CONSTRUCTION MANAGER–AT-RISK AGREEMENT

THE TEXAS FACILITIES COMMISSION

AND

[INSERT CMR NAME]

FOR

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION HEATING, VENTILATION, AND AIR CONDITIONING (HVAC) UPGRADES AT THE SAM HOUSTON REGIONAL LIBRARY IN LIBERTY, TEXAS

TFC CONTRACT NO. [INSERT]

RFQ NO. 303-1-02165

PROJECT NO. 21-003-2522

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EXHIBITS. The following exhibits are attached to this Agreement and fully incorporated herein by reference:

Exhibit A.	2015 Uniform General Conditions
Exhibit B.	2018 Supplementary General Conditions|
Exhibit C.	Special Conditions of this Agreement (if any)
Exhibit D.	Guaranteed Maximum Price Proposal Template
Exhibit E.	Guaranteed Maximum Price Amendment Template
Exhibit F.	Criminal Background Check and Application Guidelines
Exhibit G.	Approved HUB Subcontracting Plan
Exhibit G-1.	HUB Subcontracting Plan Form
Exhibit G-2.	Progress Assessment Reports Form
Exhibit H.	Project Insurance Requirements
Exhibit I.	Work Package Authorization Template
Exhibit J-1.	Form of Performance Bond
Exhibit J-2.	Form of Payment Bond

AGREEMENT BETWEEN
THE TEXAS FACILITIES COMMISSION AND
CONSTRUCTION MANAGER-AT-RISK

This Agreement (this "**Agreement**") is made as of the Effective Date, by and between:

THE TEXAS FACILITIES COMMISSION ("TFC"), an agent of the State of Texas
1711 San Jacinto Boulevard
Austin, Texas 78701

as "**Owner**" (as is defined in UGC Section 1.28), and

the **Construction Manager-at-Risk:**

[Name]
[Address]
[City, State, Zip]
[Phone:]
[Fax:]

for the following **Project** (the "**Project**"):

[Name of Project]
[Location]
[City, State, Zip]

Architect/Engineer (the "A/E"):

[Name]
[Address]
[City, State, Zip]
[Phone:]
[Fax:]

TFC and the CMR agree as follows:

ARTICLE 1. DEFINITIONS

Unless specifically provided otherwise, all words and phrases in this Agreement in initial caps shall have the meanings set out in this Article 1. All undefined and capitalized terms used herein shall have the meaning given to them in the UGC. In the event of any conflict between the definitions in the UGC, the *2018 Supplementary General Conditions* (the "**Supplementary General Conditions**"), and the Special Conditions, or in any other document that is referenced herein and incorporated for all purposes, and the definitions in this Agreement, the definitions used in this Agreement shall control.

Agreement means this agreement between TFC and Construction Manager-at-Risk whereby CMR agrees to provide Preconstruction and Construction Services to the Project to fully complete the Scope of Work as set forth herein and in the Contract Documents, as modified by the parties and executed below, together with the Exhibits listed herein and attached hereto.

Applicable Law or Law(s) means any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders now in force or hereafter enacted by Authorities Having Jurisdiction, relating to or affecting the Project or arising from this Agreement, including those governing labor, equal employment opportunity, safety, and environmental protection, and further including (i) applicable building, fire, and life safety codes and zoning requirements of Authorities Having Jurisdiction; (ii) accessibility laws, codes, and ordinances including but not limited to the Texas Accessibility Standards of the Architectural Barriers Act, *Tex. Gov't. Code Ch. 469*, Elimination of Architectural Barriers, and the Americans with Disabilities Act of 1990 (*42 U.S.C. § 12181*); (iii) occupational safety acts and requirements applicable to the Project, including United States Occupational Safety and Health Administration ("**OSHA**") requirements and related federal and state regulations; (iv) requirements under Title VII of the Civil Rights Act of 1964, as amended; (v) requirements of the Fair Labor Standards Act and applicable state wage and hour laws including *Tex. Gov't. Code § 2258.001 et seq.*; (vi) Environmental Laws, including all storm water, street, utility and other related infrastructure requirements, (vii) all requirements related to the use, removal, storage, transportation, disposal and remediation of Hazardous Materials; and (viii) any other applicable local, state or federal laws respecting the Project.

A/E shall have the meaning set forth in UGC Section 1.4.

Authority Having Jurisdiction shall have the meaning set forth in UGC Section 1.5.

Baseline Schedule shall have the meaning set forth in UGC Section 1.6.

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

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.

Building Information Model ("BIM") means the computable, digital, multi-dimensional representation of the physical and functional characteristics of the Project's facilities and their related life-cycle information in Autodesk Revit format and Autodesk Civil 3D, to be used as a repository of design and construction information for use by the Project Team during the design, bidding, Preconstruction, and construction phases of the Projects, and for TFC's use throughout the life-cycle of the facilities. Members of the Project Team are required to coordinate all efforts with respect to the BIM in accordance with the guidelines set forth in the BIM Execution Plan developed for the Project.

Building Information Model ("BIM") Execution Plan means that certain plan prepared by the Project team with the guidelines and protocols for use by the Project Team to effectively utilize the BIM throughout the design, bidding, construction and life cycle of the Project.

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.

CAD means AutoCAD DWG format.

Certificate of Substantial Completion means the certificate as defined in UGC Section 1.8, signed by the CMR, A/E, and TFC establishing the date of Substantial Completion, as defined in UGC Section 1.44, for the applicable part of the Work and identifying responsibilities for security and maintenance as set out in UGC Section 12.1.1.2.

CMR Contingency means the amount approved by TFC and allocated by CMR as a component of the GMP to be used for the purpose of protecting the CMR's GMP and Work Progress Schedule against unanticipated costs incurred and unplanned impacts which must be addressed in order to complete the Work in accordance with the Contract Documents and within the Budget.

CMR Project Manager means the individual designated by CMR, and approved by TFC, as the contact person with specific authority to supervise and direct the duties and responsibilities of the CMR, pursuant to the terms and conditions of this Agreement, and who shall have decision-making authority to bind the CMR with respect to the performance of Preconstruction and Construction Services for the Project.

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

Construction Documents means, collectively, the Drawings, Specifications, details, and other documents prepared by the A/E, its consultants and by TFC's other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements required for construction of the Work that are acceptable to TFC.

Construction Services Fee or "CMR Fee" means, subject to the provisions of UGC Section 11.8, the total amount to be paid to CMR for its performance of the Work including profit, main office and other overhead and costs not allocated to the Cost of the Work or defined as General Conditions Costs. The Construction Services Fee is derived by multiplying the sum of (i) the Cost of Work plus (ii) any portion of the used TFC Controlled Contingency, by an agreed upon percentage set forth in Section 7.1.1. No Construction Services Fee will be applied to or paid on General Conditions Costs.

Construction Manager-at-Risk *or "**CMR**" or "**Contractor**"* means that entity designated on the cover page of this Agreement who shall, subject to the provisions of UGC Section 1.18, provide the Preconstruction and Construction Services as set forth in this Agreement. The terms "Construction Manager" and "CMR" are interchangeable with each other and with the terms "Contractor" and "General Contractor" or other similar terms used in the various parts of the Contract Documents, including the UGC.

Construction Services means the coordination, implementation and execution of the Work required by the Contract Documents and are fully described in Article 6.

Contract Documents are identified in Article 2.1.

Cost Estimate(s) means the cost estimate(s) prepared by CMR at various pre-construction phases of the Project.

Design Development Documents means the design development documents, prepared by A/E for the Project, including 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, type of MEP systems, and type of structure and to coordinate the interface of all architectural and structural elements with all building systems.

Deliverables means any and all Drawings, Specifications, photos, designs, studies, sketches, computer programs, reports, and other Professional Services, which are specified to be delivered by A/E pursuant to the terms of the A/E Agreement.

Design Milestone (s) means each milestone, or phase, of design for the Project including (i) Initial Conceptual Drawings; (ii) Schematic Design; (iii) Design Development; (iv) 65% Construction Documents; (v) 95% Construction Documents; and (vi) 100% Construction Documents, such that, upon completion of all milestones, TFC will have a cohesive set of Drawings and Specifications upon which the CMR may construct the Project.

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.

Drawings means the plans, drawings, profiles, cross-sections, and supplemental drawings, or reproductions thereof, prepared by the A/E and approved by TFC, which show the locations, character, dimensions, and details of the Work for the Project.

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 including: (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 2018)*).

EPMCS means the TFC's electronic project management control system.

General Conditions Costs are those reimbursable expenses allowed pursuant to *Tex. Gov't Code § 2269.001(4)*, including CMR's on-site management and administrative personnel, insurance, bonds, and incidental Work, including minor field labor and materials, as further described in Section 8.2. No Construction Services Fee will be allowed or paid on General Conditions Costs. General Conditions Costs shall be a fixed, lump sum amount set forth in the GMP Proposal and GMP Amendment and shall be paid to Contractor based on the percentage of Work certified as complete each month as set forth in Section 9.1.3.3 herein.

Guaranteed Maximum Price or "***GMP***" means that certain amount, guaranteed by the CMR not to exceed the particular sum certain proposed by the CMR and accepted by TFC, for construction of the Project, subject only to additions and deductions by approved Change Order as provided in the Contract Documents. Any amounts incurred by CMR in excess of the GMP shall be the sole obligation of the CMR.

GMP Amendment means the document based on the GMP Proposal and signed by CMR and TFC that establishes (i) the Guaranteed Maximum Price and its basis and (ii) all other requirements set forth in Section 5.3 of this Agreement. The executed GMP Amendment shall form the basis of the Contract Sum as set forth in Article 7 of this Agreement.

GMP Proposal is that certain price proposal by the CMR to TFC that includes necessary cost and pricing and basis information as required in Section 5.2 herein and recommends a Guaranteed Maximum Price for the construction of the Project.

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 Authority Having Jurisdiction in its collection, storage, treatment, or disposal.

HUB Compliance Reporting System means the Texas Facilities Commission Historically Underutilized Business ("**HUB**") online reporting system located at https://tfc.gob2.com. The HUB Compliance Reporting System is used to maintain business records documenting compliance with the HUB Subcontracting Plan ("**HSP**") by submission of monthly Progress Assessment Reports ("**PARs**").

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

Master Schedule means the Critical Path Method schedule, if any, developed and maintained by the PMP incorporating all items of administrative process, procurement, Owner approvals, permitting, Professional Services Schedule for providing deliverables, and the construction Baseline Schedule as updated with CMR's Work Progress Schedule.

Notice to Proceed or "NTP" 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 a particular phase or the particular services for the Project.

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.

Preconstruction Services are those certain services and deliverables to be performed by CMR in accordance with Article 4 herein.

Preconstruction Services Fee means the fixed, lump sum fee for Preconstruction services to be performed by CMR as set forth in Section 4.2.1 herein.

Professional Services Schedule means the schedule/timeline set out in the A/E Agreement which provides the deadlines in terms of a fixed number of days after a preceding deadline for completion and delivery of discrete portions of the Professional Services performed by A/E.

Project Management Professional or "PMP" means the service provider, if any, with whom TFC enters into a Project Management Professional Agreement for Professional Services (the "**PMP Agreement**") for the purpose of the PMP providing certain professional project management services for the Project, which may include, among other services, general Project management, strategic Project planning, Project site planning, operational planning, capital expenditure planning, budgetary impact analysis, and/or Project controls. CMR acknowledges and agrees that the PMP shall have no authority to act for or on behalf of TFC or the State of Texas except as expressly provided for in the PMP Agreement, a copy of which TFC will provide to CMR upon the CMR's request.

Project Team means TFC, Using Agency, CMR or Contractor, A/E and its consultants, TFC Project Manager, PMP (if any), any separate contractors employed by TFC, and other consultants employed for the purpose of programming, design, and construction of the Project. The members of the Project Team will be designated by TFC and may be modified from time to time by TFC.

Request for Proposal *or "**RFP**"* means a solicitation requesting submittal of a proposal in response to the required scope of services.

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

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.

Specifications is defined in UGC Section 1.41.

Statement of the GMP means that certain component of information in the GMP Proposal setting forth the proposed total, not to exceed, amount to construct the Project which shall not be exceeded by CMR, and includes at least the following information which may be supplemented: (i) the Preconstruction Services Fee; (ii) the itemized General Conditions Costs, labor rates, and total lump sum amount; (iii) the Cost of Work enumerated, at a minimum, in categories by CSI specification number and which includes rental rates for Contractor-owned equipment to be used on the Project; (iv) TFC allowances in accordance with Section 7.2.2 herein; (v) any accepted alternates; (vi) the

CMR Fee; (vii) the CMR Contingency; and (viii) the TFC Controlled Contingency (if any), as defined below.

Subcontract means any agreement between CMR and a Subcontractor.

Subcontractor is defined in UGC Section 1.42.

Substantial Completion shall have the meaning as set forth in UGC, except as otherwise provided in the Special Conditions, if any. References to "Substantial Completion of the Work" in the Contract Documents shall mean the Substantial Completion of the entire Work required under this Agreement, except as otherwise expressly provided therein.

TFC Controlled Contingency means that portion of the GMP that will be designated by TFC in the GMP Amendment for TFC's exclusive use and benefit for the Project.

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 Agreement on behalf of TFC, including, but not limited to, serving as the point of contact between TFC, the Using Agency, as defined below, (if any), A/E, and CMR, and supervising TFC's review and approval of the Construction Management Services. For the avoidance of confusion, the TFC Project Manager shall be same person as the Owner's Designated Representative (or ODR) as defined in UGC Section 1.29.

Uniform General Conditions or "***UGC***" shall mean the Uniform General Conditions for Construction Contracts issued by the State of Texas, published date of 2015, as may be amended from time to time, a copy of which is published on TFC's website and as may be modified by this Agreement and the Special Conditions.

Using Agency has the same meaning as defined in *Tex. Gov't. Code § 2166.001(10).*

Work means, in addition to those items set forth in UGC Section 1.49, the provision of all, labor, materials, supplies, and equipment that are required of the Construction Manager to manage, implement, and fully construct the Project in accordance with the requirements of this Agreement and the Contract Documents. The Work includes the Preconstruction and Construction Services described in Articles 4 and 6 and all additional work required by any Change Orders, and any other work reasonably inferable from the Contract Documents. The term "reasonably inferable" includes the understanding of the parties that some minor details of the Work may not be shown on the Drawings or included in the Specifications, but they are included in the Work if they are usual and customary components of the Work for a project of the type depicted in the Contract Documents and they are needed to produce a complete and useable facility.

Work Progress Schedule means the schedule prepared and maintained in accordance with the Critical Path Method and the requirements of the Special Conditions, if any, and the UGC, for design and construction of the Project, reflecting the CMR's actual progress of the construction of the Work and the scheduled activities and current plans for completing the Work. The Work Progress Schedule may subsequently modified by mutual agreement between TFC and CMR to reflect any refinement in its requirements.

ARTICLE 2. CONTRACT DOCUMENTS

2.1 **Contract Documents**. The Contract Documents consist of:

2.1.1 This Agreement and all exhibits and attachments listed, contained or referenced in this Agreement and expressly incorporated herein;

2.1.2 The Uniform General Conditions, as modified by this Agreement;

2.1.3 The Supplementary General Conditions;

2.1.4 The Special Conditions (the "**Special Conditions**"), if any;

2.1.5 The Drawings, Specifications, details, and other documents developed by the design team and issued for construction with TFC's approval;

2.1.6 The BIM Execution Plan;

2.1.7 All Addenda issued prior to the Effective Date;

2.1.8 The GMP Amendment, signed by both parties when finalized and incorporated into this Agreement;

2.1.9 All Change Orders issued after the Effective Date; and

2.1.10 The HSP as approved by TFC.

2.2 **The Contract / Integration**. These Contract Documents form the entire and integrated Contract between TFC and CMR and supersede all prior negotiations, representations, or agreements, written or oral. Neither this Agreement nor any of its provisions can be waived, modified, amended or altered except by a written document signed by CMR and TFC.

2.3 **Conflict between Contract Documents**. If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written amendments to this Agreement entered into in accordance with the requirements hereof after execution of this Agreement with the amendment bearing the latest date taking precedence; (2) this Agreement, including the exhibits attached hereto and incorporated fully herein; (3) the UGC; (4) the final Drawings and Specifications developed by the A/E and such other TFC consultants incorporated into the Contract Documents; (5) the C&A; (6) the Preliminary Drawings and Specifications incorporated into the Contract Documents, with those bearing the latest date taking precedence; (7) and any proposals submitted by the CMR in the procurement for the Project and other documents identified in the Agreement as Contract Documents which have not been incorporated into the Agreement. To clarify the foregoing, the terms of the Agreement (and its Exhibits) shall control over the UGC and the terms of the Agreement (and its Exhibits) and the UGC shall control over any terms in the Drawings or Specifications developed by the A/E and such other TFC consultants inconsistent therewith.

2.4 **In General**. CMR shall perform all Preconstruction and Construction Services as defined herein by providing all labor, materials, equipment, tools, transportation and supplies necessary to complete the Work described in and reasonably inferable from the Contract Documents for the Project. The CMR accepts the relationship of trust and confidence established between it and TFC by this Agreement and agrees to furnish its best skill, attention and judgment to, and cooperate with TFC in furthering the interests of the Project.

The CMR shall furnish design reviews, estimating, scheduling, all other Preconstruction Services, bidding, self-performed work, construction management, and administration services and all other Construction Services as may be required and use its best efforts to perform the Work in the most expeditious, economical and thorough manner consistent with the interests of the TFC and the Project.

ARTICLE 3. TFC RESPONSIBILITIES, INFORMATION, AND APPROVALS

3.1 **Information and Documents to be Provided by TFC**. TFC shall, with reasonable promptness, provide CMR a copy of, or reasonable access to, the following information and documentation regarding the Project:

3.1.1 The Contract Documents;

3.1.2 Sample copies of the Agreement and payment and performance bond forms;

3.1.3 Bidding information and instructions;

3.1.4 Minimum wage rates;

3.1.5 The PAR for inclusion in the Specifications;

3.1.6 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;

3.1.7 Any soil reports or traffic impact studies in the possession of TFC;

3.1.8 The Budget;

3.1.9 The Master Schedule, if any;

3.1.10 The Communication Protocol, which includes the communication and tracking procedure to be utilized for interaction and reporting for the Project;

3.1.11 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;

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

3.1.13 Any other information or services provided under UGC Section 3.1 and under TFC's control that are relevant to the CMR's performance of the Work, upon receipt of CMR's reasonable written request.

3.2 **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.

3.3 **A/E**. TFC has retained an A/E to provide: (i) professional architectural services and/or (ii) professional engineering services as defined in *Tex. Gov't. Code Ch. 2254, Subchapter A*, the scope of both of which is set out in a separate architectural/engineering professional services agreement (the "**A/E Agreement**") for this Project.

3.3.1 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, those set forth in Section 3.2 of UGC and includes the following:

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

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

3.3.1.3 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.

3.3.2 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:

3.3.2.1 A/E shall have no authority to supervise, direct, control, or have authority over, or be responsible for CMR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto; and

3.3.2.2 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.

3.3.3 CMR's deadlines for delivery of certain products and/or services shall be coordinated, at all times, with the A/E deadlines set out in the A/E Agreement.

3.4 **PMP.** TFC may designate a PMP for the Project to provide certain Project management services in addition to those provided by TFC Project Manager. The PMP will provide management of overall Project which scope is further defined in the PMP definition above and in the PMP Agreement, but whose scope may include, but shall not be limited to, the following deliverables:

3.4.1 Planning, management, and coordination of the Project as further defined in the PMP Agreement, a copy of which shall be provided upon request to CMR;

3.4.2 Providing an initial Project program scope and strategy for implementation of the scope;

3.4.3 Review of solicitation documents and other contractual templates and provide recommendations;

3.4.4 Development and management of the Project cost control system;

3.4.5 Development of the Master Schedule and coordinating and monitoring of Work Progress Schedule within the Master Schedule including integration with Project cost control system;

3.4.6 Development of quality control plan;

3.4.7 HUB/S/M/WBE outreach and compliance consultation;

3.4.8 MEP Project planning services;

3.4.9 Functional and space programming services;

3.4.10 Estimating services;

3.4.11 Peer review of designed systems, including MEP, building envelope, roofing, weatherproofing, elevators, architectural and structural systems and utilities and civil site development;

3.4.12 Reporting on Project progress and conformance with the Project program scope; and

3.4.13 Such other deliverables as may be developed or assigned to PMP by TFC.

CMR shall, at all times, work collaboratively with PMP and the TFC Project Manager as well as other members of the Project Team at all times, and shall work to help integrate its Services with those of the A/E, PMP, and TFC Project Manager throughout the Project.

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

3.5.1 No changes to the scope of the Construction Services or Compensation shall be valid or enforceable unless evidenced by a fully executed written amendment to this Agreement.

3.5.2 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.

3.5.3 CMR is not authorized to commence providing any Preconstruction Services or Construction Services to TFC or any Using Agency with respect to the Project unless and until the appropriate Notice to Proceed is delivered by TFC. TFC may, should it find it necessary, extend any of the deadlines set out in this Agreement through written approval executed by the TFC Project Manager.

3.5.4 No inspections of the Project conducted by TFC or A/E during the course of construction, either singularly or in the aggregate, shall reduce the level or extent of CMR's responsibilities arising pursuant to this Agreement. Neither the approval and/or final acceptance of the Project or any documents prepared by CMR, 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 Services in a manner consistent with: (i) industry

standards; and (ii) as required by the Contract Documents. 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 any documents prepared by CMR or in any of the Construction Services provided by CMR.

ARTICLE 4. PRECONSTRUCTION SERVICES PHASE AND COMPENSATION

The Preconstruction Services Phase (the "**Preconstruction Services Phase**") shall commence on the date specified in a NTP with Preconstruction Services issued by TFC. CMR is not entitled to reimbursement for any costs incurred for Preconstruction Services performed before issuance of the Notice to Proceed. Preconstruction Services may overlap with Construction Phase Services. Compensation for Preconstruction Services is set forth in Section 4.2.1 below.

