

TFC Contract No. 17-032-000
Flynn Construction, Inc.
RFQ No. 303-6-02235
Amendment No. 5
Project Nos.: 20-013-5485, 16-019-2504

**AMENDMENT NO. 5
TO
CONSTRUCTION MANAGER-AT-RISK CONTRACT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
FLYNN CONSTRUCTION, INC.**

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 UGC Section 1.28) and Flynn Construction, Inc., a Texas corporation (hereinafter referred to as “CMR”), located at 4638 South Lamar Boulevard, Austin, Texas 78745 (hereinafter referred to as “CMR”) (hereinafter referred to collectively as the “Parties”), enter into the following *Amendment No. 5 to the Construction Manager-at-Risk Contract between the Texas Facilities Commission and Flynn Construction, Inc.* (hereinafter referred to as the “Amendment No. 5”), as amended.

Recitals:

WHEREAS, on December 6, 2016, the Parties entered into that one certain *Construction Manager-at-Risk Contract Between the Texas Facilities Commission and Flynn Construction, Inc.* (hereinafter referred to as the “Contract”); and

WHEREAS, on May 14, 2018, the Parties entered into Amendment No. 1 to provide for Additional Services and fees, to extend the Contract Term, and to address TFC’s unilateral reservation of rights with respect to compliance with certain Laws and Regulations; and

WHEREAS, on January 31, 2019, the Parties entered into Amendment No. 2 to provide for additional funding, to increase the Contract Sum, to apportion the additional funding provided under Amendment No. 1 and the additional funding provided in Amendment No. 2 across the Contract Sum-Components, and to incorporate statutorily required provisions; and

WHEREAS, on June 28, 2019, the Parties entered into Amendment No. 3 to provide for additional funding for non-deferred maintenance items in four (4) buildings at the Department of State Health Services Complex, and to make such other changes as may be required, including additional or amended provisions required by actions of the Texas Legislature and the State Auditor’s Office subsequent to execution of the Contract and its Amendments numbered 1 and 2; and

WHEREAS, on September 27, 2019, the Parties entered into Amendment No. 4 to provide for Additional Services and fee and to extend the Contract Term; and

WHEREAS, pursuant to Contract Section 4.5, Changes in the Work, and as defined in Exhibit A, UGC Section 1.9, the Parties now desire to enter into this Amendment No. 5 to include Additional Services and fees pursuant to Contractors GMP 007 Proposal dated December 6, 2019 and Change

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Order PCO #G-11, to further extend the Contract Term, and to apportion the additional funding provided under Amendment No. 5 across the Contract Sum-Components;

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 II – SCOPE OF SERVICES, Section 2.1.6, Additional Services, as that Section 2.1.6 was added by Amendment No. 4, to include: (i) completion of Phase 2, adding the first floor Tower Building deferred maintenance renovations and revising Building G to T; and (ii) installation of new finishes as requested by Department of State Health Services, all as set forth and described in Contractor’s Exhibit K-7 proposal dated December 6, 2019 and Contractor’s Exhibit D-7 proposal, undated, and Proposed Change Order Forms A, B, and C, inclusive, numbered PCO #G-011, attached hereto as “Exhibit A-5” and incorporated herein for all purposes.
3. The Parties agree to modify ARTICLE IV – CONSIDERATION, Section 4.2, Contract Sum-Components, to reflect the addition of One Million Four Hundred Sixty-Three Thousand Two Hundred Seventy-Five and No/100 Dollars (\$1,463,275.00), thus increasing the total Contract amount from Thirteen Million Three Hundred Twenty-Three Thousand Four Hundred Forty-Six and No/100 Dollars (\$13,323,446.00) to a new total not to exceed amount of Fourteen Million Seven Hundred Eighty-Six Thousand Seven Hundred Twenty-One and No/100 Dollars (\$14,786,721.00). Therefore, Section 4.2 as executed in Amendment No. 4, 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 Fourteen Million Seven Hundred Eighty-Six Thousand Seven Hundred Twenty-One and No/100 Dollars (\$14,786,721.00), which is the sum of the following components.

4.2.1. Pre-Construction Management Fee. The Pre-Construction Management Fee of Ninety Thousand Nine Hundred Ninety-Two and No/100 Dollars (\$90,992.00).

