

**AMENDMENT NO. 3
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. 3 to Construction Manager-at-Risk Contract between the Texas Facilities Commission and Flynn Construction, Inc.* (hereinafter referred to as "Amendment No. 3") 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 on May 4, 2018 the parties entered into Amendment No. 2 for the purpose of mutually beneficial substitutions of Supplementary General Conditions; and

WHEREAS, subject to Contract Section 2.1.4, TFC Approvals, the parties desire to enter into this Amendment No. 3 in order to provide for funding of additional Construction Management Services; and

WHEREAS, the Texas Legislature in the 85th Regular Legislative Session, enacted Senate Bill 252 effective September 1, 2017, relating to prohibiting governmental contracts with a company doing business with Iran, Sudan, or a foreign terrorist organization; and

WHEREAS, TFC has determined to modify the Contract so that it reflects this prohibition;

NOW, THEREFORE, the parties agree to amend the Contract, as amended, as follows:

1. The parties hereby agree to modify ARTICLE IV – CONSIDERATION, SECTION 4.1 – PRE-CONSTRUCTION MANAGEMENT FEE, so that it reads in its entirety, 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).”

2. The parties hereby agree to amend ARTICLE IV – CONSIDERATION, SECTION 4.2 – CONTRACT SUM-COMPONENTS, by reflecting an increase in compensation to be paid in the amount of Eight Million Six Hundred Eighty-One Thousand One Hundred and No/100 Dollars (\$8,681,100.00), thus increasing the Contract Sum from Nine Million Nine Hundred Forty-Seven Thousand One Hundred Eleven and No/100 Dollars (\$9,947,111.00), to a new total of Eighteen Million Six Hundred Twenty-Eight Thousand Two Hundred Eleven and No/100 Dollars (\$18,628,211.00), which is the sum of the components indicated in sections 4.2.1 through 4.2.6, and contains a line item for bidding, solicitation of subcontractor services, construction and construction management, warranty management and project closeout at the Dr. Bob Glaze Laboratory and the Disaster Recovery Operations Center on the Department of State Health Services campus, Austin, Texas, as more particularly set forth in the Proposed Change Order Forms A, B and C for PCO numbers 13 and 14, dated August 28, 2018, respectively, attached hereto and incorporated herein for all purposes and collectively referred to as “Exhibit A-3.”

3. The parties hereby agree to modify ARTICLE II – DESCRIPTION OF PROJECT AND SCOPE OF SERVICES, Section 2.1.2 – CONSTRUCTION PHASE is amended in its entirety to read as follows:

“2.1.2. Construction Phase. Upon receipt of a Notice to Proceed, 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 and Disaster Recovery Operations Center located at 1100 West 49th Street, Austin, Texas:

2.1.2.1.8. At the Dr. Bob Glaze Laboratory Building, repair or replace deferred maintenance items identified in Atkin's Phase 1 Assessment Report that the original deferred maintenance budget was unable to complete. Added scope items include HVAC and mechanical system improvements, controls upgrades, Lab exhaust improvements, building code and CDC upgrades, life & safety issues as funding allows.

2.1.2.1.9. At Disaster Recovery Operations Data Center, repair and replace eight (8) CRAH units and two AHU's and upgrade building controls. Perform other deferred maintenance activities as budget allows.”

4. The Parties hereby agree to modify ARTICLE IV – CONSIDERATION, SECTION 4.2 – CONTRACT SUM-COMPONENTS, so that it reads in its entirety as follows:

“4.2. Contract Sum–Components. Upon execution of a GMP Acceptance, the Contract Sum shall not exceed Eighteen Thousand Six Hundred Twenty-Eight Thousand Two Hundred Eleven and No/100 Dollars (\$18,628,211.00), which is the sum of the following components.

4.2.1. Pre-Construction Management Fee. The Pre-Construction Management Fee as indicated in Section 4.1, above.

4.2.2. Construction Management Fee. The Construction Management Fee not to exceed three and three quarter's percent (3.75%) of the Cost of Work, which sum shall not exceed Five Hundred Seventy-Nine Thousand Nine Hundred Ten and No/100 Dollars (\$579,910.00) and 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 Five Hundred Eighty-Seven Thousand Eight and No/100 Dollars (\$1,587,008.00), 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 Fifteen Million Four Hundred Sixty-Four Thousand Two Hundred Seventy-Four and No/100 Dollars (\$15,464,274.00).

