

TFC Contract No. 18-160-000
Flintco, LLC
RFQ No. 303-7-01932
Amendment No. 2
Project No. 17-016-8002

**AMENDMENT NO. 2
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. 2 to the Construction Manager-at-Risk Contract, TFC Contract No. 18-160-000* (hereinafter referred to as “Amendment No. 2”).

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, on March 9, 2020, the Parties entered into Amendment No. 1; and

WHEREAS, the Parties now desire to amend the Contract to remove the modular furniture requirement resulting in a reduction of Four Million Six Hundred Thirty-Seven Thousand Five Hundred and No/100 Dollars (\$4,637,500.00);

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. Article II, Section 2.1. Subsection 2.1, Description of Project, Paragraph 2.1.1.8, is amended to remove the phrase, “modular furniture” so that 2.1.1.8 reads in its entirety as follows:

2.1.1.8. fixed furnishings, casework;

3. Article IV, Consideration, is amended by deleting Section 4.3, Contract Sum, Components of the GMP, 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

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thereby established. The total Contract Sum as of this Amendment No. 2 is One Hundred Ninety-Two Million One Hundred Thirty-Seven Thousand One Hundred Seventeen and No/100 Dollars (\$192,137,117.00) 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. 2 is Four Million One Hundred Twenty-Eight Thousand Nine Hundred Thirty-Five and No/100 Dollars (\$4,128,935.00), 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 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-Two Million Nine Hundred Twenty-Nine Thousand Two Hundred Sixty and No/100 Dollars (\$172,929,260.00), which amount includes a line item for 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

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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. Article IV, Consideration, Section 4.4, Total Project GMP is deleted in its entirety and replacing 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-Two Million One Hundred Thirty-Seven Thousand One Hundred Seventeen and No/100 Dollars (\$192,137,117.00), which shall include: (i) a reasonable amount to be established as CMR Contingency; and (ii) the amount of the TFC Controlled Contingency set 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.

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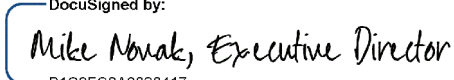
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All provisions, terms and conditions of the Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Amendment No. 2 to be effective as the date of the last Party to sign.

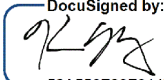
TEXAS FACILITIES COMMISSION

FLINTCO, LLC

By: 
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Mike Novak

Executive Director

By: 
52A556F20F81473...

Kevin Moyes

President, South Central Region

Date of execution: 03/22/2021 | 10:22 AM GMT Date of execution: 03/22/2021 | 8:15 AM PDT

PM 

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