

**San Mateo County – Project Development Unit
Cordilleras Health System Replacement Project**

DOCUMENT 00 5201

AGREEMENT

THIS AGREEMENT, dated this 23rd day of August, 2018 is by and between Skanska USA Inc. [Name of CMR], whose place of business is located at One California St., 51400, SF, CA 94111 (CMR), and the County of San Mateo (Owner), a county established under the laws of the State of California.

WHEREAS, Owner, by its Resolution No. 075975 adopted on the 26th day of June, 2018 (a copy of which is attached and part of this Agreement), awarded to CMR the following contract:

CORDILLERAS HEALTH SYSTEM REPLACEMENT PROJECT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, CMR and Owner agree as follows:

ARTICLE I - WORK OF THE CONTRACT AND CONTRACT SUM

1.01. Work of the Contract

- A. CMR shall complete all Work specified in the Contract Documents, including without limitation, the Specifications, Drawings, Document 01 1000 (Summary of Work) and all other terms and conditions of the Contract Documents (**Work**).

1.02. Contract Sum

- A. Owner shall pay CMR the amounts indicated in paragraphs 1.03 and 1.04 below (together, **Contract Sum**) for completion of Work in accordance with Contract Documents and (as applicable) as set forth in CMR's Proposal (Document 00 4001 [Proposal Price Form]), attached hereto.
- B. The Contract Sum includes all allowances (if any).

1.03. Pre-Construction (Phase 1) Portion of Contract Sum

- A. Cost Item 1. Owner shall pay CMR \$ ~~17,237,105.00~~ \$ 474,413.00, the amount indicated for Proposal Cost Item 1 (Pre-Construction Services) for completion of all pre-construction (**Phase 1**) services for the Project. The Cost Item 1 amount reflects full compensation for all CMR Phase 1 costs, expenses, fee, profit, general conditions, general requirements, bonds and insurance and overhead, and any other Phase 1 services and work.

1.04. Construction (Phase 2) Portion of Contract Sum

- A. After all trade subcontracts have been procured, a Final Guaranteed Maximum Price (GMP) shall be established as provided in this Document and that shall be the sum of Cost Items 1 through 7 herein. The Final GMP shall be treated as the Contract Sum and shall be inclusive of all Work of the Contract Documents.
- B. The Construction (Phase 2) portion of Contract Sum will be payable progressively based upon progressive work, as set forth in the Contract Documents, commencing only following issuance of Document 00 5501-B (Notice to Proceed for Construction).

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- C. Owner shall pay CMR for completion of all construction (**Phase 2**) work, as total compensation, amounts in Cost Items 2 through 6 described in the Contract Documents (including Section 01 1000 Summary and its appendices and exhibits) as follows.
1. Cost Item 2. An amount equal to the percentage for CMR Fee identified in CMR's Proposal Form Proposal Cost Item 2 (**CMR Fee**) multiplied by the sum of Cost Items 3, 4 and 5 below, in full compensation for CMR's construction phase fee and profit.
 2. Cost Item 3. The specified dollar amount in CMR's Proposal Form Cost Item 3 for CMR General Conditions (**CMR GC**) \$ 4,421,855.00, in full compensation for CMR's construction phase general conditions and related overhead.
 3. Cost Item 4. General Requirements identified in CMR's Proposal Form Proposal Cost Item 4 (**CMR GR**), in full compensation for CMR's construction phase general requirements provided in 2 groups:
 - a. GR 1 – Not-to-Exceed price provided in the Proposal for the General Requirements items listed in Appendix B; and
 - b. GR 2 – Price to be determined and solicited for bidding during subcontractors buy-out in Phase 1 for the General Requirement Items listed Appendix B.
 4. Cost Item 5. Direct Cost of Construction which is the aggregate total cost of the work of trades to be bid open book by CMR and authorized self-perform subtrade work at the amount agreed to; actual bid amounts awarded shall be used to determine Final GMP. Determination of this Cost Item based upon trade bids is provided in Article VII below.
 5. Cost Item 6. An amount equal to **three (3) %** of Cost Item 5 (**Contingency**). Contingency is subject to adjustment as provided herein.
 6. Cost Item 7. An amount equal to the percentage for Bonds, Insurance and Taxes identified in CMR's Proposal Form Proposal Cost Item 7 (**Bonds, Insurance and Taxes**), in full compensation for bonds, insurance and taxes as required per Document 00 6113.12, Document 00 6113.18 and Document 00 7311.

1.05. Administration of Cost Item 6, Contingency; Shared Savings.

- A. Contingency (Cost Item 6) amount will be administered by Owner and expended only for "preventable" changes and/or extra costs as defined in this paragraph 1.05, up to but not over the amount of the Contingency (and any such costs over the amount of the contingency shall not be reimbursed). CMR accepts the risk of preventable changes and/or extra costs exceeding the Contingency.
- B. Preventable changes and extra costs are those that CMR could have prevented by proper performance of its Phase 1 services under Document 00 5251 (Pre-Construction and CMR Services), such as, for example, and not by way of limitation, constructability and coordination issues or reasonably foreseeable equipment/material replacements and substitutions. CMR may be entitled to charge preventable direct cost of construction (plus overhead and profit markup) to contingency in the same manner as Change Orders under Document 01 2600 (Contract Modification Procedures), by moving such amounts from Contingency (Cost Item 6) to Cost Items 3, 4, 5 and 7 as applicable, including direct costs that were incurred as a consequence of CMR's ordinarily negligent errors and omissions; however, CMR may not charge any costs against Contingency which were incurred due to CMR's gross negligence or intentional misconduct, or any for rework of defective work.

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C. Non-preventable changes and extra costs are those CMR could not have prevented by proper performance of its Phase 1 services under Document 00 5251, such as, for example, and not by way of limitation, Owner elective changes adding additional scope or changes in legal requirements. Non-preventable Change Orders will not be recognized as a cost under the contingency, but rather, may be recognized as Change Orders that increase the Contract Sum and/or a Cost Item therein.

D. Costs may not be charged to Contingency, however, if such costs are either (i) within the scope of work of the plans and specifications on which the Proposal was submitted or subcontract packages awarded, or (ii) included within the scope of Cost Items 1 (Pre-Construction Services), 3 (CMR GC) or 4 (CMR GR). On completion of Contract, 40% of unspent contingency shall be paid to CMR; the remaining 60% of contingency shall be retained by Owner; and Contract Sum will be adjusted accordingly.

1.06. No Duplication. There shall be no duplication of costs or expenses among Cost Items. Duplication is subject to correction whenever discovered. CMR shall compare carefully its scope of work with the scope of work of trade subcontractors and monitor the work to assure that duplication does not occur, for example, and not by way of limitation, in costs of cleanup, document management, modeling, bonds, mock-ups, and supervision.

1.07. Updates and Final Confirmation of Contract Sum

A. Following bid/award of all trade subcontracts and agreements to self-perform subtrade work into the Contract, Owner and CMR shall complete and execute a change order in form of Appendix A (Calculation of CMR's Contract Sum) to this Document 00 5201 to memorialize the final Contract Sum.

