10. *Construction Costs.* Construction Costs means all hard and soft costs for labor, materials, equipment, fees, and other similar costs and expenses required to complete the Project, and prepared in the format promulgated by the Construction Specifications Institute (hereinafter referred to as "CSI").

1.1.11. *Construction Management Fee.* Construction Management Fee means, subject to the provisions of Section 11.8 of the UGC, the fee derived by multiplying the sum of the Cost of Work, as defined below, any portion of the TFC Controlled Contingency, as defined below, that may be used, applied, or otherwise credited by TFC to the Cost of Work, by an agreed upon percentage.

1.1.12. *Construction Management Services.* Construction Management Services means the comprehensive construction and management services to be provided to TFC by CMR as specified in this Contract.

1.1.13. *Contract Documents.* Contract Documents means those documents that include, but are not limited to drawings, specifications, the UGC, the 2018 Supplementary General Conditions, Special Conditions, and all pre-bid and/or pre-proposal addenda.

1.1.14. *Cost Estimate.* Cost Estimate means the cost estimate to be prepared by CMR at various pre-construction phases of the Project.

1.1.15. *Cost of Work.* Cost of Work means those costs necessarily incurred by CMR in the proper performance of the Work, as defined in UGC Section 1.48, but which shall in no event be at rates greater than the standard rates in the locale of the Project, shall be composed of only the cost items set forth in Article V of the Contract.

1.1.16. *DD Documents.* DD Documents means the design development documents, such as, plans, elevations, and such other drawings, calculations, and outline specifications that, in TFC's sole opinion, are of such quality and detail that enable TFC to fix and illustrate the size and character of the entire Project in its essentials as to kinds of materials and assembly details and type of structure and to coordinate the interface of all architectural and structural elements with all building systems.

1.1.17. *Deliverables.* Deliverables means any and all drawings, specifications, photos, designs, studies, sketches, computer programs, reports, and improvements, as well as the Construction Management Services, which are specified to be delivered by CMR pursuant to the terms of this Contract.

1.1.18. *Design Program.* Design Program means the overall goals and design objectives of the Project, the aesthetic considerations, and the functional requirements including allocations of space with uses and adjacency relationships for all areas/spaces, operational objectives and such standards of design that TFC may require for all architectural and engineering disciplines in the design and construction of the Project.

1.1.19 *Drawings* mean that product of A/E which graphically depicts the Work.

1.1.20. *Effective Date.* Effective Date means the date that the last party signs the Contract.

1.1.21. *Environmental Laws* means any local, state, or federal law, rule, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, as may be amended from time to time: (i) the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. § 6901 *et seq.*), as amended by the Used Oil Recycling Act of 1980 (Pub. L. No. 96-463, 94 Stat. 2055 (1980)), the Solid Waste Disposal Act Amendments of 1980 (Pub. L. No. 96-482, 94 Stat. 2334 (1980)), and the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98-616, 98 Stat. 3221 (1984)), and regulations promulgated thereunder; (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613 (1986)), and regulations promulgated thereunder; (iii) the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*); (iv) the Endangered Species Act of 1973 (15 U.S.C. § 1531 *et seq.*) and its amendments; (v) laws, statutes, ordinances, rules, regulations, orders, or determinations relating to "wetlands," including without limitation those

set forth in the Federal Water Pollution Control Act (commonly referred to as the "Clean Water Act") (33 U.S.C. § 1251 *et seq.*); (vi) the Texas Water Code; and (vii) the Texas Solid Waste Disposal Act (Tex. Health & Safety Code Ann. §§ 361.001–361.345 (West 2016 & Supp. 2017)).

1.1.22. *EPMCS.* EPMCS means electronic project management control system.

1.1.23. *Final Inspection Deadline.* Final Inspection Deadline means the date that is thirty (30) days after the Substantial Completion Inspection, as defined in UGC Section 12.1.1, by which A/E must conduct a Final Inspection, as defined in UGC Section 12.1.2.

1.1.24. *General Conditions.* General Conditions means those items and related costs that are specified in Article V below.

1.1.25. *General Conditions Fee.* General Conditions Fee means the fixed, lump sum fee that comprises part of the Contract Sum, as defined in UGC Section 1.14, and which shall constitute the entire amount of compensation to be paid to CMR for General Conditions.

1.1.26. *Governmental Authority(ies).* Governmental Authority(ies) means the city, the county, any municipal utility district or similar taxing authority in which the Project is located, the State of Texas, the Federal Emergency Management Agency, the United States Army Corps of Engineers, the United States Environmental Protection Agency, the Texas Commission on Environmental Quality, and any other governmental or quasi-governmental agency or authority having jurisdiction over any development or construction activities on the Project or the CMR.

1.1.27. *Guaranteed Maximum Price.* Guaranteed Maximum Price (hereinafter referred to as "GMP") means the maximum sum that TFC shall be responsible to pay for the completion of the Project, subject to any Change Orders, as defined in UGC Section 1.9, any excess of which shall be the obligation solely of CMR.

1.1.28. *GMP Acceptance.* GMP Acceptance means the document approved by TFC when price points have been identified and approved by TFC on matters related to Cost of Work, Pre-Construction Management Fees, as defined below, Construction Management Fees and such contingencies.

1.1.29. *GMP Amendment Acceptance.* GMP Amendment Acceptance means TFC's written notification to CMR of acceptance of the GMP Proposal.

1.1.30. *GMP Proposal.* GMP Proposal means the written offer from CMR to TFC which includes, among other things, a proposed GMP.

1.1.31. *Hazardous Materials.* Hazardous Materials means (i) any "hazardous waste" as defined by RCRA, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by CERCLA, and regulations promulgated thereunder; (iii) any toxic substance as

defined under or regulated by the Toxic Substances Control Act; (iv) asbestos, polychlorinated biphenyls, radon, or explosive or radioactive materials; (v) underground and above ground storage tanks, whether empty, filled or partially filled with any substance, including without limitation any petroleum product or any other "hazardous substance"; (vi) any substance the presence of which at the Project is prohibited by any Environmental Laws; and (vii) any other substance which by any Environmental Laws requires special handling or notification of any Governmental Authority in its collection, storage, treatment, or disposal.

1.1.32. *Initial Conceptual Drawings.* Initial Conceptual Drawings means initial concept drawings and block diagrams that, in TFC's sole opinion, are of such quality and detail to enable TFC to establish design direction.

1.1.33. *Laws and Regulations.* Laws and Regulations means any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders including those governing labor, equal employment opportunity, safety, and environmental protection, including but not limited to, all applicable requirements of Title III of the Americans with Disabilities Act (42 U.S.C. § 12181) and the Elimination of Architectural Barriers laws and Texas Accessibility Standards found in Texas Government Code, Chapter 469, of any and all Governmental Authorities.

1.1.34. *MEP Systems.* MEP Systems means mechanical, electrical, and plumbing systems and includes all fire protection, security, telecommunication, data, and similar systems.

1.1.35. *Notice to Proceed with Construction.* Notice to Proceed with Construction (hereinafter referred to as "NTP") means the written notice to be issued to CMR by TFC, which shall inform CMR of, among other things, the date to begin a specific phase of Work, as defined in UGC Section 1.48, and the respective date anticipated for Substantial Completion of the specific phase of Work. The effective date of the first NTP shall constitute the starting date of the Contract time.

1.1.36. *Notice to Proceed with Pre-Construction Activities.* Notice to Proceed with Pre-Construction Activities means the written notice to be issued to CMR by TFC, which shall inform CMR of, among other things, the date on which CMR shall commence the Construction Phase, as set forth in Section 2.1.2 of this Contract, of the Construction Management Services.

1.1.37. *Open Items List.* Open Items List means a list of work activities, punchlist items, changes or other issues that are not expected by TFC and Contractor to be complete prior to Substantial Completion.