4.1 **Preconstruction Services**. The CMR shall perform and complete the following tasks as a part of the Preconstruction Services:

4.1.1 **General Coordination**.

4.1.1.1 Attend and actively participate in Project Team meetings at regularly scheduled intervals throughout the Preconstruction Services Phase. Frequent Project Team meetings are anticipated prior to TFC's acceptance of the GMP Proposal and during completion of the Construction Documents phase of the design.

4.1.1.2 Visit the site and inspect the existing facilities, systems and conditions and become thoroughly familiar with the existing conditions to ensure an accurate understanding of how the Project can proceed. CMR's investigation and understanding of these conditions is instrumental in preparing its GMP Proposal for the Work. CMR shall not make or be entitled to any claim for any adjustment to the Contract Time or to Preconstruction Services Fees or for Construction Services costs or Fees arising from Project conditions that CMR discovered or, in the exercise of reasonable care, should have discovered in CMR's obligatory investigations.

4.1.1.3 Consult with TFC staff, any representatives of the Using Agency and A/E as may be directed by TFC, and provide information and recommendations to the Project Team on the following issues and on all other issues not listed that are in the normal and customary province of the a construction contractor for a Project of similar size and scope:

4.1.1.3.1 suitability of the Site and proposed improvements;

4.1.1.3.2 building equipment, systems and construction feasibility;

4.1.1.3.3 time requirements for procurement, installation, and construction scheduling issues, including phased construction and potential accelerated or fast-track scheduling;

4.1.1.3.4 availability and selection of materials and labor;

4.1.1.3.5 time requirements for construction and equipment installation;

4.1.1.3.6 safety issues and available precautions related to work under consideration;

4.1.1.3.7 selection and installation of temporary Project facilities, equipment, materials and services needed for common use of the CMR and TFC separate contractors (if any);

4.1.1.3.8 cost factors, including costs of alternative materials, construction methods, life-cycle data, and design;

4.1.1.3.9 conceptual budgets and possible cost savings available in alternative approaches or designs;

4.1.1.3.10 identification and resolution of conflicts in the proposed Drawings and Specifications as they evolve;

4.1.1.3.11 identification of appropriate CMR staff to receive instruction regarding the use of the EPMCS to be utilized by TFC;

4.1.1.3.12 methods of delivering and handling materials, systems, and equipment;

4.1.1.3.13 traffic, parking and materials and equipment storage in and around the site; and

4.1.1.3.14 at TFC's request, attend public meetings and hearings concerning the development and scheduling of the Project.

4.1.2 **Participation in Design Milestone Reviews**. CMR shall participate in review of design milestone deliverables submitted by the A/E in the sequential order as follows: (i) Initial Conceptual Drawings/Schematic Design; (ii) Design Development; (iii) 65% Construction Documents; (iv) 95% Construction Documents; and (v) 100% Construction Documents.

4.1.2.1 CMR shall provide reviews in accordance with the A/E's Professional Services Schedule for delivery of the milestone review deliverables. CMR shall accommodate, at TFC's discretion, adjustments to the A/E's Professional Services Schedule for delivery of design milestone deliverables.

4.1.2.2 Each review shall include initial review by CMR concurrent with Project Team, review meeting with A/E to receive and discuss review comments, provide CMR comments to A/E for compilation into a comprehensive list of comments, provide Cost Estimate, review A/E's responses to comments, receive A/E's certification to TFC that all comments have been reviewed and resolved.

4.1.2.3 Following TFC's acceptance of the A/E Resolution of Comments document, TFC shall issue a formal notice of authorization to A/E with a copy to CMR such that the A/E may proceed to the next Design Milestone within three (3) Days of the certification, or the first weekday thereafter.

4.1.2.4 CMR shall attend and actively participate in all meeting(s) between A/E and TFC wherein any and all documents developed during each Design Phase are reviewed and in the development of the final version of the Initial Conceptual Drawings, the Design Development Documents, and the approved Construction Documents. Such participation must be sufficient to enable CMR to understand the intended project scope, construction and phasing needs,

impacts to facility (ies) operation, and therefrom to accurately estimate construction costs at each Design Phase.

4.1.2.5 If alternative materials and systems are suggested by TFC, A/E, or CMR at any stage, CMR shall provide cost evaluations of those alternative materials and systems within the deadline for formal review comments to each Project Team member.

4.1.2.6 CMR will provide value engineering analysis on construction systems and major construction components, including but not limited to the mechanical systems, exterior envelopes, structural systems, roofing systems, lighting and power services. CMR will summarize value analysis in a detailed report and distribute it to TFC and A/E within the time periods to meet the A/E Professional Services Schedule.

Participation in review of design milestone deliverables is instrumental in preparing the GMP Proposal for the Work. Before submitting its GMP Proposal, the CMR shall have reviewed the Drawings, Specifications, and Construction Documents, and shall have notified TFC and A/E of any errors, omissions or discrepancies in the documents of which it is aware. CMR shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents that CMR discovered or, in the exercise of its standard of care as a contractor and not as a design professional, should have discovered in this design review process that CMR did not bring to the attention of TFC and the A/E in a timely manner.

4.1.3 **Cost Estimates/Cost Consultation**. Following the review meeting for each Design Milestone, CMR will prepare a Cost Estimate based on that particular phase of submittal. CMR will transmit each Cost Estimate to TFC and A/E within seven (7) Days of the review meeting along with any comments such that the Cost Estimate and comments are received by TFC and A/E timely and in a manner that contributes to A/E's prompt resolution of all comments, including conforming such comments and the scope of Work to the then current Budget. Each Cost Estimate will be updated with increasing detail and refinement 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™.

4.1.3.1 If, during the design phases, the Cost Estimate for that design phase exceeds the Budget by the percentage set forth below for each phase, CMR shall consult with TFC and A/E to identify potential design and/or Specification modifications to bring the Cost Estimate into compliance with the Budget.

Design Phase	**Percentage**
Initial Conceptual Drawings Schematic Design	20%
Design Development	15%
65% Construction Documents	10%
95% Construction Documents	5%

Design Phase	Percentage
100% Construction Documents	0%

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

4.1.4 **Schedules**.

4.1.4.1 ***Baseline Schedule and Work Progress Schedule***. As part of CMR's Preconstruction Services, CMR shall prepare the Baseline Schedule for TFC's approval. In addition to the requirements in the UGC, the Baseline Schedule shall (i) coordinate and integrate activities on the Project, including the CMR's services, the A/E's design services, and the work of other consultants and suppliers, and (ii) shall include other detailed schedule activities such as TFC-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central campus monitoring systems, information and instructional technology data-transmission systems, and computer technology systems. Further, throughout the CMR's performance of Preconstruction Services, CMR shall manage and timely update the Baseline Schedule pursuant to UGC Article 9 and in preparation of submitting the Work Progress Schedule as part of the GMP Proposal.

4.1.4.2 ***Procurement Schedule***. CMR will 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. Throughout Preconstruction Services, CMR shall timely update this schedule with information necessary to expedite and coordinate the ordering and delivery of products and materials in advance of construction.

4.1.5 **Construction Planning and Bid Package Strategy**. During this phase of Preconstruction Services, CMR shall:

4.1.5.1 Identify equipment or materials requiring extended delivery times and advise TFC on means and methods for expedited procurement of those items. Update the procurement schedule timely to track this information.

4.1.5.2 Advise TFC and A/E on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items.

4.1.5.3 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of subcontracts in a manner that promotes the interests of the Project and TFC. These recommendations shall take into consideration such factors as time and duration of performance, type and scope of work,

availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, TFC's goals for HUB subcontractor participation, and other related issues. These recommendations may include ideas for phased or staged construction or multiple separate contracts.

4.1.5.4 Review the Construction Documents with the Project Team to eliminate areas of conflict and overlap in the work to be performed by the various Subcontractors or TFC's separate contractors.

4.1.5.5 Develop bidder's interest in the Project. CMR will develop and refine a bid/proposal package strategy in coordination with the A/E that addresses the entire scope of Work for each phase and stage of the Project. Identify all bid/proposal packages on which the CMR intends to submit a self-performance bid/proposal. To the extent CMR seeks to self-perform work, it must comply with *Tex. Gov't. Code § 2269.255*. The overall bid/proposal packaging strategy shall be reviewed and approved by the TFC Project Manager and PMP, if one is retained. It may be revised throughout the buyout of the Project to further the interests of TFC and the Project.

4.1.5.6 Assist all members of the Project Team in obtaining all applicable risk management, building and design code, and regulatory agency reviews and approvals for the Project.

4.1.5.7 Refine, implement and monitor required HUB Subcontracting Plans to promote equal employment opportunity in the provision of goods and services to TFC for the Project. Improve upon the target goals where possible.

4.1.5.8 Advise TFC of any tests to be performed, and assist TFC in selecting testing laboratories and consultants. Develop with TFC a clear understanding of who will assume direct responsibility for the work of such laboratories and consultants and their compensation.

4.1.5.9 Review the Construction Documents to ensure that they contain adequate provisions for all temporary facilities necessary for performance of the Work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work, even when these services involve third parties.

4.1.5.10 Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required in critical phases or stages. Make recommendations that minimize the adverse effects of labor shortages.

4.1.5.11 Provide analysis of the different types and quantities of materials required for the Project and review and monitor the cost of such materials on an ongoing basis. Make recommendations that minimize the adverse effects of material shortages and price volatility of materials.

4.1.5.12 Consult with and make recommendations to TFC on the acquisition and delivery schedules for fixtures, furniture and equipment. Include such activities on the Work Progress Schedule to ensure that they do not delay timely completion of the Project.

4.1.6 **Safety**.

4.1.6.1 CMR shall plan, initiate, maintain, and supervise all safety precautions and programs in connection with the Work of the Project prior the start of construction. The CMR's safety

program shall comply with all applicable requirements of the UGC, OSHA, and all other applicable federal, state and local laws and regulations. The CMR shall be solely responsible for on-site safety. Neither TFC, nor A/E, nor any other member of the Project Team shall have responsibilities for on-site safety except for safety issues arising solely from their own negligent acts or omissions.

4.1.6.2 CMR shall provide recommendations and information to TFC and A/E regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. The CMR shall verify that appropriate safety considerations and provisions are included in the Construction Documents and that the Work envisioned does not include any unnecessary safety risks.

4.2 **Preconstruction Services Fee**.

4.2.1 **Fee**. For Preconstruction Services as described herein and in the Contract Documents, CMR's total compensation (including reimbursement of costs and expenses) shall not exceed the sum of [_____ ($_____)]. The Preconstruction Services Fee is the total compensation payable to the CMR for the performance of Preconstruction Services, except for additional Preconstruction Services performed in accordance with Subsection 4.2.1.2 below.

4.2.1.1 ***Costs Associated with Preconstruction Services Fee***. Costs associated with the following items are specifically, but not exclusively, to be included in the Preconstruction Services Fee: profit and profit sharing; general overhead; salaries and labor; housing and relocation; estimating, scheduling and information management systems and software; contract administration; office expenses; printing and copying; consulting fees; legal or accounting fees; cost of money; taxes; insurance premiums and deductibles; bond costs; purchase or rental of equipment; utilities; travel; per diem; fines or penalties; and damage awards. To the extent that these types of costs exist, any compensation for them shall be considered imbedded in the Preconstruction Services Fee and they may not be compensated or reimbursed in any alternative way.

4.2.1.2 ***Additional Preconstruction Services***. For additional Preconstruction Services that are approved in advance and in writing by TFC, CMR shall be entitled to additional compensation using one of the following methods of compensation: (i) a negotiated additional lump sum amount; (ii) or cost of CMR's employees or consultants who actually perform the additional services based on the employees' wage or salary rate, plus a fee established by TFC; or (iii) as otherwise agreed to by the parties in advance of performing the additional Preconstruction Services.

4.2.2 **Payment**. Payments for Preconstruction Services shall be made monthly based on the services actually performed in the month for which an Application for Payment is submitted, in accordance with and subject to the limitations of UGC Article 10. All payment requests for Preconstruction Services shall be submitted on an Application for Payment and Schedule of Values form approved by TFC and shall include all documents set forth in UGC Article 10 required as conditions precedent to payment.

4.3 **Insurance for Preconstruction Services**. As of the Effective Date and for the duration of this Agreement, including the Preconstruction Services Phase and any Work performed under a Work Package, the CMR shall maintain in effect insurance policies providing the coverages and with the policy limits as required by TFC and as detailed in "**Exhibit H**". TFC will designate the policies and policy limits required

during for Work performed under a Work Package as set forth in any Work Package Authorization. Payment and performance bonds will be required for the Work under any Work Package as dictated by the UGC and Texas law.

4.4 **Suspension/Termination of Preconstruction Services**. TFC may suspend or terminate the performance of Preconstruction Services with or without cause, or for TFC's convenience, as provided in Article 14 below, which provisions are hereby incorporated and applied to Preconstruction Services.

4.5 **Work Package Authorizations.** TFC may identify various portions of the Work that may be ready for construction before it is appropriate to arrive at an overall Guaranteed Maximum Price for the entire Project (a "Work Package"). If TFC elects to proceed with any Work Packages before the parties arrive at an overall Guaranteed Maximum Price, the CMR shall develop Work Package Authorizations for each Work Package identified by TFC as follows: CMR shall prepare a proposal for any particular portion of the Work identified by TFC as a candidate for a Work Package by preparing a proposed Work Package Authorization. Each proposed Work Package Authorization will include, for the particular Work Package or phase of Work, the information and supporting details set forth for the GMP Proposal set forth in Section 5.2 below. When the proposal for any portion of the Work is agreed upon by TFC and CMR, TFC and CMR shall execute the Work Package Authorization that describes the specific scope of the Work to be performed and details regarding that Work. Each approved Work Package Authorization will be identified in the GMP Proposal with an explanation of its scope, approved amount included within the GMP, and completion status. Prior to TFC's execution of the Guaranteed Maximum Price Amendment, CMR shall not incur any cost to be reimbursed as part of the Cost of the Work for Construction Services, except as TFC may specifically authorize in an executed Work Package Authorization as required herein. The Work Package Authorization template is attached as "**Exhibit I"**.

ARTICLE 5. DEVELOPMENT OF THE GUARANTEED MAXIMUM PRICE

When TFC and A/E determine that the design of the Project is sufficiently developed and documented to allow detailed pricing of its construction, and no later than the dates set forth in this Article 5, CMR shall prepare and submit the GMP Proposal to TFC for review and acceptance. The process includes the bidding phase, preparation of the GMP Proposal, consideration of the GMP Proposal, and acceptance or rejection of the GMP Proposal as the GMP Amendment, as set forth in this Article 5.

5.1 **Bidding Phase**.

5.1.1 Within thirty (30) Days of the date of issuance of _____% of [Design Development/ Construction Documents] by A/E, and in accordance 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 General Conditions. Such bids/proposals should follow approved CSI division format, however, 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. For proper comparative pricing evaluation, the instruction to bidders on invitation to bids shall identify the work packages/divisions in the CSI format for which bids/proposals are being requested. They shall also clearly direct bidders/proposers who provide lump sum pricing for more than one division of work to delineate pricing for each division separately.

5.1.2 CMR may seek to perform portions of the Work itself if the CMR submits its bid or proposal for said portions of the Work in the same manner as all other trade contractors or subcontractors as

described in Section 5.1.1 above, and if TFC, in its sole discretion, determines that CMR's bid or proposal provides the best value for TFC or Using Agency.

5.1.3 CMR shall strictly abide by the subcontract bidding methods required in *Tex. Gov't. Code § 2269.256* and other Applicable Laws.

5.1.4 A bid tabulation shall be prepared by CMR or otherwise recorded contemporaneously with the opening of the bids or proposals. The bid tabulation shall 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 UGC Article 4 regarding the HUB program.

5.1.5 The CMR shall furnish in writing to TFC 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. All subcontracts or other agreements entered in to by CMR over $100,000 shall be specifically approved. 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 Agreement. All bids or proposals shall be made public after award, as required by *Tex. Gov't. Code Ch. 2269.*

5.2 **GMP Proposal Preparation**.

5.2.1 Within [45/60] Days of the date of CMR's advertisement or solicitation of bids or proposals described in Section 5.1.1 above, CMR shall submit to TFC a GMP Proposal in substantially the same form as the template attached as "**Exhibit D**". To the extent that the Drawings and Specifications are anticipated to require further development by A/E, CMR shall provide in the CMR Contingency for such further development in the GMP that is consistent with the Contract Documents and reasonably inferable therefrom. 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.

5.2.2 The GMP Proposal, submitted in digital form, that shall include the following:

5.2.2.1 A list of the Drawings and Specifications used in preparation of the GMP Proposal, which shall be included as part of the Project Manual;

5.2.2.2 A list of C&A created by CMR in the preparation of the GMP Proposal, including any assumptions to supplement information provided in the Drawings and Specifications, but which shall not be issued in an attempt to rewrite provisions of this Agreement;

5.2.2.3 The Statement of the GMP including a narrative that summarizes the major elements of the Work included in the GMP Proposal identifying those portions the CMR intends to self-perform;

5.2.2.4 The proposed date of Substantial Completion of the Work and of Final Completion of the Work;

5.2.2.5 The initial Work Progress Schedule that specifies the timeline for performance of the Work, in digital format, together with the following details:

5.2.2.5.1 Dates of delivery of A/E services, with A/E's input and concurrence;

5.2.2.5.2 Coordination and integration of CMR's services, A/E's services, and all other TFC contractors' services, TFC's responsibilities, and identification of items that could affect the Project's timely completion;

5.2.2.5.3 The components of the Work including (i) times of commencement and completion required of each Subcontractor; (ii) ordering and delivery of materials and other items to be incorporated into the Work, including those that must be ordered well in advance of construction ("long lead items"); (iii) a clear delineation of the critical path; and (iv) all milestone dates of completion of particular portions of the Work and Date of Substantial Completion and of Final Completion of the totality of the Work;

5.2.2.6 An updated list of CMR's supervisory personnel and Subcontractors;

5.2.2.7 An updated HSP;

5.2.2.8 A statement of all authorized Work Packages; and

5.2.2.9 The deadline on which the GMP Proposal will automatically expire, which shall not be less than sixty (60) days from the date TFC receives it.

5.2.3 **Coordination with A/E**. In developing the GMP Proposal, the CMR shall coordinate efforts with the A/E to identify qualifications, clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. The CMR shall review the GMP Proposal on an ongoing basis from the beginning of Preconstruction Services to address clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP such that the GMP Proposal will be complete in all respects.

5.2.4 In submitting the GMP Proposal, the CMR represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or the supporting documents, along with all necessary or ancillary materials and equipment to install each of them completely and make each fully operational, unless specifically excluded by TFC.

5.2.5 **Consideration of the GMP Proposal**. CMR shall meet with TFC and A/E to review the GMP Proposal. In the event that TFC or A/E discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify CMR, who shall make appropriate adjustments to the GMP Proposal, its basis, or both. All bids and CMR's recommendations shall be reviewed by TFC and, with advice of CMR and A/E, TFC shall identify exceptions that may result in changes to bid selections and overall GMP.

5.3 **Acceptance/Rejection of the GMP Proposal and GMP Amendment**. TFC may accept or reject the GMP Proposal or attempt to negotiate its amount and its terms and conditions with CMR.

5.3.1 **Acceptance of GMP Proposal by TFC**. If TFC accepts in writing the GMP Proposal, or a negotiated variant of it, the CMR shall prepare the GMP Amendment, the form of which is attached hereto as "**Exhibit E**", for both parties to execute.

5.3.1.1 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 Agreement; (iii) a safety plan as specified in UGC Section 7.1; (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, and (v) a list of CMR-owned equipment to be utilized on the Project. Payment and Performance bonds for the Work shall be provided upon execution of the GMP Amendment.

5.3.1.2 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 those revised Drawings and Specifications to CMR as they are revised. CMR shall notify TFC and A/E of any inconsistencies between the GMP Amendment and the revised Drawings and Specifications.

5.3.1.3 At such time that the GMP Amendment has been executed and CMR has submitted the required bonds in accordance with UGC Article 5 and any Special Conditions, and TFC has accepted the proof of insurance as required by of this Agreement, TFC shall release the Security Bond to CMR. In the event that the GMP Amendment applies only to a phase or portion of the Project, the Security Bond shall not be returned to CMR until all of the foregoing requirements are met as to the remaining phase of the Project. In the event CMR fails to timely: (i) deliver the required payment and performance bonds within the time period set forth in Section 5.3.1.1, or (ii) insurance policies for the construction phase as required by "**Exhibit H**", TFC shall be entitled, upon the failure of CMR to cure following ten (10) Days written notice, and without further action or notice, to collect on the Security Bond.

5.3.1.4 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 order 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 Agreement including, but not limited to including, but not limited to Section 6.2.1.2 below.

5.3.1.5 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.

5.3.1.6 Upon execution of the GMP Amendment, the CMR shall not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the supporting documents used to establish the GMP.

5.3.1.7 The maximum allowable amount of General Conditions Costs established for the Project and incorporated by the GMP Amendment cannot be subsequently increased except with the express written approval of TFC. The limit on allowable reimbursement of General Conditions Costs will not be adjusted for changes to the Project that do not change the GMP or the scope of the Project.

5.3.2 **Rejection of the GMP Proposal by TFC**. If the TFC rejects the GMP Proposal or the parties are unable or unwilling to agree on a negotiated variant of it, TFC may terminate this Agreement.

Notwithstanding UGC Section 14.7, if this Agreement is terminated pursuant to this Section 5.3.2, TFC shall pay the CMR for that portion of the Preconstruction Services Fee as has been incurred and approved by TFC to the time of termination and TFC shall then have no further duties, responsibilities, or financial obligations to the CMR. After such a termination of this Agreement, TFC will be free to abandon or pursue this Project in any manner as it sees fit without any obligation to CMR.