ARTICLE II - CONTRACT TIME; COMMENCEMENT AND COMPLETION OF WORK

2.01. Phase 1 – Pre-Construction Phase

- A. CMR shall commence pre-construction (Phase 1) services pursuant to Document 00 5251 on the date indicated in Document 00 5501-A (Notice to Proceed for Pre-Construction Services) - **Phase 1 Commencement Date is anticipated for ~~6/11/2018~~ July 3rd 2018**
- B. CMR shall complete Phase 1 within **four hundred forty-six (446) calendar days** from the Phase 1 Commencement Date, subject to extension only as provided in Document 00 5251.
- C. Owner reserves the right to modify or alter the Phase 1 Commencement Date.

2.02. Phase 2 – Construction Phase

- A. CMR shall commence the construction (Phase 2) work on the date indicated in Document 00 5501-B (Notice to Proceed for Construction) - **Phase 2 Commencement Date is anticipated to be 9/16/2019.**
- B. CMR shall achieve Substantial Completion of the Retaining Wall, Bridge, Sitework, Campus Center Building and all MHRC Residences **eight hundred seventy-two (872) calendar days** from the Phase 2 Commencement Date.
- C. CMR shall achieve Final Completion of the all work **nine hundred fifty-seven (957) calendar days** from the Phase 2 Commencement Date.

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2.03. General Matters

- A. Conditions to Owner's issuance of Document 00 5501-A (Notice to Proceed for Pre-Construction Services) include all matters described in Document 00 5105 (Notice of Award), and such other matters as Owner may reasonably request.
- B. Conditions to Owner's issuance of Document 00 5501-B (Notice to Proceed for Construction), to be issued for the Work, include the following, which Owner may waive or modify in its sole discretion:
 - 1. CMR has satisfactorily completed all pre-construction phase services required by Document 00 5251 (Pre-Construction and CMR Services);
 - 2. CMR has awarded all trade subcontracts and authorized self-perform subtrade work contracts required to execute the Phase 2 work of the Contract Documents for construction;
 - 3. CMR has provided evidence of all insurance, bonds and bond amounts required by Contract Documents for construction.
 - 4. CMR and Owner expressly acknowledge and agree that, in entering into this Agreement, and by authorizing the commencement of Phase 1 services, notwithstanding anything to contrary contained in the Agreement, Owner has not committed itself to a specific course of conduct regarding the ultimate development of the property or guaranteed or otherwise represented that Owner will issue Document 00 5501-B (Notice to Proceed for Construction) to CMF. Owner has not completed its review of the project under CEQA and Owners Board of Supervisors has not yet made a final decision to commit itself to a specific course of conduct regarding the ultimate development of the property by taking formal action specifically approving the project.
- C. Owner reserves the right to modify or alter the Phase 1 Commencement Date or any Phase 2 Commencement Date in its sole discretion.

ARTICLE III - PROJECT REPRESENTATIVES

3.01. Owner's Project Manager

- A. Owner, acting through the San Mateo County Project Development Unit, has designated Sam Lin and/or Scott Gurley as its PDU Manager/Project Manager to act as Owner's Authorized Representative in all matters relating to the Contract Documents.
- B. To the extent Board of Supervisors approval is not required and authorized by law, Project Manager shall have authority over various matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Owner, to accept work, and to make decisions or actions binding on Owner, and shall have sole signature authority on behalf of Owner, subject however to the limits in the Public Contract Code sections 20137 and 20142, as stated in Document 00 7200, and limits supplied by law and County policies.
- C. Owner may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager, or other Owner Representative, or change the Project Manager, Construction Manager or other Owner Representative at any time.

3.02. CMR's Project Manager

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- A. CMR has designated Todd Pesavento as its Project Manager to act as CMR's Representative in all matters relating to the Contract Documents. CMR's Project Manager must be approved in writing by the Owner prior to execution of this Agreement.
- B. CMR may not change the identity of its Project Manager or any other Key Personnel without prior Owner written approval, which approval shall not be unreasonably withheld, provided such replacement has similar or greater experience and qualifications.

3.03. Architects/Engineers

- A. Cannon Design will furnish the Drawings and Specifications for the for all work associated with the project. Cannon Design will provide design criteria and bridging documents for the Earthwork, Retaining Walls and Bridge design/installations that will be provided to the CMR as a design build delivery, Cannon Design shall have the rights assigned to Architect(s)/Engineer(s) in the Contract Documents.

ARTICLE IV - TERMS, CONDITIONS AND SCOPE OF LIMITATIONS ON DELAY DAMAGES

4.01. Identification and Limitation on Delay Damages.

- A. Owner and CMR recognize that time is of the essence of this Contract and that both Owner and CMR (including Subcontractors) will suffer financial loss in the form of contract administration expenses (including without limitations extended General Conditions, General Requirements, Fee, lost profit, lost opportunities, consequences to bonding costs for CMR; and disruption, extended project management and consultant expenses, interest expense, and loss of revenues, damages to third parties and costs of substitute facilities for Owner) (collectively, **delay damages**), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents.
- B. Except as otherwise expressly provided in this Document 00 5201 (Agreement), Owner and CMR (including Subcontractors) agree that neither shall have the right to recover such defined delay damages against the other during the first **(15 days)** of any delay
- C. Consistent with Public Contract Code 7203, delay damages are liquidated as follows:
 - 1. Liquidated Damages
 - a. Owner's liquidated damages during the first fifteen (15) days of the delay period attributable to CMR, shall be the amount of \$0 per day.
 - b. From Day 16-105 of delay due to any party, owners liquidated damages shall be \$2,500 per day
 - c. Following day 106 of delay due to any party, then starting on day 106, owners liquidated damages shall be \$5,000 per day
- D. Measures of liquidated damages shall apply cumulatively.

4.02. Delays Covered. This mutual waiver and limit to liquidated damages includes delay damages resulting from delays which in turn result from ordinary, alleged breaches of contract; or errors, omissions, or alleged defects in the design; and force majeure events. Such delays include:

- 1. CMR failure to achieve Substantial Completion or Final Completion of any portion of the Work within the times required in the Contract Documents, plus any permitted extensions;
- 2. Owner's failure to respond to any CMR inquiry, submittal or other request in a timely manner;

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3. Delays caused by any expected construction interruptions, inspections, rejection of work and rework;
4. Delays caused by any differing site conditions (including hazardous waste or undisclosed Underground Facility), such as those contemplated in Document 00 7200 (General Conditions);
5. Errors or omissions amounting to ordinary negligence, including without limitation CMR negligence in performing its Pre-Construction Services, or errors or omissions in any Drawings or Specifications; and
6. Delays resulting from forces and/or causes beyond the reasonable control of Owner, CMR or any Subcontractor, including without limitation force majeure events, Acts of God, disruptions in supply and other unexpected difficulties in the progress of the Work.

4.03. Subcontractor Consent. Subcontractors must expressly agree to be bound to this Article IV, to the extent of their scope of Work. Under no circumstances may any Subcontractor make a claim against Owner for delay damages suffered by a Subcontractor. To the extent that this Document 00 5201 (Agreement) otherwise expressly entitles Subcontractors to receive delay damages, all Subcontractor claims for delay damages (i) must be prosecuted through CMR as provided in Document 00 7200 (General Conditions) and (ii) are subject to all limitations and waivers otherwise contained in this Document 00 5201 and the other Contract Documents.

