



**CONSTRUCTION MANAGER-AT-RISK  
CONTRACT  
GEORGE H. W. BUSH OFFICE BUILDING  
1801 CONGRESS AVENUE  
CAPITOL COMPLEX PROJECT  
BETWEEN  
  
THE TEXAS FACILITIES COMMISSION  
AND  
  
FLINTCO, LLC**

**CONSTRUCTION MANAGER-AT-RISK  
CONTRACT  
BETWEEN  
THE TEXAS FACILITIES COMMISSION AND  
FLINTCO, LLC**

The Texas Facilities Commission, a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 (hereinafter referred to as "TFC"), as Owner (as defined in UGC Section 1.28) and Flintco, LLC, a wholly owned subsidiary of AIH Flintco, LLC, located at 8100 Cross Park Drive, Austin, Texas 78754 (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 generally described as Capitol Complex Central Utility Plant Expansion and Utility Tunnel 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 2018 Supplementary General Conditions, and the Special Conditions, a digital copy of each of which is incorporated herein by reference for all purposes in portable document format ("PDF") on the compact disk attached hereto and labeled, "TFC Contract No. 18-160-000 / Flintco, LLC / 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, and includes any licensed professionals and other personnel working under 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, 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 judgement 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 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 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 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 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 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 CMR, A/E, and TFC establishing the date of Substantial Completion, as defined in UGC Section 1.44, for the applicable part of the Work, as defined in UGC Section 1.48, and identifying responsibilities for security and maintenance as set out in UGC Section 12.1.1.2.

1.1.10. CMR Agreement, Contract, or Agreement means 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.

1.1.11. 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 GMP as a Cost of the Work. The maximum amount of the CMR Contingency is set forth in Section 4.3.4.

1.1.12. 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.

1.1.13. CMR's Initial Pre-Construction Fee Schedule and Staffing Plan means the fee schedule that provides for payment of 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 attached hereto and incorporated herein for all purposes as "Exhibit D."

1.1.14. 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.

1.1.15. 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

1.1.16. Conceptual Design Phase means that stage of a Project culminating in the preparation and submission of a proof of concept by A/E of the Conceptual Design Package based on CMA's and Master A/E's review of Owner's Design Program and the Master Plan. The proof of concept will include the alternative approaches to designing the Projects as evaluated by CMA and Master A/E while taking into consideration the requirements of the Projects and the Program Budget.

1.1.17. Construction Manager Agent or CMA means Balfour Beatty Construction, LLC, the service provider engaged hereunder as TFC's fiduciary agent to assist TFC with management and coordination of the overall design and construction program for the Capitol Complex Projects.

1.1.18. 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.

1.1.19. 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.

1.1.20. 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 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 TFC in its sole discretion from time to time as further assessments, and design and construction cost estimates are developed by the Project Team.

1.1.21. 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").

1.1.22. Construction Management Fee means, subject to the provisions of UGC Section 11.8, the fee derived by multiplying the percentage factor of 2.45 percent (2.45%) times the sum of the following: (i) the Cost of Work, including any portion of the Construction Manager 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 funds out of TFC Controlled Contingency to pay for a Cost of Work.

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

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. *Deliverables* means any and all drawings, specifications, photos, designs, studies, sketches, computer files, 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 UGC Sections 1.7 and 1.34.

1.1.28. *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.

1.1.29. *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.

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

1.1.31. *Environmental Laws* means any local, state, or federal law, rule, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, as may be amended from time to time: (i) the Resource Conservation and Recovery Act of 1976 (“RCRA”) (42 U.S.C. § 6901 *et seq.*), as amended by the Used Oil Recycling Act of 1980 (Pub. L. No. 96-463, 94 Stat. 2055 (1980)), the Solid Waste Disposal Act Amendments of 1980 (Pub. L. No. 96-482, 94 Stat. 2334 (1980)), and the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98-616, 98 Stat. 3221 (1984)), and regulations promulgated thereunder; (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613 (1986)), and regulations promulgated thereunder; (iii) the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*); (iv) the Endangered Species Act of 1973 (15 U.S.C. § 1531 *et seq.*) and its amendments; (v) laws, statutes, ordinances, rules, regulations, orders, or determinations relating to “wetlands,” including without limitation those set forth in the Federal Water Pollution Control Act (commonly referred to as the “Clean Water Act”) (33 U.S.C. § 1251 *et seq.*); (vi) the Texas Water Code; and (vii) the Texas Solid Waste Disposal Act (Tex. Health & Safety Code Ann. §§ 361.001–361.345 (West 2016 & Supp. 2016)).

1.1.32. *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 CMA and Approved by TFC.

1.1.33. **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 TFC, A/E, all building inspectors, and all other Governmental Authorities, as evidenced by the issuance of a certificate of Final Completion signed by CMA, CMR, and A/E.

1.1.34. **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.

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

1.1.36. **General Conditions Fee** means the fixed, lump sum fee that is included in the Guaranteed Maximum Price.

1.1.37. **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 CMR.

1.1.38. **GMP Amendment** means the document in the form attached hereto as the GMP Acceptance Template, “Exhibit E,” 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 GMP(s) for the Project.

1.1.39. **GMP Proposal** means CMR’s written offer to TFC, which includes, among other things, a proposed GMP to establish one or more Guaranteed Maximum Price(s) for the Project.

1.1.40. **Guaranteed Maximum Price** or **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. A GMP is organized to include a breakdown of costs including the Preconstruction Fee, Construction Management Fee, General Conditions Fee, Cost of Work (including the CMR’s Contingency) and the TFC Controlled Contingency.

1.1.41. **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.

1.1.42. 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.

1.1.43. 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 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.

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

1.1.45. Notice to Proceed or 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.

1.1.46. 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.

1.1.47. 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.

1.1.48. 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.



1.1.49. 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.

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

1.1.51. 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.

1.1.52. 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.

1.1.53. 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.

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

1.1.55. 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.

1.1.56. 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.

1.1.57. 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.

1.1.58. 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.

1.1.59. 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.

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

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

1.1.62. Project Team means 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.

1.1.63. 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.

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

1.1.65. RFQ means the TFC Request for Qualifications No. 303-7-01932 issued on July 27, 2017.

1.1.66. 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 Master A/E.

1.1.67. 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 Master A/E.

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

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

1.1.70. 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.

1.1.71. 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.

1.1.72. 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.

1.1.73. 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.

1.1.74. Standard of Care means CMR's Standard of Care defined in Section 7.1.1.

1.1.75. 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 4.8, 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.

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

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

1.1.78. **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 occupancy, partial occupancy and use for its intended purposes, excluding only minor portions of the Work that 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.

1.1.79. **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.

1.1.80. **TFC Controlled Contingency** means the amount of funds designated by TFC, which funds are not part of the GMP, but are reflected on the GMP Amendment as a separate fund available for TFC's exclusive use for the Project.

1.1.81. **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 A/E, and CMR, and supervising TFC's review and approval of the Services and Work.

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

1.1.83. **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 CMR(s) to fulfill CMR's obligations hereunder. The term *Work* may refer to or constitute the whole or a part of the Project.

1.1.84. **Work Product** means all work product generated in relation to the Project, including all instruments of service, submittals, Drawings, Specifications, Project Manuals, Conceptual Design Packages, 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.**

**2.1. Description of Project.** The Project is the construction of a new State office building at 1801 Congress Avenue, in the Capitol Complex in Austin, Texas.

**2.1.1.** The Project is Package 4 of the Capitol Complex Phase 1, and is a new State of Texas office building located at 1801 Congress Avenue, located on existing Parking Lot 7 east of the Texas State History Museum. The building is approximately 603,000 square feet and is fourteen floors above grade, and includes five levels of below grade parking, and eight levels of above grade parking. CMR shall provide preconstruction services, construction management, closeout and warranty phase services for the following:

- 2.1.1.1. 1801 Congress Building core and shell;
- 2.1.1.2. 1801 Congress main building lobby and lobby finishes;
- 2.1.1.3. 1801 Congress above-grade parking garage;
- 2.1.1.4. below-grade parking garage under the 1801 Congress building,  
up to grid line 7;
- 2.1.1.5. interior finish out of all shared, base-building spaces;
- 2.1.1.6. core and shell impacts of the future cultural venue / museum;
- 2.1.1.7. interior fit-outs for state agencies;
- 2.1.1.8. fixed furnishings, casework, modular furniture;
- 2.1.1.9. technology infrastructure and cabling;
- 2.1.1.10. exterior building signage and lighting;
- 2.1.1.11. utilities within five feet of the building exterior walls; and
- 2.1.1.12. all related traffic control, stormwater pollution prevention plan  
(SWPPP), and all related permits.
- 2.1.1.13. incidental excavation for utility connections, perimeter beams,  
elevator pits, etc.

2.1.1.14. site improvements specifically defined in the conceptual design packages as described in section 1.1.15.

2.1.2. The following items are not included in scope of services:

2.1.2.1. mass excavation;

2.1.2.2. utility relocation beyond ancillary relocation associated with permanent utility connections;

2.1.2.3. interior fit-out of the cultural venue;

2.1.2.4. fit-out of food service spaces;

2.1.2.5. loose building furnishings;

2.1.2.6. interior fit-outs for state agencies. These portion(s) of the scope of services will be accomplished at later dates through written amendment(s) signed by the parties to this contract and the pre-construction fees will be negotiated accordingly. The future fit-out also includes, but is not limited to, the Texas Lottery Commission studio space.

2.1.2.7. BIM input for facilities management and life cycle use. (Will be addressed in an Amendment.)

2.2. 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 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.

2.2.1. 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.

2.2.1.1. During the performance of Pre-Construction Services CMR shall complete the following.

2.2.1.1.1. CMR shall 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 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 TFC, and in Construction Specifications Institute Division 1-49 format for, each portion of the Work, in such format to be approved by TFC.

2.2.1.1.2. CMR shall 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.

2.2.1.1.3. 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 CMR to perform estimating, value analysis and other functions to help TFC meet the Project Budget and deliver the Project within the GMP(s) to be established hereunder. CMR shall promptly advise 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, CMR shall make appropriate recommendations to TFC to get the Project within budget.

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

2.2.1.2.1. 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.

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

2.2.1.2.3. 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.

2.2.1.2.4. 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 the following.

2.2.1.2.4.1. 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.

2.2.1.2.4.2. 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 TFC at TFC's sole option and discretion.

2.2.1.2.4.3. Value analysis on construction systems and major construction components as they are developed, including but not limited to the mechanical systems, exterior envelopes, structural systems, roofing systems, lighting and power services (for any portion of the Project). CMR shall update and distribute at regular intervals a variance report of actual and projected costs for the Project, and in the event the projected Cost of the Work relating to one or more Design Packages will exceed the applicable line items in the control estimate, develop and implement reasonable strategies to be Approved by TFC to reduce costs to stay within the GMP and the Construction Cost Limitation. CMR and A/E will conduct a series of value analysis workshops both during the design phase of the Project and after the Construction Documents are issued to develop cost saving recommendations for the Project. The terms "value engineering" or "Value Analysis" are intended to have their commonly accepted meanings according to the Society of American Value Engineers (SAVE), and shall not imply the unlicensed practice of architecture or professional engineering by CMR. CMR is not required, in connection with value analysis, to render services that would constitute the professional practice of architecture or engineering, and any value analysis activities of CMR shall be reviewed and Approved by an architect or engineer licensed in Texas for or on behalf of TFC.

2.2.1.2.4.4. At each design phase, review the Drawings and Project Manual as they are being prepared, advise TFC, 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 A/E's professional responsibility).

2.2.1.2.4.5. Consult with TFC, 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.

2.2.1.2.5. 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.

2.2.1.2.6. 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, 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.

