

TFC Contract No. 18-160-000
Flintco, LLC
RFQ No. 303-7-01932
Amendment No. 1
Project No. 17-016-8002

**AMENDMENT NO. 1
TO
CONSTRUCTION MANAGER-AT-RISK CONTRACT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
FLINTCO, LLC**

The Texas Facilities Commission (hereinafter referred to as “TFC”), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, as Owner (as defined in 2015 UGC Section 1.28) and Flintco, LLC, a wholly owned subsidiary of AIH Flintco, LLC, located at 317 Grace Lane, Suite 150, Austin, Texas 78746 (hereinafter referred to as “CMR”) (hereinafter collectively referred to as the “Parties”), enter into the following *Amendment No. 1 to the Construction Manager-at-Risk Contract between the Texas Facilities Commission and Flintco, LLC* (hereinafter referred to as “Amendment No. 1”).

Recitals:

WHEREAS, on June 28, 2018, the Parties entered into that one certain *Construction Manager-at-Risk Contract Between the Texas Facilities Commission and Flintco, LLC* (hereinafter referred to as the “Contract”); and

WHEREAS, in keeping with Contract Sections 2.2.9, TFC Approvals, and 12.27, Entire Agreement and Modification, the Parties desire to amend the Contract, modifying ARTICLE IV, Consideration and reapportioning its Components due to circumstances unknown at Project commencement; and

WHEREAS, the Parties also desire to modify certain provisions of ARTICLE X, Insurance, and to include additional provisions, terms and conditions that were adopted subsequent to the execution of the Contract, in order to comply with actions or requirements of the Texas Legislature, the State Auditor’s Office, the Office of the Attorney General, the Comptroller of Public Accounts, and for such other purposes as are addressed herein.

NOW, THEREFORE, the Parties agree to amend the Contract as follows:

1. Unless clearly provided otherwise herein, all terms and phrases in initial caps herein shall have the same meaning as the terms and phrases with initial caps in the Contract.
2. The Parties agree to modify the caption by deleting the address provided for CMR and replacing it with the following:

“317 Grace Lane, Suite 150, Austin, Texas 78746.”
3. The Parties agree to modify ARTICLE I – DEFINITIONS, by adding the following

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definitions:

“*Contract Sum* means the not-to-exceed amount of the Total Project GMP as given in Section 4.4, below.”

“*HUB Compliance Reporting System* means the Texas Facilities Commission Historically Underutilized Business (“HUB”) online reporting system located at <https://tfc.gob2g.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. See Section 12.2, Historically Underutilized Businesses (“HUBs”).”

4. The Parties agree to modify ARTICLE IV – CONSIDERATION, Section 4.3, Components of the GMP, to reflect additional funding in the amount of Four Million Fifty-One Thousand Five Hundred Thirteen and No/100 Dollars (\$4,051,513.00), by deleting Section 4.3 in its entirety and replacing it with Section 4.3, as follows:

“4.3. Contract Sum, Components of the GMP. Upon execution of a GMP Amendment, the total amount of payments to CMR in connection with the Project shall not exceed the GMP thereby established. The total Contract Sum as of this Amendment No. 1 is One Hundred Ninety-Six Million Seven Hundred Seventy-Four Thousand Six Hundred Seventeen and No/100 Dollars (\$196,774,617.00) and which shall be calculated as the sum of the components indicated in subsections 4.3.1 through and including 4.3.6.

4.3.1. Pre-Construction Services Fee. The Pre-Construction Services Fee, which for all portions of the Project and all GMPs, is a fixed fee that shall, in no event, exceed One Million One Hundred Fifty-Two Thousand Six Hundred Four and No/100 Dollars (\$1,152,604.00) for the Project, an allocable portion of which shall be shown in each GMP Amendment covering each portion of the Project. The Pre-Construction Services Fee is part of the Total Project GMP. The Pre-Construction Services Fee(s) for tenant agencies to be determined will be negotiated at the appropriate times.

4.3.2. Construction Management Fee. The Construction Management Fee, which is a percentage fee, calculated by multiplying a percentage factor of 2.45% times the Cost of Work less that portion of the Cost of Work’s line item for Contractor Controlled Insurance Program (“CCIP”), for which see subsection 4.3.4, below. The Construction Management Fee so calculated for this Amendment No. 1 is Four Million Two Hundred Thirty-Eight Thousand Five Hundred and No/100 Dollars (\$4,238,500.00), an allocable portion of which shall be shown in each GMP Amendment covering each portion of the Project. The Construction Management Fee is part of the Total Project GMP.