4.2.2. Construction Management Fee. The Construction Management Fee not to exceed three and three/hundredths percent (3.3%) of the Cost of Work, which Construction Management Fee is Three Hundred Ninety-One Thousand Three Hundred Seventy-Five and No/100 Dollars (\$391,375.00), 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 Million One Hundred Twelve Thousand Four Hundred Eighty-Nine and No/100 Dollars (\$1,112,489.00), which sum will be finalized as part of the Contract Sum in the GMP Acceptance.

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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 Eleven Million Eight Hundred Fifty-Nine Thousand Eight Hundred Forty-Seven and No/100 Dollars (\$11,859,847.00).

4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of One Million Three Hundred Thirty-Two Thousand Eighteen and No/100 Dollars (\$1,332,018.00), 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.”

4. 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. 5 to be effective as the date of the last Party to sign.

TEXAS FACILITIES COMMISSION

FLYNN CONSTRUCTION, INC.

By: DocuSigned by:
Mike Novak, Executive Director
B1C9FC0A8020417...

By: DocuSigned by:
L. Patrick Flynn, President & CEO
A23D99C8B8C1417...

Mike Novak

L. Patrick Flynn

Executive Director

President & CEO

Date of execution: 02/12/2020 | 10:21 AM CST

Date of execution: 02/12/2020 | 7:58 AM PST

GC OR

Dir mw

DED R

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EXHIBIT A-5

Contractor's Exhibit K-7 proposal dated December 6, 2019 and Contractor's Exhibit D-7 proposal, undated, and Proposed Change Order Forms A, B, and C, inclusive, numbered PCO #G-011



TFC Contract No. 17-032-000
 Flynn Construction, Inc.
 GMP 07
 DSHS Tower (Building T) & RBB (Building G)
 Exhibit K-7

December 6, 2019

Mr. Kevin Sandberg
 Texas Facilities Commission
 Facilities Design & Construction
 1711 San Jacinto Blvd.
 Austin, TX 78701

Project #: 16-019-5530

Subject: GMP 007 – DSHS Deferred Maintenance at Tower (Building T) & RBB (Building G)

Dear Mr. Sandberg:

After thorough review of all bidders across the scope of work for the project, Flynn Construction, Inc. recommendation to Texas Facilities Commission is as follows:

DSHS Tower (Building T): Phase II

Subcontractors:

Office Furniture Moving: Allowance	\$ 2,500
Temporary Protection: FCP	\$ 5,950
Cleaning: FCP	\$ 6,040
Demolition: The Demo Company	\$ 10,805
Abatement: 1 Priority Environmental Services	\$ 11,229
Concrete: FCP	\$ 8,920
Metals: George Construction	\$ 58,564
Firestopping: Chamberlin	\$ 3,434
Door, Frames & Hardware: LaForce, Inc.	\$ 36,464
Glazing: Performance Glass	\$ 30,536
Wall & Ceiling Assemblies: FL Crane & Sons	\$ 96,985
Select Ceiling Replacement: FCP	\$ 2,400
Paints & Coatings: Texas Painting	\$ 21,315
Flooring: Flooring Solutions	\$ 31,966
Signage: Capital Architectural Signs	\$ 9,430
Fire Protection: Firetron	\$ 22,485
Mechanical & Plumbing: Capital Industries	\$ 213,671
Electrical: Beckett	\$ 87,148
Fire Alarm: Beckwith	\$ 35,807
Access Control: Netronix	\$ 54,040
CMR Controlled Contingency:	\$ 74,969

DSHS RBB (Building G): ITC #G-010

Subcontractors:

Concrete: FCP Concrete	(\$4,400)
Door, Frames & Hardware: LaForce, Inc.	\$ 14,889
Flooring: Flooring Solutions	\$ 3,188
Fire Protection: Firetron	\$ 8,398
Mechanical & Plumbing: Capital Industries	\$ 13,218

4638 S. Lamar Blvd., Austin, Texas 78745
 www.flynnconstruction.com



TFC Contract No. 17-032-000
Flynn Construction, Inc.
GMP 07
DSHS Tower (Building T) & RBB (Building G)
Exhibit K-7

Total of all items above: \$ 859,951

Cost of Work: \$ 859,951
Pre-construction Services: \$ 6,939
CMR Fee: \$ 28,378
General Conditions: \$ 117,653
Owner Controlled Contingency: \$ 266,424

TOTAL GMP-007: \$1,279,345

Should you have any questions, please feel free to contact me at (512) 440-7643. Thank you for your prompt response. We look forward to working with you on this project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tanner Craigen", is written over a horizontal line.

