

**AMENDMENT NO. 2  
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. 2 to Construction Manager-at-Risk Contract between the Texas Facilities Commission and Flynn Construction, Inc.* (hereinafter referred to as "Amendment No. 2") 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, on September 12, 2017, the parties entered into Amendment No. 1 for 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; 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 AGREE AS FOLLOWS:

1. 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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2. 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: JSRA

John S. Raff

Interim Executive Director

Date of execution: 5-4-18

**FLYNN CONSTRUCTION, INC.**

By: [Signature]

~~L. Patrick Flynn, Jr.~~

Preston Flynn

~~President and CEO~~

Vice President

Date of execution: 4/30/18

G.C. URG

Dir. MN

D.E.D. [Signature]

TFC Contract No. 17-063-001  
Amendment No. 2  
Flynn Construction, Inc.  
Project Nos. 12-047-6032, 13-012-6042,  
16-011-5550, 16-037-6086

**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**