

**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 1.25) 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 March 29, 2017, 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, the parties desire to enter into this Amendment No. 1 to the Contract for the purpose of expanding the Scope of Services, extending the Term, increasing the Consideration due to circumstances that were unknown at Project commencement, and adding a statutorily required contract clause regarding the prohibition against boycotting Israel;

NOW, KNOW ALL MEN BY THESE PRESENTS THAT THE PARTIES AGREE AS FOLLOWS:

1. ARTICLE II – DESCRIPTION OF PROJECT AND SCOPE OF SERVICES, Section 2.2 – CONSTRUCTION PHASE is amended in its entirety to read as follows:

“2.1.2. Construction Phase. Upon receipt of a NTP, CMR shall proceed with the Construction Phase of the Project and timely deliver to TFC the Construction Management Services for the Project as is specified in Section 3.3 of the UGC, and as follows.

2.1.2.1. Provide the following services for the Dr. Bob Glaze Laboratory building located at 1100 West 49th Street, Austin, Texas:

2.1.2.1.1. correct fail-safe control sequences in A600;

- 2.1.2.1.2. replace twenty-five (25) bio-safety cabinets on Floors 1, 4, and 5, and one (1) in A600;
- 2.1.2.1.3. replace and expand acid waste treatment system;
- 2.1.2.1.4. replace roof for A600;
- 2.1.2.1.5. replace radio chemistry hoods and associated roof exhaust systems;
- 2.1.2.1.6. replace three (3) perchloric acid fume hoods in the lab; and
- 2.1.2.7. repair and replace high-priority deficiency list item as Project Budget allows.

2.1.2.2. Prior to commencement of any Work at the Site, CMR shall attend a pre-construction conference between TFC, A/E, and any other representatives as deemed appropriate by TFC, at such time and location as may be designated by TFC. The Communication Protocol, initial Work Progress CPM Schedule, procedures for handling Shop Drawings, as defined in UGC, Section 1.38, and other submittals, processing Applications for Payment, as defined in UGC, Section 1.2, maintaining required records, designation of Project Managers, and any other subject as may be determined by TFC to be appropriate, shall be the subject of said meeting.

2.1.2.3. CMR shall prepare, for A/E's review and TFC's review and acceptance, a procurement schedule for items that must be ordered in advance of commencement of construction.

2.1.2.3.1. CMR shall timely expedite and coordinate the ordering and delivery of products and materials that must be ordered in advance of construction.

2.1.2.3.2. Immediately upon the establishment of the GMP, CMR shall assume full responsibility for all materials and equipment assigned to CMR by TFC for Project-related items purchased by TFC.

2.1.2.4. CMR shall direct all Requests for Information (hereinafter referred to as "RFI"), as defined in Section 1.35 of the UGC, to A/E.

2.1.2.5. CMR shall adhere to the Work Progress CPM Schedule established in accordance with the terms and conditions of this Contract, as it may be amended from time to time.

2.1.2.5.1. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise may be stated in the Contract Documents, all Work at the Site shall be performed Monday through Friday, from 6:00 a.m. until 6:00 p.m.

2.1.2.5.2. CMR shall not permit the performance of Work on any other day or time without TFC's prior written consent, which consent shall not be unreasonably withheld.

2.1.2.5. All requests for clarification of information provided in the Contract Documents or for direction concerning information necessary in order to perform the Work must be directed to A/E through an RFI.

2.1.2.6. On a monthly basis, or as otherwise agreed in writing by TFC, CMR shall submit written progress reports to TFC and A/E, reporting CMR's assessment of percentages of completion and other information required by TFC.

2.1.2.7. Unless and until instructed otherwise in writing by TFC, CMR shall also prepare a daily log (hereinafter referred to as "Daily Log") containing: (i) a record for each day's weather; (ii) a statement of which days since the previous monthly report are claimed by CMR to be subject to Force Majeure, as defined in Section 12.11 of this Contract, portions of the Work in progress; (iii) number of workers on the Site; (iv) identification of all equipment on the Site; (v) problems that might affect progress of the work; and (vi) all accidents, injuries, and any other information that may be requested by TFC from time-to-time, and upload said Daily Log into EMPCS as directed by TFC, by the end of each next business day. In the event CMR fails to timely and properly identify and upload any Force Majeure days, CMR shall be deemed, without further notice, to have automatically waived any claims of Force Majeure as to those days.