ARTICLE 6. CONSTRUCTION PHASE SERVICES

The Construction phase of the Project shall be deemed to commence upon the date specified in a NTP with Construction Services issued by TFC after executing the GMP Amendment (unless issued previously via a Work Package Authorization as set forth below) and shall continue until Final Completion of all Work. Upon receipt of the NTP, CMR shall proceed with the Work and timely deliver to TFC the Construction Services for the Project as is specified in UGC Section 3.3, and as is set forth in this Article 6. TFC reserves the right to (i) direct the Construction Phase to commence prior to completion of the Preconstruction Services, in which case the services will proceed concurrently and/or as Work Packages as set forth in Section 4.5 herein; or (ii) to complete the Project in phases.

6.1 **Performance**. Prior to commencement of any Work at the Site, CMR shall attend a pre-construction conference with TFC, A/E, and other consultants, at such time and location as designated by TFC. CMR shall furnish all Construction Services in a good and workmanlike manner, in strict compliance with the Contract Documents and all Applicable Laws, within the time parameters provided under the approved Work Progress Schedule, and within the Contract Sum. CMR shall maintain work progress and products consistent with the Work Progress Schedule. CMR will provide its best efforts to complete the Project in an expeditious and economical manner consistent with TFC's interests and in the best interest of the Project. TFC reserves the right to impose liquidated damages as to the timely completion of all or distinct portions of the Project.

6.1.1 **Ongoing Responsibilities**. CMR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in accordance with the requirements of the Contract Documents, including this Agreement and the UGC. CMR, not TFC, shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. CMR shall coordinate, monitor and inspect the work of Subcontractors to ensure conformance with the Contract Documents. CMR will thoroughly review and closely scrutinize the performance, means, methods, constructability, schedules, and costs of all of its Subcontractors and suppliers as is relevant to each Subcontractor's discipline.

6.1.2 **Compliance with Prevailing Wage Rates**. CMR will, at all times pertinent to this Agreement, comply with UGC Article 2 concerning prevailing wage rates.

6.1.3 **Multiple Completion Times**. CMR agrees to timely deliver the services described in this Agreement whether the Project is to be completed as a single package or in multiple combinations of packages. CMR will cooperate fully if TFC decides to "Fast Track" and establish multiple completion dates. If TFC elects these approaches, CMR shall organize and perform its services to be most appropriate and efficient for each stage of Project development. In these circumstances, each stage of the Project may have a unique schedule for completion and specific cost limitations agreed to in writing by the CMR and TFC.

6.1.4 **Force Majeure**. Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Agreement, 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, and governmental actions or orders concerning pandemics or epidemics, but not otherwise.

6.1.4.1 ***Notice***. In any such event, the party claiming force majeure shall notify the other of the Force Majeure event in writing within seventy-two (72) hours of the earlier of (a) the commencement of the Force Majeure event or (b) the entry of any order by an Authority Having Jurisdiction of an emergency or Force Majeure event. In the event CMR fails to timely provide said notice, 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. TFC shall determine the termination of the Force Majeure event in the exercise of reasonable discretion and based upon any applicable order entered by an Authority Having Jurisdiction.

6.1.4.2 ***Due Diligence***. CMR shall exercise due diligence to prevent, eliminate, or overcome any Force Majeure event where it is possible to do so and resume performance of Professional Services at the earliest possible date. However, if nonperformance continues for more than thirty (30) Days, TFC may terminate this Agreement immediately upon written notification to CMR.

6.1.5 **Risk of Loss**. CMR shall bear all losses, if any, resulting on account of the amount and character of the Work, or because the conditions under which the Work must be done are different from what were estimated or anticipated by CMR, or because of weather, floods, elements, or other causes.

6.2 **Project Administration**. CMR shall establish and maintain an on-site organization of competent, full-time personnel to coordinate the administration of the Project, provide budgeting and cost control measures, scheduling, review of shop drawings and submittals, establish and maintain safety controls, provide input into permits and testing, and provide a general and responsible staff to manage and complete the Construction Services in accordance with this Agreement and the UGC.

6.2.1 **Key Personnel**. CMR shall designate in writing to the Project Team those key employees and representatives who are authorized to act on the CMR's behalf with respect to the Project.

6.2.1.1 ***Designation***. CMR shall designate one or more CMR Project Manager(s) and Project superintendents who are responsible for the day-to-day management of the Construction Services. The CMR Project Manager (or one of them as designated by CMR and approved by TFC) shall be authorized to act on behalf of and bind the CMR in all matters related to Construction Services including, but not limited to, execution of Change Orders and submission of Applications for Payment. The Project Manager, and all superintendents, Project engineers, and other representatives, their titles, and a brief description of the limitations of each representative's authority shall be included as an exhibit (the "**CMR List of Key Personnel**") to the GMP Amendment. After any said list is integrated into this Agreement, CMR shall not change their assignments without TFC's written consent, which consent shall not be unreasonably withheld. CMR shall not assign or retain on the Project any person or entity to whom TFC reasonably objects.

6.2.1.2 ***Replacement***. The CMR Project Manager and Project superintendents must be committed to the Project on a full-time basis. TFC reserves the right to request that the CMR Project Manager and the Project superintendents, and any of CMR's employees and

Subcontractors (and their Project Managers), 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 Applicable Laws; (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. CMR shall bear the costs associated with the replacement of any of its staff listed on the CMR List of Key Personnel.

6.2.2 **Budget Control**. To provide for timely and detailed control of costs and expenditures, CMR will:

6.2.2.1 Maintain cost accounting records in good form on expenditures for materials, labor, or for any other expenditures;

6.2.2.2 Promptly identify all variances between estimated costs and actual costs during the Construction Phase, and report such variances, and recommend to the Project Team measures to counter any adverse cost movements, no more than five (5) Days after acquiring such information;

6.2.2.3 Comply with requirements for submission of progress and final pay applications and related documents as provided in Article 10 of UGC;

6.2.2.4 Prepare and administer its Schedule of Values and all Subcontractors' Schedule of Values together with sworn statements and waivers of lien, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports and submit same to TFC on a monthly basis; and

6.2.2.5 Notify TFC within five (5) Days of identification of any item or portion of the Project that CMR contends is not within the scope of the Project, or if CMR contends that an adjustment to the GMP or the Contract Time should be made due to a deviation from the established performance criteria.

6.2.3 **Schedule Control**.

6.2.3.1 ***Procurement Schedule***. 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.

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

6.2.3.1.2 Upon the earlier of the execution of a Work Package requiring any Construction Services, or TFC's issuance of a Notice to Proceed with any Construction Services, CMR shall (i) assume full responsibility for all materials and equipment assigned to CMR by TFC for Project-related items purchased by TFC, and (ii) obtain and bind all insurance coverages, including builder's risk insurance, as required by "**Exhibit H"**.

6.2.3.2 ***Work Progress Schedule***. CMR shall, at all times, comply with the scheduling requirements in UGC Article 9. CMR shall adhere to the Work Progress Schedule established in accordance with the terms and conditions of this Agreement, as it may be amended from time to time. 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 7:00 a.m. until 6:00 p.m. 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. CMR understands and agrees that work, installation or any other service performed without the prior written authorization of the TFC Project Manager is work outside the scope of this Agreement and shall be performed exclusively at CMR's risk.

6.2.3.3 ***Inspections and Testing Coordination***. CMR shall plan for and develop the Work Progress 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.

6.2.4 **Communication and Reporting**. CMR shall cooperate with all members of the Project Team and endeavor to further the interests of TFC and the Project. CMR will establish procedures for effective communication and coordination among the Project Team, Subcontractors, separate contractors, and others regarding the construction of the Project, and implement and continuously modify such procedures as necessary. To the extent 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. CMR shall coordinate delivery and installation of TFC-procured material and equipment and shall cooperate with any commissioning agent engaged by TFC.

6.2.4.1 ***Meetings***. 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, all explanatory presentations with the A/E as may be requested by TFC, and matters concerning the proposed site use and improvements, selection of materials, and building systems and equipment. CMR shall attend TFC regularly scheduled and any interim Project progress meetings and fully advise the Project Team of the Project status including progress, schedule, costs, quality and changes.

6.2.4.2 ***Reporting***.

6.2.4.2.1 ***Monthly***. 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. Unless otherwise provided by the A/E, or the CMR in the absence of the A/E, CMR shall record and distribute the minutes of each monthly and interim Project meeting to each Project Team member. The minutes shall identify critical activities that require action, the person/entity responsible to complete the action and the dates by which each action must be completed.

6.2.4.2.2 ***Daily Log***. Unless and until instructed otherwise in writing by TFC, CMR shall also prepare a daily log (the "**Daily Log**") containing: (i) a record for each day's weather (unless otherwise provided by the A/E); (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 6.1.3 of this Agreement, portions of the Work in progress; (iii) number of workers on the Site; (iv) identification of all equipment on the Site; (v) problems that might affect progress of the work; and (vi) all accidents, injuries, and any other information that may be requested by TFC from time-to-time, and upload said Daily Log into EMPCS as directed by TFC, by the end of each next business day. In the event CMR fails to timely and properly identify and upload any Force Majeure days, CMR shall be deemed, without further notice, to have automatically waived any claims of Force Majeure as to those days.

6.2.5 **RFIs, Submittals, and Maintenance of Documents**.

6.2.5.1 ***Discovery of Errors***. While CMR is not required to ascertain that the Drawings and Specifications are in accordance with Applicable Laws, CMR acknowledges its responsibilities as described in, and shall comply fully with, the terms and conditions of the UGC concerning discrepancies, inconsistencies, errors, or omissions in the Drawings and Specifications. CMR further acknowledges that it has a shared responsibility with A/E for discovery and resolution of discrepancies, inconsistencies, errors, and omissions in the Contract Documents as set forth in the UGC and that it shall promptly report to A/E and TFC, in writing, any nonconformity discovered by or made known to CMR. Such reporting may be in the form of an RFI.

6.2.5.2 ***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.

6.2.5.3 ***Documents***. All documents prepared by CMR shall be: (i) completed and delivered in a timely manner and in a manner consistent with industry standards; (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. 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.

6.2.5.4 ***Electronic Project Management Control System and Tracking***. CMR shall use TFC's designated project management software system to correspond and maintain project related correspondence and documentation throughout the life of the Project including Project close-out and final payments. CMR will establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplemental instructions and provide updated records at each TFC's meeting and at other times when requested. CMR certifies and represents that it is proficient in the use of CAD systems and the EPMCS utilized by TFC.

6.3 **Permits and Approvals**. CMR shall obtain building permits and special permits for permanent improvements as required by law, regulation or the Construction Documents. CMR shall assist TFC or A/E in obtaining all approvals required from authorities having jurisdiction over the Project.

6.4 **Testing**. CMR shall coordinate and provide access for all TFC-provided testing (or testing by separate contractors/providers) operations at the site and coordinate the receipt and proper distribution of all testing results. TFC will pay for all initial testing required by the Specifications for the purpose of determining whether the materials or systems tested meet the requirements of the Contract Documents. All testing initiated by the CMR, including all corrective measures necessary for a product or system to meet the requirements of the Contract Documents and any necessary re-testing, shall be paid by the CMR. To the extent that this provision conflicts with UGC Article 8.2 (Testing), this provision shall control.

6.5 **Use of the Site**.

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

6.5.2 **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.

6.5.3 **Review of Contract Documents and the Site**. CMR acknowledges that it has had an opportunity to examine, and prior to the submission of its GMP Proposal will have carefully examined, all of the Contract Documents including, but not limited to, the Drawings and the Specifications, and has fully acquainted itself with the scope of Work, design, availability of materials, existing facilities, the general topography, soil structure, substructure conditions, obstructions, and all other conditions pertaining to the Work, the site of the Work and its surrounding. CMR acknowledges that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work and that anything in any of the Contract Documents or in any representations, statements or information made or furnished by TFC or its representatives notwithstanding, CMR will, regardless of any such conditions pertaining to the Work, the site of the Work or its surroundings, complete the Work for the compensation stated in this Agreement.

6.5.4 **Hazardous Materials**. As part of its examination of the Site conditions, CMR has made and/or will make, reasonable and appropriate efforts to discover the presence of any subsurface or otherwise concealed Hazardous Materials. The scope of said examination must include a reasonable amount of invasive and/or destructive exploration behind walls and ceilings. The results thereof shall be delivered to TFC in writing at or prior to the delivery of the GMP Proposal. In the event CMR discovers the presence of other Hazardous Materials during the Construction Phase of the Project, CMR shall promptly, but in no event later that seven (7) Days after each such discovery, provide written notice thereof to TFC and A/E. CMR shall not disturb said conditions. Any remediation of such Hazardous Materials shall be considered outside the scope of Work unless specifically included in the GMP Amendment.

6.6 **Completion of the Work and Inspections**. CMR will fully comply with the requirements of UGC Article 12as it concerns inspections and timely submittal of Punchlists as required for pre- and post-inspections for Substantial and Final Completion.

6.6.1 **Completion Deadlines**. CMR shall achieve Substantial Completion and Final Completion within the time periods specified in the GMP Amendment. In the event the Project is to be constructed in phases (or with interim construction milestones), each phase (or with interim construction milestones) must be constructed within the period of time specified by TFC.

6.6.2 **As-Builts/Record Documents**. No later than ten (10) Days prior to the date of the Substantial Completion inspection, CMR must deliver to A/E a copy of the BIM, CMR's marked-up Record Documents, 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.

6.6.3 **Certifications are Conditions Precedent**. 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. Issuance of a Certificate of Final Completion is a condition precedent to CMR's right to receive Final Payment.

6.6.4 **Site Conditions**. Prior to Substantial Completion of the Work, CMR shall clean the Site and the Work and make it ready for utilization by TFC. At 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. 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 this Agreement.

6.6.5 **Fees**. In the event any fees, and/or other direct and/or consequential damages are charged to, or incurred by, TFC by reason of CMR's failure to timely correct and/or complete the items that are the subject of any of the three inspection processes set forth in UGC Section 12.1.5.3, CMR shall be liable to TFC for such fees and/or damages. At Final Completion, CMR shall remove all tools, appliances, construction equipment and machinery, and surplus materials from the Site.

6.7 **Warranties**. CMR will fully comply with the Warranty provisions set forth in UGC Article 13. However, the creation of CMR's general one (1) year warranty set forth in UGC Section 13.2 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. 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. All warranties and guarantees required by the Specifications shall expressly run to the benefit of TFC.

6.8 **Safety**. CMR shall carefully adhere to the requirements of the Contract Documents for safety and quality control, including UGC Article 7 Safety and Article 8 regarding Quality Control. Further, CMR shall provide recommendations and information to TFC and A/E regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. The CMR shall verify that appropriate safety considerations and provisions are included in the Construction Documents and that the Work envisioned does not include any unnecessary safety risks.

6.8.1 **Electrical Energy Control, Lockout/Tag-out Procedure**. 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.

6.8.2 **Safety Stand-Down Orders**. TFC may at any time, in its sole discretion and in writing, order a temporary stand-down of CMR's performance of the services ("Safety Stand-Down Order") as a result of any one (1) or more safety incidents, whereupon CMR shall immediately direct all CMR Personnel to stop all services while CMR conducts a comprehensive review of CMR's safety management plan and any Site conditions affecting safety at any Project Site for the purpose of: (i) identifying any safety hazards and unsafe working conditions; (ii) conducting safety training of the CMR personnel involved in performance of the services who were or may have been exposed to harm in connection with such safety incident(s); and (iii) taking any corrective action that CMR determines to be necessary and appropriate to fulfill its obligations in accordance with this Agreement. Upon receipt of TFC's Safety Stand-Down Order, CMR shall not resume performance of the services until it has issued to TFC a written report, which shall be due within forty-eight (48) hours of the receipt of TFC's Safety Stand-Down Order, detailing the course of action that CMR has taken, or plans to take, to resolve the safety incident(s) described therein, and to prevent the recurrence thereof. After reviewing such course of action with TFC, CMR shall, in the exercise of the CMR's reasonable judgment, propose the date by which CMR will complete all corrective action. Services shall resume only upon TFC's delivery of further written notice to CMR withdrawing the TFC's Safety Stand-Down Order, which notice of withdrawal shall not be issued until 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 Agreement, 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 Agreement and TFC may, without further notice, terminate this Agreement for cause. In responding to any Safety Stand-Down Order, CMR's evaluation of the need for, and its plan of, corrective action shall be undertaken as an independent contractor, pursuant to Section 12.3 of this Agreement and nothing herein shall be construed or interpreted to mean that TFC has assumed or agreed to assume any duty of care to the CMR Personnel, or to provide guidance or instruction as to the CMR's means and methods for managing safety as required by this Agreement. Any action taken by TFC hereunder to enforce TFC's rights to require CMR to fulfill its safety obligations under this Agreement 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.

6.9 **Historically Underutilized Businesses**. CMR will proactively comply with TFC's established policies regarding the utilization of HUB and all other applicable administrative rules and statutes relating to utilization of HUB's by TFC for the Project, including, without limitation, (i) as described in the Approved HUB Subcontracting Plan, a copy of which is attached hereto as "**Exhibit G**" and incorporated herein for all purposes, and (ii) the HUB Compliance Reporting System as described in UGC Article 4. When required, including, without limitation, (a) as part of the GMP Proposal, (b) prior to issuance of a Notice to Proceed for any Work Package; and (c) prior to issuance of a Notice to Proceed for Construction Services, CMR shall submit an updated HSP for TFC's approval. Upon TFC approval of HSP update(s), such update(s) shall become, without further notice or action, a part of the incorporated "**Exhibit G**." 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 Form and Progress Assessment Report Form (PAR form), a copy of each of which is attached hereto as "**Exhibit G-1,**" and "**Exhibit G-2,**" respectively, and incorporated herein for all purposes. No changes to the HSP can be made by the CMR without the written approval of TFC.

6.9.1 **Requirement to Utilize HUB Compliance Reporting System**. Pursuant *to Tex. Admin. Code Title 34 §§ 20.85(f)(l)(2) and 20.287(b)*, TFC administers monthly HSP to include the PARs

compliance monitoring through a HUB Compliance Reporting System known as B2G. CMR and CMR's Subcontractors must submit required PARs information into the B2G system as a condition of payment. When delays occur in the timely submission of PARs information into the B2G system, TFC reserves the right to treat such delays as a deficiency resulting in suspension of CMR's payment request until such deficiency has been resolved.

6.10 **Copyrights/Trademarks/Instruments of Service**. Drawings, Specifications and other documents prepared by A/E, its consultants, other consultants retained by TFC for the Project, or by CMR, that describe the Work to be executed by the CMR are instruments of service and shall remain the property of their authors (or TFC as may be provided in the respective contractual agreements between TFC and the respective design professional). These documents are for use on the Project only and the CMR and its Subcontractors shall not use the documents on any other projects. The CMR shall be permitted to retain one record set of such documents. All other copies of the documents shall be returned to their respective authors or suitably accounted for. The CMR and its Subcontractors are authorized to reproduce and use portions of the documents as necessary and appropriate for the execution of the Work. Submission or distribution of the documents to meet official regulatory requirements or for other purposes in connection with the Project shall not diminish the author's rights.

6.10.1 CMR agrees that all instruments of service prepared by CMR pursuant to this Agreement are subject to the rights of TFC in effect on the date of execution of this Agreement. 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 the instruments of service in response to a public information request pursuant to *Tex. Gov't. Code Ch. 552*. If the instruments of service 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. TFC shall be further authorized to make subsequent use of any instruments of service for any and all future renovations, modifications, alterations, maintenance, repairs, and the like, of the Project. CMR shall include appropriate provisions to achieve these purposes in all Subcontracts entered into that produce information subject to copyright protection.

6.10.2 CMR shall promptly provide copies of all instruments of service in CMR's possession to TFC upon completion, termination, or cancellation of this Agreement for any reason, including all copies in any form or medium specified by TFC in this Agreement, whether written, digital, or electronic.

6.10.3 **No Use of TFC's Name or Trademark**. CMR agrees not to make any written use of or reference to TFC or the Using Agency names or registered or unregistered trademarks for any marketing, public relations, advertising, display or other business purpose or make any use of TFC's or Using Agency's facilities for any activity related to the express business purposes and interests of TFC/Using Agency pursuant to this Agreement, without the prior written consent of TFC/Using Agency which consent may be withheld or granted in TFC and/or Using Agency's sole discretion. CMR shall not advertise that it is doing business with TFC or use this Agreement as any sort of marketing or sales tool without the prior written consent of TFC.

6.11 **Work Made for Hire**. All Work performed by CMR and its Subcontractors and consultants 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 Agreement. 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 Agreement.

6.12 **Building Information Model ("BIM").** CMR shall coordinate efforts with the PMP, TFC Project Manager, and the A/E to successfully implement the BIM Execution Plan for the Project. CMR will provide personnel, including a BIM Coordinator, and appropriate services to ensure the proper flow of information is provided to enable appropriate input into and output from the BIM, including, but not limited to, importing information into the BIM, providing updated information on changes to the Project plans and specifications during construction, assisting on conflict resolution, coordinating the sharing of information, facilitating file exchange, and other deliverables as assigned to it in the BIM Execution Plan. TFC may assign additional deliverables to CMR as it concerns the functionality of the BIM such that the complete BIM may be provided to TFC upon completion for TFC's use throughout the life-cycle of the Project.

ARTICLE 7. CONTRACT SUM AND GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION SERVICES

7.1 **Contract Sum**. For CMR's performance of the Work as described in this Agreement, TFC shall pay the CMR the Contract Sum in current funds as set forth herein. The Contract Sum is the (i) Cost of Work as provided in Article 8 herein, plus (ii) CMR's Preconstruction Services Fee, plus (iii) CMR's Construction Services Fee, plus General Conditions Costs, all of which CMR represents and guarantees that, when aggregated, shall not exceed the Guaranteed Maximum Price set forth in the GMP Amendment.