2.2.1.2.7. 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.

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

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

2.2.2.1. 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; (ii) Design Development; (iii) 65% Construction Documents; and (iv) 95% Construction Documents. CMR shall provide thorough and careful review of the Construction Documents, Construction Schedule and other Contract Documents. CMR will carefully and timely review, and promptly call to the attention of 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 CMR (by A/E, 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 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, 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. CMR's issuance of written advice in the form of a request for information to 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 CMR to proceed in accordance with the data as originally given, notwithstanding any contrary request for action to resolve such issues.

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

2.2.2.2.1. 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.

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

2.2.2.2.3. 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.

2.2.2.2.4. 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.

2.2.2.2.5. 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™.

2.2.2.2.6. Following TFC's acceptance of 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.

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

2.2.3.1. 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.

2.2.3.2. CMR shall actively participate in the efforts of TFC, Master A/E, CMA and A/E to develop the final Conceptual Design 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.

2.2.3.3. CMR shall prepare and deliver formal review comments in accordance with the requirements of the TFC Coordinated Document Review Process and the schedule established therein.

2.2.3.4. If necessary, CMR shall consult with TFC, 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.

2.2.3.5. 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.

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

2.2.4.1. 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.

2.2.4.2. 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.

2.2.4.3. 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 CMR's duty to control costs to deliver the Project within the GMP(s) and the Construction Cost Limitation. 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 CMR's fees, shall in no event exceed the Construction Cost Limitation, as may be amended by TFC in accordance with this Contract. CMR's maximum compensation for all Services, including the Work, shall be: (i) the Pre-Construction Services Fee; (ii) the Construction Management Fee, General Conditions Fee; (iii) the Cost of the Work in accordance with the Contract Documents; and (iv) 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 by TFC in accordance with this Contract.

2.2.4.3.1. If such estimated costs exceed the Budget by more than fifteen percent (15%), CMR shall consult with TFC, 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.

2.2.4.3.2. 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.

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

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

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

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

2.2.5.3. Following the 65%, and 95% 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.

2.2.5.3.1. If such updated Cost Estimate exceeds the Budget by more than ten percent (10%) for the 65% review, or by any amount for the 95% 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.

2.2.5.3.2. 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.

2.2.6. 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.

2.2.6.1. 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.

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

2.2.6.3. 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 one hundred twenty (120) days after issuance of the GMP Notice to Proceed.

2.2.6.4. 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 CMR's award of Subcontracts on a best value basis.

2.2.6.5. 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.

2.2.6.6. 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 CMR, CMA, 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 CMR's opinion, the best value to TFC, taking into account price, terms and conditions, financial capability to perform the Work, qualifications and history of performance, safety, and responsiveness.

2.2.6.7. 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.

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

2.2.6.9. 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 be 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.

2.2.6.9.1. CMR may seek to perform portions of the Work itself if 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.

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

2.2.6.9.3. 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.

2.2.6.9.4. Within forty (40) 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 CMR and the surety on the Bid Bond.

2.2.6.10. 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.

2.2.6.11. CMR shall include a written statement of its basis for calculation with each GMP Proposal. The statement shall include the following.

2.2.6.11.1. 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 2.1.6.9.1, above.

2.2.6.11.2. 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.

2.2.6.11.3. 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.

2.2.6.11.4. A Statement of GMP, which sets out, at a minimum, statements that separately identify the following fees and costs, the sum of which shall be the GMP upon Approval thereof: (i) the Pre-Construction Services Fee; (ii) General Conditions Fee; (iii) Cost of the Work, including all allowances; (iv) the CMR Contingency; and (v) Construction Management Fee. TFC Controlled Contingency shall be shown as a line item separate and apart from the GMP, and shall not be included in the GMP. A digital copy of the Statement of GMP shall be incorporated herein by reference for all purposes.

2.2.6.11.5. 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.

2.2.6.11.6. 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.

2.2.6.11.7. 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.

2.2.6.11.8. 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.

2.2.6.11.9. 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.

2.2.6.11.10. 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.

2.2.6.11.11. 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.

2.2.6.12. 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.

2.2.6.13. 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 2.2.6.9.1, 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 CMR incurs because of TFC's requirement that another bid or proposal be accepted.

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

2.2.6.15. The GMP Amendment shall, in accordance with the accepted GMP Proposal, 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.

2.2.6.16. 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.

2.2.6.17. 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.

2.2.6.18. 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.

2.2.6.19. At such time that the GMP Amendment has been executed and CMR has submitted the payment and performance bonds as required by Article 11, 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 CMR's written request.

2.2.6.20. 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.

2.2.6.21. 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.

2.2.6.22. 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; (ii) all proof of insurance as required by this Contract; (iii) a safety plan as specified in UGC Section 7.1; and (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.

2.2.7. 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 UGC 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.

2.2.7.1. 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 1.35, and other submittals, processing Applications for Payment, as defined in UGC Section 1.1, maintaining required records, designation of Project Managers, and any other subject as may be determined by TFC to be appropriate, shall be the subject of said meeting.

2.2.7.2. CMR's duty to maintain records shall include the following.

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

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

2.2.7.2.3. 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.

2.2.7.2.4. 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.

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

2.2.7.2.6. 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 TFC, CMA and A/E in the EPCMS, and shall be delivered to TFC upon completion of the Work.

2.2.7.2.7. 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.

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

2.2.7.3. 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.

2.2.7.4. 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.

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

2.2.7.6. Immediately upon the GMP Notice to Proceed date, CMR shall assume full responsibility for all materials and equipment assigned to CMR by TFC for Project-related items purchased by TFC. CMR shall expedite and coordinate delivery and installation of TFC-procured materials and equipment;

2.2.7.7. CMR warrants that title to all Work covered by an Application for Payment will pass to TFC no later than the time of payment. CMR further warrants that all Work is and shall remain free and clear of liens, claims, security interests or encumbrances in favor of 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.

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

2.2.7.9. 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.

2.2.7.10. 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.

2.2.7.11. 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.

2.2.7.12. 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.

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

2.2.7.14. 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.

2.2.7.15. 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, CMR shall remove from and about the Worksite waste materials, rubbish, CMR's tools, construction equipment, machinery and surplus materials. 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. CMR shall perform final cleanup prior to Final Completion of the Work, including without limitation the following:

2.2.7.15.1. remove all temporary protections;

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

2.1.7.15.3. remove marks, stains, fingerprints and other soil or dirt from all surfaces and other Work;

2.1.7.15.4. remove spots, mortar, plaster, soil and point from ceramic tile, marble and other finish materials from all surfaces and other Work;

2.1.7.15.5. clean fixtures, cabinetwork and equipment, removing stains, paint, dirt, and leave in an undamaged and new condition; and

2.1.7.15.6. clean all surfaces and other Work in accordance with recommendations of the manufacturer.

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

2.2.7.17. 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.

2.2.7.18. 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.

2.2.7.19. 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. CMR shall be solely responsible for acquiring the right to temporarily use any additional space outside the limits of construction and the boundaries of the Site, such as laydown areas or temporary access areas, which CMR desires or needs to perform the Work.

2.2.7.20. 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.

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

2.2.7.22. 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 CMR.

2.2.7.23. 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.

2.2.7.24. 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.

2.2.7.25. 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.

2.2.7.25.1. 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.

2.2.7.25.2. 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.

2.2.7.26. 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.

2.2.7.27. 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.

2.2.7.27.1. 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.

2.2.7.27.2. CMR shall, within ten (10) calendar days after receipt of TFC's 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.

2.2.7.28. 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.

2.2.7.28.1. 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.

2.2.7.28.2. 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.

2.2.7.28.3. 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.

2.2.7.28.4. 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.

2.2.7.28.5. 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.

2.2.7.28.6. 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.

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

2.2.7.29. 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.

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

2.2.8.1. CMR shall identify to TFC, for TFC's Approval, CMR's key personnel, including CMR's key subconsultants 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 review resumes and interview 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.

2.2.8.2. 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.

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

2.2.8.4. 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.

2.2.8.5. 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 TFC, A/E, and others on the Project.

2.2.8.6. 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.

2.2.8.7. 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. A/E will prepare documents required, make filings and obtain on TFC's behalf all approvals of governmental authorities having jurisdiction over the Project, including permits necessary to enable CMR to pay for and obtain any required building or regulatory permits for construction of the Project. 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 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.

2.2.8.8. 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.



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

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

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

2.2.8.12. 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.

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

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

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

2.2.7.16. CMR shall maintain work progress and products consistent with the schedules. CMR shall monitor the Work of 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 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

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

2.2.8.18. 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.

2.2.8.19. 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.

2.2.8.20. 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.

2.2.8.21. 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.

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

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

2.2.9.1. 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.

2.2.9.2. 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.

2.2.9.3. 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.

2.2.9.4. 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.

2.2.9.5. 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.

2.2.9.6. 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 May 31, 2022, 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 CMR. An adjustment shall be made to CMR's compensation calculated under UGC Section 14.1. The adjustment of CMR's compensation shall include a deductive adjustment to 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 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 of all materials, equipment, tools, construction equipment, and machinery thereon owned by CMR under any of the following circumstances, each one of which shall be considered a material breach of this Contract. Accept assignment of subcontracts pursuant to this Contract; and Complete the Work by whatever reasonable method TFC may deem expedient.

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 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. CMR may make substitutions only with the Approval, after evaluation by 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 A/E to determine whether the proposed substitution is in fact equal or of better value than the requirements of the Construction Documents. If 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 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, which, for all portions of the Project and all GMPs, shall not exceed the sum of One Million One Hundred Fifty-Two Thousand Six Hundred Four and No/100 Dollars (\$1,152,604.00) for the project, an allocable portion of which shall be shown in each GMP Amendment covering each portion of the Project. The Pre-Construction Services Fee above includes services to support the Core and Shell Package for the Project and as indicated in Section 2.1.1.

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. CMR Fee shall not be paid on the value of TFC provided equipment.

4.3. Components of the GMP. Upon execution of a GMP Amendment, the total amount of payments to 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 One Million One Hundred Fifty-Two Thousand Six Hundred Four and No/100 Dollars (\$1,152,604.00) for the Project, an allocable portion of which shall be shown in each GMP Amendment covering each portion of the Project. The Pre-Construction Services Fee is part of the Total Project GMP. The Pre-Construction Services Fee(s) for tenant agencies to be determined will be negotiated at the appropriate times.

4.3.2. **Construction Management Fee.** The Construction Management Fee, which is a percentage fee, calculated by multiplying a percentage factor of 2.45% times the Cost of Work or Four Million Two Hundred Thirty-Eight Thousand Five Hundred and No/100 Dollars (\$4,238,500.00) 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 Nine Million Three Hundred Thirty-Two Thousand and No/100 Dollars (\$9,332,000.00), an allocable portion of which shall be shown in 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 One Hundred Seventy-Three Million and No/100 Dollars (\$173,000,000.00). The CMR Contingency shall be reflected in the Cost of 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 document 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 Five Million and No/100 Dollars (\$5,000,000.00), which sum shall be maintained through construction, and, shall be included in the Contract Sum and the GMPs, but CMR shall not use such funds unless and until TFC elects to use, apply, or otherwise credit such funds to pay for a change in the Work as a Cost of Work that is not the responsibility of CMR, or due to the fault or negligence of 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.

4.3.6. **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 returned to TFC at the completion of such Work through a Change Order Approved by TFC to credit such unused amounts from such GMP and debit them to one or more other GMPs for which the Work is incomplete, as required in Section 4.10, 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.

