TFC Contract No. 18-084-000
RFQ No. 303-7-01194
Project No. 17-008-8040

CONSTRUCTION MANAGER-AT-RISK

CAPITOL COMPLEX UTILITIES RELOCATION PROJECT

BETWEEN

THE TEXAS FACILITIES COMMISSION

AND

ZACHRY CONSTRUCTION CORPORATION

CONSTRUCTION MANAGER-AT-RISK CONTRACT BETWEEN THE TEXAS FACILITIES COMMISSION AND ZACHRY CONSTRUCTION CORPORATION

The Texas Facilities Commission, a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 (hereinafter referred to as "TFC"), as Owner (as defined in UGC Section 1.28) and Zachry Construction Corporation, a Delaware corporation, located at 2330 North Loop 1604 West, San Antonio, Texas 78248 (hereinafter referred to as "CMR"), enter into the following contract for construction services pursuant to Tex. Gov't Code Ann. §§ 2166.2525, 2269.251 (West 2016), (hereinafter referred to as the "Contract"). Construction Management Services as defined in Article I, and is generally described as Capitol Complex Excavation Package (hereinafter referred to as the "Project").

I. DEFINITIONS.

1.1. Definitions. Unless specifically provided otherwise, all words and phrases in this Contract in initial caps shall have the meanings set out in this Section 1.1. In the event of any conflict between the definitions in the 2015 Uniform General Conditions for Construction Contracts (hereinafter referred to as "UGC"), the 2015 Supplementary General Conditions, and the Special Conditions, a digital copy of each of which is incorporated herein by reference for all purposes in portable document format ("PDF") on the compact disk attached hereto and labeled, "TFC Contract No. 18-084-000 / Zachry Construction Corporation / Exhibits CD," and named therein as "Exhibit A," "Exhibit B," and "Exhibit C," respectively, or in any other document that is referenced herein and incorporated for all purposes, and the definitions in this Contract, the definitions used in this Contract shall control.

1.1.1. *A/E* means the Architect of Record, the architect and/or engineer with whom TFC has entered into a professional services agreement to perform the professional architectural and engineering design services, services to start at the end of conceptual design by the Master Architect/ Engineer (Master A/E), and includes any licensed professionals and other personnel working under the A/E's supervision, or otherwise engaged by TFC to prepare the design for all or a portion for the Project.

1.1.2. *Approval or Approved* means the written Approval of TFC, and, as applicable, the CMA and/or Master A/E, where expressly required or allowed herein. TFC may exercise the right of Approval in its sole discretion, but such Approval shall not be unreasonably withheld and TFC agrees to exercise its judgment or discretion in the administration, control, performance, and approval of the Work in accordance with generally accepted construction practices. TFC's Approval shall also require formal Approval of TFC's board of commissioners (the "Commissioners") whenever Approval of the Commissioners is expressly required by this Contract, or is otherwise required by state law or TFC's policies. The act of an Approval shall not constitute a waiver of TFC's rights hereunder or excuse the CMR from fulfilling its obligations to perform in accordance with this Contract.

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

1.1.4. *Building Information Model or BIM* means a computable multi-dimensional representation of the physical and functional characteristics of the Projects' facilities and their related life-cycle information, to be used as a repository of design and construction information for use by the Project Team during the design, bidding and construction phases of the Projects, and for the TFC's use throughout the life-cycle of the facilities.

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

1.1.6. *CAD* means AutoCAD DWG format.

1.1.7. *Cause* means to direct, manage and oversee on behalf of the TFC and in a manner consistent with the terms of this Contract as reasonably necessary to accomplish or produce an action and/or deliverable by another service provider that is required by or reasonably inferable from the service provider's agreement with the TFC. The word "Cause," as defined herein, shall not be construed to give rise to a claim or dispute between CMR and any service provider not in privity with CMR.

1.1.8. *Certificate of Final Completion* means the certificate signed by the CMR, A/E, and TFC establishing, to the best of TFC's and A/E's knowledge, the date when the Work or any portion thereof is, fully and satisfactorily complete in accordance with this Contract.

1.1.9. *Certificate of Substantial Completion* means the certificate signed by the CMR, A/E, and TFC establishing the date of Substantial Completion, as defined in UGC Section 1.4\4, for the applicable part of the Work, as defined in UGC Section 1.48, and identifying responsibilities for security and maintenance as set out in UGC Section 12.1.1.2.

1.1.10. *Communication Protocol* means the communication and tracking procedures to be utilized for interaction and reporting between TFC, Master A/E, CMA, CMR, Contractors, Subcontractors, SSE and A/E, including but not limited to, the use of any EPMCS utilized by TFC for the Project.

1.1.11. *Conceptual Design Package(s)* or *CDP(s)* means one or more sets of documents developed by Master A/E and CMA, as approved by Owner, to provide sufficient information to describe and establish the design parameters for the Projects, including, as appropriate, the legal description of the Sites of the Projects, site surveys, site development requirements and other information related to the Sites, conceptual criteria for the Projects, interior space requirements, special material requirements, material quality standards, special equipment requirements, cost or budget estimates, Project Schedules, quality control requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

CMR shall attend and actively participate in all meeting(s) between A/E, Master A/E, CMA and TFC wherein the proposed Conceptual Design Documents will be reviewed

1.1.12. *Conceptual Design Phase* means that stage of a Project culminating in the preparation and submission of a Conceptual Design Package that includes preliminary design or series of preliminary design alternatives based on CMA's and Master A/E's review of Owner's Design Program and the Master Plan. This phase includes CMA's and Master A/E's preliminary evaluation of alternative approaches to designing the Projects, taking into consideration the requirements of the Projects and the Program Budget

1.1.13. *Construction Manager-at-Risk* or *CMR* has the same meaning as defined in UGC, Section 1.18, and also refers to the service provider to be engaged by TFC for the Project to perform (or cause to be performed) the Work on the Project as a Construction Manager-at-Risk.

1.1.14. *CMR Agreement, Contract or Agreement* shall mean this contract and all of the Exhibits attached hereto and which are expressly identified herein to be incorporated as a part hereof, in addition to all amendments or supplements that may be mutually agreed upon by TFC and CMR, and any Changes that may become effective in accordance with the provisions of this Agreement, from time to time.

1.1.15. *CMR Contingency* means the amount to be approved by TFC that will be allocated by CMR as a component of the Cost of Work, as defined below, in CMR's GMP, as defined below, for CMR's exclusive use and benefit to cover any additional Costs of Work that may be discovered or otherwise arise during the design and construction documents phases, but which costs are nevertheless the responsibility of CMR as part of the Cost of Work. The CMR Contingency is part of the Total Project GMP. The maximum amount of the CMR Contingency is set forth in Section 4.3.4.

1.1.16. *CMR Project Manager* means the individual designated by CMR, who has been Approved as the contact person with specific authority to properly supervise and direct the duties and responsibilities of CMR, on behalf of CMR, pursuant to the terms and conditions of this Contract, and who shall have decision-making authority to bind CMR with respect to the Services and Work rendered in connection with this Contract or the Projects.

1.1.17. *CMR's Initial Pre-construction Fee Schedule and Staffing Plan* is that fee schedule that provides for payment of the CMR's fee and includes CMR's plan for staffing to be covered by CMR's Fee, as described in CMR's Initial Fee Schedule and Staffing Plan ("Exhibit D").

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

1.1.19. *Construction Cost Limitation* means the maximum amount of funding that has been authorized by and is available to TFC to pay CMR for the Services and Work required under the Construction Contract, and the Fees to be paid to the CMR, including the Pre-Construction Services Fee, the Guaranteed Maximum Prices (including all fees therein) and all change orders. The Construction Cost Limitation may be adjusted by the TFC in its sole discretion from time to

time as further assessments, and design and construction cost estimates are developed by the Project Team.

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

1.1.21. *Construction Management Fee* means, subject to the provisions of UGC Section 11.8, the fee derived by multiplying the percentage factor of three percent (3.0%) times the sum of the following: (i) the Cost of Work, including any portion of the CMR Contingency used, applied, or otherwise credited to a Cost of the Work in accordance with this Contract, and (ii) any funds out of the TFC Controlled Contingency, as defined below, that TFC may elect to use, apply, or otherwise credit to pay for a change in the Work as a Cost of Work by Change Order or Unilateral Change Order. The Construction Management Fee is part of the Total Project GMP.

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

1.1.23. *Construction Phase*. Construction Phase means that phase of the Project that follows first issuance of an Owner's Notice to Proceed with construction, during which physical execution of the Work, as required by the Construction Documents occurs, and at the conclusion of which Final Completion of the entire Project occurs. The construction of the Project will be divided into different Design Packages, each with different dates for commencement and completion of the Work described therein, subject to applicable Guaranteed Maximum Prices to be established for such Design Packages in accordance with this Agreement.

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

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

1.1.26. *Cost of the Work* means the direct or indirect field costs to perform all Work for all Design Packages comprising the Project, which the Construction Manager must necessarily incur to properly perform the Work in strict compliance with the Contract Documents, and excludes any item of cost covered by the Pre-Construction Services Fee, General Conditions Fee, or the Construction Management Fee. Any additional costs due to acceleration of the Work to overcome delays may be included in the Cost of the Work, but only to the extent such delays were not caused or contributed to, in whole or in part, by the negligence of Construction Manager, or its Subcontractor or other persons over whom Construction Manager or any Subcontractor exercises control or is legally responsible. The Cost of the Work does not include markups on payments to Subcontractors.

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

1.1.28. *Deliverables* means any and all drawings, specifications, photos, designs, studies, sketches, computer programs, reports, and improvements, as well as the Construction Management Services, which are specified to be delivered by CMR pursuant to the terms of this Contract. Deliverables shall also include all "Close-out Documents" and "Record Documents" as defined in the Uniform General Conditions, Article 1 (Definitions), at Paragraph 1.7.

1.1.29. *Design Packages* means a part of the Construction Documents including all drawings, Specifications and other documents issued by the A/E at a designated point in time as required for bidding, procurement and construction for a specific portion of the Work.