4.2.5. TFC Controlled Contingency. The TFC Controlled Contingency of Eight Hundred Fifty-Five Thousand Six Hundred Ninety-Nine and No/100 Dollars (\$855,699.00), 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. The parties hereby agree to modify ARTICLE VII – WARRANTIES AND REPRESENTATIONS BY CMR, by adding Section 7.1.17, which shall read in its entirety as follows:

"7.1.17. Prohibition Against Contracting with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations. In accordance with Section 2251.152 of the Texas Government Code, TFC is prohibited from entering into a governmental contract (as defined in Texas Government Code Section 2252.151(3)) with a company that is identified on a list prepared and maintained under Texas Government Code Section 806.051, 807.051, or 2252.153. If contractor is on the above-referenced list the Contract will be considered void or voidable and TFC will not be responsible to pay Contractor for any work performed."

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5. 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. 3 to be effective as of the date of the last party to sign.

TEXAS FACILITIES COMMISSION

By: JSRH

John S. Raff

Interim Executive Director

Date of execution: 9.6.18

FLYNN CONSTRUCTION INC.

By: [Signature]

L. Patrick Flynn, Jr.

President and CEO

Date of execution: 9/5/18

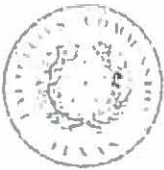
G.C. NRG

Dir. HW

D.E.D. [Signature]

TFC Contract No. 17-063-000
Amendment No. 3
Flynn Construction, Inc.
Project Nos. 18-012-5420 & 18-013-5551

EXHIBIT A-3



ARCHITECT'S

Proposed Change Order Form

A

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.)

18-012-5420

TFC PROJECT NO.

PCO #013

PROPOSED CHANGE ORDER NO.

8/28/2018

DATE

Amendment #3 to TFC Contract # 17-063-000, Flynn Construction - adding deferred maintenance deficiency items to the DBGL Lab DM project located on the DSHS North Austin campus. The work, identified in the Atkin's Phase 1, Assessment Report, will address HVAC and mechanical system improvements, controls upgrades, Lab exhaust improvements, building code upgrades and address life, safety issues as funding allows. Additional funds of \$7,706,100.00 approved by Commission on 12/13/2017, Item # XII. Funds will be initially entered into Flynn's contract as Owner Controlled Contingency (OCC) until GMP proposals identify actual costs.

Total GMP 013

\$7,706,100.00

This Proposed Change Order was initiated

by Russell AlabastroFlynn Construction

Your early response is solicited

by *Signe M. ...*

Signature

Atkins North America

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.

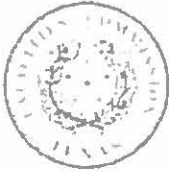
2. Contractor prepare Form "B." Respond to PCO in Impact, upload Form "B" and transmit to Architect / Engineer.

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.



TO: Atkins NA

CONTRACTOR'S

Proposed Change Order Form

B

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.)

18-012-5420
TFC PROJECT NO.

PCO #013
PROPOSED CHANGE ORDER NO.

8/28/2018
DATE

Amendment #3 to TFC Contract # 17-063-000, Flynn Construction - adding deferred maintenance deficiency items to the DBGL Lab DM project located on the DSHS North Austin campus. The work, identified in the Atkin's Phase 1, Assessment Report, will address HVAC and mechanical system improvements, controls upgrades, Lab exhaust improvements, building code upgrades and address life, safety issues as funding allows. Additional funds of \$7,706,100.00 approved by Commission on 12/13/2017, Item # XII. Funds will be initially entered into Flynn's contract as Owner Controlled Contingency (OCC) until GMP proposals identify actual costs.

Date for Substantial Completion of this GMP is 849 calendar days from Notice to Proceed. Sub Completion expected by 12/31/2020

Total GMP 013 \$7,706,100.00

Total Addition / ~~Deduction~~ (circle one) to CONTRACT SUM if accepted: \$7,706,100

Request is made for addition of 849 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

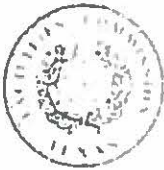
Russell Alabastro

Digitally signed by Russell Alabastro
Limited: Flynn Construction, Inc.
Reason: I agree to the terms outlined by the proponent
of my signature on this document
Contact me: (512) 440-7843
Date: 2018.08.28 09:34:25-0500

Authorized Signature

Flynn Construction

Name of Contracting Firm

**ARCHITECT'S**
Proposed Change Order Form**C**

TO: Texas Facilities Commission

AND: Kevin Sandberg
PM/ODR18-012-5420

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 #013

PROPOSED CHANGE ORDER NO.