Tanner Craigen
Project Manager
Email: tcraigen@flynnconstruction.com

Amendment No. 5 - Exhibit A-5



TFC Contract No. 17-032-000
Flynn Construction, Inc.
GMP 07
DSHS Tower (Building T) & RBB (Building G)
Exhibit D-7

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

Attn: Mr. Kevin Sandberg
Project Manager
Facilities Design & Construction Division

Re: Contract No.: 17-032-000
Project No.: 16-019-5530
Project Name: DSHS Tower (Building T) and Robert Bernstein Building (Building G)

Dear Mr. Sandberg:

Pursuant to Section 2.1.1.6 of that one certain *Construction Manager-at-Risk Contract by and between the Texas Facilities Commission and Flynn Construction, Inc.*, dated December 6, 2016 (the "CMR Contract"), please accept this letter and the accompanying binder, which includes the documents identified below, as our Guaranteed Maximum Price Proposal ("GMP Proposal").

Our proposed Guaranteed Maximum Price for Bid Package No. 7 is One Million Four Hundred Sixty-three Thousand Two Hundred Seventy-five Dollars (\$1,463,275.00)

The following documents that are enclosed in this binder constitute a part of the GMP Proposal:

1. **TAB 1:** a list of the Drawings and Specifications that were used in preparation of this Guaranteed Maximum Price Proposal including all addenda thereto, a digital copy of which list and the Drawings and Specifications shall be incorporated into the Contract by reference for all purposes in .PDF format on the CD and labeled therein as "Exhibit I-7";
2. **TAB 2:** the C&A created by us in the preparation of this Guaranteed Maximum Price Proposal, including any assumptions, a digital copy of which C&A shall be incorporated into the Contract by reference for all purposes in .PDF format on the CD and labeled therein as "Exhibit J-7";
3. **TAB 3:** a Statement of Guaranteed Maximum Price that includes, at a minimum, statements that separately identify the following costs: (i) the Pre-Construction Management Fee; (ii) the General Conditions Fee; (iii) the Cost of the Work enumerated, at a minimum, in categories by CSI specification number and including all allowances and the CMR Contingency; (iv) the Construction Management Fee; and (v) the TFC Controlled Contingency, a digital copy of which statement shall be incorporated into the Contract by reference for all purposes in .PDF format on the CD and labeled therein as "Exhibit K-7";

Amendment 5 - Exhibit A-5



TFC Contract No. 17-032-000
Flynn Construction, Inc.
GMP 07
DSHS Tower (Building T) & RBB (Building G)
Exhibit D-7

4. **TAB 4:** a Statement of the Date of Proposed Substantial Completion upon which the proposed Guaranteed Maximum Price is based, a digital copy of which statement shall be incorporated into the Contract by reference for all purposes in .PDF format on the CD and labeled therein as "Exhibit L-7";
5. **TAB 5:** the Work Progress CPM Schedule, a digital copy of which shall be incorporated into the Contract by reference for all purposes in .PDF format on the CD and labeled therein as "Exhibit M-7";
6. **TAB 6:** Updated List of Project Manager and Subcontractors, (a digital copy of which shall be incorporated into the Contract by reference for all purposes in .PDF format on the CD and labeled therein as "Exhibit N-7";
7. **TAB 7:** Revised HUB Subcontracting Plan, which is hereby submitted for approval, and upon arrival, a digital copy of which shall be incorporated into the Contract by reference for all purposes in .PDF format on the CD and labeled therein as "Exhibit O-7", and substituted for the original approved HUB Subcontracting Plan.

