TFC Contract No. 17-033-000
RFQ No. 303-6-02237
Project No. 16-020-5810

CONSTRUCTION MANAGER-AT-RISK CONTRACT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
KITCHELL CONTRACTORS, INC.

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 Kitchell Contractors, Inc., an Arizona corporation, located at 4030 West Braker Lane, Suite 400, Austin, Texas 78759 (hereinafter referred to as "CMR"), enter into the following contract for construction services pursuant to Tex. Gov't Code Ann. §§ 2166.2525 and 2269.251 (West 2016), (hereinafter referred to as the "Contract"). Construction Management Services is generally described as provision of deferred maintenance renovation services for the following eight (8) buildings in Austin, Texas: (i) the Park 35 Buildings A through E located at 12100 North IH 35; (ii) the Promontory Point Warehouse located at 4044 Promontory Point; (iii) the State Records Center located at 4400 Shoal Creek Boulevard; and (iv) the Wheless Lane Laboratory located at 2801 Wheless Lane. Services shall include, but are not limited to, upgrades to or replacement of mechanical and electrical systems, roofing systems, architectural finishes, fire protection systems and life safety issues, elevators, security systems, indoor air quality, renovating vacant office space into warehouse/training space, and other necessary incidental scopes of work related to or made necessary by the correction of building deficiencies (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 *2015 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. 17-033-000 / Kitchell Contractors, Inc. / 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 2015 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.* 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).

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. 303-6-02237, issued July 29, 2016.

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 ortion 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, the Supplementary General Conditions, the 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) Initial Conceptual Drawings; (ii) Schematic Design; (iii) Design Development; (iv) 65% Construction Documents; (v) 95% Construction Documents; and (vi) 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. The A/E shall have a fixed number of days after TFC's notice of authorization to A/E to proceed with the next phase of design. The fixed number of days for development of each phase of design will be shared with CMR upon contract execution with the AE. The last day of each design phase duration or the first weekday thereafter is the A/E deadline for submitting the design phase deliverables for review.

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 65%, 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 ten percent (10%) for the 65% review, 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 July 31, 2020, 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 Seventy Five Thousand Two Hundred Twenty One and No/100 Dollars ($75,221.00).

4.2. Contract Sum–Components. Upon execution of a GMP Acceptance, the Contract Sum shall not exceed Six Million Three Hundred Fourteen Thousand Seven Hundred Forty Four and No/100 Dollars ($6,314,744.00), 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 four and one half percent (4.5%) 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 Million Seven Thousand Ninety One and No/100 Dollars ($1,007,091.00), 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 Four Million Six Hundred Sixty Five Thousand Sixty Five and No/100 Dollars ($4,665,065.00).

4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of Three Hundred Fifty Seven Thousand Four Hundred Thirty Nine and No/100 Dollars ($357,439.00), 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 2015 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;

6.1.2.3. Provide intermediate reviews of the work product of CMR as necessary to allow CMR to proceed with delivery of the Construction Management Services in a timely manner; and

6.1.2.4. Provide such additional professional services as may be necessary to complete the Project that are not otherwise provided pursuant to this Contract.

6.1.3. A/E. TFC has retained an A/E to provide: (i) professional architectural services and/or (ii) professional engineering services as defined in Texas Government Code, Chapter 2254, Subchapter A, the scope of both of which is set out in a separate architectural/engineering professional services agreement (hereinafter referred to as the "A/E Agreement") for this Project.

6.1.3.1. The scope of said A/E Agreement includes the provision of certain services and the assumption of certain duties and responsibilities by A/E, including, but not necessarily limited to, the following:

6.1.3.1.1. the translation of a Using Agency's program requirements into design and contract documents that meet all applicable codes and regulatory requirements customary for the execution of the Project;

6.1.3.1.2. the issuance of design and contract documentation in predetermined phases of completion;

6.1.3.1.3. the requirement for collaboration and cooperation with CMR in evaluating the construction assembly, components, materials, systems, 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 CD, and named therein as "Exhibit G." A/E'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, age, or national origin. 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. E-Verify. By entering into this Contract, CMR certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: (i) all persons employed to perform duties within the State of Texas, during the term of the Contract; and (ii) all persons (including subcontractors) assigned by the CMR to perform work pursuant to the Contract, within the United States of America. CMR shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the CMR, and CMR'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. CMR shall also be

responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Contract. For persons not eligible for E-Verify screening, CMR (including sub-contractors) shall provide, upon request by TFC, another form of documentation 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.

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. 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).

7.1.8. 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. 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.

7.1.12. 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.

7.1.13. 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.

7.1.14. 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.

7.1.15. 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.

7.1.15.1. 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.

7.1.15.2. 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.

7.1.15.3. 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.

10.4.3. 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" (*http://www.buyaccessible.gov*). 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 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. **TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY. 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. When required, CMR shall submit an updated HUB Subcontracting Plan, 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-1." Upon execution of a GMP Amendment Acceptance, an updated HUB Subcontracting Plan 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 HUB Subcontracting Plan PAR, 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: Kitchell Contractors, Inc.
Attention: Borja del Nido, Project Director
4030 West Braker Lane, Suite 400
Austin, Texas 78759
Telephone: (512) 298-4186
E-mail: bdelnido@kitchell.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. 2015 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. Texas Facilities Commission Criminal Background Check and Application Guidelines.

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

12.24.9. Exhibit H-2. HUB Subcontracting Plan Progress Assessment Reporting 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.

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	**KITCHELL CONTRACTORS, INC.**
By:	By:
Harvey Hilderbran	Stephen M. Whitworth
Executive Director	Vice President
Date of Execution: 12-1-16	Date of Execution: 12/1/16

G.C.

Dir. mn

D.E.D.

TFC CONTRACT NO. 17-033-000

KITCHELL CONTRACTORS, INC.

EXHIBITS CD