Sub-subcontractors, Suppliers or their agents or employees, or of any other persons performing portions of the Work.

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. Project Implementation Plan. (PIP). The Project Implementation Plan has been developed for TFC by the CMA with the objective of: (i) ensuring adherence to the design integrity established in the Design Program, the Preliminary Master Plan, and the Owner's Project Requirements, or OPR; (ii) optimizing opportunities for TFC to reduce Project costs; and (iii) reducing Project delivery schedules to the extent reasonably and commercially possible. The CMR shall adhere to all aspects of the PIP, including but not limited to the following.

6.2.1.1. Communication protocols.

6.2.1.2. Procedures for budget management and monthly reporting.

6.2.1.3. Schedule management procedures.

6.2.1.4. Quality assurance/ construction inspection procedures.

6.2.1.5. Procedures for filing systems.

6.2.1.6. Procedures for correspondence and transmittals.

6.2.1.7. Procedures for requests for information.

6.2.1.8. Protocols for submittals.

6.2.1.9. Procedures for meetings.

6.2.1.10. Procedures issues tracking.

6.2.1.11. Procedures for reporting (weekly/monthly).

6.2.1.12. Protocols for data use and record/document management.

6.2.1.13. Project closeout procedures.

6.2.1.14. Protocols for design and cost reviews.

6.2.1.15. Procedures to manage project scheduling, sequencing, phasing and partitioning.

6.2.2. Timely Delivery of Conforming Services. CMR will, subject to Force Majeure events, as defined in Section 12.12 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.

6.2.2.1. TFC reserves the right to impose liquidated damages as to each design/construction package, to be determined at the time of GMP development.

6.2.3. Project Close-Out. CMR shall follow the TFC's Approved process for Project close-out, which shall include the following.

6.2.3.1. Inform TFC, the CMA and A/E when Substantial Completion of a Project, or completion of Work for significant Project components has been achieved in relation to the schedule milestones established therefor.

6.2.3.2. Arrange for inspections or tests of the Work of service providers for the Projects, and receive, review and comment on all certificates of inspections, tests and approvals required by applicable Laws and Regulations or the applicable contracts for the Project.

6.2.3.3. Participate with TFC, the CMA and A/E in Substantial Completion inspections and preparation of a consolidated "punch-lists" of items needed for Final Completion for the Project.

6.2.3.4. Complete punch list items and participate in Final Completion inspections.

6.2.3.5. Report to TFC confirmation of Final Completion of the Project.

6.2.3.6. Deliver all warranties and guarantees, and Project Manuals related to the Project and all equipment and products incorporated therein.

6.2.3.7. Establish and manage a warranty protocol throughout the warranty period to identify, enforce and resolve all warranty claims in consultation with the TFC.

6.2.3.8. Cause and facilitate the transfer of operation of the Project to TFC, including the acquisition and transfer of ship of all Work Product, Record Documents, project documentation, and BIM models from Project Team members to TFC.

6.2.3.9. Prepare and timely submit, and obtain certifications or approvals from all utilities operators and local, state, and federal authorities as required for TFC's use and operation of the Project, including but not limited to the City of Austin, Travis County, Texas Department of Transportation (TxDOT), and Texas Commission on Environmental Quality (TCEQ).

6.2.3.10. Develop and submit all documentation required for Asbestos Free certification and American Lung Association certification.

6.2.4. Risk of Loss. To the extent **(i)** not covered by the Builder's Risk Insurance required under this Contract, and **(ii)** not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CMR, its Subcontractors, or their consultants or anyone employed by any of them for whose acts or omissions any of them may be liable, CMR shall bear all losses, damage, or injury to the Work except to the extent attributable to **(iii)** errors in the Construction Documents that, in the exercise of the Standard of Care, could not have reasonably been foreseen by CMR, its Subcontractors, or their consultants or anyone employed by any of them for whose acts or omissions any of them may be liable, or **iv)** acts or omissions that are committed despite the CMR's delivery of its written recommendations for the specific avoidance thereof by the Owner, A/E, or A/E's consultant or anyone employed by any of them for whose acts or omissions any of them may be liable.

6.2.5. 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.

6.2.6. CMR Safety. (i) 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. (ii) TFC, in its sole discretion, may at any time order in writing a temporary stand-down of CMR's performance of the Services ("Safety Stand-Down Order") as a result of any one 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, 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.

6.2.7. Cooperation. All project managers, employees, and associated Subcontractors of CMR shall cooperate with and assist each other and all other members of the Project Team retained by TFC. CMR shall afford TFC's other contractors and tenants reasonable opportunity for the introduction and storage of their materials and equipment, and for the performance of their construction or operations. CMR also shall properly coordinate its Work with that of such other contractors, and cooperate in all respects with them. The other contractors will be required to similarly cooperate with CMR in all such respects. If any part of the Work depends upon proper performance of the construction or operations of other contractors, CMR shall inspect and promptly report to TFC any apparent discrepancies or defects that render the Work unsuitable. Failure of CMR to so report shall constitute an acceptance of the other contractors' construction or operations as fit to receive the Work. If CMR or others engaged by or under the control of CMR cause(s) physical damage to the construction or property of any other contractors, the CMR, upon notice from TFC, shall remedy such damage at its sole expense. If a dispute arises between CMR and any other Contractor as to each other's responsibility for cleaning up, TFC may clean up and charge the cost to CMR or the other contractor as TFC shall determine to be just.

6.2.7.1. No work, installation or other services shall be undertaken by CMR except with the prior written authorization of the TFC Project Manager. Services and Work 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 and expense.

6.2.7.2. 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.

6.2.7.3. 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.

6.2.8. 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 Exhibits CD and labeled therein as "Exhibit G" 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.

6.2.8.1. 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 (v) any other like reasons.

6.2.8.2. 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 ("Exhibit G").

6.2.9. 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.

6.2.10. 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.

6.2.11. 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.

6.2.12. General and Criminal Background Checks.

6.2.12.1. 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.

6.2.12.2. 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.

6.2.12.2.1. 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 adjudicated within fifteen (15) days of the date of the appropriate notice of award, and the process thereafter must be diligently pursued by CMR.

6.2.12.2.2. All criminal background checks must be completed before any of CMR's employees or Subcontractors perform any services at the Site.

6.2.12.2.3. All criminal background checks must be accomplished and results adjudicated in accordance with the criteria set forth in the Criminal Background Checks and Application Guidelines, a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit H." 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.

6.2.13. 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.

6.2.14. 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.

6.2.15. 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.

6.2.16. 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.

6.2.17. 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.

6.2.18. 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. CMR's Standard of Care. CMR shall, in the performance of the Services and Work, comply with the standard of care described herein. Notwithstanding anything to the contrary contained in this Contract, TFC and CMR agree and acknowledge that TFC has entered into this Contract in reliance on CMR's special and unique ability to manage the Work in accordance with and based upon CMR's review of the Construction Documents in the performance of its obligations hereunder. CMR understands the complexity involved in this type of construction and the necessity of coordination of the performance of its Services with the Project Team. In addition to the foregoing, and in addition to the rights and remedies otherwise existing under this Contract, at law or in equity, CMR will perform, or Cause to be performed, all Services and Work expeditiously, and in no event later than is required to conform, as applicable, to the

construction schedule, and shall do so with that degree of professional skill and care practiced by firms similar to it, using similar collaborative project planning and management methods, and having industry leading knowledge and skill for the planning and management of construction projects of comparable complexity and value, and engaged in the providing of similar services for major building construction projects of comparable value in the United States under the same or similar circumstances as described in the Request for Qualifications. CMR will furnish efficient business administration and superintendence and perform the Services in such manner as to provide the best value for the project. CMR shall employ and exercise the professional judgment of its experienced and qualified construction professionals to provide TFC confidence that the Projects will be completed in conformity with the design concepts and construction requirements established by TFC, and it is the intention of the parties that CMR shall, at all times, act in the project's best interests with respect to the performance of the Services and the management of all aspects of the Projects. CMR shall, at all times, exercise exclusive direction and control, and shall be responsible for proper supervision of all its CMR Personnel, Subcontractors, and subconsultants while present on the Worksites and otherwise. To assist TFC in managing and controlling its Project costs, CMR shall make full disclosure to TFC of all information available to CMR relating to matters that may influence or affect the total cost of the Project so the TFC, in its own best interest, is able to make fully informed decisions relating to oversight, management and control of the total cost of the Project. CMR accepts the relationship hereby established between CMR and TFC, and the duties assumed to TFC hereunder. The standard of care required hereunder shall not, however, be deemed to alter or expand CMR's common-law duty to TFC with respect to liability for, or the duty to indemnify, defend or hold TFC harmless under Article XI with respect to claims or liability for bodily injury or property damage covered by that indemnity, for which the standard of care hereunder shall be deemed and construed to be no greater than that imposed upon CMR by common law.