4.4. Total Project GMP. The sum of all GMPs for all portions of the entire Project shall be considered the "Total Project GMP." The Total Project GMP shall not exceed One Hundred Ninety-Two Million Seven Hundred Twenty-Three Thousand One Hundred Four and No/100 Dollars (\$192,723,104.00), 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 to Total Project GMP with respect to TFC's election to use TFC Controlled Contingency for TFC-directed changes, 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 Total Project GMP.

4.4.1. GMP Cost Overrun. 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.

4.4.2. GMP Savings. If there are any savings realized in actual expenditures for the Cost of Work in a GMP, those savings shall be returned to TFC in accordance with Section 4.8, below, at the earlier of: (i) the conclusion of the Work covered by such GMP; or (ii) conclusion of the Work covered by all GMPs for the entire Project. Returned savings shall include the proportionate amount of the fees allocable to the Cost of Work savings, based upon the percentage that the amount of each fee included in a GMP bears to the original Cost of Work included in such GMP.

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

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

4.5.2. 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.

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

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

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

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

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

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

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

4.5.3.1. As of the date of the pay application, contractor is in compliance with UGC Section 2.2.1.

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

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

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

4.5.3.5. 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.

4.5.4. 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.

4.5.5. 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.



4.5.6. 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.

4.5.7. 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.

4.6. 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 Construction Change Directive 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 shall be calculated in direct proportion to and based upon the net decrease in the estimated Cost of the Work for such scope decrease.

4.6.1. 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.

4.6.2. 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.

4.7. 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 CMR, or due to the fault or neglect of 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, a 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 a resulting increase (or decrease) to the Cost of Work, and 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 1.1.22 and 4.3.2, above.

4.8. 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 4.3.2, 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.

4.9. 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.

4.10. 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 Fee. 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.

4.11. 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 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 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 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 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 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 (ii) 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 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. 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 CMR's or the Subcontractors' negligence, or failure to fulfill a specific responsibility; and (ii) are not covered by insurance of 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 Fee, 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 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 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 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 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 (Cost for subcontractor employee background checks and identification materials as provided under the obligations of a subcontract may be charged as Cost of Work);

- 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; and
- 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 4.8, above.

5.2.2. Unused Amounts. 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 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. 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 CMR. TFC shall be entitled to retain 100% of the balance of any unused allowance amount.

5.2.3. Deduction from Application for Payment. 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 CMR.

5.2.3.1. The fair market value of all tools, surplus materials, construction equipment, and temporary structures that were charged to the Work (other than rental items) but were not consumed during construction or retained by TFC. Upon completion of the Work or when no longer required, CMR shall either credit TFC for the fair market value (as approved by TFC) for all surplus tools, construction equipment and materials retained by 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 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 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 CMR through advance or prompt payments funded by TFC. CMR shall obtain all possible trade and time discounts on bills for material furnished, and shall pay bills within the highest discount periods. CMR shall purchase materials for the Project in quantities that provide the most advantageous prices to TFC.

5.2.3.3. Rebates, discounts, or commissions obtained by 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 CMR.

5.2.3.5. Balances remaining on any allowances, the CMR's 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 4.8 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 from Cost 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 4.8 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. 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 including the following requirements:

6.1.1.8.1. except as otherwise expressly provided in this Contract, communications by CMR to TFC shall be made through TFC's designated Project Manager;

6.1.1.8.2. communications to CMR's personnel, Subcontractors, Sub-Subcontractors and Suppliers shall be made through the CMR; and

6.1.1.8.3. communications by CMR with separate contractors shall be made through 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 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; and

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

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

6.1.2.1. Assuming satisfactory completion of any TFC required 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.

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.

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

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

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

6.1.3.2.1. A/E shall have no authority to supervise, direct, control, or have authority over, or be responsible for CMR's means, methods, techniques,

sequences, or procedures of construction, or the safety precautions and programs incident thereto. A/E, as a representative of TFC, will visit the Worksite at intervals appropriate to the stage of CMR's operations: (i) to become generally familiar with and to keep TFC informed about the progress and quality of the portion of the Work completed; (ii) to endeavor to guard 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. A/E will neither have control over or charge of, nor be responsible for, 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 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, impose, or give rise to any duty in contract, tort, or otherwise owed by A/E to CMR, any Subcontractor, to any surety for or employee or agent of any of them. In no event shall TFC or A/E or their consultants or any other party engaged by or on behalf of TFC, have control over, be in charge of, or be responsible for CMR's construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely CMR's responsibility. TFC will not be responsible for the CMR's failure to carry out the Work in accordance with the Contract Documents. TFC will not have control over, be in charge of, and will not be responsible for the acts or omissions of CMR, its personnel, Subcontractors, Sub-Subcontractors, Suppliers or their agents or employees, or of any other persons performing portions of the Work.

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

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

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

6.2.1.1. communication protocols;

6.2.1.2. procedures for budget management and monthly reporting;

- 6.2.1.3. schedule management procedures;
- 6.2.1.4. quality assurance/ construction inspection procedures;
- 6.2.1.5. procedures for filing systems;
- 6.2.1.6. procedures for correspondence and transmittals;
- 6.2.1.7. procedures for requests for information;
- 6.2.1.8. protocols for submittals;
- 6.2.1.9. procedures for meetings;
- 6.2.1.10. procedures for issues tracking;
- 6.2.1.11. procedures for reporting (weekly/monthly);
- 6.2.1.12. protocols for data use and record/document management;
- 6.2.1.13. project closeout procedures;
- 6.2.1.14. safety procedures;
- 6.2.1.15. protocols for design and cost reviews;
- 6.2.1.16. commissioning procedures; and
- 6.2.1.17. procedures to manage project scheduling, sequencing, phasing and partitioning.

6.2.2. Timely Delivery of Conforming Services. CMR will, subject to Force Majeure events, as defined in Section 12.12 below, timely provide the Construction Management Services and construct the Project in conformity with, and as specified in, this Contract, the UGC, the Supplementary General Conditions, any Special Conditions, and the Construction Documents. TFC reserves the right to impose liquidated damages as to each design/construction package, to be determined at the time of GMP development.

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

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

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

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

6.2.3.4. Cooperate with TFC's commissioning agents (both building envelope and mechanical systems) to complete all commissioning activities and oversee TFC taking possession of completed Projects or completed portions thereof. Coordinate all commissioning activities, including submission of all commissioning reports, plans and other verification documents and establish and coordinate post-construction commissioning prior to expiration of warranties and guarantees.

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

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

6.2.3.7. Conduct all required training of TFC property management, operations and maintenance personnel for care and maintenance of the new facilities in accordance with the Approved training plan.

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

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

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

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

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

6.2.4. Risk of Loss. To the extent (i) not covered by the Builder's Risk Insurance required under this Contract, and (ii) not attributable, directly or indirectly, in whole or in part, to

the fault or negligence of CMR, its Subcontractors, or their consultants or anyone employed by any of them for whose acts or omissions any of them may be liable, CMR shall bear all losses, damage, or injury to the Work except to the extent attributable to (a) errors in the Construction Documents that, in the exercise of the Standard of Care, could not have reasonably been foreseen by CMR, its Subcontractors, or their consultants or anyone employed by any of them for whose acts or omissions any of them may be liable, or (b) acts or omissions that are committed despite the CMR's delivery of its written recommendations for the specific avoidance thereof by the Owner, A/E, or A/E's consultant or anyone employed by any of them for whose acts or omissions any of them may be liable.

6.2.5. Limitation of Authority. CMR agrees that the TFC Project Manager shall not have any express or implied authority to vary or otherwise amend the terms and conditions of this Contract in any way, or waive strict compliance with the terms and conditions of this Contract, except as to the deadlines set out in Section 2.2 above, any deviation from which must be evidenced by the TFC Project Manager in writing.

6.2.6. CMR Safety. CMR and all CMR Personnel conducting work or Services for TFC shall abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of CMR and Subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. TFC, in its sole discretion, may at any time order in writing a temporary stand-down of CMR's performance of the Services ("Safety Stand-Down Order") as a result of any one or more Safety Incidents, whereupon CMR shall immediately direct all CMR Personnel to stop all Services while CMR conducts a comprehensive review of CMR's safety management plan and any Site conditions affecting safety at any Project Site, for the purpose of: (i) identifying any safety hazards and unsafe working conditions; (ii) conducting safety training of the CMR Personnel involved in performance of the Services who were or may have been exposed to harm in connection with such Safety Incident(s); and (iii) taking any corrective action that CMR determines to be necessary and appropriate to fulfill its obligations in accordance with this Contract. Upon receipt of TFC's Safety Stand-Down Order, CMR shall not resume performance of the Services until it has issued to TFC a written report, which shall be due within forty-eight (48) hours of the receipt of TFC's Safety Stand-Down Order, detailing the course of action that CMR has taken, or plans to take, to resolve the Safety Incident(s) described therein, and to prevent the recurrence thereof. After reviewing such course of action with TFC, CMR shall, in the exercise of CMR's reasonable judgment, propose the date by which CMR will complete all corrective action. Services shall resume only upon TFC's delivery of further written notice to CMR withdrawing the TFC's Safety Stand-Down Order, which notice of withdrawal shall not be issued until TFC is reasonably satisfied that CMR has sufficiently implemented all appropriate corrective action as necessary to enable CMR to safely resume Services, fulfill its contractual obligations set forth in this Contract, and thereby avoid recurrence of the Safety Incident(s). CMR shall not be entitled to an adjustment of the CMR's Compensation, or the Professional Services Schedule, as the result of TFC's issuance of a Safety Stand-Down Order. If CMR fails to implement the corrective action in the manner proposed by CMR and determined by TFC to be reasonably acceptable, such failure shall be deemed a material breach of this Contract and TFC may, without further notice, terminate this Contract for cause. In responding to any Safety Stand-Down Order, CMR's evaluation of the need for, and its plan of, corrective

action shall be undertaken as an independent contractor, pursuant to Section 12.3, and nothing herein shall be construed or interpreted to mean that TFC has assumed or agreed to assume any duty of care to the CMR Personnel, or to provide guidance or instruction as to CMR's means and methods for managing safety as required by this Contract. Any action taken by TFC hereunder to enforce TFC's rights to require CMR to fulfill its safety obligations under this Contract shall be deemed to be undertaken solely for the purpose of fulfilling TFC's contractual expectation of results in terms of delivery of the Projects without causing injury or harm to persons or property.

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

6.2.7.1. No work, installation or other services shall be undertaken by CMR except with the prior written authorization of the TFC Project Manager. Services and Work performed without the prior written authorization of the TFC Project Manager is work outside the scope of this Contract and shall be performed exclusively at CMR's risk and expense.

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

6.2.7.3. CMR agrees to cooperate and coordinate its work and Services with that of other members of the Project Team. Upon discovery of an apparent conflict in the sequencing of work or Services with another Service Provider, CMR shall report the concern to the TFC Project Manager.

6.2.8. Identification of CMR Project Executive, Project Manager, and Project Superintendents. The CMR Project Manager identified in the initial list of project executives, Project Managers, and project superintendents (hereinafter referred to as the "CMR List of Staff"), a digital copy of which is incorporated herein by reference for all purposes in PDF on the Exhibits CD and labeled therein as "Exhibit G" will supervise the efforts of CMR to timely provide TFC



with the Construction Management Services. The updated CMR List of Staff shall be delivered to TFC no later than the date of execution of the GMP Amendment Acceptance so as to reflect all of CMR employees, including the project executive, the Project Manager, and the project superintendents that are engaged by CMR to provide TFC with the Construction Management Services. The updated CMR List of Staff shall automatically become, simultaneously upon the execution of the GMP Amendment Acceptance, and without further notice, the effective CMR List of Staff, which shall replace the initial CMR List of Staff.