4.3.3. General Conditions Fee. The General Conditions Fee, which is a fixed fee amount payable monthly, not to exceed a total fee amount of Eight Million Nine Hundred Twenty-Six Thousand Three Hundred Eighteen and No/100 Dollars (\$8,926,318.00), an

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allocable portion of which shall be shown in each GMP Amendment covering each portion of the Project. The General Conditions Fee is part of the Total Project GMP.

4.3.4. Cost of Work. The Cost of Work will be adjusted and finalized as part of the GMP. The budget for the Cost of Work shall not exceed One Hundred Seventy-Seven Million Four Hundred Fifty-Seven Thousand One Hundred Ninety-Five and No/100 Dollars (\$177,457,195.00), which amount includes a line item for Contractor Controlled Insurance Program ("CCIP") which CCIP amount shall not be subject to Section 4.3.2, Construction Management Fee. The premium cost incurred for the CCIP shall be reimbursed by TFC at an agreed fixed rate not to exceed 2.45% of the sum of the General Conditions Fee and the Cost of Work exclusive of the CCIP cost. The CMR Contingency shall be reflected in the Cost of Work for each GMP Amendment as a separate line item in CMR's GMP for CMR's exclusive use and benefit to cover any additional costs that may be discovered or otherwise arise during the design and construction document phases, but which costs are nevertheless the responsibility of CMR as part of the Cost of Work. The maximum amount allowed for the Cost of Work is part of the Total Project GMP.

4.3.5. TFC Controlled Contingency. The TFC Controlled Contingency of Five Million and No/100 Dollars (\$5,000,000.00), which sum shall be maintained through construction, and, shall be included in the Contract Sum and the GMPs, but CMR shall not use such funds unless and until TFC elects to use, apply, or otherwise credit such funds to pay for a change in the Work as a Cost of Work that is not the responsibility of CMR, or due to the fault or negligence of CMR, and which change has been Approved by Owner by Change Order or directed by Owner in a Unilateral Change Order. The TFC Controlled Contingency is part of the Total Project GMP.

4.3.6. Unused Contingencies. Any amounts of the CMR Contingency and the TFC Controlled Contingency in a GMP remaining unused at the completion of the Work covered by such GMP shall be returned to TFC at the completion of such Work through a Change Order Approved by TFC to credit such unused amounts from such GMP and debit them to one or more other GMPs for which the Work is incomplete, as required in Section 4.10, below. No part of the TFC Controlled Contingency shall be included in the GMP unless TFC elects to do so by Change Order or Unilateral Change Order for a TFC directed change to the Work or a return of unused portions of the GMP."

5. The Parties agree to further modify ARTICLE IV – CONSIDERATION, Section 4.4, Total Project GMP, by deleting Section 4.4 in its entirety and replacing it with Section 4.4, as follows:

"4.4. Total Project GMP. The sum of all GMPs for all portions of the entire Project shall be considered the 'Total Project GMP.' The Total Project GMP shall not exceed One Hundred Ninety-Six Million Seven Hundred Seventy-Four Thousand Six Hundred Seventeen and No/100 Dollars (\$196,774,617.00), which shall include: (i) a reasonable amount to be established as CMR Contingency; and (ii) the amount of the TFC Controlled Contingency set

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forth in Section 4.3.5, above. Unless an Amendment to this Contract or a Change Order is executed by TFC that expressly increases to Total Project GMP with respect to TFC's election to use TFC Controlled Contingency for TFC-directed changes, the total of all amounts to be paid to CMR in connection with all GMPs for all portions of the Project shall not exceed the Total Project GMP.”

6. The Parties agree to modify ARTICLE VI – ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS, Section 6.2, Acknowledgements, Covenants and Agreements of CMR, Subsection 6.2.19, Prohibition Against Boycotting Israel, by deleting Subsection 6.2.19 in its entirety and replacing it with Subsection 6.2.19, as follows:

“6.2.19. Entities that Boycott Israel. Pursuant to Section 2270.002 of the Texas Government Code, CMR certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this Contract. CMR shall state any facts that make it exempts from the boycott certification.”