1.1.38. *Opinion of Probable Construction Cost.* Opinion of Probable Construction Cost means a level one (1) cost estimate to facilitate budgetary and feasibility determinations, based on historical information with adjustments made for specific Project conditions, wherein estimates are based on costs per square foot, number of rooms/seats, etc. Project information required for estimates at this level shall include a general functional description, schematic

layout, geographic location, size expressed as building area, numbers of people, seats, as such, and intended use.

1.1.39. *Person.* Person means an individual and includes a corporation, an organization, a business trust, an estate, a trust, a partnership, an association, or any other legal entity.

1.1.40. *Post-Final Inspection Punchlist.* Post-Final Inspection Punchlist means the Punchlist, as defined below, of items that TFC will deliver to CMR that sets out any part of the Work that was not corrected or completed in accordance with the Contract Documents as of the Final Inspection.

1.1.41. *Post-Final Inspection Punchlist Deadline.* Post-Final Inspection Deadline means the date that is a fixed number of days after the date of the Final Inspection, by which A/E shall deliver any Post-Final Inspection Punchlist to CMR.

1.1.42. *Pre-Construction Management Fee.* Pre-Construction Management Fee means the fixed, lump sum fee for pre-construction services to be performed by CMR.

1.1.43. *Pre-Final Inspection Punchlist Deadline.* Pre-Final Inspection Punchlist Deadline means the date that is a fixed number of days after the date of the Substantial Completion Inspection, as discussed in UGC Section 12.1.1, and by which date A/E shall deliver a Pre-Final Inspection Punchlist, as defined in UGC Section 12.1.1.2, to CMR.

1.1.44. *Project Assessment Deadline.* Project Assessment Deadline means the date that is a fixed number of days after receipt of a Notice to Proceed with Pre-Construction Activities, and by which date CMR shall complete all of the assessment tasks.

1.1.45. *Project Manager.* Project Manager means the individual designated by CMR and A/E, respectively, and must be approved by TFC, as the contact person with specific authority to properly supervise and direct the duties and responsibilities of the respective entity, on behalf of said entity, pursuant to the terms and conditions of this Contract, and who shall have decision-making authority to bind their respective entity with respect to the construction of the Project.

1.1.46. *Punchlist.* Punchlist means a list of items of Work to be finished, remaining Work to be performed, or Work that does not meet quality or quantity requirements as required in the Contract Documents.

1.1.47. *Request for Proposal.* Request for Proposal (hereinafter referred to as "RFP") means a solicitation requesting submittal of a proposal in response to the required scope of services.

1.1.48. *RFQ.* RFQ means the TFC Request for Qualifications No. 303-8-02099, issued July 3, 2018.

1.1.49. *Schematic Design Drawings.* Schematic Design Drawings means, at a minimum, a site development plan, building plans, elevations, sections, and perspective sketches sufficient to convey comprehensive design intent.

1.1.50. *Schematic Design Package.* Schematic Design Package means the combination of: (i) Schematic Design Drawings; (ii) an outline summary of the areas within the proposed Project such summary corresponding to the general categories in the space allocation outlined in the Design Program; (iii) a description of the building and general site development that shall include an overview of proposed exterior architectural materials and structural systems together with the MEP Systems and services being contemplated; and (iv) an Opinion of Probable Construction Cost that demonstrates conformity with the Budget, all that in TFC's sole opinion must be in satisfactory quality and detail.

1.1.51. *Scope of Services.* Scope of Services means the Construction Management Services as set out in Section 2.1 of this Contract.

1.1.52. *Shop Drawing(s).* Shop Drawing(s) means all drawings, diagrams, illustrations, schedules, samples, and other data or information which are specifically prepared or assembled by or for CMR and submitted by CMR to illustrate some portion of the Work.

1.1.53. *Site.* Site means the lands or areas indicated in the Contract Documents as being furnished by TFC upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by TFC which are designated for the use of CMR.

1.1.54. *Specifications* mean the written product of A/E that establishes the quality and/or performance of products utilized in the Work used, including testing and verification for producing the Work.

1.1.55. *Statement of GMP.* Statement of GMP means a written statement setting forth the proposed total, not to exceed, cost of construction, which shall be composed of the following separately identified costs: (i) the Pre-Construction Management Fee; (ii) the General Conditions Fee; (iii) the Cost of Work enumerated, at a minimum, in categories by CSI specification number and including all allowances and the CMR Contingency; (iv) the Construction Management Fee; and (v) the TFC Controlled Contingency, as defined below.

1.1.56. *Subcontract.* Subcontract means any agreements between CMR and a Subcontractor, as defined below.

1.1.57. *Subcontractor.* Subcontractor means a business entity, including any supplier, which enters into an agreement with CMR to perform any part of the Construction Management Services.

1.1.58. *Substantial Completion* means the date determined and certified by Contractor, A/E, and Owner when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract, so as to be operational and fit for the use intended.

1.1.59. *Substantial Completion Inspection Deadline.* Substantial Completion Inspection Deadline means the date that is a fixed number of days after proper written notification is delivered to TFC and A/E by CMR that CMR has fully satisfied the requirements of UGC Section 12.1.1, and by which A/E must conduct a Substantial Completion Inspection.

1.1.60. *TFC Controlled Contingency.* TFC Controlled Contingency means that portion of the Contract sum that will be designated by TFC in the GMP Acceptance for its exclusive use and benefit for the Project.

1.1.61. *TFC Project Manager.* TFC Project Manager means the individual designated by TFC as the contact person for TFC with the direct responsibility to properly supervise the design and construction of the Project, and the services being provided pursuant to this Contract on behalf of TFC, including, but not limited to, serving as the point of contact between TFC, the Using Agency, as defined below, (if any), A/E, and CMR, and supervising TFC's review and approval of the Construction Management Services.

1.1.62. *Using Agency.* Using Agency has the same meaning as defined in Texas Government Code, Section 2166.001(10).

II. SCOPE OF SERVICES.

2.1. Scope of Services. CMR agrees to timely deliver the Construction Management Services described in this Contract whether the Project is to be completed as a single package or in multiple combinations of packages. In the event of any material conflict between the duties and responsibilities of the CMR as set out in the UGC, any Supplementary General Conditions, any Special Conditions, or in any other Contract Documents, and as set out in this Contract, the duties and responsibilities set out in this Contract shall control to the extent of any such material conflict. Advance notice of all deadlines discussed below shall be delivered to CMR.

2.1.1. Pre-Construction Phase. Upon receipt of a Notice to Proceed with Pre-Construction Activities, CMR shall commence, and complete, the following pre-construction management services for the Project.

2.1.1.1. No later than the Project Assessment Deadline, CMR shall complete the following assessment tasks for the Project.

2.1.1.1.1. CMR shall consult with staff of TFC, any representatives of the Using Agency and A/E as may be directed by TFC, and become thoroughly familiar with: (i) the Site; and (ii) any and all relevant and existing Site and facilities studies.

2.1.1.1.2. CMR shall reaffirm the assignment and identity of CMR's Project Manager.

2.1.1.1.3. CMR shall provide TFC and A/E with the opinion of CMR as to the suitability of the proposed site and contemplated improvements, selection of materials, building systems and equipment.

2.1.1.1.4. CMR shall provide recommendations to TFC and A/E that are consistent with the Design Program and the Initial Conceptual Drawings on: (i) constructability; (ii) availability of materials and labor; (iii) time requirements for procurement, installation and construction scheduling issues, including phased construction; (iv) accelerated or fast-track scheduling; (v) provisions for temporary facilities; and (iv) factors related to construction costs including, but not limited to, construction budget requirements and limitations, costs of alternative designs or materials, life-cycle data, and possible cost reductions, each in terms of the other.

2.1.1.1.5. CMR shall timely review Budget proposed by TFC and advise TFC if, in the opinion of CMR, the Budget is adequate to allow for the design and timely construction of the Project as contemplated.