2.1.2.8. During the progress of the Work, CMR shall keep the Site and all adjacent areas free from accumulations of waste materials, rubbish, and other debris (hereinafter

referred to collectively as "Trash"). The removal and disposal of Trash must conform to applicable Laws and Regulations.

2.1.2.9. CMR shall plan for and develop the schedule to accommodate necessary inspections and testing of electrical systems. CMR is strictly prohibited from energizing or otherwise activating any electrical systems or equipment at the Site without a minimum of twenty-four (24) hour advance notice to TFC. Any provisions in the Contract Documents to the contrary notwithstanding, TFC reserves the right to deny and/or revoke CMR's authority to energize or otherwise activate any electrical systems or equipment at the Site. CMR will not be entitled to receive additional compensation for any such denial or revocation.

2.1.2.10. Prior to Substantial Completion of the Work, CMR shall clean the Site and the Work and make it ready for utilization by TFC. At the Substantial Completion of the Work, CMR shall store and secure all tools, appliances, construction equipment and machinery, and surplus materials necessary to allow for beneficial occupancy by the Using Agency, and shall restore all property not designated for alteration by the Contract Documents to original condition.

2.1.2.11. CMR shall confine all construction operations within the limits of construction indicated on the Drawings or otherwise agreed to in writing by TFC, and use due care in placing construction tools, equipment, materials, and supplies so as to cause the least possible damage to property and interference with traffic. If additional easements for its operations are needed, CMR is solely responsible for acquisition and maintenance of the easement.

2.1.2.12. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

2.1.2.13. In order for an Application for Final Payment, as defined in UGC, Section 1.3, to be considered complete and subject to review and approval, CMR must submit to TFC a Final Payment Punchlist in such form as prescribed by TFC, jointly executed by CMR, TFC and A/E. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirement is fully satisfied.

2.1.2.14. CMR must achieve Substantial Completion within the period of time specified in the GMP Proposal, as accepted by TFC, and which shall be stated in the NTP. In the event the Project is to be constructed in phases, each phase must be constructed within the period of time specified in the respective proposals, and which shall be stated in the respective NTP.

2.1.2.14.1. At such time that CMR considers the entire Work or a portion thereof Substantially Complete, CMR must notify TFC and A/E in writing that said Work will be ready for a Substantial Completion Inspection on a specific date.

2.1.2.14.1.1. CMR shall include with the foregoing notice a Punchlist that sets out, among other things that may be requested by TFC and/or A/E, the following: (i) a list of those portions of the Work that are to be the subject of the Substantial Completion Inspection; and (ii) the Open Item List, as defined in UGC, Section 1.27, which must include the date for scheduled completion and/or correction for each item of Work contained therein.

2.1.2.14.1.2. The delivery of the foregoing notice by CMR shall constitute CMR's certification that it has, in fact, inspected each and every portion of the Work that is to be the subject of the Substantial Completion Inspection and that they are completed in conformity with the Contract Documents.

2.1.2.14.2. No later than ten (10) days prior to the date of the Substantial Completion Inspection, CMR must deliver to A/E a copy of CMR's marked-up Record Documents, as defined in UGC, Section 1.34, and a preliminary copy of each instructional manual, maintenance and operating manual, parts catalog, wiring diagrams, spare parts, specified written warranties, and like publications or parts for all installed equipment, systems, and like items as described in the Contract Documents for the Work that is the subject of the Substantial Completion Inspection.

2.1.2.14.3. Subject to the provisions of UGC, Section 12.1.1, and no later than the Substantial Completion Inspection Deadline, A/E shall conduct a Substantial Completion Inspection while accompanied by the TFC Project Manager to determine whether said portion of the Work has achieved Substantial Completion.

2.1.2.14.3.1. In the event A/E determines that the Work or any portion thereof, has not been performed or completed in accordance with the Contract Documents, and no later than the Pre-Final Inspection Punchlist Deadline, A/E shall prepare and deliver to CMR a Pre-Final Inspection Punchlist with a copy to TFC.

2.1.2.14.3.2. In the event any fees, and/or other direct and/or consequential damages are charged to, or incurred by, TFC by reason of CMR's

failure to timely correct and/or complete the items that are the subject of the Substantial Completion Inspection, CMR shall be liable to TFC for such fees and/or damages.