7.1.1 **CMR's Construction Services Fee**. The CMR's Construction Services Fee for the Construction Services on the Projects shall be computed based upon _____% of the Cost of Work actually incurred by CMR in the performance of the Work. The CMR's Construction Services Fee is the maximum amount payable to the CMR for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by TFC elsewhere in this Agreement. **No CMR Construction Services Fee will be allowed or paid on General Conditions Costs**. References in the UGC to CMR's "overhead" and "profit" shall mean the CMR's Construction Services Fee. CMR'S Construction Services Fee includes, but is not limited to, the following items:

7.1.1.1 ***Profit***. All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the CMR;

7.1.1.2 ***Salaries***. Salaries of CMR's officers, and all other employees not stationed at the Project site and performing services directly related to the Project;

7.1.1.3 ***Overhead***. Any and all overhead, labor or general expenses of any kind unless specifically allowed and provided for as General Conditions Costs. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, home office computers, copiers, and other business equipment, specialized project specific telephone systems and cellular/digital phones; trade or professional association dues; costs for hiring and/or relocation of any of the CMR's personnel; and travel, per diem or subsistence expense of CMR, its officers or employees; and

7.1.1.4 ***Financial Costs***. Any financial costs incurred by the CMR including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

7.2 **Guaranteed Maximum Price**. CMR guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price established in the GMP Amendment, as it is amended from time to time to reflect additions and deductions by changes in the Work as provided in the Contract Documents. To the extent the Cost of Work, together with the CMR's Construction and Preconstruction Services fees thereon, exceeds the Guaranteed Maximum Price, the CMR shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from TFC. CMR assumes the risk of, and shall be responsible for, all costs that overrun the 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 Agreement increasing the GMP for such costs.

7.2.1 **CMR's Contingency**. The GMP Proposal may include a CMR Contingency amount to be used to fund unanticipated costs through the refinement, development and completion of the Construction Documents or procurement of the Work. The CMR Contingency set forth in the GMP Amendment by line item, as negotiated between the parties, and it shall reflect the risk inherent in the state of completion of the Construction Documents at the time the GMP Proposal is submitted. Any unused portion of the CMR Contingency shall be returned to TFC at the completion of the Project, or a mutually agreeable time during the construction of the Project, through a credit Change Order to the Contract Sum.

7.2.1.1 Any re-allocation of funds from the CMR's Contingency to cover increases in the Cost of Work or any other claimed costs by the CMR must be approved by TFC in advance and in writing, such approval not to be unreasonably withheld. In written requests to use the CMR's Contingency, the CMR shall provide detailed documentation of the scope of work affected and the basis for any increases in costs resulting in the need to use CMR Contingency funds.

7.2.1.2 As the Construction Documents are finalized and the buyout of the Work progresses, the CMR's Contingency amount shall be reduced by mutual agreement of CMR and TFC. The buyout shall occur within the first 20% of the construction duration for each Notice to Proceed issued for construction. Should savings occur after the buyout stage, such savings, and related reductions to the CMR's Contingency amount, will be handled in accordance with the provisions of Section 7.3.

7.2.2 **TFC Allowances**. Items to be provided for through TFC special cash allowances shall be clearly identified in the Construction Documents and the GMP Proposal. The Cost of Work included in the allowances shall be determined in accordance with the UGC. Any claim by the CMR for an adjustment to an allowance amount included in the Guaranteed Maximum Price based on the cost of allowance work shall be made within a reasonable time after the issuance of the Construction Documents for the allowance items. The CMR shall not be entitled to any increase in its Construction Services Fee for increases to allowance amounts that were initially based on estimates provided by the CMR. TFC shall be entitled to retain 100% of the balance of any unused allowance amount.

7.2.3 **TFC Controlled Contingency**. The GMP Proposal will include a separate line items for the TFC Controlled Contingency, the amount of which shall be determined by TFC in its sole and absolute discretion. No part of the TFC Controlled Contingency shall be used by CMR or included in the GMP unless TFC elects to do so by Change Order and then only with respect to that portion of the TFC Controlled Contingency funds that are actually used for a TFC-directed change to the Work.

7.3 **Savings**. If the allowable, final, verified, audited amount of the Cost of Work, Allowance items and CMR's Contingency is less than the amount established for each of those categories in the originally approved GMP Proposal, the entire difference shall be credited to TFC as savings and the final contract amount shall be adjusted accordingly. When buyout of the Project is at least 85% complete, TFC may recognize any savings achieved to that point by issuing a deductive change order for the savings amount.

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

7.4 **Changes in the Work**. The Guaranteed Maximum Price 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.

7.4.1 **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 UGC Article 11. 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.

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

7.4.3 **Change Order Pricing**. CMR may include the CMR Fee on all CMR Change Order work negotiated during the Construction Phase. The CMR Fee shall supplant the references to overhead and profit imposed by UGC Section 11.8.1. Except as otherwise provided in the Special Conditions, if any, the Subcontractor overhead and profit mark-up limitations imposed by UGC Section 11.8.1 are unaffected by this paragraph and are not changed. If TFC agrees to a change in the GMP during the Construction Phase that results from a change in the scope of the Project, the Construction Phase Fee shall be equitably adjusted by applying the percentage established in this Section to the amount of the change in the GMP. The Construction Phase Fee will not be adjusted for changes to the Project that do not change the GMP.

7.4.4 **Deduction from Cost of Work**. Amounts that accrue to TFC in accordance with the foregoing provisions shall be credited to TFC through a deductive Change Order to the Guaranteed Maximum Price, or refunded to TFC as appropriate.

ARTICLE 8. COST OF WORK

"**Cost of Work**" shall mean costs necessarily incurred by the CMR in the proper performance of the Work. CMR is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred only after receipt of TFC's written authorization to commence the Construction Phase Work through Final Completion of the Work. CMR is not entitled to reimbursement for Cost of the Work costs incurred before receipt of TFC's written authorization. Costs of the Work shall be the actual costs at rates set forth in this Article, where provided, and if not, then at rates not higher than the standard paid at the place of the Project except as otherwise approved by TFC. References in the UGC to adjustments in "cost" or "costs" mean the items set forth in this Section, Cost of the Work.

8.1 **Cost of the Work**. Cost of the Work shall include the following:

8.1.1 **Labor Costs**.

8.1.1.1 Wages of construction workers directly employed by CMR to perform construction of the Work at the Site or at approved off-site workshops which shall be paid in compliance with prevailing wage rates requirements of *Tex. Gov't. Code § 2258*.

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

8.1.2 **Subcontract Costs.**

8.1.2.1 Payments made by CMR to Subcontractors and their vendors or suppliers for the subcontract work in accordance with the Contract Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers. Such costs may include taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for Subcontractor 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 Agreement.

8.1.2.2 Payments earned by CMR for self-performed subcontract work, other than General Conditions work, in accordance with the Contract Documents and the terms of this Agreement and approved by TFC.

8.1.3 **Costs of Materials, Consumable Supplies, and Equipment Incorporated into the Completed Project**, including:

8.1.3.1 Costs (including transportation and storage) of materials, consumable supplies, and equipment required by the Contract Documents to be used or incorporated into the completed Project.

8.1.3.2 Costs of materials in excess of those actually installed or incorporated to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become TFC's property at the completion of the Work or, at TFC's option, shall be sold by CMR in a commercially

reasonable manner. Any amounts realized from such sales shall be credited to TFC to reduce the Cost of the Work.

8.1.4 **Cost of Other Materials and Equipment, Temporary Facilities, and Related Items**, including:

8.1.4.1 Reasonable and necessary costs of renting motorized or engine-power or other specialized items of construction equipment or temporary facilities that are necessary to perform the Work at the Site. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the CMR, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by TFC and shall be in accordance those established by (i) the "Contractor's Equipment Cost Guide," latest edition published by the Associated General Contractors of America, or (ii) the lowest of three (3) competitive bids obtained from equipment leasing companies that have been approved by the TFC before any commitments are made. Such rental costs shall in no event be charged at higher than competitive rental rates prevailing in the Austin 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.

8.1.4.1.1 The aggregate rental cost of any item charged to TFC shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, CMR shall purchase the equipment and turn it over to TFC upon Final Completion of the Work or, at TFC's option, credit TFC with the fair market resale value of the item.

8.1.4.2 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 that TFC has approved the rentals and the rental rates in advance and all other such costs must be based on fair market value less any far market salvage value or credit for the sale or return thereof.

8.1.5 **Miscellaneous Costs**. Miscellaneous costs, which shall include the following.

8.1.5.1 Sales, use or similar taxes imposed by an Authority Having Jurisdiction that are related to the Work and for which CMR is liable except those for which exemption is allowed under the Applicable Law.

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

8.1.5.3 Fees of laboratories for tests required by the Contract Documents and the UGC, except those related to defective or nonconforming Work for which reimbursement is excluded by UGC Section 8.2.3.5 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 8.2 below.

8.1.5.4 Intellectual property royalty and license fees paid for the use of a particular design, process, or product required by the Contract Documents which are, or will be incorporated into the Work.

8.1.6 **Emergency Costs**. Emergency costs, which shall include the following.

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

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

8.2 **General Conditions Costs**. CMR is entitled to receive reimbursement for allowable General Conditions Costs incurred between the issuance of a Notice to Proceed with Construction Services or execution of a Work Package requiring the performance of Construction Services (whichever is earlier), and thirty (30) calendar days after the date of Substantial Completion. CMR is not entitled to reimbursement for General Conditions Costs incurred before the date specified in the preceding sentence, or after more than thirty (30) calendar days after Substantial Completion, except with prior written approval of TFC. Allowable General Conditions Cost items are generally identified below and in the Special Conditions, if any. CMR shall include General Conditions Costs items in a separate schedule attached to the GMP Proposal and made part of the GMP Amendment, and shall be further detailed in the Schedule of Values. Items not included in the general category below or identified in the GMP Proposal and the GMP Amendment will not be allowed as General Condition Costs.

8.2.1 **Supervisory Personnel Costs**. The actual wages based on wage rates for CMR's hourly employees and monthly salary rates of CMR's salaried personnel engaged in Project management, supervisory, support and administrative roles and who are identified to TFC in advance and in writing but only for the time actually stationed at the Project site with TFC's prior consent. CMR shall include these rates in an exhibit providing wage/salary and benefits information for the specific staffing proposed by the CMR during the proposal stage of the selection process. The specific personnel and salary rates included in CMR's proposal during the selection process along with additional staffing and salary rates that TFC and CMR mutually agree to be necessary for the competent management and successful completion of the Work shall be provided as part of the GMP Proposal. Staffing and wage/salary and benefits information may be changed only by mutual agreement during the GMP Proposal negotiation or during the Construction phase when such changes are necessary or unavoidable. The Project Manager's monthly salary rate may be included in the General Conditions Costs only when the Project Manager is directly managing the Project. Except as may otherwise be provided in the Special Conditions, if any, all personnel costs are subject to audit to determine the actual cost of the wages, salaries, allowable employer contributions, and labor burden incurred by the CMR for services performed with respect to the Project.

8.2.2 Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, construction documentation, and reasonable expenses of CMR's jobsite office if incurred at the Project site and directly and solely in support of the Work.

8.2.3 Miscellaneous jobsite costs relating to transportation and personnel, including transportation, parking, background checks and employee identification materials, costs of the safety program, temporary barriers, signage and controls, and cleaning and waste disposal.

8.2.4 Permit and inspection fees that are not subject to exemption. Permit and inspection fees paid by CMR where TFC is exempt will not be reimbursed by TFC.

8.2.5 Premiums for insurance and bonds to the extent directly attributable to this Project. Notwithstanding the foregoing, premiums for subcontractor payment and performance bonds and/or subcontractor default insurance shall **NOT** be reimbursable as a General Conditions Cost or Cost of the Work.

8.2.6 Governmental sales and use taxes directly attributable to the General Conditions Costs that are not subject to exemption. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by TFC as Costs of the Work.

8.3 **Items Excluded from the Cost of the Work**. Any provisions in this Agreement to the contrary notwithstanding, Cost of Work shall **NOT** include the following items:

8.3.1 Salaries or other compensation of CMR's personnel stationed at the CMR's principal office or offices, except as may be specifically provided in Section 8.2.1 above, or as may be provided in UGC Article 11.

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

8.3.3 Overhead and general expenses, except as may be expressly included in Sections 8.2 above.

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

8.3.5 Except as provided in Section 8.1.6.2 of this Agreement, costs due to the negligence or failure of CMR, Subcontractors, or anyone directly or indirectly employed or engaged by any of them, to fulfill a specific responsibility under this Agreement.

8.3.6 Costs of acceleration of the Work arising as a result of delay 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, or other consequential loss incurred by CMR.

8.3.7 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 the Guaranteed Maximum Price established by the GMP Amendment.

8.3.8 Premium costs/charges for or relating to subcontractor payment and performance bonds and/or subcontractor default insurance.

8.3.9 Any cost not specifically and expressly identified in Sections 8.1 to 8.2 above.

8.3.10 Costs for services incurred during the Preconstruction Services Phase of the Project (these are paid as Preconstruction Services).

ARTICLE 9. PAYMENT

9.1 **Construction Phase Payments**. Payments for Construction Services shall be made in conformance with UGC Article 10, subject to the conditions and terms of this Agreement.

9.1.1 **Schedule of Values**. All payment requests shall be submitted on an Application for Payment which shall be based on the Schedule of Values approved by TFC pursuant to UGC Section 10.1 and shall include all required attachments. CMR's Construction Services Fee, General Conditions Costs,

and CMR Contingency shall, in addition to the requirements of UGC Section 10.1, be shown as a separate line items on the Schedule of Values and on each monthly Application for Payment. CMR shall also submit a submittal schedule with the Schedule of Values that provides for the purchase of all materials necessary for the Work within the first twenty-five percent (25%) of the Construction Phase, as shown on the approved construction schedule.

9.1.2 **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.

9.1.3 **Progress Payments**. Payments to CMR will be based on Applications for Payment submitted to TFC and A/E in conformance with the requirements below and in UGC Section 10.2.

9.1.3.1 Payments for Subcontractor work shall not exceed the percentage of Work allocated to that Subcontractor for any particular work classification and shall not exceed the total value of the subcontract amount.

9.1.3.2 CMR's Construction Services Fee shall be paid monthly in the same proportion as the approved percentage completion of the Cost of the Work of the Project.

9.1.3.3 With the exception of mobilization costs that are accepted in the GMP Amendment and supported with documented receipts for costs incurred, CMR's General Conditions Costs shall be calculated and paid each month on the basis of the percentage of completion of the entire Work in conformity with the requirements of the Contract Documents and in such amounts as verified by TFC and A/E. Payment of any CMR's General Conditions Cost to date shall not proportionally exceed the percentage of overall Cost of Work installed unless otherwise approved by TFC in writing.

9.1.3.4 Used CMR Contingency for the particular month submitted shall be reported separately on the Application for Payment.

9.1.3.5 Change Orders shall be listed separately on the Application for Payment form. Payment for approved Change Orders shall be made as part of the CMR's Application for Payment.

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

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

9.1.4.2 Complete copies of all receipts, invoices with check vouchers or other evidence of payment, payrolls, and any and all other evidence of the Cost of the Work and the CMR's General Conditions Costs which TFC or its designated representatives shall deem necessary to support the amount requested. This information is subject to audit and payment for these costs is dependent on TFC's receipt of accurate and complete records of all transactions. TFC may reduce the amount paid for General Conditions Costs in any pay period if TFC, in its good faith judgment, determines that the unpaid balance of the General Conditions Costs line item is not sufficient to cover necessary General Conditions Costs for the remainder of the Project.

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

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

9.1.4.5 A duly executed Conditional Waiver and Release on Progress Payment from each Subcontractor that complies with *Tex. Prop. Code § 53.284(b)*.

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

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

9.1.5 **Pay Application Certifications**. Each submission of a pay application shall also constitute CMR's certification that: (i) as of the date of the pay application, CMR is in compliance with UGC Section 2.2.1; (ii) CMR has updated all expired insurance policies as required by UGC Section 5.2; (iii) CMR has updated the Record Documents, as required by UGC Section 6.2.3; (iv) CMR has updated the Submittal Register, as defined in UGC Section 1.40, and pursuant to UGC Section 8.3.1.2; and (v) 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.

9.1.6 **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.

9.1.7 **Deductions allowed for Discounts/Rebates**. TFC shall be entitled to deduct amounts for the following items from any Application for Payment or from the Request for Final Payment submitted by the CMR:

9.1.7.1 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 the TFC for the fair market value (as approved by the TFC) for all surplus tools, construction equipment and materials retained by the CMR or, at TFC's option, use commercially reasonable efforts to sell the surplus tools, construction equipment and materials for the highest available price and credit the proceeds to the TFC's account.

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

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

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

9.1.7.5 Balances remaining on any Allowances, the CMR's Contingency, or any other identified Agreement savings.

9.2 **Prompt Payment**. CMR shall be paid in accordance with *Tex. Gov't. Code Ch. 2251*, also known as the "Prompt Payment Act" and the provisions set out in UGC Article 10, subject to any Special Conditions.

9.3 **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.

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

9.5 **Liquidated Damages**. The CMR acknowledges and agrees that time is of the essence in completing the Work required hereunder, that the CMR's failure to meet the deadlines set forth in this Agreement shall be a material breach of the Agreement, and that TFC will incur substantial damages due to any failure by the CMR to achieve Substantial Completion on or before the required date(s). If the CMR fails to achieve Substantial Completion of the Work by the date(s) set forth in Section 6.6, as such date(s) may be modified in accordance with the terms of the Contract Documents, the CMR shall pay TFC liquidated damages, and not as a penalty, in the amount as defined in **Exhibit C** per calendar day until Substantial Completion of the Work is achieved. If the CMR fails to achieve Substantial Completion of certain construction milestones(s) by the date(s) set forth in Section 6.6, as such date(s) may be modified in accordance with the terms of the Agreement, the CMR shall pay TFC liquidated damages, and not as a penalty or forfeiture, in the amount as defined in **Exhibit C** calendar day until Substantial Completion of such construction milestone is achieved. There shall be a seven (7) calendar day grace period applied to the dates for Substantial Completion of the Work and each construction milestone before such liquidated damages are assessed.

9.5.1 TFC may deduct any liquidated damages from any amounts due the CMR, and/or TFC may require the CMR to pay any liquidated damages, within ten (10) days after TFC's request should the available contract funds be insufficient to cover the liquidated damages assessed against the CMR. If liquidated damages are actually recovered by TFC, the above-stated liquidated damages provided for herein shall be TFC's exclusive damages remedy for the CMR's unexcused failure to achieve Substantial Completion of the Work or Substantial Completion of any construction milestone, but such damages shall in no way limit TFC's other rights (e.g., termination) under the Agreement or TFC's entitlement to damages for any other injury, damage or loss, other than for delay to achieving Substantial Completion of the Work or Substantial Completion of certain construction milestone (s), for which the CMR may be responsible pursuant to the terms of this Agreement or Applicable Law.

9.5.2 In determining the amount(s) of liquidated damages set forth in **Exhibit C**, TFC has carefully considered the following categories of damages and has thoughtfully determined such amount(s) accordingly: increased financing charges, cost of relocation of personnel to alternative space, costs for managing an extended schedule, costs for the AE's extended involvement, costs of storage of TFC-provided FF&E, lease extension costs, and other numerous damages. Further, the CMR acknowledges and agrees that as of the date this Agreement is executed (i) the amount of damages TFC will incur due to the CMR's failure to achieve Substantial Completion of the Work or Substantial Completion of certain construction milestone(s) as required by this Agreement are impossible or difficult to estimate, (ii) the liquidated damages set forth in **Exhibit C** are a reasonable pre-estimate of damages that TFC will incur as a result of a delay in achieving Substantial Completion of the Work or Substantial Completion of certain construction milestone(s) as required by this Agreement, (iii) that

the consequential damages contemplated at the time of this Agreement are uncertain and difficult to determine with exactness, and (iv) that the liquidated damages set forth in **Exhibit C** are not out of all proportion to the probable loss.

9.5.3 This Section 9.5 survives the termination of the Agreement. In the event this liquidated damage provision is held to be unenforceable or void (except when the holding is the result of a challenge by TFC), TFC shall be allowed to recover actual damages (both direct and consequential damages) caused by the CMR's failure to achieve the applicable Contract Time requirements.

9.6 **Reductions/Withholdings**. TFC may reduce any Application for Payment at any time to protect TFC from loss or damage on account of actions and/or inactions of CMR as set forth in this Article 9, in UGC Section 10.3.3, or based on any of the following additional circumstances:

9.6.1 To protect TFC against any loss or damage which may result from negligence by CMR or any Subcontractor or failure of CMR or any Subcontractor to perform their obligations under this Agreement;

9.6.2 The payment request includes services that are not performed in accordance with the Contract Documents; provided, however, TFC shall pay for those services performed in accordance with the Contract Documents;

9.6.3 The payment request has insufficient documentation to support the amount of payment requested for Project costs; provided, however, TFC shall pay for allowable Project costs for which there is sufficient documentation;

9.6.4 CMR is in violation of the Prevailing Wage requirements or has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which TFC has made payment to CMR; or

9.6.5 CMR fails to obtain, maintain or renew insurance coverage as required by this Agreement.

9.7 **Partial Payment**. No partial payment made by the TFC shall constitute, or be construed to constitute, final acceptance or approval of the work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by the TFC shall constitute, or be construed to constitute, a release of CMR from any of its obligations or liabilities with respect to the Work.

9.8 **Final Payment**. Final Payment shall not be made until (i) all Work is completed and all requirements of the Contract Documents have been satisfied; (ii) all inspections required under UGC Article 12 have been performed and accepted; and (iii) all documentation required by Article 12 or as otherwise required by this Agreement has been provided.