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

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

1.1.32. *Environmental Laws* means any local, state, or federal law, rule, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, as may be amended from time to time: (i) the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. § 6901 *et seq.*), as amended by the Used Oil Recycling Act of 1980 (Pub. L. No. 96-463, 94 Stat. 2055 (1980)), the Solid Waste Disposal Act Amendments of 1980 (Pub. L. No. 96-482, 94 Stat. 2334 (1980)), and the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98-616, 98 Stat. 3221 (1984)), and regulations promulgated thereunder; (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613 (1986)), and regulations promulgated thereunder; (iii) the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*); (iv) the Endangered Species Act of 1973 (15 U.S.C. § 1531 *et seq.*) and its amendments; (v) laws, statutes, ordinances, rules, regulations, orders, or determinations relating to "wetlands," including without limitation those set forth in the Federal Water Pollution Control Act (commonly referred to as the "Clean Water Act") (33 U.S.C. § 1251 *et seq.*); (vi) the Texas Water Code; and (vii) the Texas Solid Waste Disposal Act (Tex. Health & Safety Code Ann. §§ 361.001–361.345 (Vernon 2010 & Supp. 2013)).

1.1.33. *EPMCS* means electronic project management control system, which shall be hosted by TFC for the Project and which may include one or more integrated software systems as recommended by the CMA and Approved by TFC.

1.1.34 *Fees* means, collectively, the Pre-Construction Services Fee, General Conditions Fee, and Construction Management Fee, all of which are fixed, are included in maximum sum of the Total Project GMP, and portions of which allocated to each GMP established for various portions of the Project.

1.1.35. *Final Completion* means that stage of completion by which all "punch-list" items identified in connection with the Substantial Completion of a Project have been corrected, completed, or otherwise addressed to the satisfaction of the TFC, A/E, all building inspectors, and all other Governmental Authorities, as evidenced by the issuance of a certificate of Final Completion signed by the CMA, CMR and A/E.

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

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

1.1.38. *General Conditions Fee* means the fixed, lump sum fee that is included in the Guaranteed Maximum Price for General Conditions which are listed in CMR's Initial Fee Schedule and Staffing Plan (Exhibit "D"). The General Conditions Fee is part of the Total Project GMP.

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

1.1.40. *Guaranteed Maximum Price* means the maximum sum that TFC shall be responsible to pay for the completion of the Project (if only one GMP is used for the Project) or a portion thereof (if the Parties elect to divide the Project into multiple GMPs), subject to any Change Orders, as defined in UGC Section 1.9, any excess of which shall be the obligation solely of CMR.

1.1.41. *GMP Amendment* means the document in the form attached hereto as "Exhibit E," the GMP Acceptance, to be used upon Approval of a GMP Proposal to accept one or more GMP(s) proposed by CMR therein and to amend this Contract to establish one or more (s) GMP(s) for the Project.

1.1.42. *GMP Proposal* means the document in the form attached hereto as "Exhibit F," the CMR's written offer to TFC, which includes, among other things, a proposal to establish one or more Guaranteed Maximum Price(s) for one or more portions of the Project. The total sum of

all such GMPs shall constitute and be within the maximum amount of the Total Project GMP as described in Section 4.5, below.

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

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

1.1.45. *Master Architect/ Engineer or Master A/E* means Page Southerland Page, Inc., the service provider TFC has engaged pursuant to Texas Government Code §2254 as the TFC's agent for oversight, coordination and management of the overall design of the Capitol Complex Projects by each of the Architect/Engineers for the Projects.

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

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

1.1.48. *Notice to Proceed with Pre-Construction Activities* means the written notice to be issued to CMR by TFC, which shall inform CMR of, among other things, the date on which CMR shall commence the Pre-Construction Phase, as set forth in Section 2.1.1 of this Contract, of the Construction Management Services.

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

1.1.50. *Opinion of Probable Construction Cost* means a level one (1) cost estimate to facilitate budgetary and feasibility determinations, based on historical information with adjustments made for specific Project conditions, wherein estimates are based on costs per square foot, number of rooms/seats, etc. Project information required for estimates at this level shall include a general functional description, schematic layout, geographic location, size expressed as building area, numbers of people, seats, as such, and intended use.

1.1.51. *Owner, Texas Facilities Commission, or TFC,* means and includes: the State of Texas, the Texas Facilities Commission, and any other agency of the State of Texas acting through the Texas Facilities Commission in connection with this Contract.

1.1.52. *Pay Application* means the application for payment submitted by CMR as discussed in Article IV below.

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

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

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

1.1.56. *Pre-Construction Services Fee* means the fixed, lump sum fee for Pre-Construction Services to be performed by CMR.

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

1.1.58. *Program Management Plan* or *PMP* means a management plan for all Projects in the Design Program, to be developed by CMA and submitted to TFC. PMP shall also include project implementation plans, or PIPs, specific to each of the Projects, as more fully described in Article II.

1.1.59. *Program Master Schedule* means a comprehensive schedule prepared and maintained by CMA for TFC, incorporating the Project Schedules for each of the Projects, and integrating all major Project activities, including the following: (i) phasing and alternatives for accelerating completion based on detailed phasing plans developed by CMA; (ii) establishment of schedule milestones and procedure relationships to a level of detail acceptable to TFC; and (iii) identification of predecessor relationships among activities between project boundaries constructed under separate contracts.

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

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

1.1.62. *Project Manual* means the compilation of the general requirements and the Specifications to be developed and issued for the Work for the Project by the A/E.

1.1.63. *Project Schedule* shall mean the schedule or schedules prepared by CMR and Approved by TFC and the CMA for execution of the Project.

1.1.64. *Project Team* means the TFC, SSE, A/E, CMR, Master A/E, and CMA and any separate Contractors, consultants, or other service providers employed by TFC for the purpose of planning, programming, design, construction, and commissioning of the Project. The constitution of the Project Team(s) may vary the Project, and at different phases of the Project. The Project Team will be designated by TFC and may be modified from time to time by TFC.

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

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

1.1.67. *RFQ* means the TFC Request for Qualifications No. 303-7-01194, dated March 27, 2017.

1.1.68. *Schematic Design Drawings* means, at a minimum, a site development plan, building plans, elevations, sections, and perspective sketches sufficient to convey comprehensive design intent, included as part of the Conceptual Design Drawings provided by the Master A/E.

1.1.69. *Schematic Design Package* means the combination of: (i) Schematic Design Drawings; (ii) an outline summary of the areas within the proposed Project such summary corresponding to the general categories in the space allocation outlined in the Design Program; (iii) a description of the building and general site development that shall include an overview of proposed exterior architectural materials and structural systems together with the MEP Systems and services being contemplated; and (iv) an Opinion of Probable Construction Cost that demonstrates conformity with the Budget, all of which shall be provided by the Master A/E.

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

1.1.71. *Services* means all services to be provided by the CMR, CMR Personnel and/or by Subcontractors and/or consultants retained by the CMR for the Projects that are related to the Work and the delivery of the Project.

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

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

1.1.74. *Site Services Engineer* or *SSE* means Cobb Fendley & Associates, Inc., the service provider TFC has engaged to provide the preparatory data gathering, site environmental, land surveying and geotechnical engineering services for the Projects.

1.1.75. *Specifications* means that portion of the Construction Documents consisting of the written technical requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services, including all requirements of applicable building and life safety codes.

1.1.76. *Standard of Care* means the CMR's Standard of Care defined in Section 7.1.1.

1.1.77. *Statement of the GMP* means a written statement that sets forth with respect to each Guaranteed Maximum Price, the sum of the following: (i) the portion of the Pre-Construction Services Fee applicable to and included in the GMP; (ii) the portion of the General Conditions Fee applicable to and included in the GMP; (iii) the applicable Cost of Work included in the GMP; and (iv) the portion of the Construction Management Fee applicable to and included in the GMP; and (v) the portions of the CMR Contingency and TFC Controlled Contingency applicable to and included in the GMP. For clarity, unused portions of either CMR Contingency or TFC Controlled Contingency that are not used to pay for the Cost of the Work in accordance with this Contract shall be reallocated in accordance with Section 4.9, below. Funds within the TFC Controlled Contingency, as defined below, shall be shown separately on the Statement of the GMP. Although such TFC Controlled Contingency funds are to be included in a GMP, the CMR shall not use such funds unless and until TFC elects to use, apply, or otherwise reallocate such funds to pay for a Cost of Work that is not the responsibility of the CMR or due to the fault or negligence of the CMR, but is for changes to the Work Approved by TFC as Owner in a Change Order or directed by TFC as Owner in a Unilateral Change Order.

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

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

1.1.80. *Substantial Completion* means that stage of completion by which the Work or a portion thereof is accepted by execution of a certificate of Substantial Completion by TFC and A/E as sufficiently completed, inspected, and approved by the appropriate Governmental Authorities as evidenced by issuance of a certificate of Substantial Completion, for TFC's use for its intended purposes, excluding only minor portions of the Work that are not required to be completed to allow commencement of the work of TFC's follow-on contractor for further construction on the Site of the completed Project, and which remain unfinished pending Final Completion and final inspection. Partial use or occupancy shall not result in the Project being deemed substantially complete and shall not be evidence of substantial completion, nor shall execution of a certificate of Substantial Completion be deemed to excuse unidentified or uncorrected defects in the Work or Services of a service provider.

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

1.1.82. *TFC Controlled Contingency* means the amount of funds designated by TFC, which funds are Approved to be included in the GMP, and are reflected in the Approved Statement of the GMP as a separate fund available for TFC's exclusive use for a change in the Work required by Change Order or a Unilateral Change Order.

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

1.1.84. *Total Project GMP* means the maximum sum that TFC shall be responsible to pay for the completion of the Project or a portion thereof, subject to any Change Orders, as defined in UGC Section 1.9, any excess of which shall be the obligation solely of CMR. The Total Project GMP is the sum of all individual Guaranteed Maximum Price(s) for various portions of the Project. The Total Project GMP is set forth in Section 4.5, below.

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

1.1.86. *Work* means the physical construction and the improvements thereby constructed, as required by the Construction Documents for the Project, and includes all other labor, materials, and equipment provided or to be provided by the CMR(s) to fulfill the CMR's obligations hereunder. The term *Work* may refer to or constitute the whole or a part of the Project.

1.1.87. *Work Product* means all work product generated in relation to the Project, including all instruments of service, submittals, Drawings, Specifications, Project Manuals, CDPs, documents, plans, data compilations or calculations, Building Information Models, studies, reports, or other documents, and all ideas incorporated therein, and all intellectual property rights associated therewith, and any contributions thereto, which are prepared by or on behalf of CMR or any other Service Provider, in connection with the Project or in connection with the performance of the Services and Work required hereunder, which Work Product shall, except as otherwise set forth in this Contract be and remain the property of TFC, and shall only be used by CMR in a manner strictly adhering to CMR's limited use and ownership rights as set forth in this Contract.