4.04. Exclusions. The foregoing mutual waiver of delay damages excludes the following:

- A. Any damages arising from or relating to personal injury, death, defective work, property damage, or to the extent covered by insurance maintained by Owner, CMR or any Subcontractor.
- B. Any damages resulting from CMR's or any Subcontractor's failure to maintain the minimum staffing levels required to prosecute the Work with reasonable diligence, defective work or failure to remedy defective work.
- C. Any damages resulting from any party's gross negligence or intentional misconduct.
- D. Any delay damages otherwise payable under paragraph 4.01 above; provided that under no circumstance shall Owner, CMR or any Subcontractor be paid twice for the same delay damages.
- E. Indemnity or defense obligations under Contract Documents.
- F. Under no circumstances may this mutual waiver be construed to limit liability for any damages covered by insurance maintained by Owner, CMR or any Subcontractor, to the extent of such coverage available and recovered after exercise of reasonable efforts.

ARTICLE V - NOT USED

ARTICLE VI - CONTRACT DOCUMENTS

6.01. The Contract Documents which comprise the entire agreement between Owner and CMR concerning the Work consist of the following documents, including all changes, Addenda, and Modifications thereto as listed on Document 00 0111 Table of Contents:

Document 00 4001	Proposal Price Form
Document 00 4820	Proposer Certifications

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Document 00 5201	Agreement
Document 00 5251	Pre-Construction and CMR Services
Document 00 5501-A	Notice to Proceed for Pre-Construction Services
Document 00 5501-B	Notice to Proceed for Construction
Document 00 6113.12	Construction Performance Bond
Document 00 6113.18	Construction Labor and Material Payment Bond
Document 00 6301	Guaranty
Document 00 6530	Agreement and Release of Any and All Claims
Document 00 6600	Substitution Request Form
Document 00 6801	Escrow Agreement for Security Deposit in Lieu of Retention
Document 00 7200	General Conditions
Document 00 7301	Supplementary General Conditions
Document 00 7311	Insurance and Indemnification
Document 00 7315	Naturally Occurring Asbestos [If Applicable]
Document 00 7380	Apprenticeship Program
Document 00 9111	Addenda
Specifications	Division 01 Sections identified in Document 01 0111 Table of Contents.
Specifications	Division 02 through 33 to be developed in conjunction with scope definition work as described in Document 00 5251.
Drawings	Drawings, Tables and Schedules to be completed for bidding, to be developed in conjunction with scope definition work as described in Document 00 5251

- 6.02.** Part of the scope of CMR's Pre-Construction Services work is to identify, clarify, and define the scope of the multiple Permit Packages that constitute the Project, as described further in Document 00 5251 (Pre-Construction and CMR Services).
- 6.03.** There are no Contract Documents other than those listed above in this Article VI. Document 00 3020 Geotechnical Data and Existing Conditions and Document 00 3124 Hazardous Materials Surveys (if included) and the information supplied through those documents, are not Contract Documents and describe conditions of construction only. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 7200 General Conditions.

ARTICLE VII - TRADE SUBCONTRACTOR BIDDING AND BONDS; FINAL GMP

- 7.01.** After award of this Contract, CMR shall commence performing Services as outlined in Document 00 5251. No later than at the end of performance of the Services outlined in Document 00 5251, and earlier if requested by Owner, CMR shall prepare the packages for bidding or otherwise procuring separate trade subcontracts.
- 7.02.** The subcontracts shall be bid open book, with Owner having reasonable review and clarification rights regarding scope, terms and conditions, to complete the work of the Contract Documents and guard against prejudice of Owner's rights under the Contract Documents. Subcontracts and subcontractor bidding shall comply with all public contracting requirements applicable to the County of San Mateo, including without limitation, the following requirements:
- A. CMR shall provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of Owner and the Subcontractor and Subletting Fair Practices Act.
 - B. CMR shall provide a fixed date and time on which the subcontracted work will be awarded.

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- C. In any contract between CMR and any trade subcontractor, or any contract between a trade subcontractor and a subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between Owner and CMR. If the CMR provides written notice to any trade subcontractor or subcontractor thereunder that is not a member of the CMR entity, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the CMR, then the CMR may withhold retention proceeds in excess of the percentage specified in the contract between Owner and CMR from any payment made by the CMR to the trade subcontractor or subcontractor thereunder.
- D. CMR shall award subcontracts to the low, responsive and responsible trade bidder for each trade package.
- 7.03.** CMR's contract value will increase by the amount of each trade subcontract and authorized self-perform subtrade work, and at the completion of trade subcontract bidding, the amount of all trade subcontracts (Aggregate Trade Subcontract and Self-Perform Cost) will be utilized to establish a Final GMP. The Aggregate Trade Subcontract and Self-Perform Cost shall be administered as Cost Item 5.
- 7.04.** Subcontracts bid shall encompass a complete buy out of construction Work and the Final GMP calculated at the completion of subcontractor bidding shall be a final GMP for the entire Work of the Contract Documents. CMR shall not include duplicate scope in any Cost Item or trade subcontract and if such is discovered subsequently then CMR shall so notify Owner for calculation and implementation of the appropriate deductive change order for the value of any such duplication.
- 7.05.** As a condition to the NTP for Phase 2 and as a material term of this Contract, CMR shall provide a performance bond and a payment bond in the forms provided in the Contract Documents as Document 00 6113.12 (Construction Performance Bond) and Document 00 6113.18 (Construction Labor and Material Payment Bond). Such Bonds shall be in the penal sum of the Final GMP.
- 7.06.** Except as otherwise provided in this Article VII or upon written consent of Owner, CMR shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code § 4100 *et seq.*
- 7.07.** Owner shall retain the right in its reasonable discretion, and without additional compensation to CMR, to bid subcontracts in its name and to assign and novate such subcontracts to CMR, subject to the same terms and conditions herein as CMR-bid subcontractors.

ARTICLE VIII - MISCELLANEOUS

- 8.01.** Terms and abbreviations used in this Agreement are defined in Document 00 7200 (General Conditions) and Document 01 4200 (References and Definitions) and will have the meaning indicated therein.
- 8.02.** It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 8.03.** In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, CMR or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may

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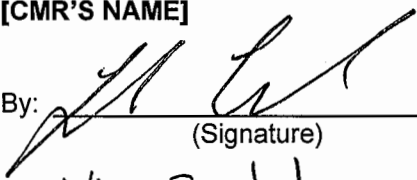
have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to CMR, without further acknowledgment by the parties.

- 8.04.** Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at Owner's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. CMR represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CMR shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 8.05.** In order to induce Owner to enter into this Agreement, CMR represents that it is duly organized, existing and in good standing under applicable state law; is licensed to perform all aspects of the Work; will employ only persons and subcontractors and designers with all required licenses and certifications; that CMR is duly qualified to conduct business in the State of California; that CMR has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents, and Work to be performed herein; and that the Contract Documents do not violate or create a default under any instrument, agreement, order, or decree binding on CMR.
- 8.06.** CMR shall not assign any portion of the Contract Documents.
- 8.07.** This Agreement and the Contract Documents shall be deemed to have been entered into in the City of Redwood City, County of San Mateo, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of San Mateo.

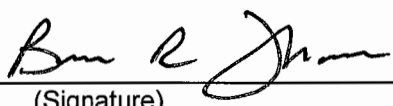
IN WITNESS WHEREOF the parties have executed this Agreement in quadruplicate the day and year first above written.

