

TFC Contract No. 18-172-000
Flintco, LLC
RFQ No. 303-8-00611
Amendment No. 3
Project No. 18-002-8601

**AMENDMENT NO. 3
TO
CONSTRUCTION MANAGER-AT-RISK CONTRACT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
FLINTCO, LLC**

This Amendment No. 3 to the Construction Manager-At-Risk Contract (hereinafter referred to as “Amendment No. 3”) is entered into by and between 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 Uniform General Conditions*, Section 1.28) and Flintco, LLC, a limited liability company located at 8100 Cross Park Drive, Austin, Texas 78754 (hereinafter referred to as “Construction Manager-At-Risk” or “CMR”) (hereinafter referred to collectively as the “Parties”), enter into the following *Amendment No. 3 to the Construction Manager-at-Risk Contract between the Texas Facilities Commission and Flintco, LLC* (hereinafter referred to as the “Amendment No. 3”), as amended.

Recitals:

WHEREAS, on May 4, 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, on January 8, 2019, the Parties entered into Amendment No. 1 to provide additional funding, to increase the Contract Sum and reapportion its components, to incorporate certain statutorily required provisions and to change the contract Contact information; and

WHEREAS, on April 2, 2019, the Parties entered into Amendment No. 2 to change the Contractor address; and

WHEREAS, in keeping with Contract Sections 2.1.4, TFC Approvals, and 12.29, Entire Agreement and Modification, the Parties desire to enter into Amendment No. 3 to include an omission in Amendment No. 1 which required the addition of Forty-Five Thousand Five Hundred Eight and No/100 Dollars (\$45,508.00) in TFC Controlled Contingency, which addition was inadvertently omitted; and

WHEREAS, the Parties also desire to provide for additional TFC Controlled Contingency funding in the amount of Ninety-Six Thousand and No/100 Dollars (\$96,000.00), to extend the Contract termination date, and to make such other changes as may be required, including additional or amended provisions required by the Texas Legislative and State Auditor’s actions subsequent to execution of the Contract and its Amendments numbered 1 and 2;

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 ARTICLE I – DEFINITIONS, by adding the following definitions:

“*Environmental Laws* means any local, state, or federal law, rule, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, as may be amended from time to time: (i) the Resource Conservation and Recovery Act of 1976 (“RCRA”) (42 U.S.C. § 6901 *et seq.*), as amended by the Used Oil Recycling Act of 1980 (Pub. L. No. 96-463, 94 Stat. 2055 (1980)), the Solid Waste Disposal Act Amendments of 1980 (Pub. L. No. 96-482, 94 Stat. 2334 (1980)), and the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98-616, 98 Stat. 3221 (1984)), and regulations promulgated thereunder; (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613 (1986)), and regulations promulgated thereunder; (iii) the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*); (iv) the Endangered Species Act of 1973 (15 U.S.C. § 1531 *et seq.*) and its amendments; (v) laws, statutes, ordinances, rules, regulations, orders, or determinations relating to “wetlands,” including without limitation those set forth in the Federal Water Pollution Control Act (commonly referred to as the “Clean Water Act”) (33 U.S.C. § 1251 *et seq.*); (vi) the Texas Water Code; and (vii) the Texas Solid Waste Disposal Act (Tex. Health & Safety Code Ann. §§ 361.001–361.345 (West 2018)).”

“*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”).”

3. The Parties agree to amend ARTICLE III – TERM, SUSPENSION, AND TERMINATION, SECTION 3.1 – CONTRACT TERM, by deleting the section in its entirety and replacing it as follows:

“3.1. Contract Term. This Contract shall be effective as of the Effective Date and shall terminate on March 31, 2021, unless extended by the parties by amendment to this Contract or terminated earlier, as provided below.”