II. SCOPE OF SERVICES.

2.0. Description of Project. The Project is the relocation of existing utilities and provision of new utilities for two (2) new office buildings in the Capitol Complex in Austin, Texas. The two (2) buildings shall include five (5) levels of underground parking, to be connected by five (5) levels of underground parking beneath Congress Avenue from Martin Luther King Jr. Boulevard ("MLK") to 16th Street. These services shall be in coordination with the on-going design and administrative efforts of the AE, the Master A/E, and CMA. The utilities to be relocated are sited in Congress Avenue from 16th Street to MLK for the construction of the underground parking garage, as well as from the MLK and Congress Avenue building sites. Utility relocations must also address conflicts that may occur in the construction of the new thermal utility tunnel which will extend from the Central Utility Plant at 14th Street and San Jacinto Boulevard to the new buildings, as well as utility relocations to accommodate the future underground parking garage under Congress Avenue from 15th Street to 16th Street and future phases of building construction. Construction services shall include relocation of existing utilities, temporary utilities as required, permanent utilities, and related traffic control, Storm Water Pollution Prevention Plan ("SWPPP"), and all related permits.

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

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

2.1.1.1. During the performance of Pre-Construction Services the CMR shall:

2.1.1.1.1. Furnish to TFC and A/E detailed, quantity survey based estimates of the Cost of the Work, including all labor, materials and expenses, based upon the then most current version of the Construction Documents, and in such form as is reasonably necessary to enable the TFC to prepare updates through its cost control system to the Project Budget and establish a control estimate by which actual costs for activities in progress and estimates for uncompleted tasks and proposed changes can be monitored. Prices shall include breakdowns for Subcontractors' estimated labor, materials, overhead and profit, and shall be formatted in a building component format Approved by the TFC, and in Construction Specifications Institute Division 1-49 format for, each portion of the Work, in such format to be Approved by TFC.

2.1.1.1.2. Provide throughout the duration of the Project and the performance of the Work, a system of cost control for the Work based on an Approved control estimate

2.1.1.1.3. It is TFC's desire to be informed and aware of any likely budget overruns as soon as possible, and by this Contract it is employing the CMR to perform estimating, value analysis and other functions to help the TFC meet the Project Budget and deliver the Project within the GMP(s) to be established hereunder. CMR shall promptly advise the TFC of any concern of CMR that may arise about the integrity of the Project budget. Such advice shall include, at a minimum: (i) a narrative statement of CMR's concern; (ii) the apparent cause of the concern; (iii) the negative impact of any delay to the scheduled critical path for the ; (iv) identify any cost overrun impacts to the Project; and (v) provide CMR's proposed resolution to the concern. If any estimate submitted to TFC exceeds the Project budget, the CMR shall make appropriate recommendations to TFC to get the Project within budget.

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

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

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

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

2.1.1.2.4. CMR shall provide recommendations to TFC and A/E that are consistent with the Design Program and the Conceptual Drawings on: (i) constructability; (ii) availability of materials and labor; (iii) time requirements for procurement, installation and construction scheduling issues, including phased construction; (iv) accelerated or fast-track scheduling; (v) provisions for temporary facilities; and (iv) factors related to

construction costs including, but not limited to, construction budget requirements and limitations, costs of alternative designs or materials, life-cycle data, and possible cost reductions, each in terms of the other. Constructability Reviews. Constructability reviews shall include:

2.1.1.2.4.1. Reviews of all drawings, plans, specifications, and other Construction Documents during the Conceptual Design Phase, Design Development Phase, and Construction Documents Phase, and advise TFC on Worksite use, foundations, systems, materials, equipment, construction feasibility, availability of labor and materials, procurement time requirements, installation and construction, relative costs;

2.1.1.2.4.2. Assistance in the development of any special conditions necessary to the obtaining of bids and contracting for the performance of the Work in accordance with the Construction Documents, which shall be Approved in writing by the TFC at TFC's sole option and discretion;

2.1.1.2.4.3. At each design phase, review the Drawings and Project Manual as they are being prepared, advise TFC, the CMA and A/E of any error, inconsistency or omission discovered, and recommend alternative solutions whenever the design affects construction feasibility, budget, risks, or schedules (without assuming the A/E's professional responsibility); and

2.1.1.2.4.4. Consult with TFC, the CMA and A/E to determine what materials, equipment, component systems, and construction types should be included in the Contract Documents; suggest reasonable adjustments in the scope of the Project; and suggest alternate bids in the Construction Documents to adjust the Construction cost to the related elements in the control estimate.

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

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

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

2.1.1.2.8. TFC shall host the EPMCS as Approved for the Project.

2.1.2. TFC Coordinated Document Review Process. CMR agrees to timely deliver the "TFC Coordinated Document Review Process" as follows.

2.1.2.1. During the design phase of the Project, the design schedule shall accommodate a periodic review of the Construction Documents at various milestones, to be coordinated by TFC, at the following milestones and in the sequential order listed: (i); Conceptual Design; (iii) Design Development; (iv) 65% Construction Documents;; and (v) 100% Construction Documents. The CMR shall provide thorough and careful review of the Construction Documents, Construction Schedule and other Contract Documents. The CMR will carefully and timely review, and promptly call to the attention of the TFC, CMA and A/E, and request a resolution of, any aspect of the Construction Documents, Project Schedule and other Contract Documents, including any Drawings, Specifications, Product Data, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the CMR (by the A/E, the TFC or any other member of the Project Team), which it regards in its opinion as unsuitable, improper, or inaccurate to accomplish the purposes for which such document or data are furnished. CMR shall carefully and timely compare the Construction Documents, Construction Schedule and other Contract Documents, and promptly call to the TFC's attention, and request a resolution of, any aspects thereof that CMR regards in its opinion as inconsistent, unsuitable, improper, or inaccurate to accomplish the Work in accordance with the requirements of the Contract Documents. Notwithstanding the above, the CMR shall not be responsible for design, except incidental designing/detailing as required by the Specifications for Shop Drawing purposes, or as required by specific agreement. The CMR's issuance of written advice in the form of a request for information to the A/E concerning any issue of inconsistency, unsuitability, impropriety, or inaccuracy will not excuse CMR from obtaining a resolution of such issues before proceeding with the Work unless TFC has confirmed in writing that it wishes the CMR to proceed in accordance with the data as originally given, notwithstanding any contrary request for action to resolve such issues.

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

2.1.2.3. The A/E shall have a fixed number of days after TFC's notice of authorization to A/E to proceed with the next phase of design in accordance with the CMA's Master Schedule.

2.1.2.4. TFC, A/E, Master A/E, CMA and CMR shall meet to review the milestone submittals in accordance with the CMA's Master Schedule.

2.1.2.5. The formal review comments and deadline is indicated in the CMA's Master Schedule, upon which TFC shall prepare and deliver TFC comments to A/E and CMR; and CMR shall prepare and deliver CMR comments to TFC and A/E.

2.1.2.6. The A/E reply and deadline is the date indicated in the CMA's Master Schedule, upon which A/E shall provide written evidence that, in TFC's sole discretion, resolves all TFC and CMR formal comments.

2.1.2.7. The CMR Cost Estimate and deadline is the date indicated in the CMA's Master Schedule, upon which CMR shall prepare and deliver to TFC and A/E Cost Estimates in increasing detail and refinement updated through the review of the 100% Construction Documents. Cost Estimates for reviews through Design Development phase shall be provided in ASTM UNIFORMAT II. Cost Estimates for reviews in the Construction Document phase shall be provided using the Construction Specifications Institute MasterFormat™.

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

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

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

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

2.1.3.3. CMR shall prepare and deliver formal review comments and cost estimates in accordance with the requirements of the TFC Coordinated Document Review Process and the schedule established therein. It shall be the CMR's duty to control costs to deliver the Project within the GMP(s) and the Construction Cost Limitation. The CMR shall exercise best efforts to manage, coordinate and collaborate with the Project Team to ensure that the total Cost of the Services and Work, including all of the CMR's Fees, shall in no event exceed the Construction Cost Limitation, as may be amended by the TFC in accordance with this Contract. The CMR's maximum compensation for all Services, including the Work, shall be (i) the Pre-Construction Services Fee, (ii) the Construction Management Fee, (iii) the General Conditions Fee, (iv) the Cost of the Work in accordance with the Contract Documents, and (v) any amount Approved by TFC to be expended out of the CMR's Contingency or the TFC Controlled Contingency, the sum of which shall in no event exceed the GMP(s) for the Project or the Construction Cost Limitation, as may be amended in accordance with this Contract.

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

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

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

2.1.4. Construction Documents. CMR shall timely deliver to TFC the following Construction Document Phase Pre-Construction Services for the Project.

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

2.1.4.2. CMR shall actively participate in the efforts of TFC, CMA and A/E to develop Approved Construction Documents.

2.1.4.3. Following the 65%, and 100% Construction Document review meetings, CMR shall prepare and deliver formal review comments and cost estimate in accordance with the requirements of the TFC Coordinated Document Review Process and the schedule established therein.

2.1.4.3.1. If such updated Cost Estimate exceeds the Budget by more than ten percent (10%) for the 65% review, or by any amount for the 100% review, CMR shall consult with TFC, CMA and A/E to identify further potential design and/or Specification modifications that could result in the Construction Documents Phase Cost Estimate being in compliance with the Budget.

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

2.1.5. GMP Proposal. CMR shall prepare and submit to TFC a GMP Proposal based upon Subcontract bids to be solicited and Subcontracts to be negotiated as follows.

2.1.5.1. Within fourteen (14) days of the date of issuance of the Drawings and Specifications by A/E, and in the manner prescribed by TFC, CMR shall advertise and solicit for bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work other than the minor work that may be included in the UGC any Supplementary General Conditions, and/or Special Conditions.

2.1.5.2. All Work shall be performed under written Subcontracts or other appropriate agreements awarded by CMR in accordance with the terms of this Contract.

2.1.5.3. All Subcontracts and other agreements related to the performance of Work or Services for each Design Package shall be fully executed, and submitted

to the Project Manager, within thirty (30) days after issuance of the GMP Addendum (or GMP Acceptance Letter).

2.1.5.4. The CMR shall prepare and obtain Approval of bid packages properly describing the portions of the Work to be done by each specific Subcontractor, publicly advertise and issue the bid packages for receipt of bids, and coordinate with TFC to determine representatives who shall attend bid openings with TFC and CMR, and provide CMR's recommendation of bidders to TFC for Approval of the CMR's award of Subcontracts on a best value basis.