7. The Parties agree to modify ARTICLE XI – BONDS AND INSURANCE, Section 11.2, Insurance Requirements, by deleting Subsection 11.2.5, Subcontractor’s Certification, in its entirety, since CMR shall provide Subcontractors’ Workers’ Compensation and Employers’ Liability Insurance through the CCIP.

8. The Parties agree to modify ARTICLE XI – BONDS AND INSURANCE, Section 11.3, CMR’s Contractor Controlled Insurance Program, and Subsection 11.3.3, CCIP Insurance Coverage and Limits Required, by deleting Section 11.3, Subsection 11.3.3, and Subsection 11.3.7, in their entirety, and replacing them with Section 11.3, Subsection 11.3.3, and Subsection 11.3.7, as follows:

““11.3. CMR’s Contractor Controlled Insurance Program. The Parties hereby agree that the CMR shall provide and maintain in effect prior to the commencement of physical construction of the Project the insurance coverages described in this Section 11.3 through CMR’s Contractor Controlled Insurance Program (CCIP). The CCIP shall provide coverages with limits no less than those stated in Section 11.3.3, below, for the Owner Group, CMR, and all of CMR’s enrolled Subcontractors (of every tier), which shall all be named as additional insureds. These CCIP insurance requirements are not intended to and they shall not in any manner, limit, qualify, or quantify the liabilities and obligations assumed by the CMR under this Contract or as otherwise provided by law. The premium cost incurred for the CCIP shall be reimbursed by TFC at an agreed fixed rate not to exceed the amount given for CCIP in Section 4.3.4.”

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

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“11.3.7. CCIP Costs. CMR shall separately submit Pay Applications for amounts reasonably necessary to pay for CCIP costs. CMR's Pay Applications shall include all supporting documentation reasonably necessary to confirm the amount of CCIP costs to be charged to Owner and that CCIP costs comply with Section 11.3, above. All approved CCIP invoices shall be paid from Cost of Work, as described in Section 4.3.4, above, as that amount may be modified in accordance with Section 4.4, Total Project GMP.”

9. The Parties agree to modify ARTICLE XI – BONDS AND INSURANCE 11.4, General Terms and Conditions of Insurance, Paragraph 11.4.5.16, Distribution of Completed Certificates, by deleting Paragraph 11.4.5.16 in its entirety and replacing it with Paragraph 11.4.5.16, as follows:

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

By Mail to: Texas Facilities Commission
Attention: Insurance Specialist, Second Floor
P O BOX 13047
Austin, TX 78711-3047

Or

By E-Mail to: Insurance@tfc.state.tx.us”

10. The Parties agree to modify ARTICLE XI – MISCELLANEOUS PROVISIONS, Section 12.2, Historically Underutilized Businesses (“HUBs”), by adding Subsection 12.2.1, as follows:

“12.2.1. Requirement to Utilize HUB Compliance Reporting System. Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(1)(2) and 20.287(b), TFC administers monthly HUB Subcontracting Plan (“HSP”) to include the Progressive Assessment Report (“PAR”) compliance monitoring through a HUB Compliance Reporting System known as B2G. CMR and CMR’s Subcontractors must submit required PAR information into the B2G system as a condition of payment. Any delay in the timely submission of PAR information into the B2G system will be treated as a deficiency and the payment request will be subject to suspension until such deficiency has been resolved.”

11. The parties hereby agree to amend ARTICLE XII – MISCELLANEOUS PROVISIONS, SECTION, Section 12.8, Notices, by changing the contact for CMR as follows:

“If to CMR: Flintco, LLC
Attention: Kevin Moyes, President, South Central Region

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317 Grace Lane, Suite 150
Austin, Texas 78746
Telephone: (512) 822-7470
E-Mail: kmoyes@FLINTCO.com”

12. All other provisions, terms and conditions of the Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment No. 1 to be effective as the date of the last party to sign.

TEXAS FACILITIES COMMISSION

FLINTCO, LLC

DocuSigned by:
By: Mike Novak, Executive Director
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By: [Signature]
52A556F20F81473...

Mike Novak

Kevin Moyes

Executive Director

President, South Central Region

Date of execution: 03/09/2020 | 1:07 PM CDT

Date of execution: 03/09/2020 | 9:34 AM PDT

GC [Signature]

Dir [Signature]

DED [Signature]