7.1.2. Financial Ability, Insurance and Bonds. CMR is financially solvent and possesses or is able to engage sufficient working capital to complete the Services and the Work as required by this Contract. CMR's insurance policies and bonds are and will be maintained in the form required under TFC's Insurance Requirements and CMR's Bond Forms.

7.1.3. 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.

7.1.4. Power to Contract. The CMR, and all CMR's personnel, Subcontractors, Sub-subcontractors, and Suppliers, with respect to their portions of the Work, are fully authorized to assume their contractual obligations to perform the same, and that each of them, with respect to its portion of the Work, is fully licensed, certified and authorized to perform the Work contemplated

by the Contract Documents and any other Work performed on the Project, and will provide evidence of the same to TFC upon request. Neither the execution and delivery of this Contract by CMR nor the performance of its obligations hereunder will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, of any partnership agreement by which CMR is bound, or any agreement, including a "Company Agreement" as defined under the applicable Texas Statutes, by which CMR is bound, nor will it result in conflict with any order or decree of any court or governmental instrumentality relating to CMR. CMR and each of CMR's personnel, Subcontractors and Suppliers (i) if a corporation or limited liability company, is duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, having all necessary corporate power and having received all necessary corporate approvals required to execute and deliver their respective contracts (including this Contract), and each of the individual signing such contracts (including this Contract) has been duly authorized to act for and bind the entity for whom such signature is made; or (ii) if it is a joint venture, partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute, deliver and perform all the obligations assumed under such contracts (including this Contract) as such entity; and (iii) the individual executing this Contract on behalf of CMR, and the individual executing any Subcontract to assume any obligation under this Contract, has been duly authorized to act for and bind CMR or Subcontractor, as applicable.

7.1.4.1. 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 RFQ for this Project to any competitor or any other person engaged in such line of business during the procurement process for this Contract.

7.1.4.2. 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.

7.1.4.3. 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.

7.1.5. 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. All information contained in CMR's response to TFC's RFQ No.303-7-00867, dated January 25, 2017, including but not limited to CMR's statements and representations as to its history, experience, capabilities, litigation disclosure, financial information, and other qualifications are accurate and complete, and no material change in circumstances has occurred as of the Effective Date that would cause CMR's responses to be untrue or materially different than what was originally stated. CMR shall have a continuing duty to disclose any material change in circumstances that could adversely affect

CMR's ability to continue to perform the Services and the Work in accordance with its obligations hereunder.

7.1.6. 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.

7.1.7. 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.

7.1.8. Proficiency in Systems. CMR is, or shall be, proficient in the use of CAD and BIM systems and the hosting and operation of the EPMCS Approved for the Project.

7.1.9. 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.

7.1.9.1. Where Shop Drawings or a sample is required by the Contract Documents or the Submittal Register, as defined in UGC Section 1.43, 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.

7.1.9.2. Any provisions in the UGC to the contrary notwithstanding, including, but not necessarily limited to UGC 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.

7.1.9.3. 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.

7.1.9.4. The foregoing notwithstanding, if TFC elects to issue to CMR a Certificate of Final Completion and/or Final Payment for the Work prior to CMR's delivery of the Record Documents, the issuance of either of the foregoing shall not relieve CMR of its obligation to deliver the Record Documents; furthermore, and notwithstanding the CMR's failure to have earlier delivered the Record Drawings or completion of all punch list items, commencing on the expiration of ninety (90) days after issuance of the Certificate of Substantial Completion, the warranties established by the Uniform General Conditions for the Work and for any item of equipment or component of the Work, shall be deemed to be extended day for day for each day following the issuance of the Certificate of Substantial Completion until Record Documents that conform to Section 7.1.9 have been delivered to TFC.

7.1.10. 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. CMR shall, at the TFC's reasonable election, either repair or replace any defects in any of the CMR's Work, Services or related deliverables as soon as the CMR becomes aware of such defects or is notified of such defects. Should the CMR refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial Work, then the TFC shall be entitled to make good such defective Work, Services or related deliverables at the CMR's expense. CMR's obligation hereunder is in addition to, and not in substitution of, any other remedy the TFC may have hereunder, or at law or in equity. Any warranty repair or replacement shall comply with the requirements of this Contract and shall be verified by the CMR's performance of testing as TFC

may require. All costs incidental to such repair, replacement, and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access to concealed areas, shall be borne by the CMR. CMR shall be liable for the satisfaction and full performance of the warranties as set forth herein.

7.1.11. CMR's Ancillary Warranty Obligations. All warranties include all labor, and all equipment and materials installed, and shall be signed by and delivered to the CMR and countersigned by the Subcontractor performing the same and/or the manufacturer thereof, as the case may be. As of the time of Final Completion of the Work, the CMR agrees to assign to TFC any and all CMR's Subcontractors' and manufacturers' warranties relating to labor, equipment and materials installed in the Work. CMR further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. In addition to the foregoing, the CMR shall comply with all other warranties referred to in any other provision of the Contract Documents. Where more than one warranty obligation applies hereunder, the more stringent warranty obligation shall govern.

7.1.12. Duty to Protect the Work. CMR shall be responsible for the protection and security of the Work and the Project until TFC has assumed control of and accepted beneficial occupancy thereof or a portion thereof for its intended use, or Substantial Completion of the Work or any portion of the Work has occurred. TFC may, but is not obligated to, accept CMR's tender of any portion of the Project for beneficial occupancy and use prior to Substantial Completion of the entire Project. CMR shall give TFC full opportunity to inspect the Work at all stages. Where any utility installations will be affected by Work to be carried on by CMR, CMR must provide ample advance notice to TFC, to enable TFC to obtain the prior consent of, the TFCs, operators or persons in charge of such utilities, so that the performance of Work is not delayed.

7.1.13. 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).

7.1.14. 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 TFCs, 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.

7.1.5. 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.

7.1.16. 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.

7.1.17. Financial Interests/Gifts. (a) 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. (b) 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.

7.1.18. 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.

7.1.19. 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.

7.1.20. 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.