2.1.5.5. CMR shall strictly abide by the subcontract bidding methods required in Chapter 2269 of the Texas Government Code and shall maintain appropriate records concerning the responses received to the advertisement for bids for each procurement of Work.

2.1.5.6. CMR shall analyze the Subcontractor's bids and proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the CMR, CMA the A/E, or TFC. CMR shall recommend award of each Subcontract to the bidder whose bid is responsive to the bid invitation, and whose bid represents, in the CMR's opinion, the best value to the TFC, taking into account price, terms and conditions, financial capability to perform the Work, qualifications and history of performance, safety, and responsiveness.

2.1.5.7. The CMR shall furnish in writing to TFC and CMA the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work prior to award of any subcontract. The acceptance or Approval by TFC of any such subcontract award recommendation shall not be construed as creating any contractual relationship between any Subcontractor and TFC, nor shall it relieve CMR of any obligations under this Contract. All bids or proposals shall be made public after award, as required by Chapter 2269 of the Texas Government Code.

2.1.5.8. All Subcontracts or other agreements entered into by CMR for the Project which exceed One Hundred Thousand Dollars ($100,000) must be specifically Approved.

2.1.5.9. Prior to entering into any Subcontract, or permitting the letting of any Subcontract, Sub-subcontract or other contract or purchase orders containing a contingent payment clause, CMR shall have furnished or caused to furnished to each such Subcontractors, Sub-Subcontractor and Supplier of every tier a completed form of the TFC's Confirmation of Funding, executed by TFC, to inform all such Subcontractors, Sub-Subcontractors and Suppliers of every tier of the Construction Cost Limitation for the Project.

2.1.5.9.1. CMR may seek to perform portions of the Work itself if the CMR submits its bid or proposal for said portions of the Work in the same manner as all other trade contractors or subcontractors at least twenty-four (24) hours prior to the opening of the bids or proposals from the trade contractors or subcontractors, and if TFC, in its sole discretion, determines that CMR's bid or proposal provides the best value for TFC. CMR shall not be

permitted to self-perform any major elements of the Work on the Project (which shall be described in separate Design Packages that will be used as the basis for bid packages to solicit bids), unless TFC determines CMR provides best value for performance of, and has awarded, such Work to CMR after evaluation of competitive bids for such Work in accordance with Chapter 2269 of the Texas Government Code. If CMR is permitted by TFC to submit a bid to self-perform any major elements of the Work, it shall submit its sealed bid to TFC no later than two (2) hours before the published deadline for submission of subcontract bids for such Work. CMR shall not self-perform any other Work not required to be bid under the Texas Local Government Code unless TFC has specifically Approved in writing a Contract Amendment authorizing CMR to perform such other Work with its own direct hired field construction personnel. TFC's determination of best value is conclusive and final.

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

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

2.1.5.9.4. Within ten (10) days after the receipt of bids, CMR shall submit to TFC a GMP Proposal for the Project (or a portion thereof for which the Construction Documents are sufficiently developed to establish a GMP for such portion). The GMP Proposal shall be in substantially the same form as the GMP Proposal Template, "Exhibit F" attached hereto and incorporated herein for all purposes, and as set forth below. TFC shall be entitled to immediately demand payment of the penal sum of CMR's Bid Bond if CMR does not cure its failure to timely execute and deliver the GMP Proposal to TFC and the Bonds, within ten (10) days after written notice to the CMR and the surety on the Bid Bond.

2.1.5.10. To the extent that the Drawings and Specifications are anticipated to require further development by A/E, CMR shall provide an allowance for such further development in the GMP that is consistent with the Contract Documents and reasonably inferable therefrom, which allowance shall be considered to be part of the CMR Contingency. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, can be incorporated only by Change Order.

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

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

2.1.5.11.1.1. A narrative statement that summarizes all major elements of the Work included in the GMP Proposal, including a statement of all major elements of the Work for which CMR intends to submit a competing bid to self-perform in accordance with Section 2.1.5.9.1, above.

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

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

2.1.5.11.1.4. A Statement of the GMP, which shall set out, at a minimum, separate line items identifying the following Fees and costs allocable to such GMP, the sum of which shall become the GMP upon Approval thereof: (i) the allocable portions of the Pre-Construction Services Fee for the GMP; (ii) the allocable portions of the General Conditions Fee for the GMP; (iii) the Cost of the Work, including all allowances; (iv) the allocable portion of the CMR Contingency for the GMP; (v) the allocable portion of the TFC Controlled Contingency to be used for the GMP; and (vi) the allocable portion of the Construction Management Fee for such GMP. A digital copy of the Statement of the GMP shall be attached to the GMP Proposal and, upon Approval of the GMP Proposal, the Statement of the GMP shall become a part of the GMP Amendment and incorporated herein by reference for all purposes.

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

2.1.5.11.1.6. The deadline on which the GMP Proposal will automatically expire without further notice, which shall not be less than sixty (60) days from the date that TFC receives it.

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

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

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

2.1.5.11.1.10. Upon execution of a GMP Amendment, a digital copy of the Approved Work Progress CPM Schedule that is the basis of the GMP Amendment shall be deemed to be incorporated herein and supersede the initial Work Progress CPM Schedule.

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

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

2.1.5.13. TFC and its agents shall review the bids that CMR receives from proposed Subcontractors, including any competing bids submitted by CMR to self-perform any major element of the Work in accordance with Section 2.1.6.9.1, above, and CMR's written recommendations to TFC for a best value determination. With the input and advice of CMR and A/E, TFC shall identify bid exceptions that influence the best value selection process and the overall GMP. Subcontracts shall be awarded only with Approval. CMR shall not be required to contract with anyone to whom CMR has a reasonable objection without a Change Order as to the price, time, or guaranteed maximum cost for any additional cost and risk that the CMR incurs because of the TFC's requirement that another bid or proposal be accepted.

2.1.5.14. Following Approval of the GMP Proposal, TFC and CMR shall proceed to complete and execute a GMP Acceptance ("Exhibit E").

2.1.5.15. The GMP Amendment shall state the number of calendar days from the applicable date for commencement of construction stated in the applicable NTP, by which the Project shall have achieved Substantial Completion and the dates established as the deadlines for achieving Substantial Completion and Final Completion of the applicable Work.

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

2.1.5.17. TFC shall authorize A/E to provide the revisions to the Drawings and Specifications to incorporate the agreed upon C&A contained in the GMP Amendment. TFC shall promptly furnish to CMR revised Drawings and Specifications as they are revised. CMR

shall notify TFC and A/E of any inconsistencies between the GMP Amendment and the revised Drawings and Specifications.

2.1.5.18. CMR shall, as part of the proposed C&A identify any schedule constraints that may be impacted with the passage of time pending TFC's review of the GMP Proposal. CMR's GMP Proposal shall be provided to TFC such that TFC shall have at least sixty (60) days of time for review and consideration of the GMP Proposal without impact to scheduling assumption included in the GMP Proposal.

2.1.5.19. At such time that the first GMP Amendment has been Approved, and CMR has submitted the payment and performance bonds, each with a penal sum that equals the total of the first GMP Amendment, as required by Article XI, below, and TFC has accepted the proof of insurance as required by this Contract, TFC will confirm the Bid Bond is released, upon receipt of the CMR's written request.

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

2.1.5.21. If the GMP has been accepted and TFC requires that another bid or proposal from a trade contractor or subcontractor be accepted, TFC shall compensate CMR by a change in price, time, or guaranteed maximum cost for any additional cost and risk that CMR may incur because of TFC's requirement that another bid or proposal be accepted. This provision shall not apply in the event TFC objects to, or otherwise requires the removal or substitution of, any trade contractor or subcontractor pursuant to the terms of this Contract, including, but not limited to, Section 6.2.8.1 below.

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

2.1.6. Construction Phase. Upon receipt of a NTP, CMR shall proceed with the Construction Phase of the Project and timely deliver to TFC the Construction Management Services for the Project as is specified in UCG Section 3.3, and as follows. The Construction Phase shall be deemed to commence upon the date specified in a Notice to Proceed issued by TFC after Approval by TFC of a Guaranteed Maximum Price for the applicable Work and Services specified in such Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services.

2.1.6.1. Prior to commencement of any Work at the Site, CMR shall attend a pre-construction conference between TFC, CMA A/E, and any other representatives as deemed appropriate by TFC, at such time and location as may be designated by TFC. The

Communication Protocol, initial Work Progress CPM Schedule, procedures for handling Shop Drawings, as defined in UGC Section 1.38, and other submittals, processing Applications for Payment, as defined in UGC Section 1.2, maintaining required records, designation of Project Managers, and any other subject as may be determined by TFC to be appropriate, shall be the subject of said meeting.

2.1.6.2. CMR's duty to maintain records shall include:

2.1.6.2.1. Daily log of Project construction, in Approved format, to be updated no less frequently than weekly for the immediately preceding week;

2.1.6.2.2. Daily record of photographs to record progress of the construction, updated no less frequently than weekly for the immediately preceding week.;

2.1.6.2.3. Original and updated or amended Subcontracts, Drawings, Specifications, procurement transaction documents, maintenance and operating manuals and instructions, and other construction related documents, including all changes and revisions;

2.1.6.2.4. Directory of all of CMR's personnel and all Subcontractors and Suppliers and their personnel on the Project including a copy of their executed prevailing wage rate notification letter and background check documentation;

2.1.6.2.5. Project correspondence, inspection procedures (as prepared by others), testing laboratory reports (as prepared by others);

2.1.6.2.6. Current Record Documents (including current as-built drawings) and the Project Manual data. Record Documents shall also include information from Subcontractors and Suppliers referenced in or otherwise used to maintain and update the same. CMR shall maintain at the Worksite for TFC one record set of the Drawings, Specifications, Addenda, Change Orders and other records of modifications, Shop Drawings, Product Data, Samples and other similar submittals, Requests for Information ("RFI's"), and instructions from A/E or TFC, all in good order and marked to currently reflect field changes and selections made during construction,. These shall be continuously available to the TFC, CMA and A/E in the EPCMS, and shall be delivered to the TFC upon completion of the Work.

2.1.6.2.7. This Contract and all related GMP Amendments and other amendment documents, including Change Orders, change directives, and other backup information and Project records reflecting Schedules, time extensions, progress payments, inspections, and acceptances or certificates relating to Substantial Completion or Final Completion of the Work or any portion thereof.