4. The Parties agree to modify ARTICLE IV – CONSIDERATION, Section 4.2, Contract Sum-Components, to reflect the addition of Ninety-Six Thousand and No/100 Dollars (\$96,000.00) in TFC Controlled Contingency, thus increasing the total Contract amount from One Million Six Hundred Eighty Thousand Ninety-Two and No/100 Dollars (\$1,680,092.00) to a new total not to exceed amount of One Million Seven Hundred Seventy-Six Thousand Ninety-

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Two and No/100 Dollars (\$1,776,092.00) reflecting the additional funding indicated in Proposed Change Order Forms A, B, and C, attached hereto as “Exhibit A-3” and incorporated herein for all purposes. The Parties also agree to correct the omission by adding Forty-Five Thousand Five Hundred Eight and No/100 Dollars (\$45,508.00) to TFC Controlled Contingency. Section 4.2 is deleted in its entirety and replaced with Section 4.2, as follows:

“4.2. Contract Sum—Components. Upon execution of a GMP Acceptance, the Contract Sum shall not exceed One Million Seven Hundred Seventy-Six Thousand Ninety-Two and No/100 Dollars (\$1,776,092.00), which is the sum of the following components.

4.2.1. Pre-Construction Management Fee. The Pre-Construction Management Fee of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00).

4.2.2. Construction Management Fee. The Construction Management Fee not to exceed three and 85/100 percent (3.85%) of the Cost of Work, Fifty-One Thousand Two Hundred Five and No/100 Dollars (\$51,205.00), which sum will be finalized as part of the Contract Sum in the GMP Acceptance.

4.2.3. General Conditions Fee. The General Conditions Fee not to exceed One Hundred Ninety-Five Thousand Eight Hundred Seventy-Nine and No/100 Dollars (\$195,879.00), which sum will be finalized as part of the Contract Sum in the GMP Acceptance.

4.2.4. Cost of Work. The Cost of Work will be adjusted and finalized as part of the Contract Sum in the GMP. The budget for the Cost of Work shall not exceed One Million Three Hundred Thirty and No/100 Dollars (\$1,330,000.00).

4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of One Hundred Ninety-One Five Hundred Eight and No/100 Dollars (\$191,508.00), which sum shall be maintained through construction, and included in the Contract Sum and finalized in the GMP Acceptance.

4.2.6. Unused Contingencies. Any unused portion of the CMR Contingency and the TFC Controlled Contingency shall be returned to TFC at the completion of the Project through a credit Change Order to the Contract Sum.”

5. The Parties agree to modify ARTICLE VI – ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS, Section 6.2, Acknowledgements, Covenants and Agreements of CMR, Subsection 6.2.18, Prohibition Against Boycotting Israel, by deleting Subsection 6.2.18 in its entirety and replacing it with Subsection 6.2.18, as follows:

“6.2.18. 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 exempt from the boycott certification.”

6. The Parties agree to modify ARTICLE VI – ACKNOWLEDGEMENTS, COVENANTS, AND AGREEMENTS, Section 6.2 Acknowledgements, Covenants, and Agreements of CMR, by adding Subsections 6.2.20 Human Trafficking Prohibition and 6.2.21 Use of State Property, as follows:

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

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

7. The Parties agree to modify ARTICLE VII – WARRANTIES AND REPRESENTATIONS BY CMR, 7.1 Warranties and Representations by CMR, 7.1.7 Eligibility, by adding Subsections 7.1.7.2 through and including 7.1.7.4, and Section 7.1.16 Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.096, which shall read in their entirety as follows:

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

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

7.1.7.4. Suspension and Debarment. CMR certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.”

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

8. The Parties agree to modify ARTICLE X – RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE, by adding Section 10.8 Cybersecurity Training Required, as follows:

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

9. The Parties agree to modify ARTICLE XI – BONDS AND INSURANCE, Section 11.2, Insurance Requirements, Subsection 11.2.1, Worker’s Compensation and Employers’ Liability Coverage, Paragraph 11.2.1.2, in its entirety and replacing it with Subsection 11.2.1.2, as follows:

“11.2.1.2. In accordance with Tex. Lab. Code §406.096(b), CMR shall require each Subcontractor to certify in writing to the CMR that said Subcontractor provides workers’ compensation and employers’ liability insurance for all of Subcontractor’s employees employed on this public project. In keeping with Sections 5.2.8 and 5.2.9 of “Exhibit A,” Owner is entitled, upon request and without expense, to receive copies of Subcontractor’s written certifications.”