6.2.8.1. The “CMR Project Manager” and project superintendents must be committed to the Project on a full-time basis. TFC reserves the right to approve the appointment of the CMR Project Manager and to demand that the CMR Project Manager and the project superintendents, and any of CMR’s employees, including the project superintendents or Subcontractors, be removed and replaced if, in the sole opinion of TFC, their performance on this Project or any other Projects, is and/or was not adequate or their continued involvement with the Project will, is, or has become, detrimental to the timely and successful completion of the Project, including but not limited to, for such reasons as: (i) any past or present violation of any statute, rule, regulation, or ordinance of any city, county, the State of Texas, or the United States, or any other Laws and Regulations; (ii) TFC’s reasonable belief that failure to obtain an acceptable criminal background check will occur; (iii) prior unsatisfactory performance on other TFC projects; and (iv) any other like reasons.

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

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

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

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

6.2.12. General and Criminal Background Checks.

6.2.12.1. CMR represents and warrants that CMR and CMR’s employees have not been convicted of a felony criminal offense, or of a crime involving moral turpitude, or

that, if such a conviction has occurred, CMR has fully advised TFC as to the facts and circumstances surrounding the conviction.

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

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

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

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

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

6.2.14. E-Verify. By entering into this Contract, CMR certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system, in accordance with the U.S. Department of Homeland Security's rules, to determine the eligibility of: (i) all persons employed to perform duties within the State of Texas, during the term of the Contract; and (ii) all persons (including subcontractors) assigned by CMR to perform work pursuant to the Contract, within the United States of America.

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

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

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

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

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

6.2.20. Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations. In accordance with Section 2251.152 of the Texas Government Code, TFC is prohibited from entering into a governmental contract (as defined in Texas Government Code Section 2252.151(3)) with a company that is identified on a list prepared and maintained under Texas Government Code Section 806.051, 807.051, or 2252.153. If contractor is on the above-referenced list the Contract will be considered void or voidable and TFC will not be responsible to pay Contractor for any work performed.

## **VII. WARRANTIES AND REPRESENTATIONS BY CMR.**

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

7.1.1. CMR's Standard of Care. CMR shall, in the performance of the Services and Work, comply with the standard of care described herein. Notwithstanding anything to the contrary contained in this Contract, TFC and CMR agree and acknowledge that TFC has entered into this Contract in reliance on CMR's special and unique construction and design management

abilities to perform its obligations hereunder. CMR accepts that, by this Contract, a relationship of trust and confidence is hereby established between it and TFC. CMR understands the complexity involved in this type of construction and the necessity of coordination of the performance of its Services with the Project Team. In addition to the foregoing, and in addition to the rights and remedies otherwise existing under this Contract, at law or in equity, CMR will perform, or Cause to be performed, all Services and Work expeditiously, and in no event later than is required to conform, as applicable, to the construction schedule, and shall do so with that degree of professional skill and care practiced by firms similar to it, using similar collaborative project planning and management methods, and having industry leading knowledge and skill for the planning and management of construction projects of comparable complexity and value, and engaged in the providing of similar services for major building construction projects of comparable value in the United States under the same or similar circumstances as described in the Request for Qualifications. CMR will furnish efficient business administration and superintendence and perform the Services in such manner as to provide TFC the best value. CMR shall employ and exercise the professional judgment of its experienced and qualified construction professionals to provide TFC confidence that the Projects will be completed in conformity with the design concepts and construction requirements established by TFC, and it is the intention of the parties that CMR shall, at all times, act in TFC's best interests with respect to the performance of the Services and the management of all aspects of the Projects. CMR shall, at all times, exercise exclusive direction and control, and shall be responsible for proper supervision of all its CMR Personnel, Subcontractors, and subconsultants while present on the Worksites and otherwise. The standard of care required hereunder shall not, however, be deemed to alter or expand CMR's common-law duty to TFC with respect to liability for, or the duty to indemnify, defend or hold TFC harmless under Article XI with respect to claims or liability for bodily injury or property damage covered by that indemnity, for which the standard of care hereunder shall be deemed and construed to be no greater than that imposed upon CMR by common law.

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

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

7.1.4. Power to Contract. CMR, and all CMR's personnel, Subcontractors, Sub-Subcontractors, and Suppliers, with respect to their portions of the Work, are fully authorized to

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

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

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

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

7.1.5. Responses to RFQ. All statements, representations and certifications contained in, or otherwise set out in, CMR's response(s) to the RFQ for this Project were true and correct when made, and shall remain true and correct throughout the term of this Contract. All information contained in CMR's response to TFC's RFQ No. 303-7-01932, dated July 27, 2017, including but not limited to CMR's statements and representations as to its history, experience, capabilities, litigation disclosure, financial information, and other qualifications are accurate and

complete, and no material change in circumstances has occurred as of the Effective Date that would cause CMR's responses to be untrue or materially different than what was originally stated. CMR shall have a continuing duty to disclose any material change in circumstances that could adversely affect CMR's ability to continue to perform the Services and the Work in accordance with its obligations hereunder.

7.1.6. Immigration Reform. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and Subcontractors who contract with the State. CMR shall not place any employee of CMR at a worksite, nor shall CMR permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, TFC without first confirming said employee's authorization to lawfully work in the United States. CMR warrants that CMR: (i) maintains and follows an established policy to verify the employment authorization of its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to CMR's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States. CMR further acknowledges, agrees, and warrants that CMR: (i) has complied, and shall at all times during the term of the Contract comply, in all respects with the Immigration Reform and Control Act of 1986 and 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and all of the laws, rules, and regulations relating thereto; (ii) has properly maintained, and shall at all times during the term of the Contract properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement ("DHS-ICE"), including, without limitation, the completion and maintenance of the Form I-9 for each of CMR's employees; and (iii) has responded, and shall at all times during the term of the Contract respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of the Contract, CMR shall, and shall cause its directors, officers, managers, agents and employees to, fully cooperate in all respects with any audit, inquiry, inspection or investigation that may be conducted by TFC or any state agency of CMR or any of its employees. CMR acknowledges, agrees and warrants that all Subcontractors permitted by it to perform work will be required to agree to these same terms as a condition to being awarded a Subcontract for such work.

7.1.7. CMR Safety. CMR and all CMR Personnel conducting work or Services for TFC shall abide by all OSHA rules and regulations provided by the Department of Labor, OSHA, Code of Federal Regulations, Chapter 29. Employees of CMR and Subcontractors shall be trained in accordance with Chapter 29, Occupational Safety and Health Regulations. CMR and Subcontractors shall inform the TFC Project Manager of their Hazardous Electrical Energy Control, Lockout/Tag-out Procedure. CMR's procedure must meet or exceed TFC's procedure as determined by the TFC Project Manager. Work or services shall not be done on energized electrical circuits, components or equipment. When de-energizing is impractical due to possible

harm to personnel, equipment or facility damage, negative onsite or offsite environmental impact, or business interruption, CMR must follow OSHA requirements as detailed in OSHA Regulations 1910.331 – 1910.399.

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

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

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

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

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

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

7.1.10. Warranty of Improvements. Any provisions herein to the contrary notwithstanding, CMR expressly warrants that all improvements, including workmanship and materials incorporated into the Project, shall be free from defects. CMR shall, at TFC's reasonable election, either repair or replace any defects in any of CMR's Work, Services, or related deliverables as soon as CMR becomes aware of such defects or is notified of such defects. Should CMR refuse or neglect to make good such defects within a reasonable time after receiving notice

requesting such remedial Work, then TFC shall be entitled to make good such defective Work, Services or related deliverables at CMR's expense. CMR's obligation hereunder is in addition to, and not in substitution of, any other remedy TFC may have hereunder, or at law or in equity. Any warranty repair or replacement shall comply with the requirements of this Contract and shall be verified by CMR's performance of testing as TFC may require. All costs incidental to such repair, replacement, and testing, including the removal, replacement and reinstallation of equipment and materials necessary to gain access to concealed areas, shall be borne by CMR. CMR shall be liable for the satisfaction and full performance of the warranties as set forth herein.

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

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

7.1.13. Eligibility. The individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate pursuant to the Texas Government Code, Section 2155.004(b).

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



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

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

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

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

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

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

7.1.21. Site Investigation. Prior to execution of this Contract, CMR has had ample opportunity to examine all of the Contract Documents, Drawings and Specifications, and all TFC Deliverables pertaining to the Work and the site of the Work and its surroundings. Prior to the submission of a GMP Proposal, CMR will have again carefully examined all such information, and shall have also investigated the site of the Work to the degree that CMR deems necessary and appropriate to fully acquaint CMR with the scope of Work, the completeness of the design, the availability of materials, the presence of existing facilities (including underground utilities), general topography, soil structure, subsurface or substructure conditions or obstructions, adjoining property constraints, and all other conditions related to the Work, the site of the Work and its surroundings. **CMR SHALL INCLUDE IN ITS GMP PROPOSAL(S) A REASONABLE AMOUNT AS CMR CONTINGENCY FOR THE RISK OF ANY DIFFICULTIES OR CONDITIONS TO BE ENCOUNTERED AFTER CMR COMMENCES CONSTRUCTION OF THE WORK, WHETHER OR NOT FORESEEABLE OR OBSERVABLE, WHICH MAY ADVERSELY IMPACT THE PERFORMANCE OR PROGRESS OF THE WORK OR COMPLETION OF THE PROJECT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY OTHER PROVISION OF THE CONTRACT DOCUMENTS, TFC DELIVERABLES, OR ANY REPRESENTATION, STATEMENT OR OTHER INFORMATION MADE OR FURNISHED BY TFC OR ITS REPRESENTATIVES, CMR AGREES CMR'S SUBMISSION OF ITS GMP PROPOSAL TO ESTABLISH A GMP FOR THE WORK SHALL CONSTITUTE CMR'S REPRESENTATION TO TFC THAT: (i) CMR HAS COMPLETED ALL INVESTIGATIONS NECESSARY OR APPROPRIATE TO FULLY EVALUATE SUCH RISK; (ii) CMR HAS ESTABLISHED A REASONABLE CMR CONTINGENCY FOR SUCH RISK IN THE GMP PROPOSAL; (iii) CMR AGREES TO ASSUME SUCH RISK; (iv) CMR SHALL COMPLETE THE WORK FOR THE GMP TO BE ESTABLISHED UNDER THIS CONTRACT NOTWITHSTANDING SUCH DIFFICULTIES OR CONDITIONS; AND (v) CMR SHALL NOT BE ENTITLED TO REQUEST EITHER THE USE OF FUNDS FROM THE TFC CONTROLLED CONTINGENCY OR AN INCREASE IN THE GMP TO PAY FOR UNANTICIPATED COSTS TO OVERCOME ANY SUCH DIFFICULTIES OR CONDITIONS. CMR ASSUMES FULL AND COMPLETE RESPONSIBILITY FOR AND SHALL NOT BE ENTITLED TO A CHANGE ORDER FOR ANY SUCH COSTS TO OVERCOME SUCH DIFFICULTIES OR CONDITIONS TO THE EXTENT THEY MAY CAUSE THE TOTAL OF ALL COSTS OR THE WORK AND FEES ON THE PROJECT TO EXCEED THE GMP.**

7.1.21.1. As part of its examination of the Site conditions, CMR has made and/or will make, reasonable and appropriate efforts to discover the presence of any subsurface or otherwise concealed Hazardous Materials. The results thereof shall be delivered to TFC in writing at or prior to the delivery of the GMP Proposal.

7.1.21.2. In the event CMR discovers the presence of other Hazardous Materials during the Construction Phase of the Project, CMR shall promptly, but in no event later than twenty-four hours after each such discovery, provide written notice thereof to TFC, CMA, and A/E. CMR shall not disturb said conditions.