The deadline on which the Guaranteed Maximum Price Proposal will automatically expire without further notice is February 30th, 2020. *TC*

We acknowledge that at or prior to the execution of the Guaranteed Maximum Price Amendment, and pursuant to Paragraph 2.2.1.5.13 of the Contract, the following additional Items must be submitted to TFC for review and approval:

1. The schedule of Values in accordance with Section 10.1 of the UGC;
2. All proof of insurance as required by the Contract; and
3. A safety plan as specified in Section 7.1 of the UGC, and the designation of a qualified and experienced safety representative at the Site whose duties and responsibilities shall be, at a minimum, the prevention of accidents and the maintenance and supervision of said safety plan.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tanner Craigen", written over a horizontal line.

Tanner Craigen
Senior Project Manager



ARCHITECT'S	A
Proposed Change Order Form	

TO: Flynn Construction

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.)

16-019-5530
TFC PROJECT NO.

PCO #G-011
PROPOSED CHANGE ORDER NO.

9/17/2019
DATE

Pursuant to TFC Contract # 17-063-000, Flynn Construction is submitting this PCO#G-011 --Proposal for scope modifications on GMP 003 to allocate COW from OCC line due to scope modifications per Owner (DSHS) request. The Cost of Work for all Owner (DSHS) requested changes, along with the approved percentage markup for Preconstruction, Fee, and General Conditions is shown below, and should be utilized for future amendment of Agency Requested Change Buyout Package #003 to allocate the budget back into OCC. The below scope modifications are reflected from A/E issuance of ITC-G009, ITC-G009, and ITC-T001 thru ITC-T006.

COR#s 76 & 85: Additional cleaning to increased limits of construction per ITC-G008 and G-009. Furniture Moving Allowance not calculated in totals in previous "NDM-002" per ITC-T001-T006 - E.C.P.	\$5,500
COR# 82: Bldg T Reno 6th Floor Conference - ITC-T001 thru ITC-T005: Abatement. (COW only, NDM-003 to include FCI burden) - 1 Priority	\$5,167
COR# 84: Bldg T Reno 6th Floor Conference - Electrical revisions per ITC-T001 thru ITC-T005 (COW only, NDM-003 to include FCI burden). - Beckett	\$11,136
COR# 79: Fire alarm revisions per ITC-G008/G009. - Beckwith	\$3,595
COR# 81: Fire protection revisions per ITCG-008/G-009. - Firetron	\$4,143
COR# 86-89: Bldg T Reno 6th Floor Conference - ITC-T001 thru ITC-T005: Doors/Frames/HW. (COW only, NDM-003 to include FCI burden). - LaForce	\$9,626
COR#s 75, 80: Refresh Basement and Level 1 per ITC-G004, ITC-G008 and G009. - Lighthouse	\$96,771
COR#s 73, 78, 83: DHG Level 1 revisions per ITC-G009, RFI#55. - Piper Weatherford	\$13,896
COR# 77: Bldg G Ground Level Revisions: Demolition per ITC-G-008 and G-009. (COW only, NDM-	\$6,315
COR# 90: Precon Services/Fee/General Conditions for scope changes to be included in next NDM/ARC Buyout package. - Flynn Construction	\$27,781
Utilize budget from OCC line.	(\$183,930.00)

Total GMP 003 change: \$0.00

This Proposed Change Order was initiated

by Zachary Wright

Flynn Construction

Your early response is solicited

by *Randy Schrecengost*
Signature

Stanley Consultants

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.
2. Contractor prepare Form "B." Respond to PCO in Impact, upload Form "B" and transmit to Architect / Engineer.
3. Architect / Engineer review Form "B" and prepare Form "C". Upload Form "C" and transmit to TFC 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.
5. Using Agency review all documents and endorse CHANGE ORDER form. Transmit to TFC via Impact.
6. TFC final Approval. Transmit copies of all documents to all parties via Impact.

TFC Contract No. 17-032-000
 Amendment No. 5 - Exhibit A-5



CONTRACTOR'S	B
Proposed Change Order Form	

TO: Atkins NA

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.)

16-019-5530

 TFC PROJECT NO.

PCO #G-011

 PROPOSED CHANGE ORDER NO.