CONSTRUCTION MANAGER AT RISK:

[CMR'S NAME]

By: 
 (Signature)

Its: Vice President
 Title (If Corporation: Chairman, President or Vice President)

By: 
 (Signature)

Its: SVP of operations
 Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)

OWNER:

COUNTY OF SAN MATEO

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[Signature] 8-23-18
Director, Project Development Unit

RESOLUTION NO. 075975

Appendix A

**CALCULATION OF CONTRACT SUM
[See Paragraph 1.06 above]**

<u>Cost Item No.</u>	<u>Item</u>	<u>Amount (\$)</u>
1.	Pre-Construction Services	\$ <u>474,413</u> (Remain same as base contract)
2.	CMR Fee	\$ <u>2,145,000</u>
3.	CMR General Conditions (Not-to-Exceed)	\$ <u>4,421,855</u> (Remain same as base contract)
4.	CMR General Requirements*	
	GR 1 (Not-to-Exceed)	GR 1 \$ <u>564,070</u>
	GR 2 (To be determined during subcontractors buy-out in Phase 1)	GR 2 \$ _____
5.	Full bid/award value of all trade subcontracts to be bid open book by CMR and agreed value of all authorized self-perform subtrade work**	\$ _____
6.	Contingency (3% of Direct Cost of Construction)	\$ _____
7.	Bonds, Insurance and Taxes	\$ <u>3,777,767</u>
	CONTRACT SUM (GMP)	\$ <u>11,383,105</u>

* See Document 00 4001 Appendix B for CMR General Requirements 1 and 2.
** Subject to any Trade Subcontractor adjustments as provided in Article VII above.

END OF APPENDIX A

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Appendix B

TRADE SUBCONTRACTORS LIST

Prepared by Owner on _____, 20__.

END OF APPENDIX B

END OF DOCUMENT 00 5201

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DOCUMENT 00 5205

ASSIGNMENT AND NOVATION AGREEMENT

THIS AGREEMENT is entered this ____ day of _____, 20__, by and among the County of San Mateo (“Owner”), _____ (“CMR”) and _____ (“Trade Subcontractor”).

WHEREAS, Owner and Trade Subcontractor have entered into a certain agreement for Work, [Trade Subcontract for _____], dated the _____ day of _____, 20__, which is incorporated herein by reference (“Trade Subcontract”); and

WHEREAS, prior to the making of the Trade Subcontract, Owner entered into a Construction Contract with CMR, dated the _____ day of _____, 20__, which is incorporated herein by reference; and

WHEREAS, Owner, Trade Subcontractor and CMR now desire to permit the assignment of the Trade Subcontract by Owner to CMR and the assumption by CMR of Owner’s liability, if any, to Trade Subcontractor thereunder, so as to substitute CMR for Owner and thus cause a novation of the Trade Subcontract; and

WHEREAS, the parties hereto desire to make the assignment and novation under this Agreement and the parties desire that Trade Subcontractor become a subcontractor of CMR and that Contractor and Trade Subcontractor release Owner with respect to the Trade Subcontract in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Assignment of Trade Subcontract and Liabilities: For good and valuable consideration, the receipt of which is hereby acknowledged, stipulated and agreed, Owner hereby grants and assigns to CMR all its rights, title and interest in and to the Trade Subcontract and all liabilities, duties and obligations of Owner arising out of or relating to the Trade Subcontract. Notwithstanding any other provision of this Agreement, Owner retains all of its contractual rights under its contract with CMR concerning Trade Subcontractor’s performance under the Trade Subcontract, whether said performance occurs before or after the date of this Agreement.

2. Assumption of Assignment, Liabilities and Novation: CMR hereby promises to perform the Work of the Trade Subcontract as the Work of CMR. CMR hereby accepts the foregoing assignment, agrees to assume and perform all duties and obligations to be performed by Owner under the Trade Subcontract to the same extent as if CMR had been an original party thereto, agrees to assume all liabilities, duties and obligations of Owner arising out of or relating to the Trade Subcontract, and agrees to the fullest extent permitted by law to release, defend, indemnify and hold Owner harmless from any and all claims, demands, actions, causes of action, suits, proceedings, damages, liabilities and costs and expenses of every nature whatsoever relating to the Trade Subcontract arising out of or with respect to the performance or non-performance of Owner’s duties and obligations.

3. Consent to Assignment, Assumption and Novation: Trade Subcontractor hereby consents to the foregoing assignment by Owner to CMR of the Trade Subcontract and Owner’s liabilities, duties and obligations thereunder and to CMR’s assumption of the same, agrees to look solely to CMR for the proper performance of the Trade Subcontract, agrees to and does release Owner from any and all claims, demands, actions, causes of action, suit, proceeding, damages, liabilities and costs and expenses of every kind and nature whatsoever arising out of or relating to the Trade Subcontract and agrees that the assignment and assumption under this Agreement shall be effective as a substitution of parties and shall constitute a novation pursuant to California Civil Code section 1531 and shall be final except as provided in section 1533.

4. Owner’s Right to Terminate Assignment and Novation Agreement: Notwithstanding the parties’ Cordilleras Health System Replacement Project Project Manual for CM at-Risk Services March 2018

Assignment and Novation Agreement –
[Insert Name] Trade Subcontract
Revision #0

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desire, intent and agreement to modify the Trade Subcontract through this Assignment and Novation Agreement, should Owner, at its sole discretion, wish to cancel, void and/or terminate this Assignment and Novation Agreement at any future time, Owner may do so by providing written notice to CMR. In such an event, simultaneously upon communication of written notice, this Assignment and Novation Agreement shall be deemed canceled, voided and/or terminated and the Owner and CMR shall look solely to and be bound by the original terms of the Construction Management Services Agreement and Owner and Trade Subcontractor shall look solely to and be bound by the Trade Contract. If this Assignment and Novation Agreement is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the CMR Agreement shall nevertheless remain in full force and effect.

5. Entire Agreement: This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof.

6. Counterparts: This Agreement and the other documents referred to herein or therein, may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

7. Notices: Notices, offers, requests or other communications required to be given by either party pursuant to the terms of this Agreement shall be given in writing to the respective parties.

8. Binding Effect: This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Neither party may assign this Agreement, or any rights or obligations hereunder, without the prior written consent of the other party and any such assignment shall be void; provided, however, either party may assign this Agreement to a successor entity in conjunction with such party's reincorporation.

9. Severability: If any term or other provision of this Agreement is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

10. Authority: Each of the parties hereto represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other actions, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms.

11. Interpretation: The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used but not otherwise defined therein, shall have the meaning assigned to such term in this Agreement.

12. Applicable Law and Venue: This Agreement and the Contract Documents shall be deemed to have been entered into in the City of Redwood City, County of San Mateo, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of San Mateo.

13. Counterparts: This Agreement and the other documents referred to herein or therein, may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

14. Notices: Notices, offers, requests or other communications required to be given by either party pursuant to the terms of this Agreement shall be given in writing to the respective parties.