9.8.1 TFC shall have no obligation to make Final Payment until a complete and final accounting of all construction costs has been submitted by CMR and has been audited and verified by TFC and its auditors. Nothing contained herein shall require the TFC to pay the CMR an aggregate amount for Construction Services that exceeds the GMP.

9.9 **Construction Funds**. All payments to CMR shall be subject to the provisions of the *Tex. Prop. Code Ch. 162*, concerning Construction Payments, Loan Receipts, and Misapplication of Trust Funds.

9.10 **Taxes**. TFC is an agency of the State of Texas and materials and services utilized in the construction of the Project may be exempted from state and local taxes. CMR is responsible for taking full advantage of

all tax exemptions applicable to the Project. TFC will deduct from the Applications for Payment and from the Request for Final Payment any taxes paid for materials or services that were entitled to tax exemption.

9.11 **Debts or Delinquencies Owed to the State**. Any payment due under this Agreement 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 *Tex. Gov't. Code § 403.055*.

9.12 **State Funding**. This Agreement shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of the *Texas Constitution, Art. III, § 49*. In compliance with the *Texas Constitution, Art. VIII, § 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 Agreement 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 Agreement should not exceed the amount of funds appropriated for payment under this Agreement, but not yet paid to CMR, for the fiscal year budget in existence at the time of the breach.

ARTICLE 10. 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 Agreement and all Applicable Laws.

10.2 **Audit Rights**. TFC shall have the right to verify and audit the details of CMR's billings, certificates, accountings, cost data, and statements, before or after any payment, by (1) inspecting the books and records of CMR during normal business hours; (2) examining any reports with respect to this Project; (3) interviewing CMR's employees; (4) visiting the Project site; and (5) any other reasonable action. CMR's records shall be organized and maintained is its files by each Application for Payment period and shall be kept on the basis of generally accepted accounting principles and in conformance with the Texas State Auditor's Office requirements. CMR should anticipate that will audit the entire Agreement record before making final payment under the Agreement. This provision shall survive any termination of this Agreement.

10.3 **Records Retention**. All records relevant to this Agreement shall be retained for a minimum of seven (7) years. This retention period runs from the date of Final Payment for the relevant goods or services by TFC, or from the date of termination of this Agreement, 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 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 Agreement. 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 Agreement; (ii) becomes available to CMR from a source (other than TFC) which source is not, to the best of CMR's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by CMR. Such Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing or designated as Confidential):

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

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

10.4.2.3 Information relating to TFC's proprietary rights prior to any public disclosure thereof, including but not limited to, the nature of the proprietary rights, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights, and trade secrets).

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

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

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

10.4.2.7 In accordance with *13 TAC § 6.94(a)(9)*, CMR shall provide to TFC the descriptions of its business continuity and disaster recovery plan as it regards TFC's vital state records as defined in *Tex. Gov't. Code § 441.180(13).*

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 Agreement.

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 Agreement to the contrary, CMR understands that TFC will comply with the Texas Public Information Act, *Tex. Gov't. Code Ch. 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 Agreement and/or any amendment to this Agreement. This Agreement and/or any amendment to this Agreement 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 Agreement, 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 Agreement, 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 *Tex. Admin. Code Title 1, Ch. 213* when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. If applicable, CMR shall provide the Texas Department of Information Resources 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 the *Rehabilitation Act § 508*), 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*). CMRs not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at *http://www.section508.gov/*.

10.8 **Cybersecurity Training Required**. If CMR has "access," as that term is defined in *1 Tex. Admin. Code § 202.1*, to any state computer system or database, then, pursuant to *Tex. Gov't Code § 2054.5192*, CMR and its subcontractors, officers, and employees shall complete a cybersecurity training program certified under *Tex. Gov't Code §2054.519*. The cybersecurity training program must be completed by the CMR and its subcontractors, officers and employees during the term and any renewal period of this Agreement. CMR shall verify completion of the training program to TFC pursuant to, and in accordance with, *Tex. Gov't Code § 2054.5192*.

ARTICLE 11. BONDS AND INSURANCE

11.1 **In General**. In addition to the Bond and Insurance requirements set forth in UGC Article 5, CMR shall comply with the requirements set forth in this Article 11.

11.2 **Bonds**

11.2.1 **Security/Bid Bond**. CMR shall provide a security bond/bid bond outlined in UGC Section 5.1.2 within the time periods set forth in UGC Section 5.1.3.1 on the form provided by TFC in the amount of _____ percent (____%) of the TFC Budget. The surety for a security bond shall meet the same requirements as set forth for payment and performance bonds. The Security/Bid Bond will be issued for a period not to exceed six (6) months and will be automatically renewed unless cancelled by written notice to CMR and TFC, received by TFC within sixty (60) calendar days prior to the applicable expiration date. If the Bid Bond is cancelled, CMR shall replace the Bid Bond, or provide other financial security under terms substantially the same as the Bid Bond and otherwise acceptable to TFC, in TFC's sole discretion, within thirty (30) calendar days of TFC's receipt of the surety's notice of cancellation, failing which, CMR shall be deemed to be in default of its obligations under and to have committed a material breach of this Agreement and TFC may proceed in accordance with the provisions of UGC Section 14.3, and/or be entitled to enforce any other remedy or right the TFC may have hereunder.

11.2.2 **Performance and Payment Bonds**. CMR shall provide Performance and Payment Bonds in accordance with the UGC, each with penal sums of one hundred percent (100%) of the value of the Guaranteed Maximum Price, in accordance with the requirements of *Tex. Gov't. Code § 2269.258* and *§ 2253.001 et seq.,* and in such form attached hereto as "**Exhibit J-1**," and "**Exhibit J-2**", respectively. The Payment and Performance Bonds will be provided by CMR upon TFC's execution of the GMP

Amendment or at the time of approval of a Work Package. No Notice to Proceed shall be issued until the bonds are received and approved by TFC. At all times, CMR's Performance and Payment Bonds will cover the Guaranteed Maximum Price as set forth in the GMP Amendment. To the extent a Work Package is issued under Section 4.5, and CMR has not provided a performance and payment bond under *Tex. Gov't. Code § 2269.258(a),* Payment and Performance bonds with penal sums equal to the authorized dollar amount of the Work Package Authorization shall be provided. Without limiting any other requirements or obligations of the surety, the Performance Bond shall cover CMR's warranty obligations for a period not to exceed one (1) year from the date of the TFC's issuance of the Certificate of Substantial Completion, and shall include coverage for any liquidated damages for which CMR may be liable under this Agreement.

11.2.3 In addition to the above requirements, all bonds shall be issued with the TFC as the named obligee and shall be executed by a corporate surety company authorized to do business in the State of Texas and which shall hold a certificate of authority from the United States Department of Treasury to qualify as a surety on obligations permitted or required under federal law. All bonds shall have a Power of Attorney attached. Performance and Payment bonds shall be provided before any Construction Services are provided, including those under any Work Package.

11.2.4 Pursuant to §8.3.8 above, costs, premiums or other charges for or relating to subcontractor bonds and/or subcontractor default insurance are not reimbursable as Costs of the Work or as General Conditions Costs and will not be reimbursed.

11.3 **Insurance.** CMR shall maintain in effect, and shall require its Subcontractors to maintain in effect, at all times during the full term of this Agreement, including Preconstruction Services, insurance policies providing the coverages specified in UGC Section 5.2 and as supplemented in "**Exhibit H**". Each policy shall be written with limits not less than those set forth in UGC Section 5.2 or "**Exhibit H**", whichever is higher. CMR will comply and will require its Subcontractors comply fully with all requirements of UGC Section 5.2 and "**Exhibit H**".

ARTICLE 12. INDEMNITY

12.1 **CMR SHALL INDEMNIFY AND HOLD HARMLESS TFC, USING AGENCY, THE STATE OF TEXAS AND CUSTOMERS, AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, ASSIGNEES AND DESIGNEES ("INDEMNITEES"), AS PROVIDED IN UGC ARTICLE 3 AND AS SET FORTH IN ANY SPECIAL CONDITIONS OR SUPPLEMENTAL GENERAL CONDITIONS**.

12.2 **WITHOUT LIMITING THE INDEMNITY REQUIRED ABOVE, THE CMR SHALL INDEMNIFY AND HOLD HARMLESS TFC, USING AGENCY, THE STATE OF TEXAS AND THEIR OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM LIABILITY OF ANY NATURE OR KIND, INCLUDING COST AND EXPENSE, FOR OR ON ACCOUNT OF INFRINGEMENT OR USE OF ANY PATENTED OR OTHERWISE PROTECTED INVENTION, PROCESS, DOCUMENT, OR ARTICLE IN THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ITS USE BY TFC**.

12.3 **Survival**. The indemnities contained herein shall survive any termination, completion, and/or expiration of this Agreement and shall not be limited in any way by the amount of type of insurance obtained by TFC or any agency of the State of Texas.

ARTICLE 13. DISPUTE RESOLUTION

13.1 **Dispute Resolution**. In addition to the requirements in UGC Article 15, the below dispute resolution process and requirements shall be used by TFC and the CMR in an attempt to resolve any unresolved claim for breach of contract arising under this Agreement and made by the CMR:

13.1.1 **Texas Government Code Chapter 2260**. Except to the extent *Tex. Civ. Prac. & Rem. Code Ch. 114* applies to any such unresolved claim, in accordance with *Tex. Gov't Code § 2260.004*, the dispute resolution process provided for in *Tex. Gov't. Code Ch. 2260* shall be used by the parties to resolve a dispute under this Agreement. TFC hereby designates general counsel as its officer for examining, negotiating and resolving claims and counterclaims in accordance with *Tex. Gov't. Code Ch. 2260.052(a).*

13.1.1.1 **Mediation**. The Parties hereby agree to mediate any claim or dispute arising under this Agreement in accordance with *Tex. Gov't. Code§ 2260.056*. TFC's administrative rules located at *1 Tex. Admin. Code, Part 5, § 111.31* apply to this Agreement and govern the mediation of any dispute arising from this Agreement.

13.1.2 **Texas Civil Practice & Remedies Code Chapter 114.** In accordance with *Tex. Gov't. Code §2260.002(3)* and/or in the event *Tex. Civ. Prac. & Rem. Code Ch. 114* applies to any such unresolved claim, the parties shall follow the below dispute resolution process (referenced as the "Alternative Dispute Resolution Process" in UGC Section 15.2):

13.1.2.1 ***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.

13.1.2.1.1 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.

13.1.2.1.2 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 13.1.2.1.1 above.

13.1.2.2 ***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 *Texas Admin. Code Title l, Part 5, § 111.31* apply to this Agreement and govern the negotiation of any dispute arising from this Agreement. 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.

13.1.2.3 ***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 Agreement. TFC's administrative rules located at *Texas Admin. Code Title l, Part 5, § 111.31* apply to this Agreement and govern the mediation of any dispute arising from this Agreement.

13.1.2.4 ***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 *Tex. Civ. Prac. & Rem. Code Ch. 114* or *Tex. Gov't. Code Ch. 2260*.

13.1.2.5 In addition to the requirements of Sections 13.1.2.1 to 13.1.2.4 above, all other provisions and requirements of *Tex. Civ. Prac. & Rem. Code Ch. 114* shall apply to such unresolved claims. To the extent the terms and conditions of *Tex. Civ. Prac. & Rem. Code Ch. 114* conflicts with the terms or conditions contained in Section 13.1.2, the terms and conditions of *Tex. Civ. Prac. & Rem. Code Ch. 114* shall control and apply.

13.1.3 **No Damage for Delays**. Notwithstanding any provision in the UGCs, an extension of the Contract Time shall be the sole remedy of CMR for delays in performance of the Work, whether or not such delays are foreseeable, except for delays caused solely by acts of TFC that constitute intentional interference with CMR's performance of the Work and then only to the extent such acts continue after CMR notifies TFC in writing of such interference. For delays caused by any act(s) other than the sole intentional interference of TFC, CMR shall not be entitled to any compensation or recovery of any damages including, without limitation, consequential damages, lost opportunity costs, impact damages, loss of productivity, or other similar damages as set forth in Section 13.1.3.1 below. TFC's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with CMR's performance of the Work regardless of the extent or frequency of TFC's exercise of such rights or remedies.

13.1.3.1 The amount of any claim for damages asserted by CMR for a delay caused by TFC's sole intentional interference shall not exceed the sum calculated as follows: (i) the per diem amount of CMR's General Conditions Costs set forth in 8.2 x number of days of delay plus (ii) direct costs incurred during the period of delay based on allowable Costs of the Work set forth in Section 8.1. CMR shall not be entitled to (z) any indirect or consequential damages, (y) home office overhead, home office charges, or any damages based on Eichleay formula calculation; (x) recovery of any damages based on a comparison of planned expenditures to total actual expenditures, or on losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly; (w) any profits or lost profits, except as expressly recoverable as CMR Construction Services Fee on the Cost of the Work in Section 7.1.1; (v) exemplary damages, (u) unjust enrichment damages, or (t) attorney's fees. All recoverable Costs must be shown to have been directly caused by TFC intentional interference. Nothing in this Section shall constitute an express authorization in the Contract for the recovery of compensation for increased cost to perform the Work as a direct result of TFC-caused delays or acceleration pursuant to *Tex. Civ. Prac & Rem. Code Ch. 114*.

ARTICLE 14. TERMINATION AND SUSPENSION

14.1 **Termination for Cause during Preconstruction Phase.** This Agreement may be terminated during the Preconstruction Phase by either party upon fifteen (15) Days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, and such failure to perform is not cured within such fifteen (15) Day period.

14.2 **Termination Subsequent to Establishment of GMP**. Following execution of the GMP Amendment, this Agreement may be terminated: (i) as provided in UGC Sections 14.3 to 14.6; and/or (ii) when an existing material breach by CMR of any other contract between CMR and TFC has remained unresolved for at least fifteen (15) Days. If this Agreement is terminated by TFC in accordance with UGC Section 14.3, TFC shall

have the right, but not the obligation, to 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 Agreement.

14.2.1 In the event TFC terminates this Agreement for cause pursuant to UGC Section 14.3, TFC reserves the either re-solicit or re-award this Agreement to the next best responsive and responsible respondent. The terminated CMR will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

14.3 **Suspension of Work**.

14.3.1 **For Cause or TFC's Convenience**. TFC may suspend all or any part of the Work in accordance with UGC Sections 14.1 and 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.

14.3.2 **Force Majeure Event**. If TFC determines that a Force Majeure event has occurred, TFC may suspend all or a portion of the Work upon written notice to CMR. CMR shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of suspension, including (a) CMR Fee on completed Work and (b) the direct, actual and unavoidable (by exercise of reasonable care) costs incurred by reason of the demobilization including fencing and other jobsite utilities/security measures for Project during the suspension period (unless covered directly by TFC) and storage of materials, and, when the suspension is lifted, direct remobilization costs. No extended General Conditions Costs or other indirect or consequential costs or damages will be paid unless specifically agreed in advance by TFC.

ARTICLE 15. SPECIAL PROVISIONS

15.1 **Compliance with Laws**. CMR has determined what licenses, patents and permits are required under this Agreement and shall procure and maintain for the duration of this Agreement 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 Agreement. 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 Agreement. As part of its delivery of the Construction Services, CMR shall make itself familiar with and at all times give all notices required by, and shall observe and comply with, all Applicable Laws that in any manner affect performance under this Agreement.

15.1.1 Neither CMR, nor any firm, corporation, partnership, or institution represented by CMR, or anyone acting for them has: (i) violated the antitrust laws of the State of Texas under the *Tex. Bus. & Com. Code Ch. 15* or the federal antitrust laws; or (ii) communicated directly or indirectly its response to the RFP for this Project to any competitor or any other person engaged in such line of business during the procurement process for this Agreement.

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

15.2 **Responses to RFQ**. All statements, representations and certifications contained in, or otherwise set out in, CMR's response(s) to the RFQ for this Project were true and correct when made, and shall remain true and correct throughout the term of this Agreement.

15.3 **Certification of No Asbestos Containing Materials or Work**. CMR shall comply with the requirements of the UGC (see Article 13) concerning Asbestos Certification. CMR shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal. All materials used shall be certified as non-Asbestos Containing Building Materials (ACBM).

15.3.1 The CMR shall insure compliance with the following acts from all of its Subcontractors and assigns:

15.3.1.1 Asbestos Hazard Emergency Response Act (AHERA—*40 CFR 763-99 (7)*);

15.3.1.2 National Emission Standards for Hazardous Air Pollutants (NESHAP—*EPA 40 CFR 61, National Emission Standard for Asbestos*); and

15.3.1.3 Texas Asbestos Health Protection Rules (TAHRP—*Tex. Admin. Code Title 25, Part 1, Ch. 295C, Asbestos Health Protection*).

15.3.2 **Licensing**. CMR shall insure that Texas Department of State Health Services licensed individuals, consultants or companies are used for any required asbestos work including asbestos inspection, asbestos abatement plans/specifications, asbestos abatement, asbestos project management and third-party asbestos monitoring.

15.3.3 **Affidavit Required**. CMR shall provide at Substantial Completion, a notarized certification statement in accordance with *Tex. Admin. Code, Rule § 295.34(c) (1)* certifying that no ACBM was used during construction of the Project. Prior to submitting this affidavit, every Subcontractor and supplier shall have provided a notarized statement to CMR that no ACBM has been provided, used, or left on this Project (which shall be provided to TFC upon request). CMR shall take whatever measures that may be necessary to insure that all employees, suppliers, fabricators, material men, subcontractors, or their assigns comply with this requirement.

15.3.4 **Provision of SDS**. CMR shall provide, in hard copy and electronic form, all necessary Safety Data Sheets ("**SDS**") of all products used in the construction of the Project to the Texas Department of State Health Services licensed inspector or to the A/E who will compile the information from the SDS and, finding no asbestos in any of the products, make a certification statement.

15.4 **General and Criminal Background Checks**.

15.4.1 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.

15.4.2 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.

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

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

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

15.6 **E-Verify**. By entering into this Agreement, CMR certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, 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 this Agreement; and (ii) all persons (including subcontractors) assigned by the CMR to perform work pursuant to this Agreement, within the United States of America. CMR shall provide, upon request of TFC and if available, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three (3) most recent hires that match the criteria above, by the CMR, and CMR's subcontractors, as proof that this provision is being followed. If this certification is falsely made, this Agreement may be immediately terminated, at the discretion of TFC, and at no fault to TFC, with no prior notification. CMR shall also be responsible for the costs of any re-solicitation that TFC must undertake to replace the terminated Agreement. For persons not eligible for E-Verify screening, CMR (including Subcontractors and sub-subcontractors of any tier) shall provide, upon request by TFC, another form of documentation of proof of eligibility to work in the United States of America.

15.7 **Equal Opportunity**. CMR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. CMR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age, disability, political affiliation, or religious belief. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion, or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) 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 services to be provided under this Agreement.

15.8 **Nondiscrimination**. In their execution of this Agreement the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this Agreement.

15.9 **Immigration Reform**. The Immigration Reform and Control Act of 1986, as amended, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, require that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by all contractors and Subcontractors who contract with the State. CMR shall not place any employee of CMR at a worksite, nor shall CMR permit any employee, nor any Subcontractor, to perform any work on behalf of, or for the benefit of, TFC without first confirming said employee's authorization to lawfully work in the United States. CMR warrants that CMR: (i) maintains and follows an established policy to verify the employment authorization if its employees and to ensure continued compliance for the duration of employment; (ii) has verified the identity and employment eligibility of all employees in compliance with applicable law; (iii) has established internal safeguards and reporting policies to encourage its employees to report any suspected violations of immigration policies or of immigration law promptly to CMR's senior management; and (iv) is without knowledge of any fact that would render any employee or Subcontractor ineligible to legally work in the United States. CMR further acknowledges, agrees, and warrants that CMR: (i) has complied, and shall at all times during the term of this Agreement 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 this Agreement properly maintain, all records required by the Department of Homeland Security, Immigration and Customs Enforcement, 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 this Agreement respond, in a timely fashion to any inspection requests related to such I-9 Forms. During the term of this Agreement, 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.

15.10 **Human Trafficking Prohibition**. Pursuant to *Tex. Gov't. Code § 2155.0061*, CMR certifies that it is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if CMR's certification in this matter is inaccurate. TFC may not award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year (5) period preceding the date of the award, has been convicted of any offense related to the direct support or promotion of human trafficking.

15.11 **Family Code Certification**. By signing this Agreement CMR is certifying, pursuant to *Texas Fam. Code § 231.006*, that it is not ineligible to receive the award of or payments under this Agreement by reason of its Family Support requirements and acknowledges that this Agreement may be terminated and/or payments may be withheld if this certification is inaccurate.

15.12 **Franchise Tax Certification**. By signature hereon, CMR hereby certifies that it is not currently delinquent in the payment of any Franchise Taxes due under *Tex. Tax Code Ch. 171*, or that it is exempt from the payment of such taxes, or that it is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

15.13 **Entities that Boycott Israel**. Pursuant to *Tex. Gov't. Code § 2271.002*, CMR certifies that either (i) it meets an exemption criteria under *Tex. Gov't. Code § 2271.002*; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Agreement. CMR shall state any facts that make it exempt from the boycott.

15.14 **Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations**. In accordance with *Tex. Gov't. Code § 2252.152* and *§2270.002*, TFC is prohibited from entering into a governmental contract (as defined in *Tex. Gov't. Code § 2252.151(3)*) with a company that is identified on a list prepared and maintained under *Tex. Gov't. Code § 806.051, 807.051, or 2252.153*. If CMR is on the above-referenced list this Agreement will be considered void or voidable and TFC will not be responsible to pay CMR for any work performed.

15.15 **Domestic Iron and Steel Certification**. Pursuant to *Tex. Gov't. Code § 2252.201-2252.205*, CMR shall require that any iron or steel product produced through a manufacturing process and used in the Project is produced in the United States. CMR will require that the bid documents provided to all bidders and each applicable subcontract include this same requirement.

15.16 **Buy Texas**. If CMR is authorized to make purchases under this Agreement, 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 *Tex. Gov't. Code Ch. 2155*.