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

## **VIII. STATE FUNDING.**

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

## **IX. COPYRIGHTS AND TRADEMARKS.**

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

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

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

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

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

## **X. ACCOUNTING RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE.**

10.1. Books and Records. CMR shall keep and maintain under generally accepted accounting principles full, true and complete records, as are necessary to fully disclose to TFC or the United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal regulations and statutes.

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

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

to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

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

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

10.4.2. Definition of Confidential Information. "Confidential Information" shall mean all information, whether or not originated by TFC, which is used in, or a part of, TFC's business and operations and is: (i) proprietary to, about, or created by TFC; (ii) gives TFC some competitive advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of TFC; (iii) designated as "Confidential Information" by TFC, or from all the relevant circumstances should reasonably be assumed by CMR to be confidential and proprietary to TFC; or (iv) not generally known by CMR. "Confidential Information" shall not include information that: (i) is or becomes available to the public generally, other than as a result of disclosure by CMR in breach of the terms of this Contract; (ii) becomes available to CMR from a source (other than TFC) which source is not, to the best of CMR's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by CMR. Such Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing or designated as confidential):

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

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

10.4.2.3. information relating to TFC's proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring,

protecting, enforcing and licensing proprietary rights (including patents, copyrights, and trade secrets);

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

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

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

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

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

10.4.3.2. Both during and after the conduct of its due diligence investigation, CMR will not use, copy, or transfer Confidential Information other than as necessary in carrying out its duties on behalf of TFC and/or due diligence investigation, without first obtaining prior written consent of TFC, and will take all reasonable precautions to prevent inadvertent use, copying, or transfer of such Confidential Information. This prohibition against

CMR's use, copying, or transfer of Confidential Information includes, but is not limited to, selling, licensing, or otherwise exploiting, directly or indirectly, any products or services, including software in any form, that embody or are derived from Confidential Information.

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

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

10.6. Public Records. Notwithstanding any provisions of this Contract to the contrary, CMR understands that TFC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552. If contacted by TFC, CMR will cooperate with TFC in the production of documents responsive to the request. CMR agrees to provide the documents responsive to the request in the format and within the time frame specified by TFC. CMR may request that TFC seek an opinion from the Office of the Attorney General of Texas. However, the final decision whether to seek a ruling from the Office of the Attorney General of Texas will be made by TFC in its sole discretion to comply with the legal requirements of the Texas Public Information Act. Additionally, CMR will notify TFC's general counsel within twenty-four (24) hours of receipt of any third-party requests for information written, produced, collected, assembled, or maintained in connection with this Contract and/or any amendment to this Contract. This Contract and/or any amendment to this Contract and all data and other information generated or otherwise obtained in its performance is subject to the Texas Public Information Act. CMR agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Furthermore, CMR is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public as specified by TFC at no additional charge to the State.

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

addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

## **XI. BONDS AND INSURANCE.**

### **11.1. Bonds.**

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

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



established at different times. Bond premiums shall be charged at no more than the best rate available to CMR for a project of this magnitude, but in any event not to exceed two and a half percent (2.5%) of the respective contract amount. CMR shall, for the duration of the Project, provide Payment and Performance Bonds for each separate portion of the Project to be constructed during the Construction Phase, and for which a separate Guaranteed Maximum Price has been established.

11.1.3. Performance Bond Requirements. CMR shall provide Performance Bonds in the penal sum of one hundred percent (100%) of the value of the Guaranteed Maximum Price(s) established by Contract Amendment for all Design Packages comprising each of the Projects. Without limiting any other requirements or obligations of the surety, the Performance Bond shall cover CMR's warranty obligations for a period not to exceed one (1) year from the date of TFC's issuance of the Certificate of Substantial Completion, and shall include coverage for any liquidated damages for which CMR may be liable under the Contract for delay in the timely completion of the Work. Performance Bonds shall be required of each first tier Subcontractor whose Subcontract value exceeds \$250,000.00, such that each first tier Subcontractor will separately provide a performance bond for its portion of the Work, with TFC and CMR included as dual obligees. TFC shall have no obligation to pay or to reimburse to CMR for performance bond premiums for the issuance of multiple bonds from second tier subcontractors covering the same Work and obligations. Subcontractor performance bond premiums will only be reimbursed with advance written approval of TFC, after submission to TFC of a pro forma copy of the bond and a copy of the proposed premium billing from any such Subcontractor's surety to Subcontractor. In lieu of requiring Payment and Performance Bonds for first tier Subcontractors, CMR shall provide subcontractor default insurance ("SDI") to provide coverage for the default of all Subcontractors. The cost of SDI shall be reimbursable by TFC at an agreed fixed rate of 1.25% of the total value of such SDI-insured subcontracts; provided, however, if a subcontractor cannot qualify for such coverage under CMR's SDI insurance program because it is rejected by the SDI insurer, and the use of another qualified subcontractor is not possible or preferred by TFC, CMR shall require such subcontractor to provide bonding, unless excused in writing by TFC.

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

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

excess thereof that may be owed to TFC as a result of CMR's delay, deficiency, or failure to perform its obligations hereunder.

11.2. Insurance Requirements. The CMR shall comply with the following insurance requirements, subject to the General Terms and Conditions of Insurance set forth in Section 11.4., below.

11.2.1. Duty to Purchase Insurance. Commencing on the Effective Date (except as otherwise provided below, with respect to Builders' Risk insurance coverage), CMR shall purchase, maintain, and keep in full force and effect such lines of insurance coverage as CMR considers necessary and adequate to protect CMR from claims, and to protect Owner and Owner Group (as defined in Section 11.2.2., below) from claims (other than claims asserting professional liability of the Owner and Owner Group or workers' compensation claims of their employees), which may arise out of or result from CMR's Services or Work, regardless of whether the Services or Work are performed by CMR, CMR Personnel, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including at a minimum the minimum insurance coverages and limits stated below (or such other greater insurance coverage or limits expressly required under any other provision of the Contract Documents).

11.2.2. Owner Group. For purposes of this Agreement, the term "Owner Group" means the Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711, the State of Texas and their officials, directors, employees, representatives, and volunteers and any other party that the CMR is required to indemnify pursuant to this Agreement.

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

11.2.3.1. Required Limits of Coverage-Statutory limits, with Employer's Liability Coverage as follows:

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

11.2.4. CMR's Certification. By execution of the Contract, CMR thereby certifies, pursuant to Texas Labor Code, Section 406.096(a), that CMR provides workers' compensation and employers' liability insurance for all employees employed on this public project with limits of not less than those required below.

11.2.5. Subcontractor's Certification. Pursuant to Texas Labor Code, Section 406.096(b), CMR shall require each Subcontractor to certify in writing to CMR that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. CMR shall forward said certifications to Owner within ten (10) days of the Effective Date of the Subcontract.

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

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

11.2.7.1. Minimum CGL limits of coverage required:

Each Occurrence	\$500,000.00
General Aggregate	\$500,000.00
Products & Completed Operations	\$500,000.00
Personal and Advertising Injury	\$500,000.00

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

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

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

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

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

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

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

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

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

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

11.2.8.9. **Punitive Damages.** Any type of punitive, exemplary or multiplied damages exclusion;

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

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

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

11.2.9.2. **Premises & Operations Liability;**

11.2.9.3. Products/Completed Operations Liability to be maintained until the expiration of CMR's maximum period of exposure to liability for the Work pursuant to the Texas statute of repose, in Tex. Civ. Practice & Remedies Code, 16.009 (however, this shall not be required if Owner has, commensurate with Final Completion of the Project, accepted in writing the same products/completed operations liability coverage under a Contractor Controlled Insurance Program ("CCIP"), as described in Section 11.3.3.1., below;

11.2.9.4. Personal and Advertising Injury Liability;

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

11.2.9.6. The policy shall include ISO endorsement CG 2503, Designated Construction Projects General Aggregate Limit, or its equivalent (This requirement does not apply to project specific CGL coverage provided through a Contractor Controlled Insurance Program).

11.2.10. Builders' Risk Insurance. Before commencement of construction and up until the time TFC has Approved the transfer of the risk of loss to the Project as further provided below, CMR shall maintain, and shall be entitled to invoice TFC for reimbursement as a Cost of the Work the premium paid for "All-Risk" Builders' Risk Insurance, with a minimum limit of coverage not less than the amount of the Guaranteed Maximum Price to be established for each portion of the Project. Coverage shall be increased for the amount of any Change Orders or Amendments that increase the replacement value of the Project as Amendments are executed during the Construction Phase to establish the Guaranteed Maximum Price for each portion of the Project. The Amendment shall acknowledge the attachment of a copy of a revised certificate of coverage as written evidence of the scheduling and placement of such coverage for each such portion of the Project under the Contractor's Builders' Risk insurance policy.

11.2.10.1 Debris Removal, Rebuilding, Restoring. The Builders' Risk Insurance shall cover all costs for labor, supervision, materials, equipment, design professional fees, permit fees, and other costs and expenses directly required to remove otherwise hereinafter provided. Proceeds of the Builders' Risk Policy for debris removal, rebuilding and restoring the Project shall be paid to the CMR to hold in trust and to be applied solely to the rebuilding and restoring of the Project to the condition prior to the loss, in accordance with an Approved recovery plan. CMR shall obtain Approval of any claim on the Builders' Risk Policy for loss or damage to the Project, and present to the Owner a proposed recovery plan for Approval within twenty (20) days following such loss or damage. The foregoing

notwithstanding, if such proceeds will not be reasonably sufficient to rebuild and restore the Project, then, prior to any expenditure thereof, CMR shall obtain Owner's Approval to use of such funds to settle the CMR's and Owner's financial interests relating to the loss, to preserve, alter or abandon the Project, and to take such other actions as may be in the best interest of Owner.

11.2.10.2. Owner's Delay in Opening Costs. The Builders' Risk Policy shall cover Owner's delay in opening costs, including losses of rental income, revenue, architectural, engineering, legal, accounting, and financing fees, extended project management costs, governmental permit fees, costs for extension, renegotiation or termination of service contracts, and other so-called "soft costs" arising from the loss or damage as defined in the policy. The Builders' Risk Policy shall provide that proceeds of coverage for all such costs shall be paid directly to the Owner.

11.2.10.3. Restrictions on Certain Exclusions. Any exclusions to this Builders' Risk coverage form require Owner's approval. Such insurance shall (a) designate the Owner Group, CMR, all Subcontractors of any tier (as their interests appear), and all Loss Payees and Mortgagees (as their interests appear) as additional named insureds on the policy; and (b) be primary and non-contributing to any other insurance coverage available to the additional named insureds, as to whom their other insurance shall be excess, secondary and noncontributing to losses covered by this Builders' Risk Insurance. The Builders' Risk Insurance shall not include any restriction on coverage relating to placement or maintenance of protective safeguards on the Project. The termination of coverage provision shall be endorsed to permit coverage to continue during any interim period of occupancy of the covered property while being constructed. This insurance shall be maintained in effect until the earlier of the following dates: (i) the date of Final Completion for the building shell and core; or (ii) the date on which the insurable interests in the covered property of all insureds other than the TFC have ceased. Such insurance shall cover at a minimum the following.

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

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

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

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

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

11.2.10.3.6. Deductibles shall not exceed: All Risks of Direct Damage Per Occurrence: \$25,000; Delayed Opening Waiting Period: 30 days or as dictated as available within the commercial market; Earthquake and Earthquake Sprinkler Leakage, Per Occurrence: \$25,000; Flood deductible per occurrence shall be \$50,000.