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WHEREFORE, the parties have executed this Assignment and Novation Agreement effective as of the date first set forth above:

Dated: _____

COUNTY OF SAN MATEO

By: _____
(Signature)

Dated: _____

[CMR]

By: _____
(Signature)

Dated: _____

[Trade Subcontractor]

Trade Contractor Bid Package

By: _____
President

By: _____
Secretary

Surety Consent: The undersigned payment bond surety and performance bond surety of CMR hereby consents to this Agreement and grants Trade Subcontractor and Owner all rights, benefits and privileges under its bonds issued with CMR as otherwise afforded as if Trade Subcontractor were an original subcontractor to CMR from inception. The undersigned payment bond surety and performance bond surety further agrees to increase the penal sum of each of its bonds by the amount of Trade Subcontractor's contract price as provided in the Construction Contract.

Dated: _____

[Insert CMR's Surety Name]:

By: _____

Title: _____

END OF DOCUMENT 00 5205

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DOCUMENT 00 5251

PRE-CONSTRUCTION AND CMR SERVICES

ARTICLE I – INTRODUCTION AND SUMMARY

- 1.01.** Construction Manager at Risk (**CMR**) shall provide Owner with professional pre-construction, trade-contractor bidding, construction management and general contractor services on the Project (**Services**). This Project shall proceed in two Phases, a Pre-construction Phase (**Phase 1**) and a Construction Phase (**Phase 2**). This Document 00 5251 defines the Services for the Pre-construction Phase (Phase 1) and describes without limitation some of the Services for the Construction Phase (Phase 2).
- 1.02.** During the Pre-construction Phase, CMR performs a range of Construction Manager (CM) services described in this Document 00 5251, working collaboratively with the Owner and its representatives, Architects/Engineers and other Project team members.
- Upon completion of the Pre-construction Phase, including procurement of trade Subcontracts, CMR becomes the Project General Contractor (GC) during the Construction Phase.
- 1.03.** In performing Construction Manager services during the Pre-construction Phase, including without limitation preparing the Project for the Construction Phase, CMR shall assume a professional role as an experienced California construction contractor holding a California Class B contractor's license; in recommending improvements in Contract Documents to better achieve Project objectives of controlling time and cost, enhancing quality and minimizing risk. In performing such services affecting Project cost, CMR shall act in the highest good faith in making recommendations affecting cost and implementing them as Owner approves.
- 1.04.** In general, during Pre-construction Phase, CMR shall:
- A. Work diligently, proactively and cooperatively with Owner and the design team, to provide constructability review, value engineering, bidding services, scheduling, estimating, phasing plan, logistic plan, safety plan, signage plan, shutdown plan, method of procedure plan, and other services, to permit establishment of a final guaranteed maximum price (Final GMP).
 - B. Work diligently, proactively to competitively bid or otherwise procure the contracts for the trades on the Project.
 - C. Perform estimating services for each of the trade-work bid packages and for the entire Project.
 - D. Additionally, if requested by Owner, work with Owner to identify any major trade subcontracts warranting use of a process that prequalifies potential bidders, and that also may involve, if requested by Owner, contract awards based on a competitive best-value analysis.
- 1.05.** Pre-construction Phase will conclude upon fixing the Final GMP for execution of a change order (Appendix A to Agreement) documenting same and issuance of Notice to Proceed for Construction for the Work. Because of Contractor's Pre-construction Services, there will be a limited change-order right for "preventable" costs that could have been avoided by proper performance of the CMR's Pre-construction Phase services as set forth in more detail in Document 00 5201 (Agreement). CMR shall be at risk for preventable costs above the Contingency.

ARTICLE II – PHASE 1 SERVICES: SCOPE DEFINITION

- 2.01.** Refer to Document 01 1001, Paragraph 1.02 for Project Description and Scope.
- The Project will require careful coordination and systematic phasing in order to maintain continuous and uninterrupted operations of the San Mateo County Government Center, and each Project Component may have its own set of drawings, specifications, permits and Deferred Approvals.
- 2.02.** CMR will conduct Scope Definition and Clarification Workshops with Project Manager, Estimator, MEP Coordinator, Subcontractors, Architects and design teams, and Owner representatives, in order to verify

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the scope identified by Owner, and to identify, isolate, and segregate the required scope for each individual subcontractor bid package required to execute the intended scope of the phases that make up the Project.

ARTICLE III – PHASE 1 SERVICES: PROJECT MANAGEMENT PLAN

- 3.01.** During Pre-construction Phase, CMR shall gather information and develop a project management plan. Meet with Owner and its Project Teams including Owner representatives, and Architects/Engineers to identify information, goals and constraints. Develop a Project strategy and proposed project management plan to meet the project goals, working around constraints. Review the proposed plan with the Owner and its representatives and based on their feedback, finalize the plan.
- 3.02.** The Project Management Plan shall include, at a minimum, the following elements:
- A. CPM Progress Schedule to include Trade Subcontractor Bidding/Procurement (including reasonable allowances for bid protests), important Owner milestones, timing for Pre-construction Phase and Construction Phase, other contracts to be incorporated into the Project, and other Project-related items as requested by Owner. CMR shall provide initial Master Schedule to Owner within Thirty (30) days of Pre-construction Phase commencement.
 - B. CMR Staffing Plan. CMR will provide for itself a Staffing Plan applicable to both Pre-construction Phase and Construction Phase, as provided in Document 00 4514 (Proposed Project Plan, Proposed Staffing Plan, and Proposed Safety Plan).
 - C. Additional Consultants or Information Required. CMR shall provide input and make recommendations to Owner for the engagement of other consultants or securing of additional information by Owner as required for efficient and successful completion of the Project. If requested, CMR shall engage such consultants or secure such data on behalf of Owner following Owner procedures; and shall support Owner in negotiating fees and preparing and processing agreements as required. These consultants, upon approval by Owner, may be retained by Owner or CMR by amendment to the Agreement.
 - D. Public Relations Activities. CMR will assist Owner in all public relations including, but not limited to, preparation of Project information and administering internal and public meetings as required, including site meetings and meetings with City, government, and regulatory agencies. Designated Owner representatives shall be the point of public contact during all phases of Work in regards to any complaints, questions, safety issues, noise problems, dust problems, and such except for such specific areas Owner representative delegates to CMR.
 - E. Regulatory Approvals. CMR will assist Owner in preparing, monitoring and processing all regulatory approvals required for Project development and construction, including without limitation, Redwood City, San Mateo County, City and County Fire Marshals, Fire and Life Safety Officer, and any other Authorities Having Jurisdiction.
 - F. Mobilization Plan. CMR will prepare, and with Owner's approval implement, the Project mobilization plan, including acquisition and installation of all required trailers and other on-Site facilities.

ARTICLE IV – PHASE 1 SERVICES: PROJECT REPORTING AND MEETINGS

- 4.01.** CMR shall organize and attend regular meetings, regularly scheduled, special meetings and all meetings required by Document 01 3100 and provide input.
- 4.02.** CMR shall report to and receive instructions from Owner. CMR shall keep Owner's responsible Project personnel, as designated from time to time, advised and informed on Project status and issues. CMR shall immediately report to Owner any conflicting instructions received from Owner representatives. All CMR field personnel assigned to the Project shall have cellular telephones sufficient to permit 24 hour a day access for response to emergency situations that may arise.