8/28/2018

DATE

REASON:

Amendment #3 to TFC Contract # 17-063-000, Flynn Construction - adding deferred maintenance deficiency items to the DBGL Lab DM project located on the DSHS North Austin campus. The work, identified in the Atkin's Phase 1, Assessment Report, will address HVAC and mechanical system improvements, controls upgrades, Lab exhaust improvements, building code upgrades and address life, safety issues as funding allows. Additional funds of \$7,706,100.00 approved by Commission on 12/13/2017, Item # XII. Funds will be initially entered into Flynn's contract as Owner Controlled Contingency (OCC) until GMP proposals identify actual costs.

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

This is an add in scope to Contract 17-063-000 of \$7,706,100 under project 18-012-5420

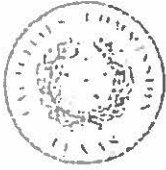
Respectfully submitted

by

Signature

Atkins North America

Architect / Engineer



TO: Flynn Construction

ARCHITECT'S

Proposed Change Order Form

A

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.)

18-013-5551

TFC PROJECT NO.

PCO #014

PROPOSED CHANGE ORDER NO.

8/28/2018

DATE

Amendment #3 to TFC Contract # 17-063-000, Flynn Construction - adding deferred maintenance deficiency items to the DROC Data Center project located on the DSHS North Austin campus. The work, identified in the Atkin's Phase 1, Assessment Report, will replace eight failing CRAC units with eight CRAH units and replace two AHU's, provide mechanical piping system improvements, controls upgrades and redundant reliability to the DROC Data Center. Additional funds of \$975,000.00 approved by Commission on 12/13/2017, Item # XII. Funds will be initially entered into Flynn's contract as Owner Controlled Contingency (OCC) until GMP proposals identify actual costs.

Total GMP 001

\$975,000.00

This Proposed Change Order was initiated

by Russell AlabastroFlynn Construction

Your early response is solicited

by 

Signature

Atkins North America

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.

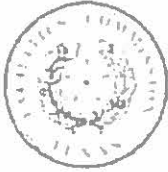
2. Contractor prepare Form "B." Respond to PCO in Impact, upload Form "B" and transmit to Architect / Engineer.

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.



TO: Atkins NA

CONTRACTOR'S

Proposed Change Order Form

B

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.)

18-013-5551
TFC PROJECT NO.

PCO #014
PROPOSED CHANGE ORDER NO.

8/28/2018
DATE

Amendment #3 to TFC Contract # 17-063-000, Flynn Construction - adding deferred maintenance deficiency items to the DROC Data Center project located on the DSHS North Austin campus. The work, identified in the Atkin's Phase 1, Assessment Report, will replace eight failing CRAC units with eight CRAH units and replace two AHU's, provide mechanical piping system improvements, controls upgrades and redundant reliability to the DROC Data Center. Additional funds of \$975,000.00 approved by Commission on 12/13/2017, Item # XII. Funds will be initially entered into Flynn's contract as Owner Controlled Contingency (OCC) until GMP proposals identify actual costs.

Date for Substantial Completion of this GMP is 480 calendar days from Notice to Proceed.

Total GMP 001 \$975,000.00

Total Addition / ~~Deduction~~ (circle one) to CONTRACT SUM if accepted: \$ 975,000

Request is made for addition of 480 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

Russell Alabastro

Digitally signed by Russell Alabastro
Location: Flynn Construction, Inc.
Reason: I agree to the terms defined by the document
of my signature on this document
Created into (212) 640-1843
Date: 2018.08.28 20:53:31-05'00'

Authorized Signature

Flynn Construction

Name of Contracting Firm

**ARCHITECT'S**
Proposed Change Order Form**C**

TO: Texas Facilities Commission

AND: Kevin Sandberg
PM/ODR

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.

18-013-5551
TFC PROJECT NO.PCO #014
PROPOSED CHANGE ORDER NO.8/28/2018
DATE

REASON:

Amendment #3 to TFC Contract # 17-063-000, Flynn Construction - adding deferred maintenance deficiency items to the DROC Data Center project located on the DSHS North Austin campus. The work, identified in the Atkin's Phase 1, Assessment Report, will replace eight failing CRAC units with eight CRAH units and replace two AHU's, provide mechanical piping system improvements, controls upgrades and redundant reliability to the DROC Data Center. Additional funds of \$975,000.00 approved by Commission on 12/13/2017, Item # XII. Funds will be initially entered into Flynn's contract as Owner Controlled Contingency (OCC) until GMP proposals identify actual costs.

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

This is an add in scope to Contract 17-063-000 of \$975,000 under project 18-013-5551

Respectfully submitted

by


SignatureAtkins North America
Architect / Engineer