2.1.2.15. Subject to the provisions of UGC, Section 12.1.2, and no later than the Final Inspection Deadline, and prior to requesting a Final Inspection, CMR must complete and/or correct all Work specified in the Pre-Final Inspection Punchlist.

2.1.2.15.1. Issuance of a Certificate of Substantial Completion is a condition precedent to CMR's right to issue notice that the Work will be ready for Final Inspection.

2.1.2.15.2. By requesting a Final Inspection, CMR thereby certifies that it has, in fact, inspected each and every portion of the Work that is set out in the Pre-Final Inspection Punchlist, and that they are completed in conformity with the Contract Documents.

2.1.2.15.3. No later than the Final Inspection Deadline, A/E shall conduct a Final Inspection, while accompanied by the TFC Project Manager, to determine whether all of the items set out in the Pre-Final Inspection Punchlist have been fully completed in accordance with the Contract Documents.

2.1.2.15.4. In the event A/E determines that any of the Pre-Final Inspection Punchlist items have not been corrected or completed in accordance with the Contract Documents, A/E shall prepare and deliver to CMR, no later than the Post-Final Inspection Punchlist Deadline, a Post-Final Inspection Punchlist with a copy to TFC.

2.1.2.15.5. No later than ten (10) days after receipt of the Post-Final Inspection Punchlist, and prior to submitting a request for Final Payment, CMR must complete and/or correct all Work specified in the Post-Final Inspection Punchlist.

2.1.2.15.6. In the event any fees and/or other consequential damages are charged to, or incurred by, TFC by reason of CMR's failure to timely correct and/or complete the items that are the subject of the Final Inspection, CMR shall be liable to TFC for such fees and/or damages.

2.1.2.15.7. At final completion, CMR shall remove all tools, appliances, construction equipment and machinery, and surplus materials from the Site.

2.1.2.16. In order for an Application for Final Payment to be considered complete and subject to review and approval, Contractor must deliver to TFC: (i) a fully completed and executed Final Payment checklist in such form as is prescribed by TFC; (ii) all test reports; and (iii) all Close-Out Documents. No approval of an Application for Final Payment is valid and enforceable unless and until the foregoing requirements are fully satisfied. Issuance of a Certificate of Final Completion is a condition precedent to CMR's right to receive Final Payment."

2. ARTICLE III – TERM, SUSPENSION, AND TERMINATION, Section 3.1 – CONTRACT TERM, is amended in its entirety to read as follows:

"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."

3. ARTICLE IV – CONSIDERATION, Section 4.1 – CONTRACT SUM-COMPONENTS and Section 4.2 - CONTRACT SUM-COMPONENTS, are amended in their entirety to read as follows:

4.1. Pre-Construction Management Fee. The initial fee for this Contract is comprised of only the Pre-Construction Management Fee, which shall not exceed the sum of One Hundred Forty One Thousand Three Hundred Twenty and No/100 Dollars (\$141,320.00).

4.2. Contract Sum-Components. Upon execution of a GMP Acceptance, the Contract Sum shall not exceed Nine Million Nine Hundred Forty Seven Thousand One Hundred Eleven and No/100 Dollars (\$9,947,111.00), which is the sum of the following components.

4.2.1. Pre-Construction Management Fee. The Pre-Construction Management Fee.

4.2.2. Construction Management Fee. The Construction Management Fee not to exceed three and three-quarters percent (3.75%) of the Cost of Work, 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 Eight Hundred Forty Nine Thousand Seven Hundred Sixty and No/100 Dollars (\$849,760.00), 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 Eight Million Ninety One Thousand Seven Hundred Ninety and No/100 Dollars (\$8,091,790.00).

4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of Five Hundred Sixty Thousand Seven Hundred Ninety Nine and No/100 Dollars (\$560,799.00), 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. ARTICLE VII – WARRANTIES AND REPRESENTATIONS BY CMR, Section 7.1 – WARRANTIES AND REPRESENTATIONS BY CMR, add 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."

5. 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

FLYNN CONSTRUCTION, INC.

By: 

By: 

Harvey Hilderbran

L. Patrick Flynn, Jr.

Executive Director

President and CEO

Date of execution: 9-12-17

Date of execution: 9/6/17

G.C. 

Dir. 

D.E.D. 