ARTICLE V – PHASE 1 SERVICES: REVIEW DRAWINGS AND SPECIFICATIONS AND SITE CONDITIONS

- 5.01.** During Pre-construction Phase, CMR shall provide technical assistance and advice in reviewing the Project Drawings and Specifications for constructability and coordination. The review process will

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include a site verification to see that existing conditions are correctly addressed in the Drawings and Specifications. The constructability review shall evaluate actual obstructions or difficulties building the designs as shown, design coordination, dimensions, interferences, conflicts, code compliance, any coordination issues apparent, and also design details or requirements that, in CMR's opinion, are unnecessarily costly or subject to achievement in different, better and/or less expensive ways. The review will also evaluate whether alternate materials, methods or systems should be considered and will aim to eliminate or minimize interferences, conflicts, unnecessary expense and potential omission or overlap of work between trades and avoid the need for clarifications or changes during Construction Phase, to improve the function of the Project and to save time and cost. CMR shall provide a written list of suggested improvements to Drawings and Specifications to Project team and monitor later documents to see that agreed on changes are incorporated into the Drawings and Specifications before trade bidding. Finally, CMR shall verify completeness of all Construction Documents and ensure that Subcontractor bid packages include a complete scope of the entire Work of Project and without scope duplication.

- 5.02.** CMR's constructability review regarding code requirements shall extend to matters of constructability that are within the scope and experience of an experienced California construction contractor holding a California Class B contractor's license; it shall not extend to matters solely within the expertise of a licensed design professional.
- 5.03.** Also during Pre-construction Phase, CMR shall conduct a comprehensive review of Project site conditions and contiguous site conditions, sufficient to successfully perform all aspects of the Work, including, without limitation:
- A. Site logistics, site access restrictions or requirements, traffic, noise restrictions, hourly work restrictions, requirements of public and/or private Authorities Having Jurisdiction, and any other restriction or consideration that may affect Contractor's Work.
 - B. Existing conditions information provided by Owner including, but not limited to, review and study of all available as-built information, geotechnical reports, engineering studies, previous contracts, measurements, surveys, documents and materials described and/or provided in Document 00 3020, and any other item required by Document 00 5201 (Agreement) Article VI.
 - C. Correlating its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents. CMR will give Project Manager prompt written notice of all conflicts, errors, ambiguities or discrepancies that it has discovered in or among the Contract Documents and as-built and actual conditions, and notify Project Manager of any written resolution thereof by Project Manager which is not acceptable to CMR.
 - D. Any other investigations deemed necessary by CMR to fully acquaint itself with existing conditions for purposes of Work.
 - E. Based on the foregoing, CMR shall recommend any further site investigations (e.g. subsurface soundings or potholing), make written recommendations to address all observable site conditions, and advise Owner of methods of Trade Subcontractor bidding to address unique site conditions such as unclear or indefinite scope that pose a risk of added change order costs. These could include, without limitation, an estimated quantity for indefinite work scope (e.g. unusable soil removal) that Trade Subcontractors are to include in their bids at unit price rates, with final cost to be based on the actual quantity at the unit rate bid. Such recommendations should minimize the incentive for Trade Subcontracts to bid anticipating open ended add change orders for indefinite quantity work.
 - F. CMR shall also indicate any additional information it requires in assessing existing conditions. Owner and CMR shall work collaboratively to secure any further, additional information which CMR reasonably requires.
- 5.04.** CMR shall collaborate with Owner on sequencing of construction, phasing, means and methods, duration of construction of various building methods and provide recommendations on expediting the construction schedule.

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- 5.05.** CMR shall review the Project Drawings and Specifications for value engineering opportunities to save cost or time. Value engineering means the least cost way to achieve an intended function in the project design. During the review of Drawings and Specifications, CMR shall list suggestions for cost savings or value engineering. CMR shall discuss these with the Project team, reach agreement on those to be adopted and see that they are incorporated in later development of Drawings and Specifications.
- 5.06.** CMR shall evaluate and advise Owner regarding opportunities to improve Project maintainability and sustainability and reduce lifecycle costs and energy use throughout the expected Project life.
- 5.07.** CMR shall suggest ways to bring Subcontractors not yet procured into the Pre-construction Phase including their participation in constructability reviews within their respective scopes of work, subject to compliance with Public Contract Code, management and coordination by CMR. Such recommendations may include early bidding of specific trades and shall address Owner's legal competitive bidding requirements and need to minimize the risk of making financial commitments commensurate with a reasonable level of cost certainty.
- 5.08.** Owner may or may not approve any changes to Contract Documents proposed by CMR in connection with its constructability review, value engineering or life-cycle cost analysis, in its sole discretion.
- 5.09.** For any of the foregoing changes which are not incorporated into the Drawings and Specifications, CMR shall notify the Project team in writing and take appropriate actions to resolve any comments the CMR believes should be incorporated or otherwise addressed.
- 5.10.** CMR shall incorporate cost estimate and other information described in Article VII below in Services performed under this Article V.

ARTICLE VI – BUILDING INFORMATION MODELING (BIM)

See Document 01 3120 Building Information Modeling (BIM) and Coordination Drawings

ARTICLE VII – COST ESTIMATES AND BREAKDOWN

- 7.01.** Promptly following issuance of the Notice to Proceed for Pre-Construction, CMR shall provide a detailed Project cost breakdown, including (i) estimated cost of construction by all Trade Subcontractors, both in the aggregate and for each anticipated Trade Subcontract separately, (ii) estimated cost of construction through CMR entity self-performance, if authorized by Owner, and (iii) all other CMR Cost Items, for the purpose of establishing whether Project cost, including all elements of the anticipated Contract Sum (see Document 00 5201 Agreement), is within the Project Construction Budget (hard cost). CMR shall completely update the cost estimate and breakdown at least at 100% SD, 100% DD and 80% CD completion of its Phase 1 Services.
- 7.02.** CMR shall conduct market survey and research to test the accuracy of its estimates. CMR acknowledges Owner's special termination for convenience rights if estimates exceed Owner's approved budgets.
- 7.03.** During Pre-construction Phase, CMR shall continuously review and revise its estimates and breakdown in light of the above market and survey information, the results of constructability and value engineering Services under Article V, and all other reasonably available information. CMR shall continue such efforts during Construction Phase, including at each major project milestone through construction completion.

ARTICLE VIII – PHASE 1 SERVICES: SCHEDULING, PHASING AND WORK SEQUENCING

- 8.01.** In addition to CMR's other scheduling obligations under Contract Documents (e.g., Document 01 3200 Construction Progress Documentation), CMR shall work with Owner's Project team to create a schedule and plan to address timing and coordination of different phases of construction, potential early release of certain Trade Subcontractor packages, CMR Work and storage areas, traffic control, access, parking, utility outages, delivery and (if applicable) installation of furniture, fixtures and equipment by separate Owner contractors and vendors, and other elements. CMR shall submit the schedule and plan for Owner approval.

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- 8.02.** Permits and Approvals. CMR shall work with Owner to secure all necessary permits and approvals and provide Verification and Assistance as required:
1. Information. CMR shall provide necessary information to Authorities Having Jurisdiction and other regulatory/permitting agencies as Owner may request and/or may be required.
 2. Permits. CMR shall perform necessary research, investigations and inquiry to determine and verify that Owner, CMR, and any other Project participants have applied for and secured all building permits, special permits, and approvals necessary for CMR to perform its Work.
 3. Statutory Approvals. CMR shall assist in obtaining statutory approvals or local approvals, for example, Redwood City, County of San Mateo, City and State Fire Marshals, Fire and Life Safety Officer, and any other Authorities Having Jurisdiction.
 4. Construction Phase Staffing. All CMR Construction Phase staff shall be mobilized and assigned to the Project in accordance with the Construction Staffing Plan approved by Owner during Pre-construction Phase.