2.1.1.1.5.1. If, in the opinion of CMR, the Budget is adequate, CMR shall confirm acceptance in writing. If, however, in the opinion of CMR, the Budget proposed by TFC is inadequate or insufficient, CMR shall advise TFC and A/E of all recommendations as to the appropriate adjustments. If the parties cannot agree, TFC, at its option, may: (i) waive the provisions of this subsection; or (ii) terminate this Contract.

2.1.1.1.5.2. The parties acknowledge and agree that subsequent changes in Design Program or scope of the Project may be cause to modify and/or amend the Budget. Any such modification or amendment to the Budget must be authorized by TFC in writing.

2.1.1.1.6. If requested, assign appropriate CMR staff to receive instruction regarding the use of the EPMCS to be utilized by TFC.

2.1.1.2. CMR agrees to timely deliver the "Owner Coordinated Document Review Process" as follows.

2.1.1.2.1. During the design phase of the Project, the design schedule shall accommodate a periodic review of the Construction Documents at various milestones, to be coordinated by TFC, at the following milestones and in the sequential order listed: (i) 90% Construction Documents; and (ii) 100% Construction Documents.

2.1.1.2.2. Each review shall include the following steps to comprise a complete review for each milestone listed above.

2.1.1.2.2.1. Design documents issued with the CMR solicitation are 90% Construction documents. The A/E shall have a notice of authorization to A/E to coordinate with the CMR and proceed with the completion of the 100% Construction Documents within 60 calendar days of date of execution of the CMR agreement for completion of CMR preconstruction services.

2.1.1.2.2.2. TFC, A/E and CMR shall meet to review the milestone submittal, five (5) to seven (7) calendar days or the first weekday thereafter following the A/E deadline.

2.1.1.2.2.3. The formal review comments and deadline is the date occurring five (5) to seven (7) calendar days or the first weekday thereafter following the review meeting upon which TFC shall prepare and deliver TFC comments to A/E and CMR; and CMR shall prepare and deliver CMR comments to TFC and A/E.

2.1.1.2.2.4. The A/E reply and deadline is the date occurring five (5) to seven (7) calendar days or the first weekday thereafter following A/E's receipt of TFC and CMR formal review comments upon which A/E shall provide written evidence that, in TFC's sole discretion, resolves all TFC and CMR formal comments.

2.1.1.2.2.5. The CMR Cost Estimate and deadline is the date occurring five (5) to seven (7) calendar days or the first weekday thereafter following delivery of CMR's formal review comments to TFC and A/E upon which CMR shall prepare and deliver to TFC and A/E Cost Estimates in increasing detail and refinement updated through the review of the 100% Construction Documents. Cost Estimates for reviews through Design Development phase shall be provided in ASTM UNIFORMAT II. Cost Estimates for reviews in the Construction Document phase shall be provided using the Construction Specifications Institute MasterFormat™.

2.1.1.2.2.6. Following TFC's acceptance of the A/E reply, TFC shall issue a formal notice of authorization to A/E with copy to CMR to proceed to the next phase of design within three (3) calendar days or the first weekday thereafter.

2.1.1.3. CMR shall timely deliver to TFC the following initial conceptual drawings/schematic design pre-construction services for the Project.

2.1.1.3.1. CMR shall attend and actively participate in all meeting(s) between A/E and TFC wherein the Initial Conceptual Drawings will be reviewed.

2.1.1.3.2. CMR shall actively participate in the efforts of TFC and A/E to develop the final version of the Initial Conceptual Drawings. Such participation must be sufficient to enable CMR to understand the intended project scope, construction and phasing needs, impacts to facility(ies) operation, and therefrom to accurately estimate construction costs.

2.1.1.3.3. Following the Initial Conceptual Drawing review meeting, CMR shall prepare and deliver formal review comments and cost estimate in accordance with the requirements of the Owner Coordinated Document Review Process and the schedule established therein.

2.1.1.3.3.1. If such Cost Estimate exceeds the Budget by more than twenty percent (20%), CMR shall consult with TFC and A/E to identify potential design and/or Specification modifications that could result in the Cost Estimate being in compliance with the Budget.

2.1.1.3.3.2. All Cost Estimates to be prepared and delivered by CMR to TFC shall be relied upon by TFC as the predominant means of budget control as the design phase of the Project progresses. To the extent Cost Estimates are provided by A/E, the CMR shall collaborate with TFC and A/E to reconcile significant differences in the Cost Estimates, and a single, reconciled Cost Estimate shall then be provided to TFC.

2.1.1.3.3.3. If alternative materials and systems are suggested by TFC, A/E, or CMR, CMR shall promptly provide cost evaluations of those alternative materials and systems.

2.1.1.4. CMR shall timely deliver to TFC the following Design Development pre-construction services for the Project.

2.1.1.4.1. CMR shall attend and actively participate in all meeting(s) between A/E and TFC wherein the proposed Design Development Documents will be reviewed.

2.1.1.4.2. CMR shall actively participate in the efforts of TFC and A/E to develop the final DD Documents. Such participation must be sufficient to enable CMR to understand the intended project scope, construction and phasing needs, impacts to facility(ies) operation, drawings and specifications prepared to date, and therefrom to accurately estimate Construction Costs.

2.1.1.4.3. CMR shall prepare and deliver formal review comments and Cost Estimate in accordance with the requirements of the Owner Coordinated Document Review Process and the schedule established therein.

2.1.1.4.3.1. If such estimated costs exceed the Budget by more than fifteen percent (15%), CMR shall consult with TFC and A/E to identify potential design and/or Specification modifications that could result in the Cost Estimate being in compliance with the Budget.

2.1.1.4.3.2. If alternative materials and systems are suggested by TFC, A/E, or CMR, CMR shall promptly provide cost evaluations of those alternative materials and systems.

2.1.1.4.4. CMR shall develop bidders' interest in the Project.

2.1.1.5. CMR shall timely deliver to TFC the following Construction Documents pre-construction services for the Project.

2.1.1.5.1. CMR shall attend and participate in all meetings between A/E and TFC wherein the Construction Documents will be reviewed.

2.1.1.5.2. CMR shall actively participate in the efforts of TFC and A/E to develop approved Construction Documents.

2.1.1.5.3. Following the 90% and 100% Construction Document review meetings, CMR shall prepare and deliver formal review comments and cost estimate in accordance with the requirements of the Owner Coordinated Document Review Process and the schedule established therein.

2.1.1.5.3.1. If such updated Cost Estimate exceeds the Budget by more than five percent (5%) for the 90% review or by any amount for the 100% review, CMR shall consult with TFC and A/E to identify further potential design and/or Specification modifications that could result in the Construction Documents Phase Cost Estimate being in compliance with the Budget.

2.1.1.5.3.2. If alternative materials and systems are suggested by TFC, A/E, or CMR, CMR shall promptly provide cost evaluations of those alternative materials and systems.

2.1.1.6. CMR shall prepare and submit to TFC a GMP Proposal as follows.

2.1.1.6.1. Within thirty (30) days of the date of issuance of the Drawings and Specifications by A/E, and in the manner prescribed by TFC, CMR shall advertise and solicit for bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work other than the minor work that may be included in the UGC, any Supplementary General Conditions, and/or Special Conditions.

2.1.1.6.1.1. CMR may seek to perform portions of the Work itself if the CMR submits its bid or proposal for said portions of the Work in the same manner as all other trade contractors or subcontractors at least twenty-four (24) hours prior to the opening of the bids or proposals from the trade contractors or subcontractors, and if TFC, in its sole discretion, determines that CMR's bid or proposal provides the best value for TFC or Using Agency.

2.1.1.6.1.2. CMR shall not open any bids or proposals, or otherwise ascertain their contents, outside the physical presence of an authorized representative of TFC.

2.1.1.6.1.3. A bid tabulation must be prepared or otherwise recorded contemporaneously with the opening of the bids or proposals, which bid tabulation must include, but shall not be limited to, the following information as to each bid or proposal: (i) the full name, address, and contact information for the trade contractor or subcontractor; (ii) a reasonably detailed description of the scope of the Work to which the bid or proposal applies; (iii) the amount of the bid or proposal; and (iv) CMR shall comply with requirements in Article 4 of the UGC regarding Historically Underutilized Business program.