7.1.21. Site Investigation. Prior to execution of a GMP, CMR has had ample opportunity to examine all of the Contract Documents, Drawings and Specifications, and all TFC Deliverables pertaining to the Work and the site of the Work and its surroundings. Prior to the submission of a GMP Proposal, CMR will have again carefully examined all such information, and shall have also investigated the site of the Work to the degree that CMR deems necessary and appropriate to fully acquaint CMR with the scope of Work, the completeness of the design, the availability of materials, the presence of existing facilities (including underground utilities), general topography, soil structure, subsurface or substructure conditions or obstructions, adjoining property constraints, and all other conditions related to the Work, the site of the Work and its surroundings. **CMR SHALL APPLY ITS SPECIAL AND UNIQUE ABILITY AND PROFESSIONAL SKILL AND CARE PRACTICED BY FIRMS SIMILAR TO IT FOR COLLABORATIVE PROJECT PLANNING AND MANAGEMENT AND INCLUDE IN ITS GMP PROPOSAL(S) A REASONABLE AMOUNT AS CMR CONTINGENCY FOR THE RISK OF ANY DIFFICULTIES OR CONDITIONS TO BE ENCOUNTERED AFTER CMR COMMENCES CONSTRUCTION OF THE WORK, WHICH MAY ADVERSELY IMPACT THE PERFORMANCE OR PROGRESS OF THE WORK OR COMPLETION OF THE PROJECT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY OTHER PROVISION OF THE CONTRACT DOCUMENTS, THE TFC DELIVERABLES, OR ANY REPRESENTATION, STATEMENT OR OTHER INFORMTION MADE OR FURNISHED BY TFC OR ITS REPRESENTATIVES, CMR AGREES CMR'S SUBMISSION OF ITS GMP PROPOSAL TO ESTABLISH A GMP FOR THE WORK SHALL CONSTITUTE CMR'S REPRESENTATION TO TFC THAT (i) CMR HAS COMPLETED ALL INVESTIGATIONS NECESSARY OR APPROPRIATE TO FULLY EVALUATE SUCH RISK, (ii) CMR HAS ESTABLISHED A REASONABLE CMR CONTINGENCY FOR SUCH RISK IN THE GMP PROPOSAL, (iii) CMR AGREES TO ASSUME SUCH RISK, (iv) CMR SHALL COMPLETE THE WORK FOR THE GMP TO BE ESTABLISHED UNDER THIS CONTRACT NOTWITHSTANDING SUCH DIFFICULTIES OR CONDITIONS, AND (v) CMR SHALL NOT BE ENTITIED TO REQUEST EITHER THE USE OF FUNDS FROM THE TFC CONTROLLED CONTINGENCY OR AN INCREASE IN THE GMP TO PAY FOR UNANTICIPATED COSTS TO OVERCOME ANY SUCH DIFFICULTIES OR CONDITIONS, EXCEPT THAT CMR SHALL BE ENTITLED TO MAKE A CLAIM STRICTLY IN ACCORDANCE WITH THE REQUIREMENTS OF THE UGC, BUT ONLY FOR A DIFFERING SUBSURFACE CONDITION, FOR AN ADJUSTMENT BY CHANGE ORDER TO COVER INCREASE OR DECREASE IN THE COST OF THE WORK NOT PAID FROM CMR CONTINGENCY AND TFC CONTROLLED CONTINGENCY, OR ANY INCREASE OR DECREASE IN THE TIME WITHIN WHICH THE WORK IS TO BE COMPLETED, BUT SUBJECT TO (A) THE REQUIREMENTS OF SECTION 11.5 OF THE UGC FOR SUCH CHANGE ORDER, AND (B) THE APPROVAL OF THE A/E AS THE OWNER'S DESIGN REPRESENTATIVE. OTHERWISE, CMR ASSUMES FULL AND COMPLETE RESPONSIBILITY FOR AND SHALL NOT BE ENTITLED TO A CHANGE ORDER TO OVERCOME SUCH DIFFICULTIES OR CONDITIONS TO THE**

**EXTENT THEY MAY CAUSE THE TOTAL OF ALL COSTS OF THE WORK AND FEES ON THE PROJECT TO EXCEED THE GMP.**

7.1.21.1. 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 results thereof shall be delivered to TFC in writing at or prior to the delivery of the GMP Proposal.

7.1.21.2. 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 than twenty-four hours after each such discovery, provide written notice thereof to TFC, the CMA and A/E. CMR shall not disturb said conditions.

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

7.1.22 Prohibition Against Boycotting Israel. In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.

## 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. ACCOUNTING 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; and

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, the names of the Contracting Person, including their representatives, (collectively referred to as "Business Customers"); the parties to and substance of any agreements between TFC and said Business Customers; services and data provided, or to be provided, by or to said Business Customers; and 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 (but nothing herein shall create a fiduciary relationship) 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. (ii) If applicable, CMR shall provide the Texas Department of Information Resources ("DIR") with the universal resource locator ("URL") to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas

Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (https://app.buyaccessible.gov/baw/Main.jsp). Vendors and service providers 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.

11.1.1 Bid Bond. CMR shall deliver the Bid Bond contemporaneously with submission of CMR's response to the RFQ, UGC Section 5.1.3.1 to the contrary notwithstanding. The Bid Bond shall be a bond issued by an Approved surety, cash, or other immediately available funds.

11.1.2 Payment and Performance Bonds. CMR shall obtain and deliver to TFC the payment and performance bonds required by UGC Section 5.1.1 within ten (10) days execution of the GMP Amendment. The Payment and Performance Bonds shall be issued by an Approved surety in the form attached hereto as "Exhibit I-1," and Exhibit I-2, respectively. CMR is required to provide TFC with Payment and Performance Bonds as specified in Texas Government Code § 2253.001 *et seq.* as supplemented by this Section 11.1, and in such forms as are prescribed in "Exhibit I-1," and "Exhibit I-2", respectively. Such bonds shall be: (i) issued with the TFC as the named obligee; (ii) executed by a corporate surety company authorized to do business in the State of Texas with such financial standing to have a rating from A.M. Best Company (or other equivalent rating company) equal to or better than "A –" and on the approved list of sureties issued by the United States Department of Treasury and shall have a Power of Attorney attached. If the A.M. Best Company rating for a surety issuing either of said bonds falls below "B+", CMR shall replace the original bonds with bonds from a surety meeting the requirements of this Section 11.1; (iii) issued in compliance with Texas Government Code § 2253.001 *et seq.*; (iv) maintained for the benefit of the TFC; (v) furnished before any Work is commenced, as stated herein; (vi) within ten (10) days of the Effective Date of this Contract, CMR shall provide a Bid Bond in the amount of $25,000.00. The surety for a Bid Bond shall meet the same requirements as set forth for payment and performance bonds. The Bid Bond will be issued for a period not to exceed six (6) months and will be automatically renewed unless cancelled by written notice to CMR and TFC, received by TFC within sixty (60) calendar days prior to the applicable expiration date. If the Bid Bond is cancelled, CMR shall replace the Bid Bond, or provide other financial security under terms substantially the same as the Bid Bond and otherwise acceptable to TFC, in TFC's sole discretion, within thirty (30) calendar days of TFC's receipt of the surety's notice of cancellation, failing which, CMR shall be deemed to be in default of its obligations under and to have committed a material breach of this Contract and TFC may proceed in accordance with the provisions of UGC Section 14.3, and/or be entitled to enforce any other remedy or right the TFC may have hereunder in relation to a breach of this Contract by CMR; and (vii) within ten (10) days of acceptance by the TFC of a Guaranteed Maximum Price Proposal, CMR shall provide Payment and Performance

Bonds on forms prescribed by TFC ("Exhibits I-1 and I-2"), in accordance with the requirements set forth therein. The penal sum of the Payment and Performance Bonds shall be equal to the Guaranteed Maximum Price for that particular phase of and Design Package(s) for the Project. Construction will be phased or staged with different Guaranteed Maximum Prices established at different times. Bond premiums shall be charged at no more than the best rate available to CMR for a project of this magnitude, but in any event not to exceed 2.5% of the respective contract amount.

11.1.3. Performance Bond Requirements. CMR shall provide Performance Bonds in the penal sum of one hundred percent (100%) of the value of each Guaranteed Maximum Price established by GMP Amendment. Without limiting any other requirements or obligations of the surety, the Performance Bond shall cover CMR's warranty obligations for a period not to exceed one (1) year from the date of the TFC's issuance of the Certificate of Substantial Completion, and shall include coverage for any liquidated damages for which CMR may be liable under the Contract for delay in the timely completion of the Work. Performance Bonds shall be required of each first tier Subcontractor whose Subcontract value exceeds $250,000, such that each first tier Subcontractor will separately provide a performance bond for its portion of the Work, with the TFC and CMR included as dual obligees. TFC shall have no obligation to pay or to reimburse to CMR for performance bond premiums for the issuance of multiple bonds from second tier subcontractors covering the same Work and obligations. Subcontractor performance bond premiums will only be reimbursed with advance written Approval of TFC, after submission to TFC of a pro forma copy of the bond and a copy of the proposed premium billing from any such Subcontractor's surety to Subcontractor. Payments of bond premium resulting in rebates, discounts or dividends from the surety shall be accounted for in accordance with Section 5.1.4.8.

11.1.4. Payment Bond Requirements. CMR shall provide Payment Bonds in the sum of one hundred percent (100%) of the value of each Guaranteed Maximum Price established by GMP Amendment. TFC shall have no obligation to pay or to reimburse to CMR for any additional costs for Subcontractor payment bond premiums, which shall not be charged as a Cost of the Work. If Subcontractors provide payment bonds at no additional cost, this is acceptable to TFC.

11.1.5. Additional Security. If TFC receives notice from a third party that it has acquired by assignment the right to receive payment of the CMR's receivables as they become due and payable under this Contract and CMR does not promptly remedy the notice, CMR agrees that, as a condition of its right to continue to perform additional Work under this Contract, CMR shall furnish to TFC as security for the performance of its obligations hereunder an irrevocable standby letter of credit in favor of TFC issued by a national bank in form reasonably acceptable to TFC, in an amount equal to the sum of the current unpaid balance of the Contract plus any amounts in excess thereof that may be owed to TFC as a result of CMR's delay, deficiency, or failure to perform its obligations hereunder.

