

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

The Texas Facilities Commission, a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701 (hereinafter referred to as “TFC”), as Owner (as defined in UGC, Section 1.28) and Flynn Construction, Inc, a Texas corporation 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. 1 to Construction Manager-at-Risk Contract between the Texas Facilities Commission and Flynn Construction, Inc.* (hereinafter referred to as “Amendment No. 1”) pursuant to Tex. Gov’t Code Ann. §§ 2166.2525 and 2267.251 (West 2016), to be effective as of the date of the last signature affixed below.

Recitals:

WHEREAS, on or about 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, in keeping with Contract Section 2.1.4, TFC Approvals, the parties desire to amend the Contract to provide for Additional Services and Fees, to extend the Contract Term, and in accordance with Contract Section 7.1.1.2 addressing TFC’s unilateral reservation of rights with respect to compliance with Laws and Regulations, to incorporate Texas Government Code § 2270.002; and

WHEREAS, the parties now desire to make a mutually beneficial substitution of supplementary general conditions by amended the Contract, as amended;

NOW THEREFORE, the Parties hereby agree 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, to include the additional work required to correct deferred maintenance deficiencies in the four (4) buildings for the Department of State Health Services Complex. The work will provide HVAC improvements, asbestos removal, the addition of a fire sprinkler system, building code upgrades, and address life safety issues as funding allows.

3. The parties hereby 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 December 31, 2020, 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 additional compensation to the Contractor for services to be provided under this Amendment No. 1 in the amount of Six Hundred Ninety Thousand Forty Five and No/100 Dollars (\$690,045.00), thus increasing the total amount from Eleven Million One Hundred Twenty Three Thousand Eight Hundred Eleven and No/100 dollars (\$11,123,811.00), to a total not to exceed amount of Eleven Million Eight Hundred Thirteen Thousand Eight Hundred Fifty Six and No/100 Dollars (\$11,813,856.00)

5. TFC hereby modifies ARTICLE VII – WARRANTIES AND REPRESENTATIONS BY CMR, by adding Section 7.1.16, as follows:

“7.1.16. Prohibition Against Boycotting Israel. In accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this Contract.”

6. The Contract is hereby amended so that all references to “2015 Supplementary General Conditions,” “Supplementary General Conditions,” and to “Exhibit B,” shall mean the “2018 Supplementary General Conditions to the State of Texas 2015 Edition of the Uniform General Conditions for Contracts (Revised April 6, 2018),” attached hereto as “Exhibit B-1,” and incorporated for all purposes.

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7. All other terms and conditions of the Contract not otherwise amended herein shall remain in full force and effect, and shall apply to the Project.

TEXAS FACILITIES COMMISSION

By: JSR

John S. Raff

Interim Executive Director

Date of execution: 5.14.18

FLYNN CONSTRUCTION, INC.

By: [Signature]

L. Patrick Flynn, Jr.

President and CEO

Date of execution: 5/9/18

G.C. NRG

Dir. MW

D.E.D. [Signature]

Exhibit B-1

**2018 SUPPLEMENTARY GENERAL CONDITIONS
TO THE STATE OF TEXAS 2015 EDITION OF THE UNIFORM GENERAL
CONDITIONS FOR CONTRACTS
(REVISED APRIL 16, 2018)**

The following Supplementary General Conditions amend and/or supplement the 2015 edition of the Uniform General Conditions for Construction Contracts and provide for bonding per GMP.

Article 5. Bonds and Insurance

5.1. Construction Bonds.

Subsection 5.1.1.1 is supplemented to modify 5.1.1.1, as follows:

- 5.1.1.1. A Performance bond is required if the Contract Sum is in excess of \$100,000. The performance bond is solely for the protection of Owner. The performance bond is to be for the Contract Sum to guarantee the faithful performance of the Work in accordance with the Contract Documents. In the case of a Construction Manager-at-Risk Contract and in Owner's sole discretion and determination, a Performance Bond is acceptable in the amount of the guaranteed maximum price (GMP). The form of the bond shall be approved by the Office of the Attorney General of Texas. The performance bond shall be effective through Contractor's warranty period.

Subsection 5.1.1.2 is supplemented to modify 5.1.1.2, as follows:

- 5.1.1.2. A Payment bond is required if the Contract price is in excess of \$25,000. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries. In the case of a Construction Manager-at-Risk Contract and in Owner's sole discretion and determination, a Payment Bond is acceptable in the amount of the guaranteed maximum price (GMP). The form of the bond shall be approved by the Office of the Attorney General of Texas.

5.2 Insurance Requirements.

Subsection 5.2.4 is supplemented to add the following new paragraphs:

- 5.2.4.1 Contractor shall deliver to Owner true and complete copies of the General Contractor's certificates prior to the issuance of any Notice to Proceed.
- 5.2.4.2 Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

- 5.2.4.3 The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 5.2.4.4 The insurance coverage and limits established in the Uniform General Conditions, Supplementary General Conditions, or Special Conditions shall not be interpreted as any representation or warranty that the insurance coverage and limits necessarily will be adequate to protect Contractor.

Article 2. Wage Rates and Other Laws Governing Construction

Add Section 2.7 as follows:

2.7 Buy America Requirements for Iron and Steel Used in Construction. In accordance with Texas Government Code 2252, Section 2252.202, all iron or steel products (i.e., rolled structural shapes including wide flange beams and columns, angles, bars, plates, sheets, hollow structural sections, pipe, etc.) shall be produced, manufactured and fabricated in the United States.

End of Supplementary General Conditions