2.1.1.6.2. Within forty-five (45) days of the date of issuance of the Drawings and Specifications by A/E, CMR shall submit to TFC a *GMP Proposal [Template]* in substantially the same form as "Exhibit D," attached hereto and incorporated herein for all purposes, and as set forth below. To the extent that the Drawings and Specifications are anticipated to require further development by A/E, CMR shall provide an allowance for such further development in the GMP that is consistent with the Contract Documents and reasonably inferable therefrom, which allowance shall be considered to be part of the CMR Contingency. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, can be incorporated only by Change Order.

2.1.1.6.3. CMR shall include the following with each GMP Proposal.

2.1.1.6.3.1 A written statement of its basis for calculation, which shall include the following.

2.1.1.6.3.1.1. A list of the Drawings, a digital copy of said list and the Drawings shall be incorporated herein by reference for all purposes and a list of Specifications and the Specifications, including all addenda thereto, shall be included in and made a part of the Project Manual, a digital copy of which Project Manual shall be incorporated herein by reference for all purposes, both of which were used in preparation of the GMP Proposal.

2.1.1.6.3.1.2. The C&A, a digital copy of which shall be incorporated herein by reference for all purposes, created by CMR in the preparation of the GMP Proposal, including any assumptions, to supplement the information provided by TFC and contained in the Drawings and Specifications.

2.1.1.6.3.1.3. A Statement of GMP, which sets out, at a minimum, statements that separately identify the following costs: (i) the Pre-Construction Management Fee; (ii) the General Conditions Fee; (iii) the Cost of Work enumerated, at a minimum, in categories by CSI specification number and including all

allowances and the CMR Contingency; (iv) the Construction Management Fee; and (v) the TFC Controlled Contingency, a digital copy of which shall be incorporated herein by reference for all purposes.

2.1.1.6.3.1.4. A Statement of the Proposed Date of Substantial Completion (hereinafter referred to as the "Statement of Date of Substantial Completion") upon which the proposed GMP is based, a digital copy of which shall be incorporated herein by reference for all purposes.

2.1.1.6.3.1.5. The deadline on which the GMP Proposal will automatically expire without further notice.

2.1.1.6.3.2. The initial Work Progress Critical Path Method Schedule (hereinafter referred to as "Work Progress CPM Schedule") that specifically includes the timeline set out in the digital copy which is incorporated herein by reference for all purposes.

2.1.1.6.3.2.1. CMR shall obtain A/E's concurrence with the portion of the initial Work Progress CPM Schedule relating to the delivery of A/E's services.

2.1.1.6.3.2.2. The initial Work Progress CPM Schedule shall coordinate and integrate CMR's services, A/E's services, and all other TFC contractors' services, TFC's responsibilities, and identify items that could affect the Project's timely completion.

2.1.1.6.3.2.3. Upon execution of each GMP Acceptance, a copy of a Work Progress CPM Schedule, as approved and accepted by TFC, shall be incorporated herein and substituted for the original initial Work Progress CPM Schedule, and a digital copy of which shall be incorporated herein by reference for all purposes.

2.1.1.6.3.2.4. All updated Work Progress CPM Schedules shall include: (i) the components of the Work; (ii) times of commencement and completion required of each Subcontractor; (iii) ordering and delivery of products, including those that must be ordered well in advance of construction; (iv) a clear delineation of the critical path; and (v) the substantial completion requirements of TFC.

2.1.1.6.4. CMR shall meet with TFC and A/E to review the GMP Proposal. In the event that TFC or A/E discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify CMR, who shall make appropriate adjustments to the GMP Proposal, its basis, or both.

2.1.1.6.5. TFC shall review the bids and CMR's recommendations, and with advice of CMR and A/E, TFC shall identify exceptions that may

result in changes to bid selections and overall GMP. CMR shall not be required to contract with anyone to whom CMR has a reasonable objection.

2.1.1.6.6. If TFC notifies CMR that TFC has accepted the GMP Proposal in writing before the deadline specified in the GMP Proposal, the GMP Proposal shall be deemed effective without further action by CMR. Following acceptance of the GMP Proposal, TFC and CMR shall immediately execute a *GMP Acceptance [Template]* in substantially the same form as the digital copy of which is incorporated herein by reference for all purposes as "Exhibit E." In the event CMR fails to timely: (i) execute and deliver the GMP Proposal to TFC, or (ii) deliver the required payment and performance bonds, or the Proof of Satisfaction of Insurance Requirements, as defined in Article XI below, TFC shall be entitled, upon the failure of CMR to cure following ten (10) days written notice, and without further action or notice, to collect on the Bid Bond.

2.1.1.6.7. The GMP Acceptance shall include a provision establishing the number of calendar days from the NTP with construction at which time the Project will be Substantially Complete, as required by the UGC.

2.1.1.6.8. CMR shall not incur any costs to be reimbursed as part of the Cost of Work prior to the commencement of the Construction Phase of the Project to be established by a Notice to Proceed with Construction, unless TFC provides prior written authorization for such costs.

2.1.1.6.9. TFC shall authorize A/E to provide the revisions to the Drawings and Specifications to incorporate the agreed upon C&A contained in the GMP Acceptance. TFC shall promptly furnish those revised Drawings and Specifications to CMR as they are revised. CMR shall notify TFC and A/E of any inconsistencies between the GMP Acceptance and the revised Drawings and Specifications.

2.1.1.6.10. At such time that the GMP Acceptance has been executed through a Change Order and CMR has submitted the required bonds in accordance with Article 5 of the UGC and any Special Conditions, and TFC has accepted the proof of insurance as required by of this Contract, TFC shall release the Bid Bond to CMR. In the event that the GMP Acceptance applies only to a phase or portion of the Project, the Bid Bond shall not be returned to CMR until all of the foregoing requirements are met as to the remaining phase of the Project.

2.1.1.6.11. In the event TFC elects to complete the Project in phases, the foregoing provisions shall apply to each phase for which a GMP is requested.

2.1.1.6.12. If the GMP has been accepted and TFC requires that another bid or proposal from a trade contractor or subcontractor be accepted, TFC shall compensate CMR by a change in price, time, or guaranteed maximum cost for any additional cost and risk that CMR may incur because of TFC's requirement that another bid or proposal be accepted. This provision shall not apply in the event TFC objects to, or otherwise requires the

removal or substitution of, any trade contractor or subcontractor pursuant to the terms of this Contract, including, but not limited to, Section 6.2.7.1 below.

2.1.1.6.13. Any provisions in Sections 9.3 and 10.1 of the UGC to the contrary notwithstanding, at or prior to the execution of the GMP Acceptance, CMR shall deliver to TFC for review and approval and to A/E for review, certain items identified herein, including but not limited to, the following: (i) the Schedule of Values in accordance with Section 10.1 of the UGC; (ii) all proof of insurance as required by this Contract; (iii) a safety plan as specified in Section 7.1 of the UGC; (iv) a designated qualified and experienced representative at the Site whose duties and responsibilities shall be, at a minimum, the prevention of accidents and the maintenance and supervision of said safety plan.

2.1.2. Construction Phase. Upon receipt of a NTP, CMR shall proceed with the Construction Phase of the Project and timely deliver to TFC the Construction Management Services for the Project as is specified in Section 3.3 of the UGC, and as follows.

2.1.2.1. Prior to commencement of any Work at the Site, CMR shall attend a pre-construction conference between TFC, A/E, and any other representatives as deemed appropriate by TFC, at such time and location as may be designated by TFC. The Communication Protocol, initial Work Progress CPM Schedule, procedures for handling Shop Drawings, as defined in UGC, Section 1.35, and other submittals, processing Applications for Payment, as defined in UGC, Section 1.1, maintaining required records, designation of Project Managers, and any other subject as may be determined by TFC to be appropriate, shall be the subject of said meeting.