2.1.6.2.8. Warranties and guarantees related to the Work, and all documents pertaining to warranty claims, repairs, replacements, and related Work.

2.1.6.3. The above-described records shall be maintained in the EPCMS and shall be available via a Project-specific website established and hosted by TFC to make such records continuously available to TFC to view or print in electronic form from TFC's offices and at the Site.

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

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

2.1.6.6. CMR shall assume full responsibility for all materials and equipment assigned to CMR by TFC for Project-related items purchased by TFC immediately upon the earlier of (i) CMR's taking possession thereof, or (ii) issuance of a Notice to Proceed with construction pursuant to an established GMP. CMR shall expedite and coordinate delivery and installation of TFC-procured materials and equipment;

2.1.6.7. The CMR warrants that title to all Work covered by an Application for Payment will pass to the TFC no later than the time of payment. The CMR further warrants that upon submittal of its application for payment, all Work is and shall remain free and clear of liens, claims, security interests or encumbrances in favor of the CMR, CMR's personnel, Subcontractors, sub-subcontractors and suppliers, or other persons or entities who might otherwise have any claim by reason of having provided labor, materials and equipment relating to the Work.

2.1.6.8. CMR shall direct all RFIs, as defined in UGC Section 1.35 to A/E.

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

2.1.6.10. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise may be stated in the Contract Documents, all Work at the Site shall be performed Monday through Friday, from 6:00 a.m. until 6:00 p.m.

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

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

2.1.6.13. On a monthly basis, or as otherwise agreed in writing by TFC, CMR shall submit written progress reports to TFC and A/E, reporting (i) CMR's assessment of

percentages of completion and other information required by TFC, and (ii) which days since the previous monthly report are claimed by CMR to be subject to Force Majeure, as defined in Section 12.12 of this Contract, portions of the Work in progress.

2.1.6.14. Unless and until instructed otherwise in writing by TFC, CMR shall also prepare a daily log (hereinafter referred to as "Daily Log") containing: (i) a record for each day's weather; (ii) a statement of which days since the previous monthly report are claimed by CMR to be subject to Force Majeure, as defined in Section 12.12 of this Contract, and the portions of the Work in progress affected, and include reasonable evidence of the occurrence of an event of Force Majeure; (iii) number of workers on the Site; (iv) identification of all equipment on the Site; (v) problems that might affect progress of the work; and (vi) all accidents, injuries, and any other information that may be requested by TFC from time-to-time, and upload said Daily Log into EMPCS as directed by TFC, by the end of each next business day.

2.1.6.15. During the progress of the Work, CMR shall keep the Site and all adjacent areas free from accumulations of waste materials, rubbish, and other debris (hereinafter referred to collectively as "Trash"). The removal and disposal of Trash must conform to applicable Laws and Regulations. At completion of the Work, the CMR shall remove from and about the Worksite waste materials, rubbish, the CMR's tools, construction equipment, machinery and surplus materials. The CMR shall be responsible for protection of the Work, including damaged or broken glass, and at substantial completion of the Work shall repair or replace damaged Work. The CMR shall perform final cleanup prior to Final Completion of the Work, including without limitation the following:

2.1.6.15.1. remove all temporary protections;

2.1.6.15.2. remove temporary facilities no longer required for subsequent phases of work;

2.1.6.16. If the CMR fails to clean up as required above, TFC may do so and the cost thereof shall be charged to the CMR.

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

2.1.6.18. Prior to Substantial Completion of the Work, CMR shall clean the Site and the Work and make it ready for utilization by TFC. At the Substantial Completion of the Work, CMR shall store and secure all tools, appliances, construction equipment and machinery, and surplus materials necessary to allow for beneficial occupancy by the Using Agency, and shall restore all property not designated for alteration by the Contract Documents to original condition.

2.1.6.19. CMR shall confine all construction operations within the limits of construction indicated on the Drawings or otherwise agreed to in writing by TFC, and use due care in placing construction tools, equipment, materials, and supplies so as to cause the least possible damage to property and interference with traffic. CMR shall ensure that the Work, at all times, is performed in a manner that affords reasonable vehicular and pedestrian access through or around the Site and adjacent areas. If additional easements for its operations are needed, CMR is solely responsible for acquisition and maintenance of the easement.

2.1.6.20. The CMR shall manage the Work so that it shall be performed in such a manner that public areas adjacent to the Worksite shall be free from all debris, building materials and equipment likely to cause hazard to any persons. Without limitation of any other provision on the Contract Documents, CMR shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area and buildings adjacent to the Worksite or portions of the Project which become partially or temporarily occupied.

2.1.6.21. The CMR shall be responsible for cutting, fitting and patching required for completion of the Work or to make its parts fit together properly. The CMR shall not damage or endanger a portion of the Work or fully or partially completed construction of the TFC or its Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The CMR shall not cut or otherwise alter such construction by the TFC or a Separate Contractor except with written consent of the TFC and of such Separate Contractor; such consent shall not be unreasonably withheld. The CMR shall not unreasonably withhold from the TFC or a Separate Contractor the CMR's consent to cutting or otherwise altering the Work.

2.1.6.22. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents. Protection of stored construction materials and equipment from weather, theft, damage or other harm is solely the responsibility of the CMR.

2.1.6.23. In order for an Application for Final Payment, as defined in UGC Section 1.24, to be considered complete and subject to review and Approval, CMR must submit to TFC a Final Payment Punchlist in such form as prescribed by TFC, jointly executed by CMR, TFC and A/E. No Approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirement is fully satisfied.

2.1.6.24. CMR must achieve Substantial Completion of the Project or the applicable phase of the Work within the period of time specified therefor in the GMP Amendment or any applicable Change Order.

2.1.6.25. CMR shall give TFC reasonable advance written notice of not less than ninety (90) days before the date when CMR plans to tender the entirety of the applicable Work as ready for a Substantial Completion Inspection.

2.1.6.25.1. CMR shall include with the foregoing notice a Punchlist that sets out, among other things that may be requested by TFC and/or A/E, the following: (i) a list of those portions of the Work that are to be the subject of the Substantial Completion Inspection; and (ii) the Open Items List, as defined in UGC Section 1.27, which must include the date for scheduled completion and/or correction for each item of Work contained therein.

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

2.1.6.26. No later than ten (10) days prior to the date of the Substantial Completion Inspection, CMR must deliver to A/E a copy of CMR's marked-up Record Documents, as defined in UGC Section 1.34, and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents for the Work that is the subject of the Substantial Completion Inspection.

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

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

2.1.6.27.2. CMR shall, upon demand, pay or reimburse TFC the amount of any additional fees or damages TFC incurs by reason of CMR's failure to promptly correct and/or complete any items that are determined to be deficient during the Substantial Completion Inspection.

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

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

2.1.6.28.2. By requesting a Final Inspection, CMR thereby certifies that it has, in fact, inspected each and every portion of the Work that is set out in the Pre-

Final Inspection Punchlist, and that they are completed in conformity with the Contract Documents.

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

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

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

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

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

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

2.1.7. <u>CMR Services Generally (during All Phases).</u> CMR shall timely deliver to TFC the following services, as applicable, during all phases for which CMR is obligated to provide Construction Management Services.

2.1.7.1. CMR shall identify to TFC for TFC's Approval the CMR's key personnel, including the CMR's key sub-consultants or entities, who CMR employs or otherwise engages on CMR's staff to perform the Pre-Construction Services and Construction Services. CMR's key personnel who are significantly involved in the performance of Pre-Construction Services shall, if required by TFC, be retained and assigned to the performance of Construction Services on the Project absent removal for permitted causes. TFC reserves the right to participate in the interview process and review resumes of all other CMR's key personnel who are being considered by CMR for re-designation and re-assignment from such key positions in the performance of the Services and Work hereunder. CMR agrees that it will obtain the written

consent of TFC, not to be unreasonably withheld, prior to the re-designation or re-assignment of CMR's key personnel, who shall not otherwise be removed or reassigned except in the case of voluntary or involuntary termination of employment, serious illness, death, or a bona fide family emergency.

2.1.7.2. All CMR's personnel, Subcontractors and Suppliers assigned to perform such Services and Work shall at all times be under CMR's direction and control and CMR shall be responsible for proper supervision and examination of their performance thereof, consistent with the requirements of this Contract. All CMR personnel assigned to the Project shall possess sufficient skills and expertise as required to satisfactorily meet all obligations and requirements of this Contract. TFC retains the right to reject or require CMR to remove CMR personnel who TFC determines in its sole judgment and discretion fail to meet this requirement.

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

2.1.7.4. CMR's personnel, including its project manager, shall meet regularly with the key personnel of TFC, CMA, A/E, and other consultants as directed by TFC, and shall take other reasonable measures to enhance the planning and coordination of the Work.

2.1.7.5. CMR shall initiate and conduct meetings, and collaboratively contribute to A/E's duties to distribute notices and documents such as agendas, minutes, reports and action papers to inform and guide the TFC, A/E and others on the Project.

2.1.7.6. CMR shall make recommendations regarding the division of the Work into Design Packages and bid packages to include Project components and methods to be used for selection of Subcontractors and award of Subcontracts pursuant to Chapter 2269 of the Texas Government Code.

2.1.7.7. The CMR shall obtain or cause its Subcontractors (as appropriate) to obtain, all permits and approvals customarily required of a construction contractor for the Work, including any required building permits for construction of the Project. The A/E will prepare documents required, make filings and obtain on the TFC's behalf all approvals of governmental authorities having jurisdiction over the Project, including permits necessary to enable the CMR to pay for and obtain any required building or regulatory permits for construction of the Project. The CMR (and its appropriate personnel) shall, as requested by TFC, attend, and schedule if necessary, all meetings with governmental authorities having jurisdiction as necessary to obtain all required permits and approvals, or other meetings as requested by the TFC, including public meetings and hearings concerning the development and schedule of the Project. Copies of the various building permits and governmental approvals shall be delivered to TFC as soon as CMR obtains them.

2.1.7.8. CMR shall prepare a worksite safety plan and related procedures for managing safety on the Site in accordance with the PIP, including drug testing and the incorporation of TFC's site-specific safety requirements from the PIP.