11.2. Insurance Requirements. The CMR shall comply with the following insurance requirements. For purposes of this provision, the term "Owner Group" means the Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711, the State of Texas, and their officials, directors, employees, representatives (except as otherwise provided in 11.2.21 and 11.2.58, below), and volunteers.

11.2.1. Duty to Purchase Insurance. Commencing on the Effective Date (except as otherwise provided below, with respect to Builders' Risk insurance coverage), CMR shall, at its own expense, purchase, maintain, and keep in full force and effect such lines of insurance coverage as CMR considers necessary and adequate to protect CMR from claims, and to protect Owner and Owner Group from claims (other than claims asserting professional liability of the Owner and Owner Group or workers' compensation claims of their employees), which may arise out of or result from CMR's Services or Work, regardless of whether the Services or Work are performed by CMR, CMR Personnel, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including at a minimum the minimum insurance coverages and limits stated below (or such other greater insurance coverage or limits expressly required under any other provision of the Contract Documents).

11.2.2. CMR's Duty to Review Its Insurance. CMR represents and acknowledges it has carefully reviewed its insurance program with its legal and risk advisors and believes its insurance policies comply with the insurance requirements in this Contract, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within five (5) days of a written request by Owner, CMR shall submit in electronic form by emailing true and complete copies of such policies to TFC's outside counsel, Richard L. Reed and Matthew R. Talley of Coats/Rose, P.C., at rreed@coatsrose.com and mtalley@coatsrose.com. The true and complete copies of all applicable insurance policies shall be submitted in a timely manner, as no contract will be executed without the receipt, review, negotiation, and TFC acceptance, of the submitted policies. The policies shall include therewith a letter provided by CMR's broker, agent, or its applicable insurance carrier representative for each policy, certifying that the copies of the policies as furnished are true and correct copies. In addition, following such review, if Owner's insurance analyst determines CMR's insurance policies relative to this Contract fail to comply with the insurance requirements of this Contract, CMR agrees to reimburse Owner for all reasonable costs and fees incurred in attempting to resolve such failure. Owner's review of CMR's policies of insurance shall in no way excuse CMR from any of the requirements set forth herein. In the event Owner enters into contract with CMR before any such deficiencies are resolved, Owner does not waive, but explicitly reserves, the right to bring, after: (i) the occurrence of any loss or damage for which insurance is required hereunder; or (ii) after the denial of a claim for coverage for such loss or damage, an action or Claim against CMR to recover directly from CMR any damages, including attorney's fees and other costs, Owner incurs as a result of CMR's failure to secure and maintain the insurance required hereunder. CMR acknowledges and agrees that any period of limitations shall not begin to run or, alternatively, shall be tolled until the time of the later of such occurrence or denial.

11.2.3. Statutory Worker's Compensation and Employer's Liability Insurance. Statutory Worker's Compensation and Employer's Liability Insurance with minimum limits of not less than indicated below. The policy must be in the name of CMR and contain an endorsement naming Owner as the Alternate Employer.

11.2.4. CMR's Certification. By execution of the Contract, CMR thereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that CMR provides workers' compensation

and employers' liability insurance for all employees employed on this public project with limits of not less than those required below.

11.2.5. Subcontractor's Certification. Pursuant to Texas Labor Code, Section 406.096(b), CMR shall require each Subcontractor to certify in writing to 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 Owner within ten (10) days of the Effective Date of the Subcontract.

11.2.6. Other States Endorsement. The policy must include an Other States Endorsement to include the State of Texas if CMR's business is domiciled outside the State of Texas. Required Limits of Coverage – Statutory limits, with Employer's Liability Coverage as follows:

| | |
|---|---|
| Bodily Injury by Accident | $1,000,000.00 |
| Bodily Injury by Disease Each Employee | $1,000,000.00 |
| Bodily Injury by Disease Policy Limit | $1,000,000.00 |

11.2.7. Commercial General Liability ("CGL") Insurance. CGL with minimum limits of coverage not less than those indicated below, written on the most current commercially available edition of the ISO CG 00 01 coverage form, and shall include TFC as additional insureds on its CGL and Excess Liability policies on a combination of unmodified ISO endorsements CG 20 10 10 01 and CG 20 37 10 01, or manuscripted endorsements identical thereto.

11.2.8. CGL Prohibited Exclusions, Limitations, Endorsements, Policy Forms. Such CGL policy shall contain no exclusions, limitations, endorsements or policy forms that are unacceptable to Owner, including but not limited to the following coverage exclusions and limitations:

11.2.8.1. Liability. Liability assumed by CMR under a written agreement, including any contractual liability limitation endorsement restricting coverage to only liability that would exist in the absence of a contract, such as the ISO CG 21 39 or its equivalent, or any amendment of insured contract definition endorsement such as the ISO CG 24 26 or its equivalent;

11.2.8.2. Hazard Endorsement. Explosion, collapse, underground property damage, blasting, blowouts, cratering, or the like, including any Explosion, Collapse And Underground Property Damage Hazard endorsement such as the ISO CG 21 42 or ISO CG 21 43 endorsements, or their equivalent.

11.2.8.3. Cross-Liability. Cross-liability on claims between any insureds, other than claims between named insureds.

11.2.8.4. Independent Contractors. Injury to independent contractors and employees of independent contractors.

11.2.8.5. Damage by Subcontractors. Any exclusion relating to damage to work performed by Subcontractors on behalf of CMR such as the ISO CG 22 94 or ISO CG 22 95, or their equivalent.

11.2.8.6. Business Classification. Any type of classification or business description limitation endorsement.

11.2.8.7. Construction Defects. Any type of endorsement excluding coverage for construction defects in the completed operations phase.

11.2.8.8. Employer's Liability. Any type of endorsement modifying the employer's liability exclusion.

11.2.8.9. Habitation/Residence. Any type of third party habitational or residential exclusion.

11.2.8.10. Punitive Damages. Any type of punitive, exemplary or multiplied damages exclusion.

11.2.8.11. Subsidence. Any type of subsidence exclusion if CMR is engaged in any type of earth movement work, including but not limited to soil compaction, fill, or installation of storm or sewer drains.

11.2.9. CGL Minimum Coverages. The CGL policy shall at a minimum include the following coverages:

11.2.9.1. Bodily injury and Property damage on an "Occurrence" basis.

11.2.9.2. Premises & Operations Liability;

11.2.9.3. Products/Completed Operations Liability (to be maintained for the later of ten years after Substantial Completion or until expiration of the statute of repose);

11.2.10. Personal and Advertising Injury Liability;

11.2.11. Electronic Data Liability coverage under an endorsement equal to ISO CG 04 37 with a minimum sublimit of liability equal to the minimum amount required hereunder for the CGL policy.

11.2.12. The policy shall include ISO endorsement CG 2503, Designated Construction Projects General Aggregate Limit, or its equivalent. Minimum CGL limits of coverage required:

| | |
|---|---|
| Each Occurrence | $5,000,000.00 |
| General Aggregate | $10,000,000.00 |
| Products & Completed Operations Aggregate | $10,000,000.00 |
| Personal and Advertising Injury | $5,000,000.00 |

If the limits of coverage required above are below the actual limits of coverage in CMR's primary commercial liability insurance policy, the above required limits of coverage shall be deemed to be automatically increased to the amount of such higher actual limits to avoid a gap in coverage that would preclude coverage under the excess/umbrella policy for failure of the underlying policy to exhaust its policy limits.