2.1.2.2. CMR shall prepare, for A/E's review and TFC's review and acceptance, a procurement schedule for items that must be ordered in advance of commencement of construction.

2.1.2.2.1. CMR shall timely expedite and coordinate the ordering and delivery of products and materials that must be ordered in advance of construction.

2.1.2.2.2. Immediately upon the establishment of the GMP, CMR shall assume full responsibility for all materials and equipment assigned to CMR by TFC for Project-related items purchased by TFC.

2.1.2.3. CMR shall direct all Requests for Information (hereinafter referred to as "RFI"), as defined in Section 1.32 of the UGC, to A/E.

2.1.2.4. CMR shall adhere to the Work Progress CPM Schedule established in accordance with the terms and conditions of this Contract, as it may be amended from time to time.

2.1.2.4.1. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as

otherwise may be stated in the Contract Documents, all Work at the Site shall be performed Monday through Friday, from 6:00 a.m. until 6:00 p.m.

2.1.2.4.2. CMR shall not permit the performance of Work on any other day or time without TFC's prior written consent, which consent shall not be unreasonably withheld.

2.1.2.5. All requests for clarification of information provided in the Contract Documents or for direction concerning information necessary in order to perform the Work must be directed to A/E through an RFI.

2.1.2.6. On a monthly basis, or as otherwise agreed in writing by TFC, CMR shall submit written progress reports to TFC and A/E, reporting CMR's assessment of percentages of completion and other information required by TFC.

2.1.2.7. Unless and until instructed otherwise in writing by TFC, CMR shall also prepare a daily log (hereinafter referred to as "Daily Log") containing: (i) a record for each day's weather; (ii) a statement of which days since the previous monthly report are claimed by CMR to be subject to Force Majeure, as defined in Section 12.11 of this Contract, portions of the Work in progress; (iii) number of workers on the Site; (iv) identification of all equipment on the Site; (v) problems that might affect progress of the work; and (vi) all accidents, injuries, and any other information that may be requested by TFC from time-to-time, and upload said Daily Log into EMPCS as directed by TFC, by the end of each next business day. In the event CMR fails to timely and properly identify and upload any Force Majeure days, CMR shall be deemed, without further notice, to have automatically waived any claims of Force Majeure as to those days.

2.1.2.8. During the progress of the Work, CMR shall keep the Site and all adjacent areas free from accumulations of waste materials, rubbish, and other debris (hereinafter referred to collectively as "Trash"). The removal and disposal of Trash must conform to applicable Laws and Regulations.

2.1.2.9. CMR shall plan for and develop the schedule to accommodate necessary inspections and testing of electrical systems. CMR is strictly prohibited from energizing or otherwise activating any electrical systems or equipment at the Site without a minimum of twenty-four (24) hour advance notice to TFC. Any provisions in the Contract Documents to the contrary notwithstanding, TFC reserves the right to deny and/or revoke CMR's authority to energize or otherwise activate any electrical systems or equipment at the Site. CMR will not be entitled to receive additional compensation for any such denial or revocation.

2.1.2.10. Prior to Substantial Completion of the Work, CMR shall clean the Site and the Work and make it ready for utilization by TFC. At the Substantial Completion of the Work, CMR shall store and secure all tools, appliances, construction equipment and machinery, and surplus materials necessary to allow for beneficial occupancy by the Using Agency, and

shall restore all property not designated for alteration by the Contract Documents to original condition.

2.1.2.11. CMR shall confine all construction operations within the limits of construction indicated on the Drawings or otherwise agreed to in writing by TFC, and use due care in placing construction tools, equipment, materials, and supplies so as to cause the least possible damage to property and interference with traffic. If additional easements for its operations are needed, CMR is solely responsible for acquisition and maintenance of the easement.

2.1.2.12. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

2.1.2.13. In order for an Application for Final Payment. as defined in UGC, Section 1.2, to be considered complete and subject to review and approval, CMR must submit to TFC a Final Payment Punchlist in such form as prescribed by TFC, jointly executed by CMR, TFC and A/E. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirement is fully satisfied.

2.1.2.14. CMR must achieve Substantial Completion within the period of time specified in the GMP Proposal, as accepted by TFC, and which shall be stated in the NTP. In the event the Project is to be constructed in phases, each phase must be constructed within the period of time specified in the respective proposals, and which shall be stated in the respective NTP.

2.1.2.14.1. At such time that CMR considers the entire Work or a portion thereof Substantially Complete, CMR must notify TFC and A/E in writing that said Work will be ready for a Substantial Completion Inspection on a specific date.

2.1.2.14.1.1. CMR shall include with the foregoing notice a Punchlist that sets out, among other things that may be requested by TFC and/or A/E, the following: (i) a list of those portions of the Work that are to be the subject of the Substantial Completion Inspection; and (ii) the Open Items List, as defined in UGC, Section 1.24, which must include the date for scheduled completion and/or correction for each item of Work contained therein.

2.1.2.14.1.2. The delivery of the foregoing notice by CMR shall constitute CMR's certification that it has, in fact, inspected each and every portion of the Work that is to be the subject of the Substantial Completion Inspection and that they are completed in conformity with the Contract Documents.

2.1.2.14.2. No later than ten (10) days prior to the date of the Substantial Completion Inspection, CMR must deliver to A/E a copy of CMR's marked-up Record Documents, as defined in UGC, Section 1.31, and a preliminary copy of each

instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents for the Work that is the subject of the Substantial Completion Inspection.

2.1.2.14.3. Subject to the provisions of UGC, Section 12.1.1, and no later than the Substantial Completion Inspection Deadline, A/E shall conduct a Substantial Completion Inspection while accompanied by the TFC Project Manager to determine whether said portion of the Work has achieved Substantial Completion.

2.1.2.14.3.1. In the event A/E determines that the Work or any portion thereof, has not been performed or completed in accordance with the Contract Documents, and no later than the Pre-Final Inspection Punchlist Deadline, A/E shall prepare and deliver to CMR a Pre-Final Inspection Punchlist with a copy to TFC.

2.1.2.14.3.2. In the event any fees, and/or other direct and/or consequential damages are charged to, or incurred by, TFC by reason of CMR's failure to timely correct and/or complete the items that are the subject of the Substantial Completion Inspection, CMR shall be liable to TFC for such fees and/or damages.

2.1.2.15. Subject to the provisions of UGC, Section 12.1.2, and no later than the Final Inspection Deadline, and prior to requesting a Final Inspection, CMR must complete and/or correct all Work specified in the Pre-Final Inspection Punchlist.

2.1.2.15.1. Issuance of a Certificate of Substantial Completion is a condition precedent to CMR's right to issue notice that the Work will be ready for Final Inspection.

2.1.2.15.2. By requesting a Final Inspection, CMR thereby certifies that it has, in fact, inspected each and every portion of the Work that is set out in the Pre-Final Inspection Punchlist, and that they are completed in conformity with the Contract Documents.

2.1.2.15.3. No later than the Final Inspection Deadline, A/E shall conduct a Final Inspection, while accompanied by the TFC Project Manager, to determine whether all of the items set out in the Pre-Final Inspection Punchlist have been fully completed in accordance with the Contract Documents.

2.1.2.15.4. In the event A/E determines that any of the Pre-Final Inspection Punchlist items have not been corrected or completed in accordance with the Contract Documents, A/E shall prepare and deliver to CMR, no later than the Post-Final Inspection Punchlist Deadline, a Post-Final Inspection Punchlist with a copy to TFC.

2.1.2.15.5. No later than ten (10) days after receipt of the Post-Final Inspection Punchlist, and prior to submitting a request for Final Payment, CMR must complete and/or correct all Work specified in the Post-Final Inspection Punchlist.

2.1.2.15.6. In the event any fees and/or other consequential damages are charged to, or incurred by, TFC by reason of CMR's failure to timely correct and/or complete the items that are the subject of the Final Inspection, CMR shall be liable to TFC for such fees and/or damages.