15.17 **Use of State Property**. CMR is prohibited from using State Property for any purpose other than performing services authorized under this Agreement. State Property includes, but is not limited to: TFC's office space, identification badges, TFC information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TFC issued software, and the TFC Virtual Private Network (VPN client)), and any other resources of TFC. CMR shall not remove State Property from the continental United States. In addition, CMR may not use any computing device to access TFC's network or e-mail while outside of the continental United States. CMR shall not perform any maintenance services on State Property unless this Agreement expressly authorizes such services. During the time that State Property is in the possession of CMR, CMR shall be responsible for (i) all repair and replacement charges incurred by TFC that are associated with loss of State Property or damage beyond normal wear and tear; and (ii) all charges attributable to CMR's use of State Property that exceeds the scope of this Agreement. CMR shall fully reimburse such charges to TFC within ten (10) Days of CMR's receipt of TFC's notice of amount due. Use of State Property for a purpose not authorized by agreement shall constitute breach of contract and may result in termination of the agreement and the pursuit of other remedies available to TFC under contract, at law, or in equity.

15.18 **Eligibility Certifications**.

15.18.1 **No Financial Participation in preparing specifications or RFP**. By signing this Agreement CMR certifies that, pursuant to *Tex. Gov't. Code § 2155.004*, the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

15.18.2 **Disaster Relief Contract Violation**. Under *Tex. Gov't. Code § 2155.006 and § 2261.053*, CMR certifies that the individual or business entity named in the response or this Agreement is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

15.18.3 **Excluded Parties**. CMR certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

15.18.4 **Suspension and Debarment**. CMR certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas

Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

15.18.5 **No Conflicts**. CMR represents and warrants that CMR has no actual or potential conflicts of interest in providing services to the State of Texas under this Agreement and that CMR's provision of services under this Agreement would not reasonably create an appearance of impropriety.

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

15.20 **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 *Tex. Bus. & Com. Code Ch. 17* 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 *Tex. Bus. & Com. Code Ch. 17* 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.

15.21 **Antitrust and Assignment of Claims**. CMR represents and warrants that neither CMR nor any firm, corporation, partnership, or institution represented by CMR, or anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under *Tex. Bus. & Com. Code Ch. 15*, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Agreement. CMR assigns to the State of Texas all of CMR's rights, title, and interest in and to all claims and causes of action CMR may have under the antitrust laws of Texas or the United States for overcharges associated with this Agreement.

15.22 **Disclosure of Former State Executives**. Pursuant to the *Tex. Gov't. Code § 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 Agreement or any contract resulting from this Agreement. 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.

15.23 **Certification Concerning Restricted Employment for Former State Officers or Employees Under *Tex. Gov't. Code § 572.069***. CMR certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or Agreement negotiation for TFC involving CMR within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

15.24 **Financial Interests/Gifts**. Pursuant to *Tex. Gov't. Code § 572.051 and § 2255.001* and *Tex. Penal Code § 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 Agreement. In addition, pursuant to *Tex. Gov't Code Ch. 573 and § 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.

15.25 **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 *Tex. Gov't. Code Ch. 573 and § 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 Agreement during the twelve (12) month period immediately following the employee's last date of employment at TFC.

15.26 **Disclosure of Interested Parties**. CMR certifies that, if the value of this Agreement or the anticipated value of the GMP exceeds $1 Million, it has complied with *Tex. Gov't. Code § 2252.908* and *Part 1 Tex. Admin. Code § 46.1 to 46.3* as implemented by the Texas Ethics Commission ("**TEC**"), if applicable, and has provided the TFC with a fully executed TEC Form 1295, certified by the TEC and signed and notarized by the CMR.

ARTICLE 16. MISCELLANEOUS PROVISIONS

16.1 **Time Is of the Essence**. Time is of the essence with respect to this Agreement; 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.

16.1.1 **Notices**. All notices, demands, and requests required under this Agreement 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:	[Name of TFC Contact] [Title] [Address] [City, State Zip]
With copies to:	[Name] [Title] [Address] [City, State Zip]
If to CMR:	[Name of CMR Contact] [Title]

[Name of CMR]
[Address]
[City, State Zip]

Any party may make reasonable changes in the person or place designated for receipt of notices upon five (5) business days advance written notice to the other party.

16.2 **Name and Organizational Changes**. CMR must provide TFC with written notification of all name changes and organizational changes relating to the CMR including, but not limited to, merger, acquisition, or sale, no later than ten (10) 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 this Agreement. If the change entails personnel changes for personnel performing the responsibility of this Agreement 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 this Agreement t and CMR shall supply the requested information within seven (7) 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 Agreement. TFC may terminate this Agreement due to any change to CMR that materially alters CMR's ability to perform under this Agreement.

16.3 **No Assignment or Delegation by CMR**. CMR shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Agreement 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 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 Agreement. CMR will provide written notification to TFC of any such Subcontractor performing work under this Agreement, 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.

16.4 **Relationship of the Parties**. CMR is associated with TFC only for the purposes and to the extent specified in this Agreement, and with respect to performance of the contracted services pursuant to this Agreement, CMR is and shall be an independent contractor. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of CMR or any other party. CMR shall be solely responsible for, and TFC shall have no obligation with respect to the following: (i) withholding of income taxes, FICA, or any other taxes or fees; (ii) industrial or workers' compensation insurance coverage; (iii) participation in any group insurance plans available to employees of the State of Texas; (iv) participation or contributions by the State to the State Employees Retirement System; (v) accumulation of vacation leave or sick leave; and (vi) unemployment compensation coverage provided by the State.

16.5 **Entire Agreement; Modifications**. This Agreement supersedes all prior agreements, written or oral, between CMR and TFC and shall constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by CMR and TFC.

16.6 **Governing Law and Venue**. This Agreement 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 Agreement 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 Agreement or any document related hereto.

16.7 **Waivers**. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement shall impair or constitute a waiver of any such right or power. 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 Agreement shall not be construed as a waiver or a relinquishment thereof for the future. Notwithstanding any provision of this Agreement, nothing herein constitutes a waiver of the constitutional, statutory or common law rights, privileges, defenses or immunities of the parties.

16.8 **No Waiver of Sovereign Immunity**. Nothing in this Agreement 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 this Agreement 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.

16.9 **No Third-Party Beneficiaries**. This Agreement 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 Agreement as a third-party beneficiary or otherwise, except as otherwise provided herein for the benefit of TFC only.

16.10 **No Presumptions for Ambiguities**. Each party hereby represents and warrants that although the initial draft of this Agreement may have been prepared by one party, both parties have been given the opportunity to review this Agreement 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 Agreement such that any ambiguities cannot be construed against any party.

16.11 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

16.12 **Unenforceable or Invalid Term / Severability**. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions shall not be affected and this Agreement shall be construed as if the invalid or unenforceable term or provision had never been included.

16.13 **Multiple Counterparts**. This Agreement 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.

16.14 **Captions**. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

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

16.16 **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 Agreement.

16.17 **False Statements; Breach of Representations**. By signature to this CMR, CMR makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If CMR signs this Agreement with a false statement or it is subsequently determined that CMR has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, CMR shall be in default under this Agreement, and TFC may terminate or void this Agreement for cause and pursue other remedies available to TFC under this Agreement and applicable law.

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

[INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed and bound themselves to this Agreement effective as of the date the last party signs this Agreement (the "**Effective Date**").

CONSTRUCTION MANAGER-AT-RISK:

[INSERT CMR NAME]

By: _____
(original signature)

Name: _____

Title: _____

Date: _____

OWNER:

THE TEXAS FACILITIES COMMISSION

By: _____
(original signature)

Name: _____

Title: Executive Director

Date: _____

Project Manager: _____

General Counsel: _____

Director of Project Management: _____

Deputy Executive Director: _____

EXHIBIT A

2015 UNIFORM GENERAL CONDITIONS

[See attached.]

EXHIBIT B

2018 SUPPLEMENTARY GENERAL CONDITIONS

[See attached.]

EXHIBIT C

SPECIAL CONDITIONS OF THE AGREEMENT

LIQUIDATED DAMAGES SCHEDULE

Liquidated Damages for Interim Construction Milestone(s) (if any): Pursuant to Section 9.5 of the Agreement, the liquidated damages for failure to achieve Substantial Completion of the interim construction milestone (s), if any, shall be as set forth below:

Milestone 1: The sum of _____ and no/100 Dollars ($_____) per calendar day for each day of delay in achieving Substantial Completion of Milestone 1, beginning on day eight (8) (so as to allow a seven (7) day grace period), as required by Contract Documents.

Milestone 2: The sum of _____ and no/100 Dollars ($_____) per calendar day for each day of delay in achieving Substantial Completion of Milestone 2, beginning on day eight (8) (so as to allow a seven (7) day grace period), as required by Contract Documents.

Liquidated Damages for the Entire Work: Pursuant to Section 9.5 of the Agreement, the liquidated damages for failure to achieve Substantial Completion of the entire Work shall, in addition to and not in lieu of any liquidated damages as provided above with regard to the interim construction milestone (s), be as set forth below:

Days Beyond Substantial Completion	Liquidated Damages
1 - 7 calendar days	$0, to allow for a seven (7) calendar day grace period
8 - 30 calendar days	$_____per calendar day
31 - 45 calendar days	$_____per calendar day
46+ calendar days	$_____per calendar day

The liquidated damages arising from the failure to achieve Substantial Completion of the interim construction milestone (s) and the liquidated damages arising from the failure to achieve Substantial Completion of the entire Work are to be charged separately, but in no event shall the daily rate exceed the highest singular applicable daily rate (i.e., no stacking).

EXHIBIT D

GUARANTEED MAXIMUM PRICE PROPOSAL TEMPLATE

[CMR's LETTERHEAD]

Texas Facilities Commission
1711 San Jacinto Boulevard, 2nd Floor
Austin, Texas 78701

Attn: [Insert Project Manager Name]
Project Manager
Facilities Design & Construction Division

Re: Agreement No.: [Insert Agreement Number]
Project No.: [Insert Project Number]
Project Name: [Insert Project Name]

Dear [INSERT]:

Pursuant to Section 5.2 of that certain *Construction Manager-at-Risk Agreement* by and between **THE TEXAS FACILITIES COMMISSION** ("**TFC**") and [INSERT] (the "**CMR**"), dated [INSERT] (the "**Agreement**"), please accept this letter and the accompanying binder, which includes the documents identified below, as our GMP Proposal. Undefined capitalized terms used herein shall have the same meaning given to them in the Agreement.

Our proposed Guaranteed Maximum Price for the entire Work is [INSERT] and No/100 Dollars ($[INSERT].00).

Our proposed date of Substantial Completion of the Work is: [INSERT]

Our proposed date of Final Completion of the Work is: [INSERT]

Along with this letter, the below documents and Exhibits collectively constitute the GMP Proposal. CMR shall prepare and deliver the GMP Proposal to TFC in a binder organized by tabs consistent with the organizational structure outlined below.

1. A list of Drawings and Specifications that were used in preparation of this GMP Proposal including all addenda thereto, a copy of which is attached hereto as **Exhibit D-1**.

2. Lists of the proposed C&A created in the preparation of this GMP Proposal and proposed alternates upon which any portion of the Cost of the Work is based (if any), copies of which are attached hereto as **Exhibit D-2** and **Exhibit D-3**, respectively.

3. The Statement of the GMP (in narrative form) identifying the basis of the GMP calculation together with following information: (i) the Pre-Construction Management Fee; (ii) the General Conditions Costs together with; (iii) the Cost of the Work enumerated, at a minimum, in categories by CSI specification number; (iv) TFC Allowances; (v) CMR

Contingency; (vi) the Construction Services Fee; and (vii) the TFC Controlled Contingency (if any), which shall be set forth in **Exhibit D-4**.

4. The initial Work Progress Schedule developed by Critical Path Method, a copy of which is attached hereto as **Exhibit D-5**. Such initial Work Progress Schedule shall include the following, among other things:

    i. Dates of delivery of A/E services, with A/E's input and concurrence;

    ii. Coordination and integration of CMR's services, A/E's services, and all other TFC contractors' services, TFC's responsibilities, and identification of items that could affect the Project's timely completion; and

    iii. The components of the Work including (i) times of commencement and completion required of each Subcontractor; (ii) ordering and delivery of materials and other items to be incorporated into the Work, including those that must be ordered well in advance of construction ("long lead items"); (iii) a clear delineation of the critical path; and (iv) all milestone dates of completion of particular portions of the Work and Date of Substantial Completion and of Final Completion of the totality of the Work.

5. Updated list of CMR List of Key Personnel and proposed Subcontractors, a copy of which is attached hereto as **Exhibit D-6**.

6. Updated HSP, which is hereby submitted for approval, and upon approval, a copy of which is attached hereto as **Exhibit D-7**, and shall supplement or replace the original approved HSP, as applicable.

Pursuant to Section 4.5 of the Agreement, the previously approved Work Package Authorizations, if any, are listed below, the amount(s) of which is (are) included in the Guaranteed Maximum Price, above.

WPA #	Scope	Approved Amount	Completion Status

Unless otherwise accepted in writing by TFC and the Parties enter into a GMP Amendment, this GMP Proposal shall automatically expire on _____, 2021 (such date shall not be less than sixty (60) days from the date TFC receives a copy of this GMP Proposal).

Sincerely,

CMR:

[INSERT CMR NAME]

By: _____

(original signature)

Name: _____

Title: _____

Date: _____

DRAFT

EXHIBIT D-1

LIST OF DRAWINGS AND SPECIFICATIONS

[See attached.]

DRAFT

EXHIBIT D-2

PROPOSED C&A

[See attached.]

DRAFT

EXHIBIT D-3

PROPOSED ALTERNATES

[See attached.]

DRAFT

EXHIBIT D-4

STATEMENT OF THE GMP

[See attached.]

DRAFT

EXHIBIT D-5

WORK PROGRESS SCHEDULE

[See attached.]

DRAFT

EXHIBIT D-6

CMR'S SUPERVISORY PERSONNEL AND SUBCONTRACTORS

[See attached.]

DRAFT

EXHIBIT D-7

UPDATED HSP

[See attached.]

DRAFT

EXHIBIT E

GUARANTEED MAXIMUM PRICE AMENDMENT TEMPLATE

Agreement No.: [Insert Agreement Number]
Project No.: [Insert Project Number]
Project Name: [Insert Project Name]

This **GUARANTEED MAXIMUM PRICE AMENDMENT** ("**Amendment**") is made as of _____ ___, **20**__ to amend that certain *Construction Manager-at-Risk Agreement* by and between **THE TEXAS FACILITIES COMMISSION** ("**TFC**") and [INSERT CMR'S NAME] (the "**CMR**"), dated [INSERT DATE OF CMR AGREEMENT] (the "**Agreement**"), whereby CMR has agreed to perform the Work for the [INSERT PROJECT DESCRIPTION] (the "**Project**") in accordance with the terms of the Agreement.

WHEREAS, the Agreement provides for a Guaranteed Maximum Price ("**GMP**") Amendment in which the GMP and certain Exhibits were to be determined and finalized by Amendment; and

WHEREAS, TFC and CMR now desire to amend the Agreement for the purpose of establishing the GMP value, clarifying the details of certain costs and allowances, and establishing the Work Progress Schedule in and for the Agreement.

NOW THEREFORE, in consideration of the covenants and conditions contained herein, and other good and valuable consideration, TFC and CMR hereby agree to amend the Agreement as follows:

1. All capitalized terms that are undefined herein shall have the meanings set forth in the Agreement. All terms incorporated in this Amendment are retroactive to the Agreement date and any payments received for Work performed prior to this Amendment shall be credited as payments against the Contract Sum as set forth in Article 7 of the Agreement.

2. Pursuant to §5.2.2.1 of the Agreement, a list of the Drawings and Specifications for the Project is attached hereto as **Exhibit E-1**.

3. Pursuant to §5.3.1.2 of the Agreement, lists of the agreed upon C&A and alternates upon which any portion of the Cost of the Work is based (if any) are attached hereto as **Exhibit E-2** and **Exhibit E-3**, respectively.

4. Pursuant to §7.2 of the Agreement, the Guaranteed Maximum Price for the Project is established as [SPELL OUT AMOUNT, E.G., **One Million Twenty-One Thousand Three Hundred Twelve and no/100 Dollars ($1,021,312.00)**] and is provided with the detailed Schedule of Values for Construction Services enumerated in categories by CSI specification as **Exhibit E-4**.

5. Pursuant to §7.1.1 of the Agreement, the CMR's Construction Services Fee is _____% of the Cost of the Work and is provided with the detailed Schedule of Values.

6. Pursuant to §7.2.1 of the Agreement, the CMR's Contingency is established as [SPELL OUT AMOUNT, E.G., One Million Twenty-One Thousand Three Hundred Twelve and no/100 Dollars

($1,021,312.00) OR IF A PERCENTAGE, STATE THE PERCENTAGE AS A PERCENTAGE OF THE COST OF THE WORK] and is provided with the detailed Schedule of Values.

7. Pursuant to §7.2.3 of the Agreement, the TFC Controlled Contingency is established as [SPELL OUT AMOUNT, E.G., One Million Twenty-One Thousand Three Hundred Twelve and no/100 Dollars ($1,021,312.00) OR IF A PERCENTAGE, STATE THE PERCENTAGE AS A PERCENTAGE OF THE COST OF THE WORK] and is provided with the detailed Schedule of Values.

8. Pursuant to §8.2 of the Agreement, CMR's General Conditions Costs are established as [SPELL OUT AMOUNT, E.G., **One Million Twenty-One Thousand Three Hundred Twelve and no/100 Dollars ($1,021,312.00)**] and is provided with the detailed Schedule of Values.

9. The Parties confirm the Notice to Proceed with Construction Services will be issued under separate cover, following TFC's review and acceptance of evidence of all required insurance policies and acceptance of bonds.

10. Pursuant to §5.2.2.4 of the Agreement, an updated initial Work Progress Schedule (developed by Critical Path Method) is established in **Exhibit E-5**.

11. Pursuant to §6.6.1 of the Agreement, the CMR shall achieve Substantial Completion of the Work not later than _____ calendar days following the date of commencement of the Work as established in the NTP.

12. Pursuant to §6.2 of the Agreement, an updated list of CMR List of Key Personnel is attached hereto as **Exhibit E-6**. Also included with **Exhibit E-6** is an updated list of the proposed Subcontractors that are (or will be) engaged to perform a portion of the Work.

13. Pursuant to §6.9 of the Agreement, an approved copy of the updated HSP is attached hereto as **Exhibit E-7**.

14. Pursuant to §7.2.2 of the Agreement, a list of TFC allowances, if any, and a statement of their bases is established in **Exhibit E-8.**

15. Pursuant to §6.1.2 of the Agreement, CMR shall abide by the minimum wage rates as set forth in **Exhibit E-9**.

16. Pursuant to §8.1.4.1 of the Agreement, a list of rental rates for CMR-owned equipment to be utilized on the Project is attached as **Exhibit E-10.**

17. Pursuant to §5.3.1.1 of the Agreement, the CMR's safety plan is attached hereto as **Exhibit E-11**. Further, CMR hereby designates [INSERT CMR'S DESIGNATED SAFETY REPRESENTATIVE] as its safety representative for the Project Site.

18. Pursuant to §4.5 of the Agreement, the previously approved Work Package Authorizations, if any, are listed below, the amount(s) of which is (are) included in the Guaranteed Maximum Price, above.

WPA #	Scope	Approved Amount	Completion Status

19. This Amendment, including all Exhibits, is hereby incorporated into the Agreement as **Exhibit E**. Together with **Exhibits E-1 through E-11,** this document represents the entire and integrated GMP

Amendment to the Agreement, sets forth all terms and conditions related to the GMP and the Work Progress Schedule, and supersedes all prior negotiations, representations or agreements, either written or oral, related to revisions to the GMP Amendment and/or determination of the GMP value as of the date hereof between the Parties.

20. Except as specifically modified by this Amendment, all terms of the Agreement remain in full force and effect.

This Amendment is entered into as of the day and year first written above.

TFC:	**CMR:**
THE TEXAS FACILITIES COMMISSION	**[INSERT]**
By: _____	By: _____
Name: _____	Name: _____
Title: Deputy Executive Director	Title: _____

DRAFT

EXHIBIT E-1

LIST OF DRAWINGS AND SPECIFICATIONS

[See attached.]

DRAFT

EXHIBIT E-2

C&A

[See attached.]

DRAFT

EXHIBIT E-3

ALTERNATES

[See attached.]

DRAFT

EXHIBIT E-4

SCHEDULE OF VALUES

[See attached.]

DRAFT

EXHIBIT E-5

WORK PROGRESS SCHEDULE

[See attached.]

DRAFT

EXHIBIT E-6

CMR LIST OF KEY PERSONNEL AND SUBCONTRACTORS

[See attached.]

DRAFT

EXHIBIT E-7

HSP

[See attached.]

DRAFT

EXHIBIT E-8

TFC ALLOWANCES

[See attached.]

DRAFT

EXHIBIT E-9

MINIMUM WAGE RATES

[See attached.]

DRAFT

EXHIBIT E-10

EQUIPMENT RENTAL RATES

[See attached.]

DRAFT

EXHIBIT E-11

CMR'S SAFETY PLAN

[See attached.]

DRAFT

EXHIBIT F

CRIMINAL BACKGROUND CHECK AND APPLICATION GUIDELINES

[See attached.]

TEXAS FACILITIES COMMISSION

CRIMINAL BACKGROUND CHECKS AND APPLICATION GUIDELINES

It is the policy of the Texas Facilities Commission ("TFC") that all Contractor employees and subcontractors that will complete 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 the Contractor. Contractor's employees and subcontractors who work on TFC contracts are required to submit a criminal history background check. A criminal history background check shall be completed before any Contractor's employee or subcontractor performs services at the site. Criminal background checks must be performed by the Texas Department of Public Safety ("DPS") and must be on the form provide by TFC.