10. The Parties agree to modify ARTICLE XI – INSURANCE, Section 11.2.7, General Requirements for All Insurance, by deleting Subsection 11.2.7.3.2 in its entirety and replacing it with Subsection 11.2.7.3.2, as follows:

“11.2.7.3.2 the policy, or such other document(s) as may be acceptable to TFC, must obligate the insurer, or a third party acceptable to TFC, to notify the Texas Facilities Commission, Attention: Insurance Specialist, P. O. Box 13047, Austin, Texas 78711 (e-Email: Insurance@tfc.state.tx.us), of any (i) non-renewal; (ii) cancellation; or (iii) material changes, in writing, as soon as is reasonably possible prior to any such non-renewal, cancellation, or change.”

11. The Parties agree to modify ARTICLE XII – 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.”

12. 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
317 Grace Lane, Suite 150
Austin, Texas 78746
Telephone: (512) 822-7470
E-Mail: kmoyes@flintco.com”

13. The Parties agree to modify ARTICLE XII – MISCELLANEOUS PROVISIONS, Section 12.9, Name and Organizational Changes, by adding Subsection 12.9.1, Termination Due to Material Change, as follows:

“12.9.1. Termination Due to Material Change. TFC may terminate this Contract due to any change to CMR that materially alters CMR’s ability to perform under the Contract.”

14. The Parties agree to modify ARTICLE XII – MISCELLANEOUS PROVISIONS, by inserting Sections 12.26 through and including 12.29, and re-numbering existing Section 12.26, Entire Agreement and Modification as Section 12.29, so that the inserted and existing Sections read in their entirety, as follows:

“12.26. False Statements; Breach of Representations. By signature to this CMR, CMR makes all the representations, warranties, guarantees, certifications and affirmations

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included in this Contract. If CMR signs this Contract with a false statement or it is subsequently determined that CMR has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, CMR shall be in default under this Contract, and TFC may terminate or void this Contract for cause and pursue other remedies available to TFC under this Contract and applicable law.

12.27. Abandonment and Default. If CMR defaults on this Contract, TFC reserves the right to cancel the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible respondent. The defaulting CMR will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

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

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

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15. Except as expressly amended above, the Contract remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment No. 3 to be effective as the date of the last party to sign.

TEXAS FACILITIES COMMISSION

FLINTCO, LLC

By:  _____
B1C9FC0A8020417...

By:  _____
52A566F20F81473...

Mike Novak

Kevin Moyes

Executive Director

President

Date of execution: 03/31/2020 | 5:15 PM CDT

Date of execution: 03/31/2020 | 3:11 PM PDT

G.C. AJWS

Dir. 

D.E.D. 

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EXHIBIT A-3

PROPOSED CHANGE ORDER FORMS A, B, AND C



<h1 style="margin: 0;">ARCHITECT'S</h1> <h2 style="margin: 0;">Proposed Change Order Form</h2>	A
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TO: Contractor

Please prepare a CONTRACTOR'S PROPOSED CHANGE ORDER FORM B on the following proposed change: (Additional sealed documents necessary to completely describe the change identified below are attached.)

18-002-8601
TFC PROJECT NO.

PCO 44
PROPOSED CHANGE ORDER NO.

02 20 2020
DATE

PCO 44 addresses additional work to be completed by Flintco. This PCO is being added to Flintco's Controlled Contingency. Work includes the following:

- 1 Public Address System
- 2 Building 512 Demolition
- 3 Clerestory Window Tinting

Total \$96,000.00

This Proposed Change Order was initiated

Your early response is solicited

by Dorothy Spearman

by 
Signature

Texas Facilities Commission

GSC Architects
Architect / Engineer

ROUTING INFORMATION

1. Architect / Engineer prepare Proposed Change Order (PCO) in Impact and assign PCO number. Prepare and upload form "A", along with any attachments and transmit to Contractor via Impact.

4. TFC staff review all documents, fill in amounts on CHANGE ORDER form, assign CHANGE ORDER NUMBER, and endorse. Transmit to Using Agency via email/Impact.