11.2.13. Builder's Risk Insurance. Before commencement of the construction and up until the time for transfer of the risk of loss to the Project as further provided below, CMR shall maintain, and shall be entitled to invoice TFC for reimbursement as a Cost of the Work the premium paid for "All-risk" Builder's Risk Insurance, with a minimum limit of coverage not less than the amount of the Guaranteed Maximum Price to be established for the Project. Coverage shall be increased for the amount of any Change Orders or Amendments that increase the replacement value of the Project. Coverage shall also cover per occurrence the cost of debris removal equal to the lesser of: (i) 25% of the amount of loss, or (ii) $5,000,000. Coverage shall be at least as broad as an unmodified ISO Special Causes of Loss Form ISO CP 10 30 06 95 and shall include coverage for theft, collapse, flood and earthquake. Any exclusions to this Builder's Risk coverage form require Approval. Such insurance shall (a) designate the Owner Group, CMR, all Subcontractors of any tier (as their interests appear) as additional named insureds on the policy; and (b) be primary and non-contributing to any other insurance coverage available to the additional named insureds, as to whom their other insurance shall be excess, secondary and noncontributing to losses covered by this Builder's Risk Insurance. The Builder's Risk Insurance shall not include any requirement that protective safeguards are in-place or maintained on the Project. The termination of coverage provision shall be endorsed to permit coverage to continue during any interim period of occupancy of the covered property while being constructed. This insurance shall be maintained in effect until the earlier of the following dates: (i) the date reflected on the Certificate of Substantial Completion, in accordance with Section 1.1.9 above, (ii) the date on which Final Payment has been issued to and accepted by the CMR, as provided for in the Contract Documents or (iii) CMR has fully demobilized and relinquished all possession of the Site for a phased GMP, and the follow-on contractor has mobilized to the Site to commence its follow-on work on the Site, for which other Builder's Risk insurance has been bound, covering the follow-on contractor's work. The earlier of the foregoing three dates shall be the date when CMR's insurable interests in the covered property will be deemed to have ceased for the purposes of this Agreement, and TFC's follow-on contractor for further construction on the Site of the completed Project shall be deemed to have assumed control of the Site and the risk of loss associated therewith. TFC shall have the right to procure and substitute other Builder's Risk Insurance for the Project providing coverage no less broad than that required herein, and, if TFC is able to bind substitute Builder's Risk Insurance covering the Project so that it is unnecessary for CMR to buy such coverage to commence construction, TFC shall be entitled to receive a refund of any premium upon cancellation of CMR's Builder's Risk Insurance to the extent CMR is entitled to such refund. In such case, CMR shall be entitled to review and confirm such substitute Builder's Risk insurance coverage is at least as comprehensive as the CMR's Builder's Risk form of Builders Risk Insurance. Such insurance, whether purchased by CMR or by Owner, shall cover at a minimum the following.

11.2.13.1 All structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling.

11.2.13.2. All temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site.

11.2.13.3. All property including materials and supplies on site for installation.

11.2.13.4. All property including materials and supplies at other locations but intended for use at the site.

11.2.13.5. All property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit.

11.2.13.6. Other property for which an insured is liable in connection with the Project, including Owner furnished or assigned property.

11.2.13.7. Deductibles shall not exceed:

11.2.13.7.1. All Risks of Direct Damage, Per Occurrence: $10,000.

11.2.13.7.2. Delayed Opening Waiting Period: 15 days.

11.2.13.7.3. Earthquake and Earthquake Sprinkler Leakage, Per Occurrence: $100,000.

11.2.13.7.4 Flood. The deductible per occurrence shall be 5% of the value-at-risk-at-time-of-loss ("VARTOL") with a minimum VARTOL of $250,000. If flood insurance is purchased through National Flood Insurance Program, the deductible shall be the maximum amount of insurance purchased thereunder.

11.2.14. Coverages. Coverage for each of the following shall be included in the policy with sub-limits or additional limits not less than those shown below:

| Coverage | Minimum Sublimit/Additional Limit |
|---|---|
| 1. Additional expenses due to delay in completion of project (where applicable) | TBD via GMP Amendment. |
| 2. Agreed Value (not less than the most current GMP) | Included without sublimit |

| Coverage | Minimum Sublimit/Additional Limit |
|---|---|
| 3. Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse and ensuing loss | Included without sublimit |
| 4. Debris removal (additional coverage limit) | 25% of loss or $5,000,000 whichever is less. |
| 5. Earthquake and Earthquake Sprinkler Leakage | $1,000,000 minimum |
| 6. Flood | $10,000,000 minimum |
| 7. Freezing | Included without sublimit |
| 8. Mechanical breakdown including hot (introduction of feed stock, catalyst or similar media for processing & handling or commencement of supply to a system) and cold (hydrostatic, pneumatic, electrical, hydraulic or mechanical) testing, where applicable | Included without sublimit |
| 9. Occupancy pre-completion | Included without sublimit |
| 10. Ordinance or law | $2,500,000 |
| 11. Pollutant clean-up and removal | $500,000 |
| 12. Preservation of property | Included without sublimit |
| 13. Replacement cost | Included without sublimit |
| 14. Theft | Included without sublimit |

11.2.15. Business Automobile Insurance. Business Automobile Insurance with the limits of coverage shown below to cover damages because of bodily injury or property damages caused by an accident and resulting from the ownership, maintenance or use of: (i) any auto, including owned, hired and non-owned autos; and (ii) any mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.

Combined Single Limit Bodily Injury & Property Damage $1,000,000.00

11.2.16. Excess Liability Insurance. Excess Liability Insurance over Employers' Liability, CGL, Commercial Automobile Liability Policies, with the limits shown below, which Excess Liability Insurance shall follow form over, and afford coverage no less broad than the coverage in such underlying policies, including, but not limited to designated construction project(s) aggregate limit.

Excess Liability Insurance $12,000,000.00

11.2.17. Contractor's Pollution Liability Insurance. Contractor's Pollution Liability Insurance, with minimum limits of coverage not less than shown below, providing occurrence based coverage for all claims, liabilities, damages, costs, fees, and expenses, including but not limited to claims for bodily injury or death, property damage, environmental or natural resource damage, and any civil fines, fees, civil assessments or civil penalties or punitive, exemplary or multiplied damages assessed by any governmental department, agency, commission or court, arising out of any Pollution Condition(s) (as defined below) that is in any way related to CMR's or CMR Personnel's operations, actions or inactions, or completed operations associated with any Work performed by CMR or CMR Personnel. If coverage is written on a Claims Made & Reported Policy form, the policy retroactive date for prior acts coverage shall be no later than the Contract Effective Date. The pollution liability policy shall be continuously maintained for a period of 10 years after completion of the project or termination of the Contract, whichever occurs later; the CMR's purchase of an extended discovery period or an extended reporting period will not be sufficient to comply with CMR's obligations hereunder. Such insurance shall name the Owner Group as Additional Insureds. The Pollution Liability policy shall provide coverage for "sudden & accidental" and gradual occurrences arising from the work performed under this Contract. The Business Automobile Liability policy shall either be endorsed to provide coverage under the ISO CA9948 endorsement (Broadened Pollution Liability Coverage) and Motor Carrier Endorsement (MCS-90), or the CMR's Contractor's Pollution Liability policy shall be endorsed to provide transportation coverage beyond the boundaries of the job site, if CMR activities involve hauling excavated spoil. The Contractor's Pollution Liability policy shall also include coverage for: (i) the full scope of the CMR's operations (on-going and completed), as described in the Contract; (ii) losses arising from pollutants, including but not limited to fungus, bacteria, biological substances, mold, microbial matter, asbestos, lead, silica and contaminated drywall; (iii) third party liability for bodily injury, property damage, clean up expenses, and defense costs arising from the CMR's operations; (iv) diminution of value and natural resources damages; (v) contractual liability; (vi) claims arising from CMR's use of any owned or non-owned disposal sites arising out of CMR's activities in connection with the Contract; (vii) bodily injury to include physical injury, sickness, disease, death, mental anguish, medical monitoring and emotional distress sustained by any person; and (viii) all costs that are related to or that arise out of or from

the investigation or adjustment of any claim or in connection with any court, arbitration, mediation, state administrative hearing, or other proceeding of any kind, including attorney's fees, expert witness fees, costs, charges and expenses that arise out of or that are related to a Pollution Condition(s). Coverage under this policy shall include a 7-day minimum occurrence period for emergency response costs. The Pollution Liability insurance policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from:

11.2.17.1. Insured vs. insured actions (however, an exclusion for claims made between insureds within the same economic family is acceptable).

11.2.17.2. Impaired property that has not been physically injured.

11.2.17.3. Materials supplied or handled by the named insured; any exclusionary language pertaining to materials supplied by the insured is subject to the Owner's review and approval.