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

Coverage	Minimum Sublimit/Additional Limit
Additional expenses due to delay in completion of project (where applicable)	\$1,500,000; additional delay in completion coverage in excess of the stated limit may be established by the parties by GMP Amendment.
Agreed Value (not less than the most current GMP)	Included without sublimit
Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse and ensuing loss	Included without sublimit
Debris removal (additional coverage limit)	25% of loss or \$5,000,000 whichever is less.
Earthquake and Earthquake Sprinkler Leakage	\$1,000,000 minimum
Flood	\$10,000,000 minimum
Freezing	Included without sublimit
Mechanical breakdown including cold (hydrostatic, pneumatic, electrical, hydraulic or mechanical) testing, where applicable	Included without sublimit
Occupancy pre-completion	Included without sublimit
Ordinance or law	\$2,500,000
Pollutant clean-up and removal	\$100,000
Preservation of property	Included without sublimit
Replacement cost	Included without sublimit

Theft	Included without sublimit
-------	---------------------------

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

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

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

Excess Liability Insurance \$14,000,000.00

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



up expenses, and defense costs arising from the CMR's operations; (iv) diminution of value and natural resources damages; (v) contractual liability; (vi) claims arising from CMR's use of any owned or non-owned disposal sites arising out of CMR's activities in connection with the Contract; (vii) bodily injury to include physical injury, sickness, disease, death, mental anguish, medical monitoring and emotional distress sustained by any person; and (viii) all costs that are related to or that arise out of or from the investigation or adjustment of any claim or in connection with any court, arbitration, mediation, state administrative hearing, or other proceeding of any kind, including attorney's fees, expert witness fees, costs, charges and expenses, that arise out of or that are related to a Pollution Condition(s). "Pollution Event means the discharge, dispersal, release, or escape of any solid, liquid, gaseous or thermal irritant, contaminant or pollutant including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Coverage under this policy shall include a 7-day minimum occurrence period for emergency response costs. The Pollution Liability insurance policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from:

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

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

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

11.2.13.4. Punitive, exemplary or multiplied damages, if allowed by law.

11.2.13.5. Work performed by subcontractors.

11.2.13.6. Contractual liability incurred as a result of an injury to an employee.

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

11.2.14. Contractor's Professional Liability Insurance. Contractor's Professional Liability Insurance with the minimum limits of coverage not less than shown below shall be provided by CMR to cover the professional liability arising out of or in connection with any negligent act, error or omission of all CMR Personnel, including all design professionals and any non-professional CMR Personnel, and all members of any subconsultant firm or any joint venture or other firm of CMR acting for, in combination with, on behalf of, or under the direction or control of the CMR in the performance of any Services or Work required under this Contract, or arising from or in connection with the coordination, management or oversight of such CMR Personnel. This policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from: (i) bodily injury or property damage where coverage is provided on behalf of design professionals or subcontractors; (ii) habitational or

residential operations; (iii) pollution, mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; (v) professional liability of the CMR arising out of the negligence of CMR Personnel; or (vi) design/build services.

Professional Liability Insurance \$5,000,000.00 Per Claim/\$5,000,000.00 Aggregate

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

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

11.3. CMR's Contractor Controlled Insurance Program. The parties hereby agree CMR shall provide and maintain in effect prior to the commencement of physical construction of the Project the insurance coverages described in this Section 11.3 through CMR's Contractor Controlled Insurance Program (CCIP). The CCIP shall provide coverages with limits no less than those stated in Section 11.3.3., below, for the Owner Group, CMR, and all of CMR's enrolled Subcontractors (of every tier), all as additional named insureds. These CCIP insurance requirements are not intended to and they shall not in any manner, limit, qualify, or quantify the liabilities and obligations assumed by the CMR under this Agreement or as otherwise provided by law. The premium cost for the CCIP shall be reimbursed by TFC at an agreed fixed rate of 2.68% of the Contract Sum.

11.3.1. CCIP Enrollment of Subcontractors. Except as otherwise provided in Section 11.3.2 below, the CMR shall enroll each person or firm engaged by CMR to provide any Work or Services to or on the Site as an enrolled Subcontractor in the CCIP as of the effective date of the written Subcontract between the CMR and each such Subcontractor. For purposes of this Section 11.3., the term "Site" shall also mean those areas located within the surveyed boundaries of the Site designated in writing for performance of the Work and such additional surveyed areas as may be designed in writing for use by CMR personnel in the performance of the Work. The term "Site" also includes (a) field office sites, (b) property used for storage of material for the Project, (c) staging areas dedicated to the Project, and areas where activities incidental to the Project are being performed by enrolled Subcontractors covered by the CCIP Workers' Compensation policy, but excluding any permanent office, warehouse or fabrication facilities of such enrolled Subcontractors. The CMR shall ensure that the administrator of the CCIP shall promptly provide to Owner copies of certificates of insurance evidencing each enrollment of a Subcontractor prior to the Subcontractor's commencement of any portion of the Work on the Site. The administrator's issuance of such a certificate of insurance for an enrolled Subcontractor shall also be deemed to be an effective

enrollment of such Subcontractor even in the absence of a fully executed Subcontract. Enrolled Subcontractors shall not be entitled to any coverage under any other insurance carried by the Owner if the CCIP limits of insurance required under Section 11.3.3., below, become inadequate or exhausted, and they shall bear the expense of any other insurance they choose to maintain for their own protection.

11.3.2. Persons and Entities to be excluded from CCIP Enrollment. For persons or entities engaged by CMR to provide any services to or upon the Site and who are not to be enrolled in the CCIP, CMR shall be responsible for requiring that they carry and maintain the types and limits of insurance coverage that CMR has determined to be necessary and appropriate to protect Owner, the Owner Group and the CMR from claims and the risk of loss that may be caused by any of them, taking into consideration the scope of their services and the Work to be performed by them. CMR shall provide Owner evidence of their insurance coverage, upon Owner's request. Persons or entities who are engaged by the CMR in the performance of the Work and who shall *not* be enrolled in the CCIP are:

11.3.2.1. Persons and entities providing architectural, engineering, consulting or other professional services to the CMR in the implementation of the CMR's means and methods for performing the Work, including without limitation testing and balancing, and surveying;

11.3.2.2. Persons or entities, such as material suppliers, vendors, or dealers, equipment rental companies, truckers, transporters, drivers and others who do not have a regularly scheduled, continuous presence to directly perform Work on the Site, such as those who transport, deliver, assemble, disassemble, or remove parts or equipment (including without limitation overhead, tower or aerial cranes and scaffolding systems), materials, personnel, rubbish or other general waste, or other items required to be taken to or from the Project Site;

11.3.2.3. Persons or entities engaged to perform any of the following hazardous activities at the Site: abatement or remediation of regulated hazardous materials, marine diving activities, demolition using blasting, explosives or wrecking balls and operation of overhead, tower or aerial cranes; and

11.3.2.4. Persons or entities engaged to perform any of the following activities that are incidental to the Work and performed for the protection or maintenance of the Site (except as required to be performed as a part of the scope of an enrolled Subcontractor's Work while upon the Site): janitorial or other routine maintenance services and guarding or monitoring of the Site or other security services.

11.3.3. CCIP Insurance Coverage and Limits Required. Contractor shall provide and maintain in effect at all times during the full term of the Work the following coverage through a Project specific Contractor Controlled Insurance Program (CCIP).

11.3.3.1. CCIP Workers' Compensation Insurance. In addition to the general requirements stated in Section 11.2.3. above, which remain applicable for Workers' Compensation insurance provided in the CCIP, the CCIP shall provide Workers' Compensation insurance at the following greater minimum limits of coverage:

11.3.3.1.1. Worker's Compensation: Statutory Limits

11.3.3.1.2. Employer's Liability:

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

11.3.3.2. CCIP Commercial General Liability Insurance. In addition to the general requirements stated in Section 11.2.4, above, which remain applicable for Commercial General Liability insurance provided in the CCIP, the CCIP shall provide Commercial General Liability insurance at the following greater minimum limits of coverage:

Each Occurrence	\$2,000,000.00
General Aggregate	\$4,000,000.00
Products & Completed Operations Aggregate (as described below)	\$4,000,000.00
Personal and Advertising Injury	\$2,000,000.00

Products/Completed Operations coverage under CGL and Excess Liability policies shall be maintained and continued in effect by CMR from the date of Owner's final written acceptance of the Project, as evidenced by the execution of the Certificate of Final Completion by CMR, the A/E, and Owner, until the expiration of the maximum period of exposure to liability pursuant to the Texas statute of repose, in Tex. Civ. Practice & Remedies Code, 16.009.

11.3.3.3. CCIP Excess Liability Insurance. The CCIP shall provide Excess Liability insurance that follows the form of, and has the same inception and expiration dates as, and provides coverage that is no less broad than the primary Commercial General Liability insurance policy required under Section 11.3.3.2. and the Employer's Liability coverage required under Section 11.3.3.1., above with the following greater minimum limits of coverage:

Each Occurrence General Aggregate	\$100,000,000.00
Products & Completed Operations	\$100,000,000.00
Aggregate (as described below)	\$100,000,000.00
Personal and Advertising Injury	\$100,000,000.00

**11.3.3.4. CGL Prohibited Exclusions, Limitations, Endorsements.**

Unless Approved by Owner CGL policy shall contain no exclusions, limitations, or endorsements unacceptable to Owner.

**11.3.3.5. Modification of Aircraft, Auto or Watercraft Exclusion.**

Exclusion g. shall be modified to include the following provision: (6) Claims against the First Named Insured, Project Owner or the General Contractor for "bodily injury" or "property damage" if: 1. The claim alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others; 2. The "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "auto" that is owned or operated by or rented or loaned to any other Named Insured other than the First Named Insured, Project Owner or General Contractor; and 3. The "bodily injury" or "property damage" occurred at the construction project location covered by this policy.

**11.3.3.6. Modification to Mobile Equipment Exclusion.**

Exclusion h. shall be modified to include the following provision: Paragraph (1) does not apply to claims against the First Named Insured, Project Owner or the General Contractor for "bodily injury" or "property damage" if: 1. The claim alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others; 2. The "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "auto" that is owned or operated by or rented or loaned to any other Named Insured other than the First Named Insured, Project Owner or General Contractor; and 3. The "bodily injury" or "property damage" occurred at the construction project location covered by this policy.

**11.3.4. Reinstatement of General Aggregate.** The General Aggregate Limit for all coverages included in the CCIP, other than Products/Completed Operations Aggregate, shall reinstate on an annual basis.

**11.3.5. Certifications Concerning Elimination of Duplicate Insurance Costs.** The CMR shall not charge to Owner, and shall require each enrolled Subcontractor (of any tier) to exclude from all charges for the performance of their respective portions of the Work all costs of Workers' Compensation, Employer's Liability, Commercial General Liability, and

Excess Liability insurance in exchange for coverage under the CCIP. The CMR shall, and shall cause the CCIP Administrator, to exercise all due diligence to ensure that enrolled Subcontractors and their lower-tier enrolled Subcontractors do not charge as a cost to Owner any amount for the cost of such non-CCIP insurance coverages. The CMR shall attest under oath, and shall require each enrolled Subcontractor (of any tier) to attest under oath, with each of their respective Pay Applications, that no cost of non-CCIP insurance coverage has been included in any amount charged for the Work for Workers' Compensation, Employer's Liability, Commercial General Liability, and Excess Liability insurance in exchange for coverage under the CCIP. All information related to enrollments in the CCIP for this Project, and the calculation of CCIP insurance costs, including any information that can be used to verify proper deduction of insurance costs from the charges for the Work and the reporting and management of claims, and the exhaustion of CCIP limits of insurance shall be considered information related to this Project and shall be made available to Owner upon request for examination and shall be subject to audit in accordance with the provisions of Article X. Owner shall be informed of, and shall have the right to participate, in any audit of costs of insurance and premium calculations related to the CCIP. Such information shall be retained for a minimum of seven (7) years, in accordance with Section 10.3, above. TFC agrees that the fixed rates and fixed percentages it has agreed that CMR may charge for insurance coverages, including but not limited to CCIP and SDI costs, are subject to TFC's audit rights only for TFC to confirm that rates or percentages have been charged by CMR in accordance with the Contract Documents, and the composition of such rates and percentages is not subject to audit by the TFC or its auditors.