2.1.7.9. CMR shall not erect any sign on or relating to the Worksite, or permit others to do so, without prior Approval.

2.1.7.10. CMR shall plan for acquisition of long-lead items.

2.1.7.11. CMR shall develop warranty claim procedures for the prompt repair or replacement of defects in the Work.

2.1.7.12. CMR shall develop a quality control plan, including identification of a Quality Control Supervisor, the production and implementation of Quality Control reports, and methodology for incorporation of any quality control plan into all Subcontracts.

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

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

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

2.1.7.16. CMR shall maintain work progress and products consistent with the schedules. CMR shall monitor the Work of the CMR personnel and Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project Team with a goal to attain completion of the Project at a cost not to exceed the applicable Guaranteed Maximum Price and the Construction Cost Limitation, as may be amended by the TFC in accordance with Section 3.2, below, and to attain the Scheduled Date of Substantial Completion and the Scheduled Date of Final Completion to be set forth in the Construction Schedule

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

2.1.7.18. CMR shall actively participate in all meetings and/or teleconferences to bring the full measure of CMR's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline including, but not limited to, matters concerning the proposed site use and improvements, selection of materials, and building systems and equipment.

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

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

2.1.7.21. CMR shall assist TFC as reasonably necessary to support and engage with TFC in its public outreach and public relations efforts. CMR shall work with TFC and its agents and consultants to plan and develop a public outreach campaign that will promote and manage the establishment of positive community relations and public awareness about the Project within the community and with appropriately targeted audiences of community constituents in a manner that is appropriate to the success of the Project.

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

2.1.8. TFC Approvals. Any provisions in this Contract to the contrary notwithstanding, all consents and/or Approvals by TFC shall be in its sole and absolute discretion and must be in writing. The foregoing notwithstanding, TFC's exercise of its discretion in bad faith shall be subject to dispute resolution.

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

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

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

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

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

2.1.8.6. No inspections of the Project conducted by TFC, CMA, or A/E during the course of construction, either singularly or in the aggregate, shall reduce the level or extent of CMR's responsibilities arising pursuant to this Contract. Neither the Approval and/or final acceptance of the Project or any Deliverables, the payment of any pay application, or the issuance of any Certificates of Final or Substantial Completion by TFC shall constitute, nor be deemed, a release of CMR's obligation to perform and deliver the Construction Management Services in a manner consistent with: (i) that degree of care and skill ordinarily exercised by

members of the same profession currently practicing under similar circumstances; and (ii) as required by the Contract Documents.

III. TERM, SUSPENSION, AND TERMINATION.

3.1. Contract Term. This Contract shall be effective as of the Effective Date and shall terminate on April 1, 2020, unless extended by the parties by amendment to this Contract or terminated earlier, as provided below.

3.2. Suspension of Work. TFC may suspend all or any part of the Work, for cause, without prior notice, as more specifically provided in UGC Section 14.1. In addition, TFC may suspend all or any part of the Work for the convenience of TFC, without breach of this Contract, upon seven (7) days written notice, and as more specifically provided in UGC Section 14.2. Upon receipt of a notice of suspension pursuant to this subsection, CMR shall, subject to the provisions of UGC Section 14.2, immediately stop all Work. Notwithstanding anything in this Contract to the contrary, TFC may for its convenience, and without adjustment to any Fee and without further liability to CMR, suspend, cancel and/or procure a separate contract for the performance of any Work associated with, or the delivery of, any one or more Project(s) at any time prior to establishment of a Guaranteed Maximum Price for such Project(s) by Contract Amendment upon issuance of TFC's written notice of cancellation to the CMR. An adjustment shall be made to the CMR's compensation calculated under UGC Section 14.1. The adjustment of the CMR's compensation shall include a deductive adjustment to the CMR's compensation in proportion to the amount of the Work actually completed by CMR. No adjustment shall be made to the extent that: (i) performance is, was or would have been so suspended, delayed or interrupted by another cause for which the CMR is responsible; or (ii) adjustment has already been made or denied under another provision of this Contract.

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

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

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

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

of which shall be considered a material breach of this Contract. In addition, TFC may accept assignment of subcontracts pursuant to this Contract; and complete the Work by whatever reasonable method the TFC may deem expedient. Upon completion of the Project, TFC shall return all of CMR's equipment, tools, construction equipment, and machinery that are not permanently incorporated into the Work.

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

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

3.6.3. Failure to Timely Deliver Services or Construct the Project. The failure of CMR to timely deliver the services set out herein or timely complete the Project in accordance with the Contract Documents or the failure of CMR to furnish to TFC, upon request, evidence of ability to perform, as hereinafter provided. If TFC at any time has reasonable grounds to believe that CMR is in default, or likely to default, in the performance of its obligations under this Contract, TFC may request in writing, and CMR shall provide to TFC in writing within ten (10) days after receipt of TFC's request, adequate assurance of CMR's present and future ability to perform its obligations. CMR's written response to such request shall include evidence sufficient to demonstrate CMR's ability to perform to the reasonable satisfaction of TFC. All determinations related to CMR's failure to cure a condition of default shall be subject to the dispute resolution proceedings found elsewhere in this agreement.

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

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

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

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

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

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

3.6.10. Unauthorized Use of Unapproved Item of Material or Equipment. The use of or otherwise incorporating of an item of material or equipment into the Project that is not specified by the Drawings or Specifications, or otherwise Approved pursuant to the procedures set out in the requirements for substitutions and equivalents. The CMR may make substitutions only with Approval, after evaluation by the A/E and, if a change in the Guaranteed Maximum Price or an extension of the construction schedule is involved, in accordance with the applicable procedure for requesting a Change Order. CMR may submit for TFC's consideration proposed substitutions of materials, equipment or processes previously Approved by TFC as part of a Guaranteed Maximum Price. Submittals of proposed substitutions shall include value analysis data, including procurement and impact costs and schedule impact information associated with the substitution, and shall be issued with reasonable promptness to allow TFC and the A/E to determine whether the proposed substitution is in fact equal or of better value than the requirements of the Construction Documents. If the CMR fails to promptly propose a substitution within a reasonable time after recognizing the need for it, CMR shall pay from the CMR's Contingency for the cost to have the A/E evaluate it.

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

IV. CONSIDERATION.

4.1. Pre-Construction Services Fee. The Pre-Construction Services Fee is a fixed fee for this Contract, for all portions of the Project and all GMPs, which shall not exceed the sum of Five Hundred Eighty Nine Thousand Nine Hundred Eighty and No/100 Dollars ($589,980.00) for the Project, an allocable portion of which shall be shown in each GMP Amendment covering each portion of the Project.

4.2. TFC's Right to Purchase Equipment Directly. TFC may in its sole discretion directly purchase from equipment manufacturers and/or vendors items of equipment specified in any Design Package, or any portion thereof, such as but not limited to mechanical, electrical and plumbing equipment, In such event, the cost of purchasing such equipment shall not be included in the applicable Guaranteed Maximum Price, but CMR shall include all labor and installation costs associated with installing such directly-purchased equipment in the applicable Guaranteed Maximum Price.

4.3. Components of the GMP. Upon execution of a GMP Amendment, the total amount of payments to the CMR in connection with the Project shall not exceed the GMP thereby established, which shall be calculated as the sum of the following components:

4.3.1. Pre-Construction Services Fee. The Pre-Construction Services Fee, which, for all portions of the Project and all GMPs, is a fixed fee that shall, in no event, exceed Five Hundred Eighty Nine Thousand Nine Hundred Eighty and No/100 Dollars ($589,980.00) for the Project,

an allocable portion of which shall be shown in the each GMP Amendment covering each portion of the Project. The Pre-Construction Services Fee is part of the Total Project GMP.

4.3.2. Construction Management Fee. The Construction Management Fee, which is a percentage fee, calculated by multiplying a percentage factor of three percent (3.0%) times the Cost of Work, an allocable portion of which shall be shown in each GMP Amendment covering each portion of the Project. The Construction Management Fee is part of the Total Project GMP.

4.3.3. General Conditions Fee. The General Conditions Fee, which is a fixed fee amount payable monthly, not to exceed a total fee amount of One Million Four Hundred Ninety Six Thousand Six Hundred Fifty Six and No/100 Dollars ($1,496,656.00), an allocable portion of which shall be shown in the each GMP Amendment covering each portion of the Project. The General Conditions Fee is part of the Total Project GMP.

4.3.4. Cost of Work. The Cost of Work will be adjusted and finalized as part of the GMP. The budget for the Cost of Work shall not exceed Sixteen Million Five Hundred Thousand and No/100 Dollars ($16,500,000.00). The CMR Contingency shall be reflected in the Cost of the Work for each GMP Amendment as a separate line item in CMR's GMP for CMR's exclusive use and benefit to cover any additional costs that may be discovered or otherwise arise during the design and construction documents phases, but which costs are nevertheless the responsibility of CMR as part of the Cost of Work. The maximum amount allowed for the Cost of Work is part of the Total Project GMP.

4.3.5. TFC Controlled Contingency. The TFC Controlled Contingency of One Million One Hundred Forty Four Thousand Eight Hundred Ninety Eight and No/100 Dollars ($1,144,898.00), which sum shall be maintained through construction, and an allocable portion of which shall be included in the GMPs, but the CMR shall not use such funds unless and until TFC elects to use, apply, or otherwise allocate such funds to pay for a change in the Work as a Cost of Work that is not the responsibility of the CMR, or due to the fault or negligence of the CMR, and which change has been Approved by Owner by Change Order or directed by Owner in a Unilateral Change Order. The TFC Controlled Contingency is part of the Total Project GMP.

4.4 Unused Contingencies. Any amounts of the CMR Contingency and the TFC Controlled Contingency in a GMP remaining unused at the completion of the Work covered by such GMP shall be re-allocated as set forth in Section 4.9, below. No part of the TFC Controlled Contingency shall be included in the GMP unless TFC elects to do so by Change Order or Unilateral Change Order for a TFC directed change to the Work or a return of unused portions of the GMP.

4.5. Total Project GMP. The sum of all GMPs for all portions of the entire Project shall be considered the "Total Project GMP." Total Project GMP shall not exceed Twenty Million Two Hundred Twenty Six Thousand Five Hundred Thirty Four and No/100 Dollars ($20,226,534.00), which shall include (i) a reasonable amount to be established as CMR Contingency, and (ii) the amount of the TFC Controlled Contingency set forth in Section 4.3.5., above. Unless an Amendment to this Contract or a Change Order is executed by TFC that expressly increases the Total Project GMP with respect to the TFC's election to use TFC Controlled Contingency for a

Change Order or Unilateral Change Order, the total of all amounts to be paid to CMR in connection with all GMPs for all portions of the Project shall not exceed the amount of the Total Project GMP.