11.2.17.4. Property damage to the work performed by a contractor.

11.2.17.5. Faulty workmanship as it relates to clean up costs.

11.2.17.6. Punitive, exemplary or multiplied damages.

11.2.17.7. Work performed by subcontractors.

11.2.17.8. Contractual liability incurred as a result of an injury to an employee of the insured.

"Pollution Condition(s)" means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, sewage, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, mold, silt, sedimentation, low-level radioactive material and waste materials into or upon land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered.

Pollution Liability Insurance $5,000,000.00 Each Claim/$5,000,000.00 Aggregate

11.2.18. Contractor's Professional Liability Insurance. Contractor's Professional Liability Insurance with the minimum limits of coverage not less than shown below shall be provided by CMR to cover the rendering of or failure to render professional services arising out of or in connection with any negligent act, error or omission of all CMR personnel, including any subconsultant acting for, in combination with, on behalf of, or under the direction or control of the CMR in the performance of any Services or Work required under this Contract. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of CMR or its subcontractors; (ii) habitational or residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages;

(v) rendering of or failure to render professional services arising out of the negligence of CMR Personnel; or (vi) design/build services.

Professional Liability Insurance $5,000,000.00 Each Claim/$5,000,000.00 Aggregate

11.2.19. Cyber/Privacy Liability Insurance Policy. Cyber/Privacy Liability Insurance shall be provided by CMR to cover risk of loss to electronic data. The policy must include coverage for electronic vandalism to electronic data, including coverage for a third party's willful electronic alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, or denial of service to web site or email destinations.

Cyber Liability Insurance $1,000,000 Claim/$1,000,000 Aggregate

11.2.20. Endorsements. CMR's commercial automobile liability, CGL, excess liability, professional liability and pollution liability insurance policies shall be endorsed to provide that they are **primary to and non-contributing** with, any other insurance carried by, or for the benefit of TFC. The primary and non-contributing endorsement for CMR's Commercial General Liability Policy shall be written under the ISO CG 20 01 04 13 coverage form and the Excess Policy shall follow form thereof. It is the specific intent of the parties to this Contract that all such insurance policies shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess) maintained by TFC, with TFC's insurance being excess, secondary and noncontributing. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage. Within thirty (30) days following receipt of Owner's request, CMR shall furnish to Owner a letter issued by any insurer of CMR confirming the extent to which the insurer's coverage of the CMR is at risk of being, reduced, diminished or exhausted by claims thereon. If any insurance CMR furnishes (other than Professional Liability and Pollution Liability) shall be, or become at risk of being, reduced diminished or exhausted by claims thereon, CMR agrees to supplement, increase and/or replace such insurance with other insurance to ensure that CMR has available at all times the coverage required hereunder for the continuation of its Services or Work.

11.2.21. Subrogation. CMR's workers' compensation, employers' liability, commercial automobile liability, CGL, excess liability, professional liability, builder's risk and pollution liability insurance policies shall be endorsed to waive all rights of subrogation in favor of TFC. With respect to all such policies, CMR waives any and all rights of recovery or subrogation against Owner Group. For the purposes of this provision, however, the term "Owner Group" excludes any TFC representative who prepared the design for the work.

11.2.22. Additional Insureds. TFC shall be included as additional insureds on all policies required herein (except workers' compensation, employers' liability builder's risk and professional liability policies), under the form of an additional insured endorsement providing the maximum protection to Owner allowed by applicable law, except as otherwise expressly stated herein. CMR represents and warrants that:

11.2.23. Maximum Extent Permitted. CMR's policies of liability insurance, including CMR's commercial general liability, commercial automobile liability, excess liability, and

Builders' Risk insurance policies shall have been endorsed to cover TFC as additional insureds (or additional named insureds, in the case of the Builders' Risk insurance policy) to the maximum extent permitted by applicable law, or as otherwise set forth herein, with respect to liability arising out of Work performed by or for CMR, including ongoing and completed operations in connection with this Contract (and such coverage provides for the protection of each insured against claims of liability by another insured under a separation of insureds clause).

11.2.24. Third Parties. Such policies of insurance shall have also been endorsed to cover as an additional insured any third party to the extent required by the Contract Documents.

11.2.25. Indemnified Party. Any additional insured endorsements required hereunder shall provide as to each additional insured coverage to the limits of the applicable endorsed policy for indemnity and defense of each Claim that is no less broad than the obligations of CMR to indemnify, defend and hold harmless the additional insured as an Indemnified Party under the Contract.

11.2.26. Original Policies. Access to the originals of the certified copies of required insurance policies will be provided to Owner for review upon request.

11.2.27. Attachments. Attached hereto are true and correct copies of the following:

11.2.27.1. Current certificates of insurance describing each of the policies of insurance required hereunder.

11.2.27.2. All policy endorsements required hereunder.

11.2.28. Notification. All policies shall obligate the insurer to notify the Texas Facilities Commission (Attn: TFC Insurance Analyst, Legal Services Division), P.O. Box 13047, Austin, Texas 78711, of any (i) non-renewal; (ii) cancellation; or (iii) material changes, in writing, at least thirty (30) days prior to any such non-renewal, cancellation or change. All polices shall require at least ten (10) days' notice of cancellation to Owner in the event of non-payment of premiums by CMR.

11.2.29. Material Change. "Material change" means any of the following changes to the Policy during the term of the Policy.

11.2.29.1. A change in the policy period.

11.2.29.2. A material revision to, or removal of, a coverage section.

11.2.29.3. 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.

11.2.29.4. An increase of the amount of any self-insured retention(s).

CMR shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.

11.2.30. Insurance Carriers. All CMR's insurance shall be issued by insurance carriers authorized and/or approved to do business in Texas at the time the policy is issued (and at all times during the term of this Contract) and rated by A.M. Best Company as A-VII or better, confirmed by one or more insurance certificates conforming to the following requirements:

11.2.31. Acord Form. Certificates of insurance shall be prepared on an Acord 25 (2016/03) form, or any later edition of this form.

11.2.32. Certificate Holder. Certificates shall designate Owner as certificate holder, together with Owner's mailing address.

11.2.33. Name of Insured. The named insured's name must match CMR's name as shown in this Contract.

11.2.34. List of Insurance Companies. Certificates shall list each insurance company producing each form of coverage, together with the applicable policy number and policy date.

11.2.35. Contact Information of Issuing Producer. Certificates shall include the name, address, phone number, fax number and email address of the issuing producer, and the signature of the authorized representative of the producer.

11.2.36. Additional Insured/Additional Named Insured Endorsements. Certificates for all applicable policies shall attach copies of all applicable additional insured/additional named insured endorsements.

11.2.37. Deductibles. All deductibles and self-insured retentions shall be disclosed on the certificate, and shall be paid by, assumed by, for the account of and at CMR's sole risk without any right of reimbursement except for Builder's Risk insurance deductibles in accordance with Section 5.1.4.8 above. No deductible or self-insured retention shall exceed Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00), without prior written approval of Owner, except as otherwise specified herein. If CMR elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding the foregoing deductible amounts, CMR shall be obligated to grant Owner all rights against CMR to the same extent as if CMR had maintained the insurance required hereunder with a commercial insurer, including but not limited to additional insured status (as to liability policies other than Workers' Compensation Insurance and Professional Liability Insurance), primary and non-contributory liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. CMR shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the same extent all of the foregoing would have been covered had CMR maintained the insurance required hereunder with a commercial insurer.

11.2.38. General Aggregate Limit. Certificates of applicable policies shall disclose any designated construction project(s) general aggregate limit. TFC requires notice of replenishment and placement of supplemental coverage if any aggregate limit is exhausted during the applicable policy period.

11.2.39. Primary and Non-Contributory Endorsements. Certificates shall attach all primary and non-contributory endorsements required herein.

11.2.40. Waivers of Subrogation. Certificates shall attach waivers of subrogation applicable to all coverages required herein.

11.2.41. Notice of Cancellation Terms. Certificates shall attach copies of all notice of cancellation terms from all policies required herein.

11.2.42. Project Names. Name(s) of the Project(s) as described in this Contract shall be listed in the certificate.

11.2.43. Contractor's Professional Liability Policy. Include in writing on the certificate the "Retroactive-date" for this coverage.

11.2.44. Project and Contract Number(s). Owner's Project/Contract number(s) along with its descriptor caption must be included in the Description of Operations section located in the bottom half of the certificate forms.