2.1.2.15.7. At final completion, CMR shall remove all tools, appliances, construction equipment and machinery, and surplus materials from the Site.

2.1.2.16. In order for an Application for Final Payment to be considered complete and subject to review and approval, Contractor must deliver to TFC: (i) a fully completed and executed Final Payment checklist in such form as is prescribed by TFC; (ii) all test reports; and (iii) all Close-Out Documents. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirements are fully satisfied. Issuance of a Certificate of Final Completion is a condition precedent to CMR's right to receive Final Payment.

2.1.3. CMR Services During All Phases. CMR shall timely deliver to TFC the following services, as applicable, during all phases for which CMR is obligated to provide Construction Management Services.

2.1.3.1. CMR shall participate with A/E in all explanatory presentations as may be requested by TFC.

2.1.3.2. CMR shall critically review and closely scrutinize all documents submitted by all Subcontractors, suppliers, and all other third-parties.

2.1.3.3. CMR shall thoroughly review and closely scrutinize the performance, constructability, schedules, and costs of all of its Subcontractors and suppliers;

2.1.3.4. CMR shall critically review and evaluate Subcontractor's proposed means, methods, schedule, and costs as relevant to each Subcontractor's discipline.

2.1.3.5. CMR shall maintain work progress and products consistent with the schedules.

2.1.3.6. CMR shall promptly communicate with pertinent parties, including topics regarding information needs and responses to needs of other parties.

2.1.3.7. CMR shall actively participate in all meetings and/or teleconferences to bring the full measure of CMR's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline

including, but not limited to, matters concerning the proposed site use and improvements, selection of materials, and building systems and equipment.

2.1.3.8. CMR shall ensure that each Subcontractor includes thorough examinations of all documents they author, for accuracy, intended completeness, and constructability as their standard of care for the Project.

2.1.3.9. CMR shall ensure that its Project Manager, and any other representative of CMR whose presence is requested by TFC, attend all meetings and participate in all conference calls that are scheduled by TFC or A/E.

2.1.3.10. CMR shall cooperate with any commissioning agent that may be engaged by TFC.

2.1.4. TFC Approvals. Any provisions in this Contract to the contrary notwithstanding, all consents and/or approvals by TFC shall be in its sole and absolute discretion, and must be in writing.

2.1.4.1. No changes to the scope of the Construction Management Services or the Consideration, shall be valid or enforceable unless evidenced by a fully executed written amendment to this Contract.

2.1.4.2. To the extent that TFC approval is required to authorize incurring any costs, such approval must be acquired prior to incurring any such costs. The parties shall exercise good faith efforts to identify all such costs prior to execution of the GMP Acceptance.

2.1.4.3. CMR is not authorized to commence providing any Construction Management Services to TFC or any Using Agency with respect to the Project unless and until the appropriate NTP is delivered by TFC.

2.1.4.4. TFC, including by and through the TFC Project Manager, reserves the right, if deemed appropriate by TFC in its sole discretion, to extend any of the deadlines set out in this Contract.

2.1.4.5. TFC hereby reserves the right, if deemed appropriate by TFC in its sole discretion, to conduct reviews of inspections during the course of design and construction of the Project. However, CMR shall not be relieved of any of its obligations arising pursuant to this Contract.

2.1.4.6. No inspections of the Project conducted by TFC or A/E during the course of construction, either singularly or in the aggregate, shall reduce the level or extent of CMR's responsibilities arising pursuant to this Contract. Neither the approval and/or final acceptance of the Project or any Deliverables, the payment of any pay application, or the issuance of any Certificates of Final or Substantial Completion by TFC shall constitute, nor be deemed, a release of CMR's obligation to perform and deliver the Construction Management

Services in a manner consistent with: (i) that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances; and (ii) as required by the Contract Documents.

III. TERM, SUSPENSION, AND TERMINATION.

3.1. Contract Term. This Contract shall be effective as of the Effective Date and shall terminate on May 30, 2019, unless extended by the parties by amendment to this Contract or terminated earlier, as provided below.

3.2. Suspension of Work. TFC may suspend all or any part of the Work, for cause, without prior notice, as more specifically provided in Section 14.1 of the UGC. In addition, TFC may suspend all or any part of the Work for the convenience of TFC, without breach of this Contract, upon seven (7) days written notice, and as more specifically provided in Section 14.2 of the UGC. Upon receipt of a notice of suspension pursuant to this subsection, CMR shall, subject to the provisions of UGC, Section 14.2, immediately stop all Work.

3.3. Termination Prior to Establishment of the GMP. Prior to the execution of the GMP Acceptance, TFC may terminate this Contract upon no less than thirty (30) days written notice to CMR for TFC's convenience and without cause, and CMR may terminate this Contract upon not less than ninety (90) days written notice to TFC for the reasons set forth in Section 14.6 of the UGC.

3.4. CMR Compensation. In the event of termination of this Contract and pursuant to Section 14.5 of the UGC, CMR shall be equitably compensated for pre-construction phase services performed prior to receipt of a notice of termination. In no event shall CMR's compensation under this section exceed the compensation set forth in this Contract.

3.5. Termination Subsequent to Establishment of GMP. Following execution of the GMP Acceptance, the Contract may be terminated: (i) as provided in Sections 14.5 and 14.6 of the UGC; (ii) for cause as provided below; and/or (iii) when an existing material breach by CMR of any other contract between CMR and TFC has remained unresolved for at least fifteen (15) days.

3.6. Termination by Owner for Cause. Upon written notice to CMR and its surety, TFC may, without prejudice to any right or remedy, terminate this Contract and take possession of the Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by CMR under any of the following circumstances, each one of which shall be considered a material breach of this Contract.

3.6.1. Inadequate Workmen and/or Materials. Failure or refusal, except during complete or partial suspensions of work authorized under the Contract, to supply enough properly skilled workmen or proper materials.

3.6.2. Violation of Law. A violation, whether discovered or asserted before or after the Effective Date, of any Laws and Regulations of any Governing Authority.

3.6.3. Failure to Timely Deliver Services or Construct the Project. The failure of CMR to timely deliver the services set out herein or timely complete the Project in accordance with the Contract Documents.

3.6.4. Failure to Remedy. Failure to timely remedy defective work.

3.6.5. Endangerment. Creating endangerment to the safety of employees, Subcontractors, or any other members of the public or of the Work.

3.6.6. Bonds and Insurance. Failure to timely obtain and deliver, or maintain any required bonds or any required proof of insurance, pursuant to the Contract Documents.

3.6.7. False Statement. The falsity of any material statement, warranty or representation when given or made by CMR to TFC or A/E, whether in this Contract, in CMR's response to the RFQ, or otherwise, or any such statement, warranty or representation becoming materially false at any time during the term of this Contract, or any fraud committed by CMR or its members, officers, agents, or principals in connection with the procurement of this Contract or the delivery of the Construction Management Service.

3.6.8. Bankruptcy, Insolvency, and/or Debtor Relief. CMR: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary proceeding seeking protection from creditors under any bankruptcy or other law; (iii) is the subject of an involuntary proceeding under any bankruptcy or other similar law and such proceeding is not dismissed within sixty (60) days; or (iv) makes any admission of its inability to pay its debts generally as they become due.

3.6.9. Appointment of Trustee. The appointment of a trustee, receiver, or liquidator for CMR.

3.6.10. Unauthorized Use of Unapproved Item of Material or Equipment. The use of or otherwise incorporating an item of material or equipment into the Project that is not specified by the Drawings or Specifications, or otherwise approved pursuant to the procedures set out in the requirements for substitutions and equivalents.

3.6.11. Failure to Timely Comply. Failure to timely comply with any other requirements of the Contract Documents.

IV. CONSIDERATION.

4.1. Pre-Construction Management Fee. The initial fee for this Contract is comprised of only the Pre-Construction Management Fee, which shall not exceed the sum of Fifteen Thousand and No/100 Dollars ($15,000.00).