ARTICLE IX – PHASE 1 SERVICES: BID PACKAGING AND BID MANAGEMENT

- 9.01.** CMR shall develop a strategy for packaging the Project's construction Work into separate bid/procurement packages for each Trade Subcontract in full compliance with the Contract Documents and all applicable laws, including without limitation the Subcontractor Listing Law and other applicable portions of the Public Contract Code.
- 9.02.** Following Owner approval, at the appropriate time, CMR shall then carry out this packaging, working with the Architects/Engineers to compile the necessary Drawings and Specifications to receive separate bids for all elements of the Work while retaining a fully coordinated Project.
- 9.03.** CMR shall solicit interest from potential Trade Subcontractor bidders before and after developing the bid packaging. CMR shall incorporate this market feedback into the bid packaging strategy and estimates in Article VII above. CMR shall also take the necessary procedures to administer or assist Owner in administering any prequalification of potential Trade Subcontractors as directed by Owner. CMR shall make recommendations for actions designed to minimize adverse effects of labor shortages. CMR shall continue to solicit interest from qualified Trade Subcontractors.
- 9.04.** CMR shall arrange for advertising of all Trade Subcontractor bid packages. Without limiting the foregoing, if and to the extent requested by Owner, CMR shall:
- A. Prepare bidding documents, agreement, and other contract documents for each Trade Subcontract, based on Owner-provided forms to the extent requested, consistent with Contract Documents, Project schedule, and legal requirements. No such item shall be a Contract Document for this CMR-Owner Contract, nor shall any such item limit or excuse any obligation contained in the CMR Contract Documents, including without limitation the obligations of this paragraph. Any changes to any Owner-provided form which would have any effect before assignment and novation of the applicable Trade Subcontract to CMR are subject to Owner's approval in its sole discretion. However, no Owner-provided form, Owner-requested changes or Owner approval shall in any way diminish CMR's obligations under the Contract Documents.
 - B. Prepare complete contract documents for each Trade Subcontract, which, in addition to the items identified in paragraph A above, include a flow-down of all items required by CMR's Contract Documents to the extent of the Trade Contractor's scope of work.
 - C. The scope of the Contract Documents for each Trade Subcontractor shall be the same as the scope for the bid packages as identified and agreed upon in Scope Definition and Clarification Workshops. CMR shall notify Owner in writing and prior to any bidding of any changes, revisions, or deletions to Trade Subcontractor bid packages from the scope agreed upon in the Scope Definition and Clarification Workshops, and of any constructability issues discovered subsequent to the Scope Definition and Clarification Workshops. All such changes in scope identified prior to bidding and approved by Owner shall be included in the Trade Subcontractor bid packages. All other changes in scope shall be cost reimbursable but all other expenses, general conditions, general requirements or mark-up will be deducted from CMR's contingency.

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- 9.05.** CMR shall arrange for advertising of all Trade Subcontractor bid packages in compliance with the Subcontractor Listing Law and otherwise applicable public contracting laws, conduct pre-bid conferences and receive and award Trade Subcontractor bids. Without limiting the foregoing, CMR shall:
- A. Distribute bidding and contract documents to prospective bidders;
 - B. Organize and attend pre-bid meetings and site visits, and respond to bidder inquiries;
 - C. Prepare addenda and distribute them to bidders;
 - D. Compile bids (taking into account any Owner-specified bid preferences) and prepare recommendations for award;
 - E. Prepare and distribute Notices of Intent to Award and Notices of Award after owner concurrence;
 - F. Prepare final Contract Documents and transmittals for Trade Subcontractor and Owner execution;
 - G. Prepare and distribute Notices to Proceed.
- 9.06.** CMR shall conduct its Pre-construction Phase Services to facilitate the uninterrupted bidding of the trade subcontracts necessary for the Project. CMR will develop and expedite bidding procedures for bid document issuance, bid tracking, and receipt of bids with regard to each of the subcontracts.
- 9.07.** CMR shall be fully responsible for flowing down (i) to each Trade Subcontractor all terms, conditions and requirements of CMR's Contract Documents which are applicable to the Trade Subcontractor's portion of the Project, and (ii) to all Trade Subcontractors collectively all Work of CMR's Contract Documents, excluding only the scope of CMR's specific Cost Items 1, 2, 3 and 4. These flow-down items include, without limitation:
- A. Insurance and bonding requirements.
 - B. Indemnity, defense and hold harmless requirements.
 - C. Warranties and guarantees relating to the Work.
 - D. Consequences of delay and defective work.
 - E. All labor, small and local business, apprenticeship requirements, including without limitations all requirements relating to prevailing wages and any project labor agreement.
 - F. The Project will be expected to achieve a minimum of LEED certification and Zero Net Energy (ZNE) for per the County of San Mateo Municipal Green Building Policy dated December 5, 2017.
 - G. Teamwork and collaboration requirements.
 - H. All applicable regulatory agency compliance.

ARTICLE X – NOT USED.

ARTICLE XI – PHASE 2 SERVICES: DELINEATION OF CMR'S PHASE 2 CONSTRUCTION RESPONSIBILITIES

- 11.01.** Following the award of the Trade Subcontracts, a Final Guaranteed Maximum Price (GMP) shall be established and CMR shall become a general contractor for the scope of work under the Contract, responsible for construction and quality control, as well as project management services. CMR shall issue a written notice to Owner five (5) business days prior to the start of construction for each Trade Subcontractor package. CMR shall require Trade Subcontractors to comply with all applicable provisions of the Contract Documents, and strictly enforce the prime contract terms incorporated into each Trade Subcontract, including, but not limited to, cost record terms, and claims notice and documentation terms.

CMR shall provide construction administration and management services to construct the Project in an efficient and cost-effective fashion consistent with the best interests of County of San Mateo to deliver the Project on time and on budget. During the Construction Phase, CMR shall perform the following:

- A. Establish and implement an effective proven quality control program throughout construction to oversee and assure the quality performance of work.
- B. Work in coordination with the Architects, Owner, Inspector of Record and all applicable Authorities Having Jurisdiction (AHJ) including but are not limited to the County of San Mateo Building and

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Planning department, Redwood City, State and Redwood City Fire Marshals, County of San Mateo Environmental Health Department, etc. for all required inspections and approvals.

- C. Oversee the construction of the Project and manage/submit required records to comply with all Project requirements including, but not limited to, applicable statutory permits, LEED certification, Zero Net Energy per the County of San Mateo Municipal Green Building Policy, etc.
- D. Coordinate and address trade subcontractors' Requests for Information (RFIs) with the Architects. RFIs shall be tracked through the field office by the CMR. Architects shall be responsible for technical interpretations and clarifications of the Contract Documents. CMR shall be responsible for managing the clarification and interpretation process.
- E. Provide direct supervision, coordination, scheduling and problem resolution for trade subcontractors. Monitor that the trade subcontractors are maintaining as-built drawings regularly. Coordinate the construction schedule with the subcontractors and vendors to ensure that any Owner provided items are installed at the appropriate time to minimize damage to previously installed work and to coordinate with space availability. CMR shall work with the County's direct vendors to coordinate their work.
- F. Assist County Project Manager in reporting construction progress to the Board of Supervisors and Senior Management of County of San Mateo at regular intervals throughout the Project. The CMR shall prepare occasional presentations to other organizations as requested by the County Project Manager regarding construction issues of special importance.