11.2.45. Certificate Holder. Owner Group shall be shown as the certificate holder in the certificate holder section located in the bottom half of the certificate form as follows:

Texas Facilities Commission
P.O. Box 13047
Austin, Texas 78711

11.2.46. Distribution of Completed Certificates. Completed Certificates shall be distributed by CMR and shall be provided to TFC upon execution of this Contract and upon each renewal, replenishment, or supplementation of the coverage thereunder, and certificates, as follows:

11.2.46.1. Original shall be sent by mail:

Texas Facilities Commission
Attention: Carol Palermo, Insurance Analyst
P. O. Box 13047
Austin, Texas 78711

11.2.46.2. By E-Mail:

Carol.Palermo@tfc.state.tx.us

11.2.47. Deductibles. CMR is responsible for all deductibles and any self-insured retentions under all lines of insurance coverage required by this Contract, including for property damage arising from design specifications and additional expenses due to delay in startup, other than coverage afforded under Builder's Risk insurance . TFC will reimburse CMR as Cost of the Work up to $50,000 per deductible paid under the Builder's Risk insurance.

11.2.48. "Claims-Made" Policy Forms. With respect to any coverage maintained on a "claims-made" policy form, CMR shall maintain such coverage for a minimum of ten (10) years after completion of the project or termination of the Contract, whichever occurs later. Coverage under any such policy form shall include a retroactive date based on the effective date of contract for the first performance of Work or Services for the Project. CMR's purchase of an extended discovery period or an extended reporting period on a "claims-made" policy will not be sufficient to comply with CMR's obligations hereunder.

11.2.49. Insurance Required to Commence Work. Except with respect to the Builders' Risk policy (as to which Pre-Construction Services may commence prior to placement of coverage), CMR shall not commence Work or Services under this Contract until CMR has obtained all required insurance and until such insurance has been accepted by Owner's Approval. Owner's approval of CMR's insurance shall not relieve or decrease the liability of CMR hereunder. Owner shall have no duty to pay or perform under this Contract until all certificates of insurance and required insurance policies have been confirmed by Owner's advisors to comply with the requirements set forth herein. CMR's failure to fulfill these insurance requirements shall not be a basis for any adjustment to CMR's compensation or schedule. Owner reserves the right to terminate this Contract for convenience without any expense or liability in the event CMR fails to secure all insurance required herein within ten (10) days of CMR's execution of the Contract.

11.2.50. Failure to Obtain, Maintain, or Renew Insurance. If CMR fails to timely obtain, maintain, or renew the insurance required herein and to provide Owner with acceptable evidence thereof, Owner shall have the right, but not the obligation, to, among all other available remedies at law and in equity: (i) procure such insurance and reduce the amount of this Contract (or any other agreement between Owner and CMR) by the cost thereof; and/or (ii) deem as a material breach of this Contract CMR's failure to do so. Within ten (10) calendar days of any cancellation or non-renewal of any required line of insurance coverage, CMR shall provide Owner a replacement certificate of insurance with all applicable endorsements included therewith. Owner shall have the right, in its sole discretion, to suspend CMR's performance or terminate this Contract should there be a lapse in coverage at any time during this Contract. In addition to any other remedies available to Owner, Owner shall have the right, upon CMR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, to withhold any payment(s) which become due to CMR hereunder (or under any other agreement between Owner and CMR) until CMR demonstrates compliance with the insurance requirements of the Contract. At Owner's discretion, CMR may be disqualified from eligibility to participate in any other or future projects with Owner for failure to comply with the insurance requirements herein.

11.2.51. CMR's Obligations. The insurance and insurance limits required herein shall not be deemed as a limitation on CMR's liability to perform and fulfill the CMR's duties and obligations of indemnity and defense owed to any member of the Owner Group. CMR's obligations for loss or damage arising out of CMR's Services and Work or operations are not limited to the types or amounts of insurance set forth herein. Losses not covered by the insurance required hereunder shall be paid by CMR.

11.2.52. No Attorney's Fees. To the extent Applicable Law allows recovery of attorney's fees in any action or proceeding commenced to enforce the rights of any member of Owner Group as an additional insured under this Contract, CMR agrees to pay Owner as the prevailing party in any such action, in addition to any other relief granted, the actual reasonable attorney fees Owner has paid or is obligated to pay, and all costs and expenses to enforce such rights, not merely recoverable costs. This provision is independent and severable from any other provision of this Contract and shall be enforceable as a separate contractual, agreement and applies to any limited liability company entity liable to TFC under this Contract.

11.2.53. Compliance. Owner shall not be under any duty to advise CMR in the event that CMR's insurance is not in compliance with the Contract. CMR shall require all CMR Personnel to carry the types and limits of insurance coverage CMR determines to be necessary and appropriate to protect Owner and CMR from the risk of loss, taking into consideration the scope of services and work performed by each CMR Personnel. Excepting only Workers' Compensation and Professional Liability insurance policies, CMR shall cause all CMR Personnel to include Owner as an additional insured under each policy of insurance maintained by CMR Personnel. CMR will require evidence of this insurance and additional insured status to be provided by all CMR Personnel prior to their commencement of any work or services, or entering onto any Site in connection with the Project, and copies of this evidence shall be provided to Owner by CMR.

11.2.54. Policy Limits. The stated policy limits of each line of insurance coverage required herein are minimum only and it shall be CMR's responsibility to determine what policy limits in excess of such minimum limits are adequate, and the length of time each line of insurance coverage shall be maintained beyond any lengths of time set forth herein; insurance policy limits are not a limit of CMR's liability. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the required insurance coverages and limits will necessarily be adequate to fully protect CMR. Unless otherwise set forth herein, CMR shall not cause or permit any required insurance to be cancelled or to lapse prior to the expiration of all common law, statutory and contractual warranty periods.

11.2.55. Erosion of Aggregate Limits. CMR shall provide Owner with thirty (30) days written notice of erosion of any aggregate limits below the minimum amounts required by the Contract.

11.2.56. TFC's Right to Review Policies. Owner reserves the right to review the insurance requirements and to require deletion, revision, and/or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulations that are binding upon Owner, CMR, or the underwriter) on any such policies when deemed necessary and prudent by Owner 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 relative to this Contract and commercially available to CMR. Owner shall make an equitable adjustment to the Contract Sum for any additional cost resulting therefrom.

11.2.57. Covenants. CMR covenants and agrees that: (i) the failure of Owner to demand certificates of insurance, or proof of compliance with the insurance requirement herein, or failure of Owner to identify a deficiency in any policy required hereunder will not be construed as a waiver of CMR's obligation to maintain the insurance required under this Contract; (ii) the insurance required under this Contract does not represent that coverage and limits will necessarily be adequate to protect CMR, nor shall the limits of coverage stated herein be deemed a limitation of CMR's liability to Owner in this Contract; (iii) and CMR may meet the required insurance coverages and limits with any combination of primary and umbrella/excess liability insurance.

11.2.58. Release and Waiver. CMR hereby waives all rights of recovery and releases, and shall cause its subconsultants and subcontractors to release, Owner Group from any and all claims or causes of action whatsoever which CMR and/or subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by CMR and/or its subconsultants or subcontractors pursuant to the Contract. However, the foregoing waiver of rights of recovery and release shall not apply to an excess liability insurer to the extent that it pays an excess liability covered loss exceeding $50,000,000 per occurrence. CMR represents and warrants to TFC that each of its excess liability insurance policies covering loss exposure for the first $50,000,000 per occurrence have been endorsed to designate the Owner Group as additional insureds thereon in the same manner as, and that such policies are subject to this release and waiver and will follow the form of and shall be maintained to provide coverage for such additional insureds that is no less broad as, that provided in the underlying excess liability policies previously reviewed by TFC's outside counsel covering the first $15,000,000 of excess liability per occurrence. TFC shall have the right to require such policies to be submitted to TFC's outside counsel for review and advice relating to compliance with such excess liability coverage requirements. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING RELEASE AND WAIVER SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF OWNER GROUP. FOR PURPOSES OF THIS PROVISION, HOWEVER, THE TERM "OWNER GROUP" EXCLUDES ANY TFC REPRESENTATIVE WHO PREPARED THE DESIGN FOR THE WORK AND ANYONE WHO INTENTIONALLY CAUSES LOSS OR DAMAGE TO CMR'S PROPERTY BY ACTS OF VANDALISM OR OTHER INTENTIONAL MISCONDUCT.**

11.2.59. Third Party Beneficiary Status. No provision of this Agreement shall confer or be construed to create any right or benefit in any third party, including any CMR Personnel or any other entity which has assumed any of CMRs obligations hereunder, or in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of this Contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. CMR shall be solely responsible

for all contractual obligations to CMR Personnel, and shall pay for the Services and Work of its CMR Personnel in accordance with Laws and Regulations. CMR shall, however, provide that TFC may, at its election, assume the status of a third party beneficiary to any contracts, subcontracts, consulting agreements, purchase orders and other agreements executed by CMR in connection with this Contract and/or the Project, which election may be exercised as to any such agreement by TFC's issuance of written notice of such election to the other party or parties to such agreement.