I. CRIMINAL HISTORY CRITERIA

Employers should use the following criminal history criteria when hiring employees to perform work for TFC. Any employee failing to meet the minimum standard will be denied. If special circumstances exist, please contact the TFC representative for clarification or further consideration.

A conviction or deferred adjudication for one of the following offenses will result in the **permanent disqualification** of a person from eligibility to provide contractual services with Texas Facilities Commission:

(i) any act causing death as defined in Texas Penal Code; and

(ii) any felony or misdemeanor involving arson, burglary, breach of computer security, credit card abuse, counterfeiting, forgery, kidnapping, robbery, stalking, terroristic threat, theft, and any sexual offense designated as a felony in Texas Penal Code.

Additionally, anyone who has a current duty to register as a sex offender, is under indictment or is a fugitive from justice is disqualified.

For individuals who have a conviction or deferred adjudication for felonies not enumerated above, 10 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the TFC.

For individuals who have a misdemeanor conviction or deferred adjudication for misdemeanors not enumerated above, 5 years must have passed from the time of disposition or discharge of probation in order for that person to be eligible to provide contractual services with the TFC.

II. CRIMINAL BACKGROUND PROCESS

DPS has entered into an exclusive contract with IdentoGO Centers, formerly L-1 Enrollment Services, operated by MorphoTrust USA. IdentoGO by MorphoTrust is the exclusive live scan fingerprinting provider for DPS. All TFC contractors that are subject to TFC criminal background check requirements must create an account with IdentoGO in accordance with the IdentoGO Account Application and requirements attached hereto as "Attachment A". Thereafter, all contractor employees and subcontractors must follow the registration procedures attached hereto as "Attachment A" including using the ***Texas Facilities Commission Service Code 11G6ZN.*** All necessary instructions and information to schedule a fingerprint appointment is included in Attachment A. In addition, the only service code accepted by DPS for a TFC criminal background check is the service code provided in Attachment A, hereto, therefore, if an individual does not use the service code in Attachment A, he or she may be required to repeat the process at the expense of contractor. Contractors can began the process by simply clicking on this link:
https://uenroll.identogo.com/servicecode/11G6ZN

Additionally, forms and instructions can be found on the IdentoGO website at http://www.identogo.com by clicking on the State of Texas. Links on that page include one for online scheduling and a list for the state-wide fingerprinting locations. The waiver form for the criminal background check is attached hereto as "Attachment B". In the event Contractor needs to set up a new account, please refer to the attached link for instructions: http://www.l1enrollment.com/state/forms/tx/566718664f05a.pdf.

III. CRIMINAL HISTORY ERROR RESOLUTION

The Error Resolution Unit ("ER") is responsible for updating and evaluating possible errors in criminal history records. Potential errors are reported to ER by law enforcement, judicial agencies, as well as private citizens.

If an applicant would like to make a request that a criminal history record be updated or corrected, the applicant will need to supply certified documents to the ER. Required forms and additional information submit a correction request to the ER can be found at:

http://txdps.state.tx.us/administration/crime_records/pages/errorresolution.htm.

IV. TFC CONTACTS

For any questions involving the TFC criminal background check process, please contact the following:

Tommy Oates, Deputy Executive Director
Office: 512-463-3057
Cell: 512-463-3376
Email: tommy.oates@tfc.state.tx.us

Mandy Burrell, Manager
Office: 512-463-1799
Cell: 512-247-1290
Email:
mandy.burrell@tfc.state.tx.us

ATTACHMENT A

Facilities Commission (ORI Facilities Commission/Service Code 11G6ZN)

The general process for electronic fingerprinting is:

1. Schedule an appointment to be electronically fingerprinted by MorphoTrust USA at one of their IdentoGo enrollment centers.
    - Internet based scheduling is the quickest and most convenient way to obtain a fingerprint appointment.
        a. **You may begin the process now by simply clicking on this link: https://uenroll.identogo.com/servicecode/11G6ZN**
        b. Provide all required pre-enrollment data and select a convenient date and time for your appointment
    - If you prefer to schedule over the telephone, you must:
        a. Have your Service Code ready (**11G6ZN**), then call **888.467.2080**;
        b. MorhphoTrust will prompt you for the Service Code (**11G6ZN**);
        c. Provide all required pre-enrollment data and select a convenient date and time for your appointment
2. Arrive at your scheduled appointment with your photo identification and fee
    - If you plan on bringing a form of identification other than a valid (unexpired) TX Driver License, please refer to the Department of Public Safety's acceptable document types here: http://www.l1enrollment.com/state/forms/tx/55fc619a7f7aa.doc
    - MorphoTrust accepts Visa/MasterCard/Discover/American Express, business checks, money orders and coupon codes (employer accounts) at the time of service.
    - Please note that personal checks and cash are **not accepted**.
3. Your fingerprints will be submitted electronically to DPS and the FBI. You will not receive a printed fingerprint card.
4. At the conclusion of your appointment, the MorphoTrust enrollment agent will provide you with an IdentoGo receipt stating that you were fingerprinted.
    - Do not throw away the receipt;
    - You may check status on your submission by clicking on this link: **https://uenroll.identogo.com/servicecode/11G6ZN** and then;
    - Click "**Check Status**"

Fingerprints provided for this application shall be used to check criminal history records of the Texas Department of Public Safety and the Federal Bureau of Investigation, in accordance with applicable statutes.

ATTACHMENT B

IdentoGO
By MorphoTrust USA

Texas Fingerprint Service Code Form

Facilities Commission

Service Name: Facilities Commission

To schedule your ten-minute fingerprint appointment, simply visit **https://uenroll.identogo.com** and enter the following Service Code

11G6ZN

Service Code is unique to your hiring/licensing agency. Do not use this code for another purpose.

Background Check Waiver

I certify that all information I provided in relation to this criminal history record check is true and accurate. I authorize the Texas Department of Public Safety (DPS) to access Texas and Federal criminal history record information that pertains to me and disseminate that information to the designated Authorized Agency or Qualified Entity with which I am or am seeking to be employed or to serve as a volunteer, through the DPS Fingerprint-based Applicant Clearinghouse of Texas and as authorized by Texas Government Code Chapter 411 and any other applicable state or federal statute or policy.

I authorize the Texas Department of Public Safety to submit my fingerprints and other application information to the FBI for the purpose of comparing the submitted information to available records in order to identify other information that may be pertinent to the application. I authorize the FBI to disclose potentially pertinent information to the DPS during the processing of this application and for as long hereafter as may be relevant to the activity for which this application is being submitted. I understand that the FBI may also retain my fingerprints and other applicant information in the FBI's permanent collection of fingerprints and related information, where all such data will be subject to comparisons against other submissions received by the FBI and to further disseminations by the FBI as may be authorized under the Privacy Act of 1974 (5 USC 552a). I understand my fingerprints will be searched by and against civil, criminal and latent fingerprints in the Next Generation Identification (NGI) system. I understand I am entitled to obtain a copy of any criminal history record check and challenge the accuracy and completeness of the information before a final determination is made by the Qualified Entity. I also understand the Qualified Entity may deny me access to children, the elderly, or individuals with disabilities until the criminal history record check is completed. If a need arises to challenge the FBI record response, you may contact the agency that submitted the information to the FBI, or you may send a written challenge request to the FBI's Criminal Justice Information Services (CJIS) Division at FBI CJIS Division, Attention: Correspondence Group, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Don't have access to the Internet? You can still schedule an appointment by calling 888.467.2080

EXHIBIT G – 1

HUB SUBCONTRACTING PLAN FORM

[See attached.]

Rev. 2/17

HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

➤ **If you will be awarding <u>all</u> of the subcontracting work you have to offer under the contract to <u>only</u> Texas certified HUB vendors, complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
- ☐ Section 2 c. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you <u>do not</u> have a *<u>continuous contract</u>** in place for more than five (5) years *<u>meets or exceeds</u>* the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - Yes
- ☐ Section 4 - Affirmation
- ☐ GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you <u>do not</u> have a *<u>continuous contract</u>** in place for more than five (5) years *<u>does not meet or exceed</u>* the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - Yes, I will be subcontracting portions of the contract.
- ☐ Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
- ☐ Section 2 c. - No
- ☐ Section 2 d. - No
- ☐ Section 4 - Affirmation
- ☐ GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.

➤ **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**

- ☐ Section 1 - Respondent and Requisition Information
- ☐ Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
- ☐ Section 3 - Self Performing Justification
- ☐ Section 4 - Affirmation

***<u>Continuous Contract</u>**: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Rev. 2/17

HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- ***11.2 percent for heavy construction other than building contracts,***
- ***21.1 percent for all building construction, including general contractors and operative builders' contracts,***
- ***32.9 percent for all special trade construction contracts,***
- ***23.7 percent for professional services contracts,***
- ***26.0 percent for all other services contracts, and***
- ***21.1 percent for commodities contracts.***

- - Agency Special Instructions/Additional Requirements - -

*In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent **does not** have a **continuous contract*** in place for **more than five (5) years** shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: _____ State of Texas VID #: _____

Point of Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No

c. Requisition #: _____ Bid Open Date: _____ (mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

☐ - ***Yes***, I will be subcontracting portions of the contract. (If ***Yes***, complete Item b of this SECTION and continue to Item c of this SECTION.)

☐ - ***No***, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If ***No***, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php).

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

☐ - ***Yes*** (If ***Yes***, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

☐ - ***No*** (If ***No***, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "**Agency Special Instructions/Additional Requirements**."

☐ - ***Yes*** (If ***Yes***, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)

☐ - ***No*** (If ***No***, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

****Continuous Contract**: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
	Aggregate percentages of the contract expected to be subcontracted:	%	%	%

*_Continuous Contract_: *Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*

HSP – SECTION 2
(Continuation Sheet)

Enter your company's name here: _____ Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature	Printed Name	Title	Date (mm/dd/yyyy)

Reminder:

- If you responded "**Yes**" to **SECTION 2, Items c or d**, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "**No**" **SECTION 2, Items c and d,** you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in SECTION 2, Item b.

HSP Good Faith Effort - Method A (Attachment A)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "***Yes***" to **SECTION 2, Items c** or **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf

SECTION A-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ **Description**: _____

SECTION A-2: SUBCONTRACTOR SELECTION

List the subcontractor(s) you selected to perform the subcontracting opportunity you listed above in SECTION A-1. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "**A**" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded "***No***" to **SECTION 2, Items c** and **d** of the completed HSP form, you must submit a completed "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf..

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ **Description:** _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

☐ - **Yes** (If ***Yes***, continue to SECTION B-4.)

☐ - **No / Not Applicable** (If ***No*** or ***Not Applicable***, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you MUST comply with items **a**, **b**, **c** and **d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.

a. Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "**A**" signifies that the company is a Texas certified HUB.

b. List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company's Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No
			☐ - Yes ☐ - No

c. Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program's webpage at https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php.

d. List **two (2) trade organizations or development centers** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		☐ - Yes ☐ - No
		☐ - Yes ☐ - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b,** of the completed HSP form for which you are completing the attachment.

a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ **Description**: _____

b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at http://mycpa.cpa.state.tx.us/tpasscmblsearch/index.jsp. HUB status code "**A**" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	Approximate Dollar Amount	Expected Percentage of Contract
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%
	☐ - Yes ☐ - No		$	%

c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is **not** a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.

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HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of $100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in **Section B** has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in **Section C, Item 2**, reply no later than the date and time identified in **Section C, Item 1**. Submit your response to the point-of-contact referenced in **Section A**.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____ State of Texas VID #: _____

Point-of-Contact: _____ Phone #: _____

E-mail Address: _____ Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____ Phone #: _____

Requisition #: _____ Bid Open Date: _____ (mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. **Potential Subcontractor's Bid Response Due Date:**

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2, we must receive your bid response no later than _____ (Central Time) **on** _____ (Date (mm/dd/yyyy)).

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. **Subcontracting Opportunity Scope of Work:**

3. **Required Qualifications:** ☐ - Not Applicable

4. **Bonding/Insurance Requirements:** ☐ - Not Applicable

5. **Location to review plans/specifications:** ☐ - Not Applicable

EXHIBIT G – 2

PROGRESS ASSESSMENT REPORTS FORM

HUB Subcontracting Plan (HSP)
Prime Contractor Progress Assessment Report

This form must be completed and submitted to the contracting agency each month to document compliance with your HSP.

Contract/Requisition Number: ____________ Date of Award: ____________ (mm/dd/yyyy) Object Code: ____________ (Agency Use Only)

Contracting Agency/University Name: ____________________________

Contractor (Company) Name: ____________________ State of Texas VID #: ____________

Point of Contact: ____________________ Phone #: ____________

Reporting (Month) Period: ____________ Total Amount Paid this Reporting Period to $ -

Report HUB and Non-HUB subcontractor information

Subcontractor's Name	Subcontractor's VID or HUB Certificate Number	*Texas Certified HUB? (Yes or No)	Total Contract $ Amount from HSP with Subcontractor	Total $ Amount Paid This Reporting Period to Subcontractor	Total Contract $ Amount Paid to Date to Subcontractor	Object Code (Agency Use Only)
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
			$ -	$ -	$ -	
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			$ -	$ -	$ -	
		TOTALS:	$ -	$ -	$ -	

Signature: ____________________ Title: ____________ Date: ____________

*Note: Prime contractors can verify subcontractor HUB certification status on-line at http://www2.cpa.state.tx.us/cmbl/cmblhub.html Rev. 09/07

EXHIBIT H

PROJECT INSURANCE REQUIREMENTS

CMR shall purchase, maintain, and keep in full force and effect, and shall require its Subcontractors to purchase, maintain and keep in full force and effect at all times during the term of this Agreement, including Preconstruction Services, such lines of insurance coverage with policy limits set forth in this **"Exhibit H".** Each policy shall be written with limits not less than those set forth this **"Exhibit H"** unless higher limits are provided in UGC Section 5.2, such that the greater/higher limit is obtained. CMR will comply and will require its Subcontractors comply fully with all requirements of this **"Exhibit H"** prior to the commencement of any Work or Preconstruction Services. This **"Exhibit H"** and UGC §5.2 are intended to be mutually explanatory of each other; however, in the event of a conflict between this **"Exhibit H"** and UGC §5.2, this **"Exhibit H"** will control.

H.1 **Required Coverages**. CMR will obtain the following policies with the policy limits as indicated and shall require its Subcontractors to provide the policies with limits as indicated below:

Policy	CMR		Subcontractors
	Preconstruction	Construction	
Worker's Compensation	Statutory	Statutory	Statutory
Employer's Liability Insurance: Bodily Injury by Accident (accident) Bodily Injury by Disease (policy limit) Bodily Injury by Disease (each employee)	$1,000,000 $1,000,000 $1,000,000	$1,000,000 $1,000,000 $1,000,000	$1,000,000 $1,000,000 $1,000,000
Commercial General Liability	$1,000,000 each occurrence $2,000,000 annual general aggregate $2,000,000 products-completed operations aggregate	$1,000,000 each occurrence $2,000,000 annual general aggregate $2,000,000 products-completed operations aggregate	$1,000,000 each occurrence $2,000,000 annual general aggregate $2,000,000 products-completed operations aggregate
Automobile Liability* *coverage must include loading and unloading hazards	$1,000,000 each accident	$1,000,000 each accident	$1,000,000 each accident
Umbrella/Excess Liability	$1,000,000 each occurrence $1,000,000 aggregate	$1,000,000 each occurrence $1,000,000 aggregate	$1,000,000 each occurrence $1,000,000 aggregate
Asbestos Abatement Liability (If Applicable)	$2,000,000 combined single limit for BI and PD	$2,000,000 combined single limit for BI and PD	If Subcontractor is engaged by CMR to perform asbestos abatement:

Policy	CMR		Subcontractors
	Preconstruction	Construction	
	Employer's liability for asbestos abatement is: $1,000,000 each accident/disease each employee/disease policy limits	Employer's liability for asbestos abatement is: $1,000,000 each accident/disease each employee/disease policy limits	$2,000,000 combined single limit for BI and PD. Employer's liability for asbestos abatement is: $1,000,000 each accident/disease each employee/disease policy limits
Cyber/Privacy Liability	$1,000,000 per claim/$1,000,000 aggregate	$1,000,000 per claim/$1,000,000 aggregate	
Pollution Liability	$1,000,000 each occurrence $1,000,000 aggregate	$1,000,000 each occurrence $1,000,000 aggregate	
Builder's Risk (including Installation Floater)		100% of GMP on a replacement cost basis	

H.1.1 **Worker's Compensation/Employer's Liability**. Worker's Compensation insurance coverage must be provided for all workers at all tier levels and shall meet the statutory requirements of *Tex. Labor Code §401.011(44)* and, specific to construction projects for public entities, as required under *Tex. Labor Code §406.096*. In addition:

H.1.1.1 ***Certifications***. CMR hereby certifies, pursuant to *Tex. Labor Code §406.096(a)*, that CMR provides or will provide at, or prior to, execution of the GMP Amendment, workers' compensation and employers' liability insurance for employees employed on this public project with limits as indicated above. Pursuant to *Tex. Labor Code § 406.096(b),* CMR shall require each Subcontractor to certify in writing to the CMR that said Subcontractor provides workers' compensation and employers' liability insurance for all of Subcontractor's employees employed on this public project. In keeping with *Tex. Gov't. Code § 5.2*, TFC is entitled, upon request and without expense, to receive copies of Subcontractor's written certifications. CMR shall forward said certifications to TFC within ten (10) days of the Effective Date of this Agreement.

H.1.1.2 ***Endorsements***. This policy must include an Other States Endorsement to include the State of Texas if CMR's business is domiciled outside the State of Texas. The policy will be endorsed to name TFC as the alternate employer.

H.1.1.3 All policies shall be endorsed to include Waiver of Subrogation in favor of TFC.

H.1.2 **Commercial General Liability**. Commercial General Liability coverage ("**CGL**") shall be provided on ISO occurrence form CG 00 01 (or a substitute form providing

equivalent coverage). The CGL insurance general aggregate limit shall apply separately to this Project and CMR and Subcontractors shall provide evidence of same through ISO Endorsement CG 25 03 05 09. The policy shall include endorsement CG2503, Amendment of Aggregate Limits of Insurance (per Project), or its equivalent. CGL insurance shall cover liability including, but not limited to, liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, electronic data liability (under endorsement ISO CG 04 37), property damage, and personal injury and death resulting therefrom. This policy shall provide for full separation of insureds and shall **not** include any insured v. insured exclusions or limitations. The following is a non-exclusive list of additional prohibited exclusions and limiting endorsements:

- 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.

- 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.

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

- Injury to independent contractors and employees of independent contractors.

- 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.

- Any type of classification or business description limitation endorsement.

- Any type of endorsement excluding coverage for construction defects in the completed operations phase.

- Any type of endorsement modifying the employer's liability exclusion.

- Any type of habitational or residential exclusion.

- Any type of punitive, exemplary or multiplied damages exclusion.

- 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.

TFC reserves the right to notify CMR of any additional prohibited exclusions or endorsements in advance of placing the insurance. A copy of the CGL Schedule of Forms and Endorsement page(s) of the policy shall be provided to verify the coverages required, that the Endorsements required by these insurance requirements are included, and that none of the prohibited exclusions exist in the policy. TFC may require additional exclusions be removed. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by TFC. CGL

insurance must be kept in force at all times during the course of this Agreement and until all claims arising out of the Work are barred by the statute of repose provided under Texas law.

H.1.3 **Automobile Liability Insurance**. An automobile liability insurance policy shall be provided by CMR and all Subcontractors. This policy shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with the Work on the Project and shall include coverage for loading and unloading hazards. Automobile liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. No aggregate shall be permitted.

H.1.4 **Umbrella/Excess Liability Insurance**. An Excess or Umbrella liability insurance policy shall be provided by CMR and all Subcontractors with limits as indicated in H.1. This policy shall be excess of the CGL, automobile liability, and employers liability insurance on a "following form" basis of underlying policies. This policy shall be excess over and be no less broad than the CGL, Automobile Liability, Employer's Liability as described in these insurance requirements, including but not limited to the required additional insured status, designated project(s) and/or location(s), general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations, The policy shall provide coverage where underlying primary insurance coverage limits are exhausted or otherwise unavailable or inadequate to cover a loss. Any excess or umbrella policy shall be kept in force at all times during the course of this Agreement and until all claims arising out of the Work are barred by the statute of repose provided under Texas law.

H.1.5 **Asbestos Abatement Liability Insurance**. Asbestos Abatement Liability coverage shall be provided if the Work or the Project includes asbestos containing materials. This policy shall provide coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

H.1.6 **Professional Liability Coverage**. CMR will provide Professional liability coverage ("**PL**") as will insure from and against all negligent acts, errors, and omissions in the professional services performed by CMR, its agents, representatives, employees, and Subcontractors. PL coverage shall provide full prior acts coverage or a retroactive date not later than the date the Preconstruction Services are first performed by or for CMR in connection with the Project. 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; or (vi) design/build services. This insurance shall be maintained until all claims arising out of the Work are barred by applicable statutes of limitation or repose.