4.2. Contract Sum–Components. Upon execution of a GMP Acceptance, the Contract Sum shall not exceed One Million Four Hundred Eighty-Two Thousand Seven Hundred Twenty-Five and No/100 Dollars ($1,482,725.00), which is the sum of the following components.

4.2.1. Pre-Construction Management Fee. The Pre-Construction Management Fee.

4.2.2. Construction Management Fee. The Construction Management Fee not to exceed five and one-half percent (5.5%) of the Cost of Work, which sum will be finalized as part of the Contract Sum in the GMP Acceptance.

4.2.3. General Conditions Fee. The General Conditions Fee not to exceed One Hundred Eighty-Six Thousand and No/100 Dollars ($186,000.00), which sum will be finalized as part of the Contract Sum in the GMP Acceptance.

4.2.4. Cost of Work. The Cost of Work will be adjusted and finalized as part of the Contract Sum in the GMP. The budget for the Cost of Work shall not exceed One Million Two Hundred Fourteen Thousand Nine Hundred Five and No/100 Dollars ($1,214,905.00).

4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of Zero and No/100 Dollars ($0.00), which sum shall be maintained through construction, and included in the Contract Sum and finalized in the GMP Acceptance.

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

4.3. GMP. The Contract Sum shall not exceed the amount specified in the GMP, as set forth in the GMP Acceptance, as it may be amended from time to time.

4.3.1. Cost of Work and GMP. To the extent the Cost of Work exceeds the GMP, CMR shall bear all such costs in excess of the GMP without reimbursement or additional compensation from TFC.

4.3.2. Realized Savings. If there are any savings realized in actual expenditures for the Cost of Work, those savings shall be returned to TFC through a credit Change Order at the conclusion of the Project. Returned costs shall include the portion of Construction Management Fee proportioned to the reduced Cost of Work.

4.4. Progress Payments. The administration of all progress payments shall be governed by the following provisions.

4.4.1. Initial Pay Application. The submission of the initial pay application must be preceded by the submission and approval of the Schedule of Values, as defined by UGC, Section 1.34, at least twenty-one (21) days prior thereto, as provided in UGC, Section 10.1.1.

4.4.2. Additional Pay Application Requirements. In addition to the requirements of Article 10 of the UGC, each pay application must also include the following additional documentation.

4.4.2.1. An updated Work Progress Schedule, as defined in UGC, Section 1.46, including the executive summary and all required schedule reports, as provided in UGC, Sections 8.3.1.3 and 10.2.1.2.

4.4.2.2. A PAR monthly compliance report, as provided in UGC, Sections 4.2.5.1 and 10.2.1.3.

4.4.2.3. All test results and reports from all Subcontractors and/or otherwise under CMR's possession or subject to CMR's control.

4.4.2.4. A duly executed Conditional Waiver and Release on Progress Payment from each Subcontractor that complies with Texas Property Code, Section 53.284(b).

4.4.2.5. Proof of satisfaction of CMR's obligation to timely upload the CMR's Daily Log to the EPMCS.

4.4.2.6. Any other information or documentation as may be requested by TFC.

4.4.3. Pay Application Certifications. Each submission of a pay application shall also constitute CMR's certification that:

4.4.3.1. as of the date of the pay application, Contractor is in compliance with UGC, Section 2.2.1;

4.4.3.2. CMR has updated all expired insurance policies as required by UGC, Section 5.2;

4.4.3.3. CMR has updated the Record Documents, as required by UGC, Section 6.2.3;

4.4.3.4. CMR has updated the Submittal Register, as defined in UGC, Section 1.40, and pursuant to UGC, Section 8.3.1.2; and

4.4.3.5. the sums contained in the pay application that represent amounts owed to Subcontractors and/or suppliers are, in fact, due and owing to said Subcontractors and/or suppliers, without any deductions or offsets.

4.4.4. Prompt Payment. CMR shall be paid in accordance with Chapter 2251 of the Texas Government Code, also known as the "Prompt Payment Act" and the provisions set out in Article 10 of the UGC, subject to any Special Conditions.

4.4.5. Payments to Subcontractors. For all services rendered, CMR's payment to Subcontractors is due within ten (10) days after receipt of payment from TFC and shall be in accordance with the Prompt Payment Act.

4.4.6. Credit on Cost Plus Subcontracts. If a subcontract is awarded on a cost plus a fee basis, CMR shall return to TFC any cost savings not expended in fully performing the subcontract.

4.4.7. Construction Funds. All payments to CMR shall be subject to the provisions of the Texas Property Code, Chapter 162, concerning Construction Payments, Loan Receipts, and Misapplication of Trust Funds.

4.5. Changes in the Work. The GMP is subject to additions and/or deductions only by Change Order, and the Contract Time shall be subject to adjustments only as provided in the Contract Documents.

4.5.1. Enforceability of Changes. In order to be valid and enforceable, changes to the scope and/or Cost of Work must be executed in accordance with Article 11 of the UGC.

4.5.2. No Course of Conduct. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations, or additions to the Work, and no claim that TFC has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to any increase in any amounts due under the Contract Documents or a change in any period provided for in the Contract Documents.

4.6. Adjustments to Cost of Work. When adjustments to the Cost of Work are necessary, TFC may, in its sole discretion, either fund the Work through a no-cost Change Order and transfer of funds from the TFC Controlled Contingency, or adjust the Contract Sum through a Change Order. In no event, however, and any provisions in Section 11.8.2 of the UGC to the contrary notwithstanding, shall CMR be authorized to add, charge or collect any mark-up for overhead and profit for any subcontracted Work. However, the GMP may be increased (or decreased, as the case may be) for any changes to General Conditions for management of any such changed scope of Work and resulting increase to the Cost of Work, and CMR shall be entitled to the Construction Management Fee thereon. CMR must account to TFC when CMR uses, applies, or otherwise debits the CMR Contingency. Furthermore, CMR may not add, charge or collect any additional fees, or mark-ups for overhead and profit as described in 11.8.2, for any subcontracted Work for which CMR elects to use, apply, or otherwise debit the CMR Contingency.

4.7. Deduction from Cost of Work. Amounts that accrue to TFC in accordance with the foregoing provisions shall be credited to TFC as a deduction from the Cost of Work, or refunded to TFC as appropriate.

4.8. Certification As to Cost of Work and General Conditions Fee. No portion of the sums submitted by CMR as part of its Cost of Work in its GMP Proposal shall include any items that are derived from any consideration of items or corresponding sums that are considered General Conditions. Likewise, no portion of the Construction Management Fee may be derived from any consideration of items or corresponding sums in the General Conditions Fee. No portion of the Cost of Work, the TFC Controlled Contingency, or the CMR Contingency shall include any sums for deductibles or self-insured retentions that CMR may be obligated to pay in the event of any property or casualty loss.

4.9. Change Orders–Final Settlement. Unless otherwise provided in the Change Order, execution of a Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule, but excluding any and all matters involving latent defects.

V. COMPONENTS OF COST OF WORK FOR CONSTRUCTION PHASE.

5.1. Components of Cost of Work. The Cost of Work shall be composed of, subject to TFC's written approval, only the following items.

5.1.1. Labor Costs. Labor costs, which include the following.

5.1.1.1. Wages of construction workers employed by CMR to perform the construction of the Work at the Site or at approved off-site workshops.

5.1.1.2. Costs paid or incurred by CMR for taxes, contributions, assessments, and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries identified in the Cost of Work.

5.1.1.3. Wages or salaries of CMR's personnel for resolving a CMR Contingency.

5.1.2. Subcontract Costs. The subcontracting costs.

5.1.3. Costs of Materials and Equipment Incorporated into the Completed Construction. Costs of materials and equipment incorporated into the completed Project, which shall include the following.

5.1.3.1. Costs (including transportation and storage) of materials and equipment incorporated, or to be incorporated, into the completed Project.