## XII. MISCELLANEOUS PROVISIONS.

12.1. INDEMNIFICATION. **CMR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, 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. Provisions Solely for the Benefit of the Parties. 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. Requirement to Promptly Advise. CMR shall promptly advise TFC in writing of any claim or demand against TFC or against CMR which involves TFC and known to CMR and related to or arising out of CMR's activities under this Contract.

12.1.5. Failure to Achieve Substantial Completion. The CMR acknowledges, understands and agrees that the TFC will incur significant costs and damages if the CMR fails to achieve Substantial Completion and Final Completion by the applicable dates established by Contract Amendment, including but not limited to the following types of damages.

12.1.5.1. Temporary relocation costs for displaced tenants.

12.1.5.2. Increased costs related to extending leases of tenants unable to occupy the new facility due to delays.

12.1.5.3. Additional permitting costs.

12.1.5.4. Additional costs related to temporary parking.

12.1.5.5. Additional public relations costs.

12.1.5.6. Additional legal costs.

12.1.5.7. Extended costs for TFC's staff, including but not limited to the TFC's project management personnel and its senior management, financing and accounting personnel.

12.1.5.8. Extended or additional costs for TFC's design team, consultants, engineers and inspectors.

12.1.5.9. Extended or additional costs for TFC's facilities trailer, equipment rental, on-site computers, and related technology charges.

12.1.5.10. Extended or additional vehicle, gasoline, and maintenance costs.

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 J-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 J-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.

12.3.1. Taxes. Withholding of income taxes, FICA, or any other taxes or fees.

12.3.2. Industrial or Workers' Compensation. Industrial or workers' compensation insurance coverage.

12.3.3. Group Insurance Plans. Participation in any group insurance plans available to employees of the State of Texas.

12.3.4. State Contributions. Participation or contributions by the State to the State Employees Retirement System.

12.3.5. Leave. Accumulation of vacation leave or sick leave.

12.3.6. Unemployment Compensation. Unemployment compensation coverage provided by the State.

12.4 Conflicts of Interest. CMR has been furnished a copy of, and CMR has completed and provided to TFC prior to execution of this Contract and in accordance with the requirements for the timely filing thereof under Chapter 176 of the Texas Local Government Code, true and complete answers to TFC's Conflict of Interest Questionnaire, adopted June 29, 2007. CMR agrees to update its responses to the TFC's Conflict of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code, and TFC shall have the right at any time to require CMR to complete and furnish to TFC a current Conflict of Interest Questionnaire form, which shall be completed and furnished to TFC promptly upon TFC's written request, failing in which TFC may terminate this Contract. CMR represents that it has advised TFC in writing of any past or present relationship or dealing with any third party, including competitors of TFC or CMR, which could or could be perceived to impair or interfere with the CMR's exercise of its independent judgment and discretion in professionally and ethically rendering of Services for the sole benefit and enjoyment of TFC under this Contract or which could cause TFC to change its evaluation of CMR and the decision to enter into this Contract with CMR ("Conflict of Interest"). A Conflict of Interest shall also exist when, because of other undisclosed activities or relationships

with third parties, TFC determines in its sole discretion that CMR is unable to render impartial assistance, advice, or Services to TFC, or the CMR's objectivity in performing the Services is or might be otherwise impaired, or when CMR gains an unfair competitive advantage or receives undisclosed profits or benefits in addition to compensation for its performance of Services under this Contract. CMR shall at all times during the performance of this Contract remain free of any obligation of any kind to any person other than TFC where such obligation may cause or require CMR to compromise or otherwise be in breach of its obligations to TFC, including without limitation its obligations with respect to proprietary rights and confidentiality and conflicts of interests. CMR has not undertaken, and during the period covered by this Contract, CMR shall not undertake any relationship with any person or entity that could give rise to such a Conflict of Interest without the prior written consent of TFC. CMR shall immediately advise TFC of any relationship that may give rise to a Conflict of Interest during the term of this Contract. If TFC becomes aware of any such relationships, through CMR's disclosure or otherwise, TFC shall have the option to terminate this Contract in whole or in part without further liability to CMR.

12.5. 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.

12.6. 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.

12.7. 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.

12.8. 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<br>Attention: Legal Services Division<br>1711 San Jacinto Boulevard, Suite 400<br>Austin, Texas 78701 |
| With a Copy to: | Texas Facilities Commission<br>Attention: John S. Raff, Deputy Executive Director<br>1711 San Jacinto Boulevard, Suite 200<br>Austin, Texas 78701 |
| If to CMR: | Zachry Construction Corporation<br>Attention: Travis Mross, Vice President<br>2330 North Loop 1604 West<br>San Antonio, Texas 78248<br>Telephone: (512) 844-5834<br>Email: Travis.Mross@zachrycorp.com |
| With a Copy to: | Zachry Construction Corporation<br>Attention: Darrell S. Arevalo, Director of Operations<br>2330 North Loop 1604 West<br>San Antonio, Texas 78248<br>Telephone: (201) 289-5614<br>Email: Darrell.Arevalo@zachrycorp.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.

12.9. Name and Organizational Changes. 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.

12.10. 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.

12.11. 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.

12.12. 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.

12.12.1. 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.

12.12.2. 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.

12.13. 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.

12.13.1. 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.

12.13.1.1. 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.

12.13.1.2. 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 12.13.1.1 above.

12.13.2. Damages. The total amount of money recoverable on a claim for breach of contract under this Section 12.13 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.

12.13.2.1. 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 12.13.2 above.

12.13.2.2. Any award of damages under this Contract may not include: (i) consequential or similar damages, except delays or labor-related expenses described by Section 12.13.2 above; (ii) exemplary damages; (iii) any damages based on an unjust enrichment theory; (iv) attorney's fees; or (v) home office overhead.

12.13.3. 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 1, 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.

12.13.4. 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 1, 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.

12.13.5. 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.

12.13.6. 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 12.13 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.

12.13.7. 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 12.13.

12.14. 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.

12.15. 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.

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

12.17. 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.

12.18. 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.

12.19. 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.

12.20. 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.

12.21. 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.

12.22. 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.

12.23. 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.

12.24. 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.

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

12.25.1. Exhibit A. 2015 Uniform General Conditions.

12.25.2. Exhibit B. 2015 Supplementary General Conditions.

12.25.3. Exhibit C. Special Conditions (if any)

12.25.4. Exhibit D. CMR's Initial Fee Schedule and Staffing Plan.

12.25.5. Exhibit E. GMP Acceptance Template.

12.25.6. Exhibit F. GMP Proposal Template.

12.25.7. Exhibit G. CMR List of Staff.

12.25.8. Exhibit H. Criminal Background Checks and Application Guidelines.

12.25.9. Exhibit I-1. Payment Bond Form.

12.25.10. Exhibit I-2. Performance Bond Form.

12.25.11. Exhibit J-1. HUB Subcontracting Plan Form.

12.25.12. Exhibit J-2. HUB Subcontracting Plan Progress Assessment Reporting Form.

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

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12.27. 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** | **ZACHRY CONSTRUCTION CORPORATION** |
|---|---|
| By: | By: |
| Harvey Hilderbran | Jean Abiassi |
| Executive Director | President and Chief Operating Officer |
| Date of Execution: 8-23-17 | Date of Execution: 08-25-17 |

G.C. _____

Dir. mr

D.E.D. _____

# TFC CONTRACT NO. 17-123-000

# ZACHRY CONSTRUCTION CORPORATION

# EXHIBITS CD