2. Contractor prepare Form "B." Respond to PCO in Impact, upload Form "B" and transmit to Architect / Engineer.

5. Using Agency review all documents and endorse CHANGE ORDER form. Transmit to TFC via Impact.

3. Architect / Engineer review Form "B" and prepare Form "C". Upload Form "C" and transmit to TFC via Impact.

6. TFC final Approval. Transmit copies of all documents to all parties via Impact.



<h1 style="margin: 0;">CONTRACTOR'S</h1> <h2 style="margin: 0;">Proposed Change Order Form</h2>	B
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TO: Architect / Engineer

The following is a detailed cost breakdown, including both materials and labor for all additions to and/or deductions from the contract sum if the change described on form A is accepted. (Additional data necessary to support itemized figures is attached and identified below.)

16-001-88010 & 18-002-8601

TFC PROJECT NO.

PCO TSBVI # 044

PROPOSED CHANGE ORDER NO.

2.27.2020

DATE

This PCO is to Add additional funds to the CMR Contingency to cover the following pending additional work. Should additional funds remain after work is completed, funds shall be dealt with in accordance with Contract Documents.

This PCO is also to extend the contract period in order to complete the additional work.

Additional work includes, but may not be limited to the following:

1. Public address system
2. Building 512 demolition
3. Clerestory Window Tinting
4. Landscape and irrigation repairs
5. ASI 11 - Door and hardware changes
6. Misc. Drywall and Painting

Total Addition Deduction (circle one) to CONTRACT SUM if accepted: \$ 96,000.00

Request is made for addition of 365 CALENDAR DAYS to the contract period.

The above proposal is submitted for your consideration. The undersigned contractor understands and agrees that this proposal is validated only by the approved CHANGE ORDER attached hereto



Authorized Signature

Flintco, LLC

Name of Contracting Firm



Change Notification

Texas Facility Commission - TSBVI Residential Admin & Weekend Home Transportation Facility

Flintco LLC (40-000)

1100 West 45th Street
Austin, Texas 78756

Project # 18046

PCO: 044

Date: 2/27/2020

To: Texas Facilities Commission
1711 San Jacinto Blvd.
Austin, Texas 78701

From: Flintco, LLC - Austin
317 Grace Lane Suite 150
Austin, Texas 78746

Description	Status
CE #056 - Increase CMR Contingency to Cover Pending Additional Work	Pending - In Review

Days Req	Reference	Amt Req
		\$96,000.00

Notes

CE #056 - Increase CMR Contingency to Cover Pending Additional Work
Add to CMR Contingency to cover the following pending additional work. Should additional funds remain after work is completed, shall be dealt with in accordance with our Contract Documents and term.

1. Public address system
2. Building 512 demolition and abatement
3. Clerestory Window Tinting
4. Landscape and irrigation repairs
5. ASI 11 - Door and hardware changes
6. Misc. drywall and painting as required

CE No.	CE Total	CE Type	Change Reason
056	\$96,000.00	Design Contingency	Owner Directive

Item No	Item Description	Amount
1	CMR Contingency	\$96,000.00
Total Amount:		\$96,000.00

Approved By:

Signature

Name

 Acceptance is by execution of Amendment No. 3 to
 TFC Contract No. 18-172-000.

Date



<h1 style="margin: 0;">ARCHITECT'S</h1> <h2 style="margin: 0;">Proposed Change Order Form</h2>	C
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TO: Texas Facilities Commission

AND: Dorothy Spearman
PM/ODR

18-002-8601
TFC PROJECT

The Proposed Change Order Documents are presented for your consideration and approval. The Contractor's Form "B" has been reviewed and it is recommended for approval by the undersigned. Acceptance of this change is recommended for the following REASON and JUSTIFICATION.

PCO 44
PROPOSED CHANGE ORDER NO.

02 20 2020
DATE

REASON:

PCO 44 addresses additional work to be completed by Flintco. This PCO is being added to Flintco's Controlled Contingency. Work includes the following:

- 1 Public Address System
- 2 Building 512 Demolition
- 3 Clerestory Window Tinting

Total	\$96,000.00
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JUSTIFICATION:

PCO 44 adds the total amount shown to the overall contract contingency. The Design Team takes no exceptions to PCO 44.

Respectfully submitted

by



Signature _____

GSC Architects
Architect / Engineer