1/30/2020

 DATE

Pursuant to TFC Contract # 17-063-000, Flynn Construction is submitting this PCO#G-011 - Proposal for scope modifications on GMP 003 to allocate COW from OCC line due to scope modifications per Owner request. Due to TFC verbal directive to proceed prior to ammendment of GMP, the Cost of Work for all Owner requested changes, along with the approved percentage markup for Preconstruction, Fee, and General Conditions is shown below, and should be utilized for future ammendment of Agency Requested Change Buyout Package #003 to allocate the budget back into OCC. The below scope modifications are reflected from A/E Issuance of ITC-G009, ITC-G009, and ITC-T001 thru ITC-T006.

COR#s 76 & 85: Additional cleaning to increased limits of construction per ITC-G008 and G-009. Furniture Moving Allowance not calculated in totals in previous "NDM-002" per ITC-T001-T006 - F.C.P.	\$5,500
COR# 82: Bldg T Reno 6th Floor Conference - ITC-T001 thru ITC-T005: Abatement. (COW only, NDM-003 to include FCI burden) - 1 Priority	\$5,167
COR# 84: Bldg T Reno 6th Floor Conference - Electrical revisions per ITC-T001 thru ITC-T005 (COW only, NDM-003 to include FCI burden). - Beckett	\$11,136
COR# 79: Fire alarm revisions per ITC-G008/G009. - Beckwith	\$3,595
COR# 81: Fire protection revisions per ITCG-008/G-009. - Firetron	\$4,143
COR# 86-89: Bldg T Reno 6th Floor Conference - ITC-T001 thru ITC-T005: Doors/Frames/HW. (COW only, NDM-003 to include FCI burden). - LaForce	\$9,626
COR#s 75, 80: Refresh Basement and Level 1 per ITC-G004, ITC-G008 and G009. -	\$96,771
COR#s 73, 78, 83: DHG Level 1 revisions per ITC-G009, RFI#55. - Piper Weatherford	\$13,896
COR# 77: Bldg G Ground Level Revisions: Demolition per ITC-G-008 and G-009. (COW only,	\$6,315
Precon Services - Flynn Construction	\$1,265
CMR Fee - Flynn Construction	\$5,153
GC's - Flynn Construction	\$21,363
Utilize budget from OCC line.	(\$183,930.00)

Total Addition / Deduction (circle one) to CONTRACT SUM if accepted: \$ _____ \$0

Request is made for addition of 16 CALENDAR DAYS to the contract period (see above)

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

Flynn Construction

 Name of Contracting Firm



ARCHITECT'S	C
Proposed Change Order Form	

TO: Texas Facilities Commission

AND: Kevin Sandberg
 PM/ODR

16-019-5530
 TFC PROJECT NO.

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 #G-011
 PROPOSED CHANGE ORDER NO.

9/17/2019
 DATE

REASON:

Pursuant to TFC Contract # 17-063-000, Flynn Construction is submitting this PCO#G-011 - Proposal for scope modifications on GMP 003 to allocate COW from OCC line due to scope modifications per Owner (DSHS) request. The Cost of Work for all Owner (DSHS) requested changes, along with the approved percentage markup for Preconstruction, Fee, and General Conditions is shown below, and should be utilized for future amendment of Agency Requested Change Buyout Package #003 to allocate the budget back into OCC. The below scope modifications are reflected from A/E issuance of ITC-G009, ITC-G009, and ITC-T001 thru ITC-T006.

COR#s 76 & 85: Additional cleaning to increased limits of construction per ITC-G008 and G-009. Furniture Moving Allowance not calculated in totals in previous "NDM-002" per ITC-T001-T006 - F.C.P.	\$5,500
COR# 82: Bldg T Reno 6th Floor Conference - ITC-T001 thru ITC-T005: Abatement. (COW only, NDM-003 to include FCI burden) - 1 Priority	\$5,167
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COR# 77: Bldg G Ground Level Revisions: Demolition per ITC-G-008 and G-009. (COW only, NDM-	\$6,315
COR# 90: Precon Services/Fee/General Conditions for scope changes to be included in next NDM/ARC Buyout package. - Flynn Construction	\$27,781
Utilize budget from OCC line.	(\$183,930.00)

Total GMP 003 change: \$0.00

JUSTIFICATION:

Per Contract # 17-063-000, approval of GMP's are required to be \$0 dollar PCO's through IMPACT. Please see required GMP attachments in files

Respectfully submitted

by

Randy Schrecengost

 Signature

Stanley Consultants

 Architect / Engineer