11.3.6. Reporting of Claims and Joint Defense Agreements. Owner shall be informed of, and shall be promptly provided with copies of all notices of claims or losses against the CCIP insurance and all claims investigation reports. Any obligation to enter into a joint defense agreement pursuant to the CCIP shall remain subject to the joint defense rights of the Owner Group who are required to be indemnified and defended by CMR under Section XII, below. In no event shall Owner Group be precluded from selecting its own defense counsel at its own expense, and no claim against the Owner Group shall be settled without concurrence of the Office of the Attorney General of Texas. Nothing in the CCIP or any Joint Defense Agreement shall preclude Owner from pursuing claims for losses or damages not covered by the CCIP in a proceeding independent from any claim being defended under the CCIP.

11.3.7. CCIP Costs. CMR shall separately submit Pay Applications for amounts reasonably necessary to pay for the CCIP costs. CMR's Pay Applications shall include all supporting documentation reasonably necessary to confirm the amount of CCIP costs to be charged to Owner.

11.3.8. CCIP Closeout. The CMR shall not release final payment to any Subcontractor until after the Subcontractor has submitted all necessary close-out

documentation for final accounting for, and has either cooperated as necessary to complete, or confirmed in writing its agreement to cooperate in respect to, an audit of the costs of insurance related to the Work of the Subcontractor and its lower-tier subcontractors, and such Subcontractor has been provided notice of the expiration or cancellation of coverage of its and their coverage under the CCIP. Notwithstanding the closeout of a Subcontract, the CCIP Commercial General Liability coverage shall be automatically extended to cover an enrolled Subcontractor in connection with its obligations to return to the Site for the purpose of fulfilling its obligations to perform any warranty work or other continuing obligations with respect to the Subcontractor's completed Work. CMR shall provide verification of workers' compensation insurance from Subcontractors showing coverage during the warranty period by updated insurance certificates.

11.3.9. Compliance with Texas Insurance Code. The CMR shall, and shall cause the CCIP administrator, to comply with the provisions to the Texas Insurance Code, Section 151.001 et. seq., and all rules of the Texas Insurance Commission relating to disclosure and furnishing of information related to the adoption of the CCIP, including the requirement to provide such information to any person or entity required to be enrolled as a Subcontractor in the CCIP at least ten (10) days prior to CMR's entering into any contract with such person or entity. If CMR fails to comply with such legal requirements, CMR shall bear all cost as required by the Code to compensate any such person or entity for the cost to obtain insurance to substantially comply with the non-CCIP insurance requirements imposed upon such person or entity persons.

11.4. General Terms and Conditions of Insurance.

11.4.1. Endorsements. CMR's commercial automobile liability, CGL, excess liability, and pollution liability insurance policies shall and the CGL and Excess policies included in CMR's CCIP shall be endorsed to provide that they are **primary to and non-contributing** with all insurance available to the Owner Group as a Named Insured. The primary and non-contributing endorsement for the Commercial General Liability Policies and shall be written under the ISO CG 20 01 04 13 coverage form and the Excess Policies shall follow form thereof. It is the specific intent of the parties to this Contract that all such insurance policies shall be primary to and shall seek no contribution from any other insurance (primary, umbrella, contingent or excess) maintained by Owner Group, with Owner Group's insurance being excess, secondary and noncontributing. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage. Within thirty (30) days following receipt of Owner's request, CMR shall furnish to Owner a letter issued by any insurer or authorized representative of such insurer of CMR confirming the extent to which the insurer's coverage of the CMR is at risk of being, reduced, diminished or exhausted by claims thereon. If any insurance CMR furnishes shall be, or become at risk of being, reduced diminished or

exhausted by claims thereon, CMR agrees to supplement, increase and/or replace such insurance with other insurance to ensure that CMR has available at all times the coverage required hereunder for the continuation of its Services or Work.

11.4.2. Subrogation. CMR's workers' compensation, employers' liability, commercial automobile liability, CGL, excess liability, cyber liability, professional liability, builders' risk and pollution liability insurance and CCIP policies shall be endorsed to waive all rights of subrogation in favor of Owner Group. With respect to all such policies, CMR waives any and all rights of recovery or subrogation against Owner Group.

11.4.3. Additional Insureds. Owner Group shall be included as additional insureds without limitation on all policies required herein (except workers' compensation, employers' liability, builders' risk and professional liability policies), under the form of an additional insured endorsement providing the maximum protection to Owner Group allowed by applicable law, except as otherwise expressly stated herein. CMR represents and warrants that:

11.4.3.1. Maximum Extent Permitted. CMR's policies of liability insurance, including CMR's commercial general liability, commercial automobile liability, excess liability, Builders' Risk insurance, and the CGL and Excess policies included in the CCIP, are endorsed (or, prior to commencement of construction, shall have been endorsed) to cover Owner Group as additional insureds (or additional named insureds, in the case of the Builders' Risk insurance policy) to the maximum extent permitted by applicable law, or as otherwise set forth herein, with respect to liability arising out of Work performed by or for CMR, including ongoing and completed operations in connection with this Contract (and such coverage provides for the protection of each insured against claims of liability by another insured under a separation of insureds clause).

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

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

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



11.4.3.5. Certificates and Endorsements. CMR shall provide certificates of insurance with true and correct copies of the all endorsements required hereunder attached thereto.

11.4.4. Notification. All policies shall obligate the insurer to notify the Texas Facilities Commission (Attn: TFC Insurance Analyst, Legal Services Division), P.O. Box 13047, Austin, Texas 78711, of any (i) non-renewal; (ii) cancellation; or (iii) material changes, in writing, at least 30 days prior to any such non-renewal, cancellation or change. All policies shall require at least ten (10) days' notice of cancellation to Owner in the event of non-payment of premiums by CMR. CMR shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.

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

11.4.4.1.1. A change in the policy period.

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

11.4.4.1.3. A reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses.

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

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

11.4.5.1. Acord Form. Certificates of insurance shall be prepared on an Acord 25 (2010/05) form, or any later edition of this form.

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

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

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

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

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

11.4.5.7. Deductibles. All deductibles and self-insured retentions shall be disclosed in writing, and shall be paid by, assumed by, for the account of, and at CMR's sole risk without any right of reimbursement. No deductible or self-insured retention shall exceed \$150,000, without prior written Approval of Owner, except as otherwise specified herein. If CMR elects to self-insure or to maintain insurance required herein subject to deductibles and/or retentions exceeding the foregoing deductible amounts, CMR shall be obligated to grant Owner all rights against CMR to the same extent as if CMR had maintained the insurance required hereunder with a commercial insurer, including but not limited to additional insured status (as to liability policies other than Workers' Compensation Insurance and Professional Liability Insurance), primary and non-contributory liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverage required herein. CMR shall pay from its assets the costs, expenses, damages, claims, losses and liabilities, including attorney's fees and necessary litigation expenses at least to the same extent all of the foregoing would have been covered had CMR maintained the insurance required hereunder with a commercial insurer.

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

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

11.4.5.10. Waivers of Subrogation. Certificates shall attach waivers of

subrogation applicable to all coverages required herein.

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

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

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

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

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

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

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

Original shall be sent:

11.4.5.16.1. By Mail:

Texas Facilities Commission  
Legal Services Division, 4th Floor  
P. O. Box 13047  
Austin, Texas 78711-3047

11.4.5.16.2. By E-Mail:

[Martin.Blair@tfc.state.tx.us](mailto:Martin.Blair@tfc.state.tx.us)

11.4.6. Deductibles. CMR is responsible for all deductibles and any self-insured

retentions under all lines of insurance coverage required by this Contract.

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

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

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

11.4.10. CMR's Obligations. The insurance and insurance limits required herein shall not be deemed as a limitation on CMR's liability to perform and fulfill the CMR's duties and obligations of indemnity and defense owed to any member of the Owner Group. CMR's obligations for loss or damage arising out of CMR's Services and Work or operations are

not limited to the types or amounts of insurance set forth herein. Losses not covered by the insurance required hereunder shall be paid by CMR. CMR shall not violate or knowingly permit to be violated by itself or any of its Subcontractors any conditions of the policies of insurance provided by CMR under the terms of the Agreement and shall at all times satisfy the requirements of the insurance companies issuing them. All requirements imposed by the policies referred to above, and to be performed by CMR shall likewise be imposed upon, assumed and performed by each of its Subcontractors, whether enrolled in the CCIP or not. CMR's Subcontractors and their lower tier subcontractors shall execute a written agreement that includes all such requirements.

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

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

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

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

11.4.15. Additional Required Insurance. Owner may elect at any time during the term of this Agreement to require CMR to procure and maintain other or additional insurance, to the extent commercially available. Notice of such election shall be given at least sixty (60) days prior to the effective date of the required modifications. Any additional costs incurred by these parties in securing insurance shall be reimbursed by Owner as a part of the Cost of the Work, and the Guaranteed Maximum Price shall be revised by Change Orders to be increased by the amount of such additional reimbursement.

11.4.16. TFC's Right to Review Policies. CMR represents and acknowledges it has carefully reviewed its insurance program with its legal and risk advisors and believes its insurance policies comply with the insurance requirements in this Contract, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within 48 hours of a written request by Owner, CMR shall submit in electronic form for independent review by Owner's consultants, true and complete copies of CMR's policies of insurance, and include therewith a letter provided by CMR's broker, agent, or its applicable insurance carrier representative for each policy, certifying that the electronic copies of the policies as furnished are true and correct copies. In addition, upon conducting such review, if Owner's consultants determine CMR's insurance policies contain deficiencies that cause such policies to fail to comply with the insurance requirements of this Contract, CMR agrees to reimburse Owner for all costs and fees of its consultants incurred in attempting to resolve such policy deficiencies by modification or special endorsement thereof. Owner's review of CMR's policies of insurance shall in no way excuse CMR from any of the requirements set forth herein. In the event Owner enters into contract with CMR before any such deficiencies are resolved, Owner does not waive, but explicitly reserves, the right to bring, after: (i) the occurrence of any loss or damage for which insurance is required hereunder; or (ii) after the denial of a claim for coverage for such loss or damage, an action or Claim against CMR to recover directly from CMR any damages, including attorney's fees and other costs, Owner incurs as a result of CMR's failure to secure and maintain the insurance required hereunder. CMR acknowledges and agrees that any period of limitations shall not begin to run or, alternatively, shall be tolled until the time of the later of such occurrence or denial. Owner reserves the right to review the insurance requirements and to require deletion, revision, and/or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulations that are binding upon Owner, CMR, or the underwriter) on any such policies when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, or the claims history of the industry and/or of CMR, provided however, such modifications must be commercially available to CMR. Owner shall make an equitable adjustment to the Contract Sum for any additional cost resulting therefrom.

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

a limitation of CMR's liability to Owner in this Contract; (iii) and CMR may meet the required insurance coverages and limits with any combination of primary and umbrella/excess liability insurance.

11.4.18. Release and Waiver. CMR hereby waives all rights of recovery and releases, and shall cause its subconsultants and subcontractors to release, Owner Group from any and all claims or causes of action whatsoever which CMR and/or subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by CMR and/or its subconsultants or subcontractors pursuant to the Contract. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING RELEASE AND WAIVER SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OR STRICT LIABILITY OF OWNER GROUP.