H.1.7 **Pollution Liability Coverage**. CMR will provide a pollution liability policy that covers a pollution event or release on the Project resulting from the CMR's or any Subcontractor's activities under and during the term of this Agreement and for completed operations. The Pollution Liability policy shall provide coverage for "sudden & accidental" and gradual occurrences arising from the work performed under this Agreement. The annual aggregate shall apply separately to this Project. CMR shall maintain pollution liability insurance with coverage as specified herein for at least ten (10) years following Substantial Completion of the Work. CMR's purchase of an extended discovery period or an extended reporting period will not be sufficient to comply with CMR's obligations hereunder. This policy shall include coverage for: (i) the full scope of the CMR's

operations (on-going and completed), as described in this Agreement; (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 this Agreement; (vii) bodily injury to include physical injury, sickness, disease, death, mental anguish, medical monitoring and emotional distress sustained by any person; and (viii) all attorneys' fees, expenses and other 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 that arise out of or that are related to a Pollution Condition(s). Coverage under this policy shall include a 7-day minimum occurrence period for emergency response costs. The Pollution Liability insurance policy shall not include any type of exclusion or limitation of coverage applicable to claims arising from any of the following:

- Insured vs. insured actions (however, an exclusion for claims made between insureds within the same economic family is acceptable).
- Impaired property that has not been physically injured.
- Materials supplied or handled by the named insured; any exclusionary language pertaining to materials supplied by the insured is subject to the Owner's review and approval.
- Property damage to the work performed by a contractor.
- Faulty workmanship as it relates to clean up costs.
- Punitive, exemplary or multiplied damages.
- Work performed by subcontractors.
- Contractual liability incurred as a result of an injury to an employee of the insured.

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

H.1.8 **Cyber/Privacy Liability Coverage**. Cyber/Privacy liability insurance shall be provided by CMR and all Subcontractors 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 alteration of data, introduction of viruses which impact electronic data, unauthorized use of electronic data, and denial of service to website or email destinations.

H.1.9 **Builder's Risk Coverage**. Builder's Risk coverage shall be purchased by the CMR for the entire Project on an "all risk" completed value form at 100% of the GMP with coverage automatically increasing to provide constant limits of insurance at full 100% of all

insurable values as they are created during construction and to cover the amount of any Change Orders or Amendments that increase the replacement value of the Project. Coverage shall be at least as broad as an unmodified ISO Special Causes of Loss Form ISO CP 10 30 06 95 and shall include coverage for fire, extended coverage, vandalism and malicious mischief, theft, collapse, flood and earth movement, and named storm. Any exclusions to this Builder's Risk coverage form require TFC approval. Such insurance shall (a) designate the TFC and its Indemnitees and 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 Builder's Risk Insurance. The Builder's Risk Insurance shall not include any requirement that protective safeguards are in-place or maintained on the Project. The termination of coverage provision shall be endorsed to permit coverage to continue during any interim period of occupancy of the covered property while being constructed. This insurance shall be maintained in effect until the earlier of the following dates: (i) the date on which termination of coverage has been approved after Final Payment has been issued to and accepted by the CMR, as provided for in the Contract Documents; or (ii) the date on which the insurable interests in the covered property of all insureds other than the TFC have ceased. Loss, if any, shall be adjusted with and made payable to TFC as trustee for the insureds. Such insurance shall cover at a minimum the following:

- 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.

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

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

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

- The cost of debris removal equal to the lesser of: (i) 25% of the amount of loss, or (ii) $5,000,000 per occurrence.

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

H.1.9.1 For renovation projects or projects that involve portions of Work contained within an existing structure, the policy must also include coverage in the additional sum of $1,000,000.00, or the value of the total contact sum, whichever is less. These policy limits are in addition to the builder's risk policy limit that is equal to the total Contract Sum for Existing Property and TFC-furnished equipment, if any, specified by TFC. For purposes herein, "**Existing Property**" means existing buildings or structures, as well as, all personal property contained therein, but does not include personal property owned or operated by CMR or any Subcontractors.

H.1.9.2 For TFC-furnished equipment or materials that will be in care, custody or control of CMR, CMR shall be responsible for any and all damages and losses thereto.

H.1.9.3 **Sublimits**. For those properties located within a Tier 1 or 2 windstorm area, named storm coverage must be provided with limits as specified by TFC. For those properties in flood prone areas, floor insurance coverage must be provided with limits specified by TFC. TFC may specify additional sublimits applicable to the Project in the Special Conditions.

H.1.9.4 The policy shall include the following endorsements:

H.1.9.4.1 Builder's Risk insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property;

H.1.9.4.2 The policy shall not contain an occupancy clause suspending or reducing coverage should TFC partially occupy the Site and before the parties have determined Substantial Completion; and

H.1.9.4.3 Valuation of any loss for the renovation and any existing property (exclusive of building and existing structures) shall be at replacement cost.

H.1.9.5 **Deductibles.** Deductibles shall not exceed the following:

H.1.9.5.1 All risks of direct damage, $25,000 per occurrence

H.1.9.5.2 Delayed Opening Waiting Period: 5 days.

H.1.9.5.3 Earthquake and Earthquake Sprinkler Leakage, $100,000 per occurrence.

H.1.9.5.4 Flood. The deductible per occurrence shall be 5% of the value-at-risk-at-time-of-loss ("VARTOL") with a minimum VARTOL of $250,000. If flood insurance is purchased through National Flood Insurance Program, the deductible shall be the maximum amount of insurance purchased thereunder.

H.1.9.6 The Builder's Risk policy shall remain in effect until the time TFC has approved the transfer of the risk of loss to the Project.

H.1.9.7 Additional requirements may be specified by TFC in the Special Conditions.

H.2 **Insurance Required of Subcontractors**. Each Subcontractor must provide Worker's Compensation, Employer's Liability, Commercial General Liability, Business Auto Liability, and Excess/Umbrella coverage, cyber/privacy liability, and pollution liability with limits as set forth in this **Exhibit H**. If CMR elects to engage a Subcontractor to perform any asbestos abatement, Subcontractor shall meet the policy requirements in H1 and H1.5 above. The limits of such insurance may be adjusted in accordance with the nature of each Subcontractor's operations but, if such adjustment is requested, it must be submitted to TFC for approval before the Subcontractor enters into an agreement or any work commences under the agreement in question. Additionally, all Subcontractors shall comply with (i) UGC Section 5.2 as it concerns policies and Subcontractor requirements therein, and (ii) the provisions set forth in this Exhibit.

H.3 **Inclusion of Insurance Information in Bid Packages**. CMR shall include required insurance information in trade bid/proposal packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their responses. The CMR shall not commence any phase of the work under this Agreement until it has obtained all insurance required for that phase and until evidence of the required insurance has been reviewed and approved by the TFC. TFC's review and approval of the insurance shall not affect the liability of either party.

H.4 **General Terms for All Insurance Policies (including those Subcontractors).** All insurance coverages must be placed with carriers acceptable to TFC, licensed to do business in Texas and rated A-/VII or better by A.M. Best, confirmed by one or more insurance certificates on an Acord 25 form, with all information fully provided as required by the form. All insurance coverages shall be written on an occurrence basis (except Professional Liability) and shall be primary and not excess insurance vis-à-vis any coverage, any self-insurance, or other policy of insurance maintained by TFC. Any coverage underwritten on a claims-made basis must include a retroactive date for the policy and all renewals must be coincident with the Effective Date. Any premiums for this extended reporting period shall be paid by CMR. Certificates of insurance and additional insured endorsements required herein shall provide that the policies shall be primary without right of contribution from any insurance carried by TFC. Each policy, other than Worker's Compensation/Employer's Liability and Professional Liability, shall contain a severability of interest clause stating "*it is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability*." Each policy shall provide for full separation of insureds and include no insured v. insured limitations or exclusions.

H.5 **Additional Insured Status.** TFC and Indemnitees (as defined in the Agreement) and their officers, directors, agents, and employees shall be included as additional insureds on policies procured by CMR and its Subcontractors, except Worker's Compensation, Professional Liability, and Builder's Risk, using ISO Additional Insured Endorsements CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (Completed Operations) or their equivalent, as approved by TFC. Additional named insured requirements for the Builder's Risk coverage are contained in H.1.9 above wherein TFC and the Indemnitees shall be listed as additional named insureds. CMR shall provide additional insured endorsements demonstrating the additional insured status of TFC and the Indemnitees as provided herein on such forms as required by TFC.

H.6 **Waivers of Subrogation.** All Worker's Compensation, Employers' Liability, Automobile Liability, CGL, Excess Liability, Builder's Risk, and Pollution Liability insurance policies (including those procured by Subcontractors) must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against TFC and Indemnitees and their officers, directors, agents, and employees. With respect to all such policies, CMR waives any and all rights of recovery or subrogation against TFC and its Indemnitees and their officers, directors, agents, and employees.

H.7 **Evidence/Proof of Insurance/Endorsements.** Evidence of the insurance coverage required of CMR must be furnished to TFC before (i) execution of the Agreement for Preconstruction Services, and (ii) commencement of the Work (or, with respect to Subcontractors, before such Subcontractor begins its portion of the Work) and as coverage renews. Evidence of coverages shall be provided in certificates of insurance with a copy of the Commercial General Liability policies and all endorsements shall be made available to TFC upon request. The insurance policies shall provide or be endorsed to include a requirement for each insurer to give TFC notice at least thirty (30) Days prior to any (i) non-renewal; (ii) cancellation; or (iii) material change. "Material Change" includes, without limitation (i) a change in the policy period; (ii) a material revision to, or removal of, a coverage section; (iii) a reduction of the amount of limits of insurance, provided such reduction is not the result of payment of damages, medical expenses, or claim expenses; or (iv) an increase of the amount of any self-insured

retentions. Similarly, the Commercial General Liability policy shall be endorsed to include a 10-Day Notice of Non-Payment of Premium in favor of TFC.

H.8 **Notification to TFC**. Any and all policies, endorsements, approvals, certificates of insurance and/or notifications of cancellation, non-renewal, or material change shall be transmitted to:

The Texas Facilities Commission
Attention: Insurance Specialist
P.O. Box 13047
Austin, Texas 78711
Insurance@TFC.State.tx.us

H.9 **Deductibles, Retentions & Exclusions.** Insurance deductibles shall be paid by CMR without reimbursement by TFC. Any under-insurance, self-insurance, self-insured retentions (SIR), deductibles, and exclusions in coverage in the insurance policies required under this agreement to the extent applicable, shall be assumed by, for the account of and at the sole risk of CMR and Subcontractors. All deductibles and self-insured retentions shall be disclosed to TFC before the placement of any insurance. No deductible or self-insured retention shall exceed _____, without prior written approval of TFC.

H.9.1 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 TFC 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.

H.10 **CMR's Duty to Review**. 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 Agreement, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within 48 hours of a written request by TFC, CMR shall submit true and complete copies of CMR's policies of insurance in electronic form by emailing true and complete of such policies to TFC's insurance analyst. The true and complete copies of all applicable insurance policies shall be submitted in a timely manner, as no contract will be executed without the receipt, review, negotiation, and TFC acceptance, of the submitted policies. The policies shall include therewith a letter provided by CMR's broker, agent, or its applicable insurance carrier representative for each policy, certifying that the electronic copies of the policies as furnished are true and correct copies. In addition, upon conducting such review, if TFC's insurance analyst determines CMR's insurance policies contain deficiencies that cause such policies to fail to comply with the insurance requirements of this Agreement, CMR agrees to reimburse TFC for all costs and fees incurred in attempting to resolve such policy deficiencies by modification or special endorsement thereof. CMR shall not cause or permit any required insurance to cancel or lapse prior to the expiration of all warranty periods, provided however, policy duration for builder's risk (or as applicable, an installation floater) is not governed by this provision. CMR must update all expired policies prior to submission of any pay application.

H.11 **Right to Review**. TFC reserves the right to review all 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 TFC, CMR, or the underwriter) on any such policies when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions, or the claims history of the industry and/or of CMR, provided however, such modifications must be commercially available to CMR. TFC shall make an equitable adjustment to the GMP for any additional cost resulting therefrom.

H.12 **Failure to Obtain or Maintain**. Failure to timely obtain and maintain the insurance coverages as required under this Agreement may subject CMR to disqualification from eligibility to participate in any other or future projects with TFC and/or suspension of Work for cause pursuant to UGC Article 14. CMR shall provide TFC thirty (30) Days written notice of erosion of any aggregate limits below the minimum amounts required by this Agreement. In the event CMR fails to timely renew or pay any of the renewal premiums for any expiring policies, TFC shall have the right (but not the obligation) to: (i) make such payments; and/or (ii) acquire replacement coverage, and set off the amount(s) or costs thereof against the next payment(s) coming due to CMR under this Agreement or under any other contract between TFC and CMR. TFC may withhold any payments due to CMR from this Project or any other TFC project until satisfaction is achieved.

H.13 **Enforceability of Requirements.** None of the requirements contained herein as to types, limits, or TFC's approval of insurance coverage to be maintained by CMR is intended to and shall not in any manner limit, qualify, or quantify the liabilities and obligations assumed by CMR under the Agreement or otherwise provided by law. All insurance coverages required by the Agreement, as amended by TFC, shall be written in strict conformance with these requirements to provide complete and full coverage to TFC for CMR's and Subcontractors' operations and completed operations. If coverages and/or specified endorsements are not available due to a change in Texas law, CMR shall secure equivalent coverages, which shall be subject to approval by TFC. To the extent any provision of these insurance requirements is held to be void, voidable, invalid, or unenforceable, the remainder of these insurance requirements shall not be affected thereby and shall remain valid and fully enforceable.

H.14 **Losses Paid by CMR**. Actual losses not covered by insurance as required by this Agreement shall be paid by CMR. CMR hereby waives all rights of recovery and releases, and shall cause its subconsultants and Subcontractors to release, TFC 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 this Agreement.

H.15 **TFC a Third-Party Beneficiary**. It is hereby acknowledged and agreed that, based on the CMR Agreement into which this **Exhibit H** is incorporated, TFC is intended to be and hereby is a third-party beneficiary of any agreement(s) between CMR and any and all Persons who procure, or cause to be procured any insurance policy and any renewals thereof, for the Project.

H.16 **Required Insurance Coverages No Effect On Indemnification**. The insurance and insurance limits required herein shall not be deemed as a limitation on CMR's liability under the indemnifications granted to TFC.

H.17 **No Warranty That Insurance Limits Will Be Adequate to Fully Protect CMR**. The insurance requirements set out herein shall not be interpreted as any representation or warranty that the insurance coverage and limits will necessarily be adequate to fully protect CMR.

EXHIBIT I

WORK PACKAGE AUTHORIZATION TEMPLATE

Work Package Authorization No. ____

Project: _____ **(the "Project")**

Date: _____ ____, 20___

To: _____ **("CMR")**

Agreement: CONSTRUCTION MANAGER–AT-RISK AGREEMENT between THE TEXAS FACILITIES COMMISSION ("TFC") and CMR (the "Agreement")

Pursuant to Section 4.5 of the Agreement, the following scope of work is authorized as a Work Package in connection with the above-referenced Project:

1. Scope of Work:

(a) CMR is authorized to proceed with the following scope of Work:

[*Describe scope of Work]*

(b) CMR intends to utilize the following Subcontractors in connection with the Work Package:

Subcontractor	Scope of Work	Subcontract Amount
	Total:	**$**

2. Notice to Proceed:

CMR is hereby given Notice to Proceed with the scope of Work described above as of the ___ day of _____, 20__.

3. Authorized Amount (check one):

The authorized amount of this Work Package Authorization ("Authorized Amount") is the amount as indicated below, subject to additions and deductions by Change Order as provided in the Contract Documents:

☐	(**Stipulated Sum**) A stipulated sum of $_____, which sum is inclusive of all labor, materials, equipment, fees, and profit/mark-ups.
☐	(**Cost + Fee with GMP**) (a) the Cost of the Work plus (b) CMR's Fee of [$_____/____%], plus (c) a Contingency of [$_____/____%], all of which is guaranteed by the CMR not to exceed « » ($ « »),

The Authorized Amount shall not be exceeded without the express written authorization of TFC.

4. Allowances:

The following Allowances are included in the Authorized Amount:

(a)

(b)

(c)

5. Alternates:

The following Alternates have been accepted by TFC and are included in the Authorized Amount:

(a)

(b)

(c)

6. Unit Prices:

The Authorized Amount is based upon the following Unit Prices:

Item	Units and Limitations	Price Per Unit ($0.00)
1.		
2.		
3.		

7. Supporting Documentation Attached (*Check if Applicable*):

☐ CMR's Schedule of Values for the Scope of Work is attached hereto as **Exhibit 1**.

☐ A breakdown of CMR's General Conditions Costs for the Scope of Work is attached hereto as **Exhibit 2.**

☐ CMR will utilize the Labor Rates attached as **Exhibit 2(a)** for this Scope of Work.

☐ CMR shall utilize the Equipment Rental Rates attached as **Exhibit 2(b)** for this Scope of Work.

☐ A list of Drawings and Specifications for the Scope of Work is attached hereto as **Exhibit 3**.

☐ CMR's C&As for the Scope of Work are attached hereto as **Exhibit 4**.

☐ CMR's List of Key Personnel for the performance of the Scope of Work set forth herein is attached hereto as **Exhibit 5**

☐ CMR's Performance and Payment Bonds with penal sums in the amount set forth in Section 3 above are attached hereto as **Exhibit 6**.

8. Insurance: No work shall be performed unless and until CMR has provided verification that it and the Subcontractors performing work under this Work Package Authorization have provided the insurance coverages with the policy limits:

(choose one)

☐ set forth in **Exhibit H** to the Agreement.

☐ as set forth below all other provisions of **Exhibit H** apply in full except as modified with the following policies/limits:

Policy	CMR	Subcontractors
Worker's Compensation **Employer's Liability Insurance**: Bodily Injury by Accident (accident) Bodily Injury by Disease (policy limit) Bodily Injury by Disease (each employee)	Statutory $1,000,000 $1,000,000 $1,000,000	Statutory $1,000,000 $1,000,000 $1,000,000
Commercial General Liability	$1,000,000 each occurrence $2,000,000 annual general aggregate $2,000,000 products-completed operations aggregate	$1,000,000 each occurrence $2,000,000 annual general aggregate $2,000,000 products-completed operations aggregate
Automobile Liability* *coverage must include loading and unloading hazards	$1,000,000 each accident	$1,000,000 each accident
Umbrella/Excess Liability	$1,000,000 each occurrence $1,000,000 aggregate	$1,000,000 each occurrence $1,000,000 aggregate
Asbestos Abatement Liability	$1,000,000 combined single limit for BI and PD Employer's liability for asbestos abatement is: $1,000,000 each accident/disease each employee/disease policy limits	If Subcontractor is engaged by CMR to perform asbestos abatement: $1,000,000 combined single limit for BI and PD. Employer's liability for asbestos abatement is: $1,000,000 each accident/disease each employee/disease policy limits
Cyber/Privacy Liability	$1,000,000 per claim/$1,000,000 aggregate	[redacted]
Pollution Liability	$1,000,000 each occurrence $1,000,000 aggregate	
Builder's Risk (including Installation Floater)	100% of GMP on a replacement cost basis	

CMR shall provide evidence of insurance and Subcontractors' insurance coverage to TFC as provided in **Exhibit H** to the Agreement.

The Authorized Amount of this Work Package Authorization will be included in the final GMP Amendment as set forth in Section 5.3.1 of the Agreement. All terms and conditions of the Agreement shall continue in full force and effect and shall apply to the scope of Work to be performed under this Work Package Authorization.

TFC:	**CMR:**
THE TEXAS FACILITIES COMMISSION	**[INSERT]**
By: _____	By: _____
Name: _____	Name: _____
Title: Deputy Executive Director	Title: _____

EXHIBIT J-1

FORM OF PERFORMANCE BOND

STATE OF TEXAS
COUNTY OF _____

LET IT BE KNOWN BY THIS INSTRUMENT:

That we, _____ as principal

and we _____ a corporation duly authorized to do business in this State, as Surety(s), are this date held and firmly bound unto the State of Texas in the amount of _____

_____ Dollars $ _____

for payment of which indemnity the said Principal and Surety, by this declaration, do firmly bind themselves, their heirs, executors, administrators, successors and assigns, jointly and individually.

Since a Contract, which by reference is made a part hereof, exists between Principal and the State of Texas, acting by and through the Texas Facilities Commission, and dated _____ for the _____

_____

_____

The conditions of this obligation are, therefore, such that it shall remain in full force and effect unless and until the Principal shall faithfully perform the Contract in accordance with the Contract Documents.

In the event of Principal's failure, as defined by the Contract Documents, to faithfully perform the Contract, Surety(s) will within fifteen (15) days of determination of default, assume full responsibility for completion of said Contract and become entitled to payment of the balance of the Contract amount.

The liabilities, rights, limitations, and remedies concerning this Bond shall be determined in accordance with the provisions of Chapter 2253 of the Texas Government Code, amended by Acts of 73rd Legislature, 1993 pursuant to which Bond is executed.

IN WITNESS TO THIS DECLARATION, the said Principal and Surety(s) have signed and sealed this instrument

this _____ day of _____

PRINCIPAL

By_____

SURETY

By _____

Bond Identification No. _____

_____

Address of Attorney-In-Fact

_____

Telephone No. of Attorney-In-Fact

DRAFT

EXHIBIT J-2

FORM OF PAYMENT BOND

STATE OF TEXAS
COUNTY OF _____

LET IT BE KNOWN BY THIS INSTRUMENT:

That we, _____ as principal

and we _____ a corporation duly authorized to do business in this State, as Surety(s), are this date held and firmly bound unto the State of Texas in the amount of _____

_____ Dollars $ _____

for payment of which indemnity the said Principal and Surety, by this declaration, do firmly bind themselves, their heirs, executors, administrators, successors and assigns, jointly and individually.

Since a Contract, which by reference is made a part hereof, exists between Principal and the State of Texas, acting by and through the Texas Facilities Commission, and dated _____ for the _____

_____

The conditions of this obligation are, therefore, such that it shall remain in full force and effect unless and until the Principal shall faithfully perform the Contract in accordance with the Contract Documents.

The liabilities, rights, limitations, and remedies concerning this Bond shall be determined in accordance with the provisions of Chapter 2253 of the Texas Government Code, amended by Acts of 73rd Legislature, 1993 pursuant to which Bond is executed.

IN WITNESS TO THIS DECLARATION, the said Principal and Surety(s) have signed and sealed this instrument

this _____ day of _____

PRINCIPAL

By _____

SURETY

By _____

Bond Identification No. _____

_____
Address of Attorney-In-Fact

_____
Telephone No. of Attorney-In-Fact