5.1.3.2. Costs of materials in excess of those actually installed or incorporated to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become TFC's property at the completion of the Work or, at TFC's option, shall be sold by CMR in a commercially reasonable manner. Any amounts realized from such sales shall be credited to TFC as a deduction from the Cost of Work.

5.1.4. Miscellaneous Costs. Miscellaneous costs, which shall include the following.

5.1.4.1. Sales, use or similar taxes imposed by a Governmental Authority that are related to the Work and for which CMR is liable.

5.1.4.2. Fees and assessments for any building permit and for other permits, licenses and inspections for which CMR is required to be paid by the Contract Documents.

5.1.4.3. Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 8.2.3.5 of the UGC or by other provisions of the Contract Documents, and which do not fall within the scope of Section 5.1.7 below.

5.1.4.4. Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.

5.1.5. Emergency Costs. Emergency costs, which shall include the following.

5.1.5.1. Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property as provided in Sections 7.3 and 11.7.4 of the UGC.

5.1.5.2. Costs of repairing damaged Work performed by CMR or Subcontractors, provided that such damaged Work was not caused by any negligence, or failure to fulfill a specific responsibility, of CMR or Subcontractors and only to the extent that the cost of repair is not covered by CMR's insurance, sureties, Subcontractors, or others.

5.1.6. Non-Cost of Work Items. Any provisions in this Contract to the contrary notwithstanding, Cost of Work shall not include the following cost items.

5.1.6.1. General Conditions, as defined in Section 5.1.7 below.

5.1.6.2. Salaries or other compensation of CMR's personnel stationed at the CMR's principal office or offices, except as may be specifically provided in Section 5.1.1 above, or as may be provided in Article 11 of the UGC.

5.1.6.3. Expenses of the CMR's principal office and other offices.

5.1.6.4. Overhead and general expenses, except as may be expressly included in Sections 5.1.1 to 5.1.5 above.

5.1.6.5. CMR's capital expenses, including interest, on the CMR's capital employed for the Work.

5.1.6.6. Except as provided in Section 5.1.5.2 of this Contract, costs due to the negligence or failure of CMR, Subcontractors, or anyone directly or indirectly employed or engaged by any of them, or for whose acts any of them may be liable to fulfill a specific responsibility under the Contract.

5.1.6.7. Any cost not specifically and expressly identified in Sections 5.1.1 to 5.1.5 above.

5.1.6.8. Costs, other than costs included in Change Orders approved by TFC, that would cause the GMP to be exceeded.

5.1.6.9. Costs for services incurred during the pre-construction phase of the Project.

5.1.7. General Conditions. For purposes of this Contract, "General Conditions" means the following items and related costs.

5.1.7.1. Bonds and insurance.

5.1.7.2. Project management, supervisory, support, and administrative personnel, both office and field.

5.1.7.3. Temporary field offices, facilities and storage including equipment, materials, and temporary utilities.

5.1.7.4. Background checks and employee identification materials.

5.1.7.5. Safety program.

5.1.7.6. Construction documentation.

5.1.7.7. Transportation.

5.1.7.8. Parking.

5.1.7.9. Temporary barriers, signage, and controls.

5.1.7.10. Cleaning and waste disposal.

5.2. Discounts, Rebates and Refunds. All cash discounts obtained or otherwise realized on payments made by CMR shall accrue to TFC if, before making the payment, CMR included them in a pay application and received payment from TFC; otherwise, all cash discounts shall accrue to CMR. In no instance may CMR retain as profit or gain, a discount, rebate or refund received as a result of a purchase or Work performed as part of the Project.

5.2.1. Savings. If the allowable amount of the cost of Cost of Work, General Conditions and CMR's Contingency is less than the amount established for each of those line items in the originally approved Guaranteed Maximum Price Proposal, the entire difference shall be credited to the Owner as savings and the contract amount shall be adjusted accordingly, including associated Construction Phase fees. When buyout of the Project is at least 85% complete, the Owner may recognize any savings achieved to that point by issuing a deductive change order for the saved amount.

5.2.2. Owner's Allowances. Items to be provided for through Owner's special cash allowances shall be clearly identified in the Construction Documents and the Guaranteed Maximum Price Proposal. The Cost of the Work included in the allowances shall be determined in accordance with the 2015 Uniform General Conditions. Any claim by the CMR for an adjustment to an allowance amount included in the Guaranteed Maximum Price based on the cost of allowance work shall be made within a reasonable time after the issuance of the Construction Documents for the allowance items. The CMR shall not be entitled to any increase in its Construction Phase fee for increases to allowance amounts that were initially based on estimates provided by the CMR. Owner shall be entitled to retain 100% of the balance of any unused allowance amount.

5.2.3. Deductions. The Owner shall be entitled to deduct amounts for the following items from any Application for Payment or from the request for Final Payment submitted by the CMR.

5.2.3.1. The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by the Owner. Upon completion of the Work or when no longer required, CMR shall either credit the Owner for the fair market value (as approved by the Owner) for all surplus tools, construction equipment and materials retained by the CMR or, at Owner's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to the Owner's account.

5.2.3.2. Discounts earned by the CMR through advance or prompt payments funded by the Owner. The CMR shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. The CMR shall purchase materials for the Project in quantities that provide the most advantageous prices to the Owner.

5.2.3.3. Rebates, discounts, or commissions obtained by the CMR from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

5.2.3.4. Deposits made by Owner and forfeited due to the fault of the CMR.

5.2.3.5. Balances remaining on any allowances, the CMR's Contingency, or any other identified contract savings.

5.2.4. Recovery of Savings. Owner shall be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting work, provided however, that CMR may use such savings to offset other buyout packages that exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase. Owner shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, before or after Final Payment."

5.3. Accrual to TFC. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to TFC, and CMR shall make provisions and take such actions so that they can be obtained.

VI. ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS.

6.1. Acknowledgements, Covenants, and Agreements of TFC. TFC acknowledges, covenants, and agrees to the following.

6.1.1. TFC Deliverables to CMR. TFC shall, with reasonable promptness, provide CMR a copy of, or reasonable access to, the following information and documentation regarding the Project.

6.1.1.1. The UGC.

6.1.1.2. The 2018 Supplementary General Conditions.

6.1.1.3. The Special Conditions.

6.1.1.4. Sample copies of the following:

6.1.1.4.1. contract forms; and

6.1.1.4.2. bond forms.

6.1.1.5. Bidding information and instructions.

6.1.1.6. Minimum wage rates.

6.1.1.7. The PAR for inclusion in the Specifications.

6.1.1.8. Any maps, surveys, and Drawings in the possession of TFC that reflect or depict Site boundaries, recorded easements, topography, utility locations, and such other documents in the possession of TFC that reflect Site conditions and/or restrictions which may impact the design and/or construction of the Project.

6.1.1.9. Any soil reports or traffic impact studies in the possession of TFC.

6.1.1.10. The Budget.

6.1.1.11. TFC's Project schedule.

6.1.1.12. The communication protocol, which includes the communication and tracking procedure to be utilized for interaction and reporting for the Project.

6.1.1.13. Information regarding requirements for, and limitations of, the Project including a written program which shall set forth TFC's objectives, constraints, and criteria including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

6.1.1.14. When such services are necessary for Project implementation, and upon request of the CMR, the services of geotechnical engineers which may include, but are not limited to, test borings, soils and geological formation analysis with written reports and appropriate recommendations for foundation and other necessary site-related subsurface construction.

6.1.1.15. Any other information or services under TFC's control and relevant to the CMR's performance of the Work upon receipt of CMR's reasonable written request.

6.1.2. TFC Services to CMR. TFC shall timely provide, or cause to be provided, to CMR the following services for the Project.

6.1.2.1. Assuming satisfactory completion of all criminal background checks, assist CMR in obtaining such access to the Site as is reasonably necessary to enable CMR to provide the Construction Management Services;

6.1.2.2. Designate the TFC Project Manager who will supervise the design and construction of the Project and the services being provided pursuant to this Contract and the Contract Documents;