4.5.1. Costs In Excess of GMP. To the extent the Cost of Work exceeds a GMP, CMR shall bear all such costs in excess of the GMP without reimbursement or additional compensation from TFC. CMR assumes the risk of, and shall be responsible for, all costs that overrun a GMP from any cause whatsoever, including costs due to otherwise excusable circumstances for which an adjustment to the GMP would have been permitted, unless CMR has obtained in advance of the incurring such overrun costs an amendment to this Contract increasing the GMP for such costs. For clarity, cost overruns in one or more line items of cost shall be subject to this provision only if such cost overruns contribute to cost overruns that, in the aggregate, are expected to overrun the GMP; provided, however, CMR shall promptly inform TFC and obtain Approval before continuing to incur any cost overrun for a line item or group of line items if CMR believes or reasonably should anticipate that CMR will be unable to deliver the Project within the Total Project GMP by incurring such cost overrun.

4.5.2. Savings. If there are any savings realized in actual expenditures for the Cost of Work in a GMP, CMR shall report those savings to TFC when realized, and at TFC's request, CMR shall either apply the savings to the Cost of Work required to complete the Project or return such savings to TFC in accordance with Section 4.9, below. At the conclusion of the Work covered by all GMPs for the entire Project, any savings realized in actual expenditures for the Cost of Work for the Project will be returned to TFC as set forth in Section 4.9, below. Returned savings shall include a proportionate amount of the Construction Management Fee applicable to the savings in actual expenditures for the Cost of Work, by multiplying the amount of such savings times the percentage factor stated in the definition of Construction Management Fee.

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

4.6.1. Initial Pay Application. The submission of the initial pay application must be preceded by the submission and Approval of the Schedule of Values, as defined by UGC Section 1.37, at least twenty-one (21) days prior thereto, as provided in UGC Section 10.1.1.

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

4.6.2.1. An updated Work Progress Schedule, as defined in UGC Section 1.49, including the executive summary and all required schedule reports, as provided in UGC Sections 8.3.1.3 and 10.2.1.2.

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

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

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

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

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

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

4.6.3.1. As of the date of the pay application, Contractor is in compliance with UGC Section 2.2.1.

4.6.3.2. CMR has updated all expired insurance policies as required by UGC Section 5.2.

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

4.6.3.4. CMR has updated the Submittal Register, as defined in UGC Section 1.43, and pursuant to UGC Section 8.3.1.2.

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

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

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

4.6.6. Credit on Cost Plus Subcontracts. If a subcontract is awarded on a cost plus a fee basis, CMR shall return to TFC any cost savings arising out of a final subcontract cost that is less than the budgeted or expected cost for performing the Subcontract, or funds that were planned to be expended, but not expended, in completing the performance of the subcontract.

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

4.7. Changes in the Work. The GMP is subject to additions and/or deductions only by Change Order, and the Contract Time shall be subject to adjustments only as provided in the Contract Documents. TFC shall be entitled to a reduction in the Guaranteed Maximum Price if TFC issues a Unilateral Change Order that decreases the scope of the Work, resulting in a net decrease in the estimated Cost of the Work, if any. Such reduction in the Guaranteed Maximum Price shall be calculated in direct proportion to and based upon the net decrease in the estimated Cost of the Work for such scope decrease.

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

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

4.8. Adjustments to Cost of Work. When adjustments to the Cost of Work are necessary for a change in the Work that is required by TFC but not the responsibility of the CMR, or due to the fault or neglect of the CMR, TFC may, in its sole discretion, either fund the change in the Work by a transfer of funds from the TFC Controlled Contingency, without adjusting the Contract Sum; provided, however, if the TFC Controlled Contingency is fully used and depleted, any further funding of a change in the Work that would increase the Contract Sum to an amount in excess of the Total Project GMP may only be accomplished through a Change Order or Unilateral Change Order. TFC must first execute an Amendment to this Contract or a Change Order that expressly increases the amount of the Total Project GMP to cover any adjustments to the Cost of the Work that would exceed the amount of any previously Approved Total Project GMP. However, any provisions in UGC Section 11.8.2 to the contrary notwithstanding, in no event shall CMR be authorized to add, charge or collect any mark-up for overhead and profit for any subcontracted Work. And provided further, however, the GMP may be increased (or decreased, as the case may be) for any changes to General Conditions for management of any such changed scope of Work and resulting increase (or decrease) to the Cost of Work, the General Conditions Fee and the Construction Management Fee allocable to the Cost of Work in such GMP may also similarly be adjusted for such increase or decrease. In the case of the Construction Management Fee, the adjustment shall be calculated by multiplying the amount of the change in the Cost of Work by the same Fee percentage rate stated in Sections 1.1.21 and 4.3.2, above.

4.9. Re-Allocation of Unused Funds. CMR must account to TFC for CMR's use of all funds included in a GMP, including the amount of CMR Contingency, TFC Controlled Contingency, Cost of Work and Fees that are Approved to be included within a GMP. CMR shall, at the request of TFC, reallocate any unused portion of a GMP or other savings from the amount of the GMP, together with the applicable portion of the Construction Management Fee as provided in Section 4.5.2, above, to (i) one or more other GMPs for which the Work is incomplete, to be applied to the Cost of the Work to complete the Project, or (ii) TFC Controlled Contingency. Furthermore, CMR may not add, charge or collect any additional fees, or mark-ups for overhead and profit as described

in UGC Section 11.8.2, for any subcontracted Work for which CMR elects to use, apply, or otherwise allocate the use of the CMR Contingency. CMR shall maintain the CMR Contingency balances among multiple GMPs that are no more than reasonably necessary and appropriate to support the completion of the Work. Upon completion of the Project, the unused portion of TFC Controlled Contingency, CMR Contingency, Cost of Work, and Construction Management Fee shall be reallocated from the amount of the final GMP to TFC Contingency.

4.10. Mark-ups on Subcontracts Prohibited. Notwithstanding the provisions of UGC Section 11.8.2, relating to mark-ups for subcontracted Work, CMR shall not obtain, receive or accept any remuneration for, and shall not be entitled to include in the Cost of the Work any mark-up on the value of, any Work performed by Subcontractors.

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

4.12. Change Orders–Final Settlement. Unless otherwise provided in the Change Order, execution of a Change Order shall constitute a final settlement of all matters relating to and all claims the CMR may have, directly or indirectly, arising out of or relating to the change in the Work which is the subject of the Change Order,. By accepting a Change Order, CMR agrees that any adjustment to the Guaranteed Maximum Price, the Construction Management Fee and/or the construction schedule effectuated by such Change Order is sufficient to cover all direct and indirect costs, impact costs and time extensions associated with such change.

V. COMPONENTS OF COST OF WORK FOR CONSTRUCTION PHASE.

5.1. Components of Cost of the Work. The "Cost of the Work" or "Cost of Work" refers only to the direct or indirect field costs the CMR reasonably and necessarily incurs to properly perform the Work in strict compliance with the Contract Documents, and excludes any item of cost required to be covered by the Pre-Construction Services Fee or the Construction Management Fee. The Cost of the Work includes only the cost items expressly set forth below.

5.1.1. Direct Costs. Direct costs, which include the following:

5.1.1.1. Wages of construction workers directly employed by CMR to self-perform at the Site or at Approved off-site workshops any portion of the Work competitively awarded to the CMR in accordance with Texas Government Code, §2269.255, and which shall be paid in compliance with prevailing wage rate requirements of this Contract. Such wages do not include CMR's wages of CMR's indirect management personnel assigned to coordinate and manage the Subcontractors' performance of the Work on the Project, whose services are to be compensated solely by payment of the Construction Management Fee.

5.1.1.2. Costs incurred and paid by CMR for taxes, contributions, assessments, and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages of those workers directly employed by CMR to self-perform Work as described in Section 5.1.1.1, above.

5.1.2. Subcontract Costs. Costs that CMR incurs and pays according to the terms of Approved Subcontracts competitively awarded for the performance of all major elements of the Work on the Project in accordance with Texas Government Code, §2269.255. Such costs may include the labor costs for construction workers directly employed by a Subcontractor under an Approved Subcontract to perform such portions of the Work, including Approved labor burden rates for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on the wages for such construction workers and comply with the prevailing wage rate requirements of this Contract.

5.1.3. Costs of Materials, Consumable Supplies and Equipment Incorporated into the Completed Construction. Reasonable and necessary costs of procuring materials, consumable supplies, and equipment required by the Contract Documents to be used or incorporated into the completed Project, including and subject to the following.

5.1.3.1. Reasonable and necessary costs of transportation and storage for such items.

5.1.3.2. Costs of materials in excess of those actually installed or incorporated that CMR demonstrates to have been reasonably unavoidable due to normal and customary waste and spoilage and that cannot be recovered by return or alternative uses for other purposes resulting in a credit to TFC for the cost thereof.

5.1.3.3. At TFC's option, any unused excess materials shall become TFC's property at the completion of the Work or removed from the Site and sold by CMR in a commercially reasonable manner as soon as it is reasonable to determine that they are unnecessary for the Project. Any amounts realized from such sales shall be credited to TFC to reduce the Cost of Work.

5.1.3.4. Costs for any previously used items to be installed in the Project must be Approved in advance and based on fair market value.

5.1.4. Other Costs of Construction. Other reasonable and necessary costs of construction, as follows.

5.1.4.1. Reasonable and necessary costs of renting motorized or engine powered or other specialized items of construction equipment or temporary facilities that are necessary to perform the Work at the Site. If such items are rented from the CMR's own inventory,

the amount or rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined to be the lesser of (i) those established by the "Contractor's Equipment Cost Guide," latest edition published by the Associated General Contractors of America, or (ii) the lowest of three (3) competitive bids obtained from equipment leasing companies that have been Approved by the TFC before any commitments are made. Such rental costs shall in no event be charged at higher than competitive rental rates prevailing in the Austin/Round Rock Metropolitan Statistical Area for similar equipment. In no event shall the aggregate rental cost to TFC exceed the purchase price and maintenance cost of the item. In the event the item can be purchased for an amount comparable to the aggregate rental cost thereof, CMR shall at TFC's option, either (i) purchase such item, transfer ship of it to TFC upon Final Completion, or (iii) credit TFC with the amount of the fair market resale value thereof.