11.4.19. Compliance with the Insurance Requirements. Certain of CMR's insurance policies (the "Policies") will require the conforming endorsements in order to comply with the insurance requirements of this Contract. Owner's obligations under this Contract are and shall remain expressly conditioned upon and subject to the issuance and receipt of valid, current and conforming Policies that comply with the insurance requirements of this Contract, including any conforming endorsements, within thirty (30) calendar days after the Effective Date hereof. Such conforming endorsements and policy forms shall be in form sufficient to enable Owner to receive the independent confirmation of its outside legal counsel that the Policies, as amended by such conforming endorsements, strictly comply with the insurance requirements of this Contract, which insurance requirements shall remain in full force and effect, and shall not be deemed waived by the execution of this Contract. The furnishing of such conforming endorsements and compliant policy forms shall be accomplished at no additional cost to Owner. CMR acknowledges and agrees that Owner expressly reserves all rights to enforce the failure to comply with insurance requirements herein as a material default by CMR under this Contract.

11.4.20. Third Party Beneficiary Status. No provision of this Agreement shall confer or be construed to create any right or benefit in any third party, including any CMR Personnel or any other entity which has assumed any of CMR's obligations hereunder, or in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of this Contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. CMR shall be solely responsible for all contractual obligations to CMR Personnel, and shall pay for the Services and Work of its CMR Personnel in accordance with Laws and Regulations. CMR shall, however, provide that TFC may, at its election, assume the status of a third party beneficiary to any contracts, subcontracts, consulting agreements, purchase orders and other agreements executed by CMR in connection with this Contract and/or the Project, which election may be exercised as to any such agreement by TFC's issuance of written notice of such election to the other party or parties to such agreement.

## **XII. MISCELLANEOUS PROVISIONS.**

### **12.1. INDEMNIFICATION.**

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

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



**ACTUAL OR POTENTIAL CLAIM, OR TFC PROVIDES CMR WITH NOTICE OF AN ACTUAL OR POTENTIAL CLAIM, CMR MAY (OR IN THE CASE OF AN INJUNCTION AGAINST TFC, SHALL), AT CMR'S SOLE OPTION AND EXPENSE: (i) PROCURE FOR TFC THE RIGHT TO CONTINUE TO USE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE; OR (ii) MODIFY OR REPLACE THE AFFECTED PORTION OF THE PRODUCT OR SERVICE WITH FUNCTIONALLY EQUIVALENT OR SUPERIOR PRODUCT OR SERVICE SO THAT TFC'S USE IS NON-INFRINGEMENT.**

**12.1.3. TAXES / WORKERS' COMPENSATION / UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY. CMR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS AGREEMENT, CMR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CMR'S AND CMR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CMR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TFC AND/OR THE STATE SHALL NOT BE LIABLE TO CMR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. CMR AGREES TO INDEMNIFY AND HOLD HARMLESS TFC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS AGREEMENT. CMR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CMR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CMR AND TFC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**12.1.4. Provisions Solely for the Benefit of the Parties. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

**12.1.5. Requirement to Promptly Advise. CMR shall promptly advise TFC in writing of any claim or demand against TFC or against CMR which involves TFC and known to CMR and related to or arising out of CMR's activities under this Contract.**

**12.1.6. Failure to Achieve Substantial Completion. CMR acknowledges, understands and agrees that TFC will incur significant costs and damages if CMR fails to achieve**

Substantial Completion and Final Completion by the applicable dates established by Contract Amendment, including but not limited to the following types of damages:

- 12.1.6.1. temporary relocation costs for displaced tenants;
- 12.1.6.2. increased costs related to extending leases of tenants unable to occupy the new facility due to delays;
- 12.1.6.3. additional permitting costs;
- 12.1.6.4. additional costs related to temporary parking;
- 12.1.6.5. additional public relations costs;
- 12.1.6.6. additional legal costs;
- 12.1.6.7. extended costs for TFC's staff, including but not limited to TFC's project management personnel and its senior management, financing and accounting personnel;
- 12.1.6.8. extended or additional costs for TFC's design team, consultants, engineers and inspectors;
- 12.1.6.9. extended or additional costs for TFC's facilities trailer, equipment rental, on-site computers, and related technology charges; and
- 12.1.6.10. extended or additional vehicle, gasoline, and maintenance costs.

12.2. Historically Underutilized Businesses ("HUBs"). In accordance with state law, it is TFC's policy to assist HUBs, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting Subcontractors to assist in fulfilling CMR's obligations with TFC. If CMR subcontracts with others for some or all of the services to be performed under this Contract, CMR shall comply with all HUB requirements pursuant to Chapter 2161 of the Texas Government Code. When required, CMR shall submit an updated HUB Subcontracting Plan, a digital copy of the form for which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit J-1." Upon execution of a GMP Amendment Acceptance, an updated HUB Subcontracting Plan must be approved. CMR shall provide the HUB program of TFC with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HUB Subcontracting Plan Progress Assessment Reporting ("PAR") Form, a digital copy of the form for which is incorporated herein by reference for all purposes in PDF on the Exhibits CD, and named therein as "Exhibit J-2."

12.3. Relationship of the Parties. CMR is associated with TFC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services

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

12.4 Conflicts of Interest. CMR has been furnished a copy of, and CMR has completed and provided to TFC prior to execution of this Contract and in accordance with the requirements for the timely filing thereof under Chapter 176 of the Texas Local Government Code, true and complete answers to TFC's Conflict of Interest Questionnaire, adopted June 29, 2007. CMR agrees to update its responses to TFC's Conflict of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code, and TFC shall have the right at any time to require CMR to complete and furnish to TFC a current Conflict of Interest Questionnaire form, which shall be completed and furnished to TFC promptly upon TFC's written request, failing in which TFC may terminate this Contract. CMR represents that it has advised TFC in writing of any past or present relationship or dealing with any third party, including competitors of TFC or CMR, which could or could be perceived to impair or interfere with CMR's exercise of its independent judgment and discretion in professionally and ethically rendering of Services for the sole benefit and enjoyment of TFC under this Contract or which could cause TFC to change its evaluation of CMR and the decision to enter into this Contract with CMR ("Conflict of Interest"). A Conflict of Interest shall also exist when, because of other undisclosed activities or relationships with third parties, TFC determines in its sole discretion that CMR is unable to render impartial assistance, advice, or Services to TFC, or CMR's objectivity in performing the Services is or might be otherwise impaired, or when CMR gains an unfair competitive advantage or receives undisclosed profits or benefits in addition to compensation for its performance of Services under this Contract. CMR shall at all times during the performance of this Contract remain free of any obligation of any kind to any person other than TFC where such obligation may cause or require CMR to compromise or otherwise be in breach of its obligations to TFC, including without limitation its obligations with respect to proprietary rights and confidentiality and conflicts of interests. CMR has not undertaken, and during the period covered by this Contract, CMR shall not undertake any relationship with any person or entity that could give rise to such a Conflict of Interest without the prior written consent of TFC. CMR shall immediately advise TFC of any relationship that may give rise to a Conflict of Interest during the term of this Contract. If TFC becomes aware of any

such relationships, through CMR's disclosure or otherwise, TFC shall have the option to terminate this Contract in whole or in part without further liability to CMR.

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

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

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

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

If to TFC:                      Attention: Legal Services Division  
Texas Facilities Commission  
1711 San Jacinto Blvd., Suite 400  
Austin, Texas 78701

With a Copy to:              Attention: John S. Raff, Deputy Executive Director  
Texas Facilities Commission  
1711 San Jacinto Blvd., Suite 400  
Austin, Texas 78701

If to CMR:                      Attention: Kevin Moyes, President, South Central Region  
Flintco, LLC  
8100Cross Park Drive  
Austin, TX 78754  
Telephone: (512) 822-7470  
Email: kmoyes@FLINTCO.com

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

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

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

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

12.12.   Force Majeure. Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused solely by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure" including acts of God or the public enemy,

sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes, or any other natural disaster, or governmental actions.

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

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

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

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

12.13.1.1. CMR must provide written notice to TFC of a claim for breach of contract not later than one hundred eighty (180) days after the date of the event giving rise to the claim. The notice must state with particularity: (i) the nature of the alleged breach; (ii) the amount CMR seeks as damages; and (iii) the legal theory of recovery.

12.13.1.2. TFC must assert, in a writing delivered to CMR, any counterclaim not later than the sixtieth (60th) day after the date of notice of a claim under Section 12.13.1.1 above.

12.13.2. Damages. The total amount of money recoverable on a claim for breach of contract under this Section 12.13 may not, after deducting the amount specified below, exceed an amount equal to the sum of: (i) the balance due and owing on the Contract price; (ii) the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and (iii) any

delay or labor-related expense incurred by CMR as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

12.13.2.1. Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Section 12.13.2 above.

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

12.13.3. Negotiation. TFC's general counsel shall examine the claim and any counterclaim and negotiate with CMR in an effort to resolve them. The negotiation must begin no later than one hundred twenty (120) days after the date the claim is received. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the negotiation of any dispute arising from this Contract. In the event negotiation results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the settlement to writing, and each party shall sign the settlement. A partial settlement or resolution of a claim does not waive a party's rights as to the parts of the claim that are not resolved.

12.13.4. Mediation. Before the one hundred twentieth (120th) day after the date the claim is filed with TFC and before the expiration of any extension of time mutually agreed upon, the parties may agree to mediate a claim made under this Contract. TFC's administrative rules located at Title 1, Part 5, Section 111.31 of the Texas Administrative Code apply to this Contract and govern the mediation of any dispute arising from this Contract.

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

12.13.6. Payment of Claims. In accordance with the Texas Civil Practice and Remedies Code, Section 114.011, TFC may pay a claim resolved under this Section 12.13 only from money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim. Chapter 304 of the Texas Finance Code applies to a judgment awarded to a claimant except that the applicable rate of interest may not exceed six percent (6%). Consistent with the Texas Civil Practice and Remedies Code, Section 114.011, property owned by the State or any unit of state government is not subject to seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment on a breach of contract claim.

12.13.7. Representation of TFC. The Office of the Attorney General of Texas shall defend TFC in any proceeding or adjudication conducted in conjunction with a claim brought under this Section 12.13.

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

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

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

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

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

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

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



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

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

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

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

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

- 12.25.1. Exhibit A. 2015 UGC.
- 12.25.2. Exhibit B. 2018 Supplementary General Conditions.
- 12.25.3. Exhibit C. Special Conditions (if any).
- 12.25.4. Exhibit D. Initial Fee Schedule and Staffing Plan.
- 12.25.5. Exhibit E. GMP Acceptance Template.
- 12.25.6. Exhibit F. GMP Proposal Template.

- 12.25.7. Exhibit G. CMR List of Staff.
  - 12.25.8. Exhibit H. Criminal Background Checks and Application Guidelines.
  - 12.25.8. Exhibit I-1. Payment Bond Form.
  - 12.25.9. Exhibit I-2. Performance Bond Form.
  - 12.25.10. Exhibit J-1. HUB Subcontracting Plan Form.
  - 12.25.11. Exhibit J-2. HUB Subcontracting Plan PAR Form.
- 12.26. Survival of Terms. Termination of the Contract for any reason shall not release CMR from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution and invoice and verification.

[This Space Intentionally Left Blank]

12.27. Entire Agreement and Modification. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistently with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

**TEXAS FACILITIES COMMISSION**

By: HSBA

John S. Raff

Interim Executive Director

Date of Execution: 6-28-18

**FLINTCO, LLC**

By: [Signature]

Kevin Moyes

President, South Central Region

Date of Execution: 6/25/18

G.C. NRL

Dir. HW

D.E.D. [Signature]

**EXHIBITS CD**