END OF DOCUMENT 00 5251

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DOCUMENT 00 5501-A

NOTICE TO PROCEED FOR PRE-CONSTRUCTION (PHASE 1)

Dated: July 3rd, 2018

To: Skanska USA Inc.
(Name of CMR)

Address: One California St. Sv. 1400, San Francisco, CA 94111

CONTRACT FOR: **CORDILLERAS HEALTH SYSTEM REPLACEMENT PROJECT**

You are notified that Contract Time for pre-construction phase services under the above Contract will commence to run on July 3rd [2018]. On that date, you are to start performing your pre-construction phase services obligations under the Contract Documents. In accordance with Article II of Document 00 5201 (Agreement), the date of Completion of the pre-construction phase services is Sept. 22nd, [2019].

Before you may start any of the pre-construction phase services, you must:

1. _____
2. _____
3. _____

COUNTY OF SAN MATEO

By: [Signature]
Its: Director, Project Development Unit
Date: 8-23-18

END OF DOCUMENT 00 5501-A

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DOCUMENT 00 5501-B

NOTICE TO PROCEED FOR CONSTRUCTION (PHASE 2)

Dated: _____, 20__

To: _____
(Name of CMR)

Address: _____

CONTRACT FOR: CORDILLERAS HEALTH SYSTEM REPLACEMENT PROJECT

You are notified that the Contract Time for construction phase services and work under the above Contract will commence to run on _____ [20__]. On that date, you are to start performing your construction obligations under the Contract Documents. In accordance with Article II of Document 00 5201 (Agreement), the dates of Substantial Completion and Final Completion for the entire Work are _____, [20__] and _____, [20__], respectively.

Before you may start any Work at the Site, you must:

1. Submit one (1) original of Document 00 6113.12 (Construction Performance Bond), executed by you and your surety.
2. Submit one (1) original of Document 00 6113.18 (Construction Labor and Material Payment Bond), executed by you and your surety.
3. Submit certified Safety Program and related information
4. Submit copies of applicable permits
5. **[Other]**

COUNTY OF SAN MATEO

By : _____

Its: _____

Date: _____

END OF DOCUMENT 00 5501-B

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DOCUMENT 00 6113.12

CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

- 1.01** THAT WHEREAS, the COUNTY OF SAN MATEO (**Owner**), a political subdivision of the State of California, has awarded to (**Name of CMR**) _____ as Principal Contract Number _____ dated the ____ day of _____, 20____ (the **Contract**) for the **CORDILLERAS HEALTH SYSTEM REPLACEMENT PROJECT** at 200 Edmonds Road located in Redwood City, California.
- 1.02** AND WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;
- 1.03** NOW, THEREFORE, we, the undersigned Principal and (**Name of Surety**) _____ as Surety are held and firmly bound unto Owner in the sum of [Insert **“Total Proposal Price”** identified in CMR’s Proposal; subject to further revision as Trade Subcontracts are bid out, or otherwise procured, and assigned and novated to CMR per Contract Documents (e.g., Documents 00 5201 Agreement and 00 5205 Assignment and Novation Agreement)] to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
- 1.04** THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal’s part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.
- 1.05** No extension of time, change, alteration, modification, or addition to the Contract, or of the work required thereunder, or work or actions by Owner to mitigate the damages resulting from any breach in performance by Contractor, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.
- 1.06** Whenever Principal shall be and declared by Owner in default under the Contract, Surety shall promptly remedy the default, or shall promptly, and in no event later than thirty (30) days from notice:
- A. Undertake through its agents or independent Contractors (but having qualifications and experience reasonably acceptable to Owner), to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or
 - B. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all

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obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by Owner to the Principal under the Contract and any amendments thereto, less the amount paid by Owner to Principal.

- 1.07** Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the others.
- 1.08** Surety may not use Contractor to complete the Contract absent Owner's Consent. Owner shall have the right in its sole discretion to continue the work of the Contract, as necessary following a default and/or termination, as necessary to prevent risks of personal injury, property damage or delay to the Project.
- 1.09** No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.
- 1.10** Surety shall join in any proceedings brought under the Contract upon Owner's demand, and shall be bound by any judgment.
- 1.11** Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____ (Corp. Seal)

Company: _____ (Corp. Seal)

Signature: _____

Signature: _____

Name and Title: _____

Name and Title: _____

Address: _____

Address: _____

END OF DOCUMENT 00 6113.12

**San Mateo County – Project Development Unit
Cordilleras Health System Replacement Project**

DOCUMENT 00 6113.18

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

- 1.01** THAT WHEREAS, the COUNTY OF SAN MATEO (**Owner**), a political subdivision of the State of California, has awarded to **(Name of CMR)** _____ as Principal Contract Number _____ dated the ____ day of _____, 20____ (the **Contract**) for the **CORDILLERAS HEALTH SYSTEM REPLACEMENT PROJECT** at 200 Edmonds Road located in Redwood City, California.
- 1.02** AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
- 1.03** NOW, THEREFORE, we, the undersigned Principal and (Name of Surety) _____, as Surety, are held and firmly bound unto Owner in the sum of **[Insert 100% of the "Total Bid Price" identified in CMR's Bid; subject to further revision as Trade Subcontracts are bid out and assigned and novated to CMR per Contract Documents (e.g., Documents 00 5201 Agreement and 00 5205 Assignment and Novation Agreement)]** for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
- 1.04** THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code § 3181, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
- 1.05** This bond shall inure to the benefit of any of the persons named in California Civil Code § 3181, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
- 1.06** Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.
- 1.07** Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.
- 1.08** Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

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IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____ (Corp. Seal)

Company: _____ (Corp. Seal)

Name

Name

Title

Title

Address: _____

Address: _____

END OF DOCUMENT 00 6113.18

San Mateo County – Project Development Unit
Cordilleras Health Replacement Project

DOCUMENT 00 6301

GUARANTY

TO: The COUNTY OF SAN MATEO (Owner), for construction of the CORDILLERAS HEALTH SYSTEM REPLACEMENT PROJECT located at 200 Edmonds Road, Redwood City, San Mateo County, California.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

Contractor hereby grants to Owner for a period of one (1) year following the date of Final Acceptance of the Work completed, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use nor occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one (1) year, or longer if specified, from the date of Final Acceptance of the Work completed.

If within one (1) year after the date of Final Acceptance of the Work completed, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be Defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom.

If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement.

Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents.

The foregoing Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.

San Mateo County – Project Development Unit
Cordilleras Health Replacement Project

Date: July 12, 2018

Skanska USA Inc.
CMR's name

By: 
Signature

Gordon Childress
Print Name

General Manager, EVP
Title

One California St., Suite 1400
Street Address

San Francisco, CA, 94111
City, State, Zip code

END OF DOCUMENT 00 6301