5.1.4.2. Reasonable and necessary costs of furnishing hand tools, instruments and other devices (except for those customarily owned by construction workers) that are necessary to use at the Site to perform the Work; provided, however, any rates to rent any such items must be Approved in advance and all other such costs must be based on fair market value less any fair market salvage value or credit for the sale or return thereof.

5.1.4.3. Worksite debris removal and disposal costs in accordance with this Contract and Applicable Laws.

5.1.4.4. Sales, use or similar taxes imposed by a Governmental Authority that are related to the Work and for which CMR is liable and for which CMR is unable to shall avail itself of an exemption based upon TFC's tax-exempt status.

5.1.4.5. Permits, licenses, and inspections and related fees and assessments, for which CMR is required to be paid by the Contract Documents.

5.1.4.6. Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work.

5.1.4.7. Third-party intellectual property royalties and license fees paid for the use of a particular design, process, or product when specifically required by the Contract Documents and identified in the GMP Amendment establishing the Guaranteed Maximum Price for such Work; Duties with respect to Royalties and Licenses to Use Intellectual Property. CMR shall pay all royalties and license fees due in connection with the Services and the Work. CMR warrants that the Services, the Work and the use of CMR's Work Product will not infringe any patent or other proprietary right; provided, however, CMR shall only be liable to TFC for infringement of a patent or other proprietary right if it arises out of designs, processes or products in the Work that the CMR has recommended or caused to be used for or on the Project or that arise out of the use of the CMR's Work Product. Should TFC, in consultation with CMR, determine that CMR's proprietary information, data or systems will be used on the Project, CMR agrees that TFC shall be entitled to a royalty-free license to enable TFC to use CMR's proprietary information, data or system, in connection with the ongoing use and maintenance of the Project, which license agreement shall be non-exclusive, perpetual, and not require further expenditure by TFC.

5.1.4.8. Net Premiums (less return premiums, rebates and bond dividends) for insurance and bonds and deductibles for Builder's Risk insurance only as set forth in Sections 11.2.47 to the extent directly attributable to this Contract and incurred in accordance with Article XI, below. Return premiums, rebates and bond dividends shall be paid to TFC when received by CMR.

5.1.4.9. Other costs Approved in advance in writing by TFC in TFC's sole discretion.

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

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

5.1.5.2. Costs of repairing damaged Work performed by CMR or Subcontractors.

5.1.5.3. Notwithstanding the foregoing provisions of this Section 5.1.5, such costs may be included in the Cost of the Work only to the extent such costs (i) were not caused or contributed to by the CMR's or the Subcontractors' negligence, or failure to fulfill a specific responsibility, and (ii) are not covered by insurance of the CMR, sureties, Subcontractors, or others.

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

5.1.6.1. Costs of the General Conditions, as defined in Section 5.1.7, below.

5.1.6.2. Costs of salaries or other compensation of CMR's personnel not stationed at the Site and stationed at the CMR's principal office or offices, except as may be specifically provided in Section 5.1.1 above, or as may be provided in UGC Article 11.

5.1.6.3. Expenses of the CMR's home office or other principal or satellite offices.

5.1.6.4. Overhead and general expenses, including legal costs to review and negotiate the Contract Documents, except as may be expressly included in Sections 5.1.1 to 5.1.5 above.

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

5.1.6.6. Except as provided in Section 5.1.5.2 of this Contract, costs due to the negligence or failure of CMR, Subcontractors, or anyone directly or indirectly employed or

engaged by any of them, or for whose acts any of them may be liable to fulfill a specific responsibility under the Contract.

5.1.6.7. Travel and subsistence expense of CMR, its officers or employees incurred while traveling between the Project and CMR's principal or branch offices, and travel in the metropolitan area of the Project, unless Approved in advance in writing as a reimbursable expense to be charged to the Cost of the Work, in which case CMR shall require its personnel to comply, with TFC's travel reimbursement policies.

5.1.6.8. Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of CMR.

5.1.6.9. Costs resulting from the failure of CMR or any CMR's personnel to procure and maintain insurance as and to the extent required by the Contract Documents.

5.1.6.10. Any and all personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the field office at the Worksite and only as specifically permitted under this Contract.

5.1.6.11. Any and all overhead expense or office expense except as specifically permitted under this Contract.

5.1.6.12. Costs related to CMR's indemnification obligations.

5.1.6.13. Costs arising out of the CMR's failure to adhere to the standard of care, including, without limitation, costs related to defective, rejected, or nonconforming Work, materials or equipment, and damage to persons or property, including warranty Work, or other costs which should have been mitigated and avoided by CMR in the exercise of the standard of care.

5.1.6.14. Liquidated or actual damages imposed by TFC for failure of CMR to complete the Work by the Scheduled Date of Substantial Completion.

5.1.6.15. Rental costs of machinery and equipment, except to extent expressly permitted under this Contract.

5.1.6.16. Fees of testing laboratories for tests required by the Contract Documents inasmuch as those are paid by TFC directly under separate contract.

5.1.6.17. Costs due to CMR's failure to apply in a timely manner for permits for which CMR is responsible under this Contract.

5.1.6.18. Costs of acceleration of the Work arising as a result of delay in the Work caused by the negligence of CMR, or its Subcontractor or other persons over whom CMR or any Subcontractor exercises control or is legally responsible, including any and all

overtime wages, unabsorbed home office overhead, exemplary damage, or other consequential damage incurred by CMR.

5.1.6.19. Any and all costs not otherwise expressly authorized to be charged as a Cost of the Work herein, including, without limitation, any cost which would exceed a Guaranteed Maximum Price established by Contract Amendment.

5.1.6.20. Testing fees that must be incurred by CMR pursuant to the terms and conditions of this Contract.

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

5.1.6.22. Costs, exceeding the GMP as amended for any Change Orders that are Approved in advance.

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

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

5.1.7.1. Bonds and insurance premiums (but excluding deductible or self-insured retention charges for Builder's Risk insurance).

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

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

5.1.7.4. Background checks and employee identification materials.

5.1.7.5. Safety program.

5.1.7.6. Construction documentation.

5.1.7.7. Transportation.

5.1.7.8. Parking.

5.1.7.9. Temporary barriers, signage, and controls.

5.1.7.10. Cleaning and waste disposal.

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

5.2.1. Re-allocation of Certain Amounts. If the amount of the Cost of Work, CMR's Contingency and TFC Controlled Contingency, and any applicable Construction Management Fees actually incurred for a GMP is less than the allowable amount established for each of those line items in the originally approved GMP Amendment, the difference shall be re-allocated as provided in Section 4.9, above.

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

5.2.3. TFC Deductions. The TFC shall be entitled to deduct amounts for the following items from any Application for Payment or from the request for Final Payment submitted by the CMR to the extent they have previously been paid:

5.2.3.1. The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by the TFC. Upon completion of the Work or when no longer required, CMR shall either credit the TFC for the fair market value (as Approved by the TFC) for all surplus tools, construction equipment and materials retained by the CMR or, at TFC's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to the TFC's account. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Worksite by the CMR. Any materials and equipment no longer required for the Work, shall be promptly removed from the Worksite.

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

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

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

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

5.2.4. Re-allocation of Other Savings. Identified from TFC shall be entitled to require that any savings realized between the Cost of Work included in a Guaranteed Maximum Price and the actual buyout price for subcontracted packages of Work, any unused portion of CMR's Contingency for such GMP, and any unused portion of TFC Controlled Contingency for such GMP, together with any applicable Construction Management Fees on Cost of Work savings, be reallocated from the amount of such GMP to other GMP's or to TFC Controlled Contingency, in accordance with Section 4.9 of this Contract. CMR shall maintain the CMR Contingency balances among multiple GMPs with balances that are no more than reasonably necessary and appropriate to support the completion of the Work.

5.2.5. Savings Identified by Review/Audit. TFC shall be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time, for Work included in any GMP; provided however, such savings shall be reallocated from the amount of such GMP to other GMP's or to TFC Controlled Contingency, in accordance with Section 4.9 above.

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

VI. ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS.

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

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

6.1.1.1. Bidding procedures and instructions to be followed by CMR in procuring bids of Subcontractors for major elements of the Work.

6.1.1.2. Schedule of prevailing wage rates.

6.1.1.3. The PAR for inclusion in the Specifications.

6.1.1.4. Any maps, surveys, and Drawings in the possession of TFC that reflect or depict Site boundaries, recorded easements, topography, utility locations, and such other

documents in the possession of TFC that reflect Site conditions and/or restrictions which may impact the design and/or construction of the Project.

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

6.1.1.6. The Budget.

6.1.1.7. TFC's Project schedule.

6.1.1.8. The communication protocol, which includes the communication and tracking procedure to be utilized for interaction and reporting for the Project. Except as otherwise expressly provided in this Contract, communications by the CMR to TFC shall be made through the TFC's designated Project Manager. Communications to CMR's personnel, Subcontractors, Sub-subcontractors and Suppliers shall be made through the CMR. Communications by CMR with Separate Contractors shall be made through the TFC.

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

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

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

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

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

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

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

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

6.1.3. A/E. TFC has retained an A/E to provide: (i) professional architectural services and/or (ii) professional engineering services as defined in Texas Government Code, Chapter 2254, Subchapter A, the scope of both of which is set out in a separate architectural/engineering professional services agreement (hereinafter referred to as the "A/E Agreement") for this Project. Notwithstanding anything in the Contract Documents to the contrary, TFC agrees that CMR assumes no responsibility for the timely delivery and adequacy, accuracy and/or sufficiency of the plans, specifications, and drawings, as well as the suitability, soundness and safety of the design of the facilities or structures to be constructed.

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

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

6.1.3.1.2. the requirement for collaboration and cooperation with CMR in evaluating the construction assembly, components, materials, systems, constructability, costs and schedules pursuant to the successful implementation of the Project construction.

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

6.1.3.2.1. A/E shall have no authority to supervise, direct, control, or have authority over, or be responsible for CMR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto. The A/E, as a representative of TFC, will visit the Worksite at intervals appropriate to the stage of the CMR's operations: (i) to become generally familiar with and to keep the TFC informed about the progress and quality of the portion of the Work completed; (ii) to endeavor to guard the TFC against defects and deficiencies in the Work; and (iii) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, A/E will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The A/E will neither have control over or charge of, nor be responsible for, the CMR's construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the CMR's rights and responsibilities under the Contract Documents.

6.1.3.2.2. Neither A/E's authority or responsibility under the A/E Agreement or under any other provision of the Contract Documents, nor any decision made by A/E in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by A/E shall create,