

ADDENDUM TO JOB ORDER CONTRACT

THIS ADDENDUM TO AGREEMENT (“Addendum”) is made and entered into this 4th day of March, 2014, by and between the City of Maricopa, ARIZONA, an Arizona municipal corporation (“City”), and FCI Constructors, Inc., a Colorado Corporation, (“Contractor”) for design and construction services for site work at Fire Station 572.

WHEREAS, City desires to retain a contractor to furnish design and construction services and to make payment for the same in accordance with the terms and conditions set forth in the Agreement as modified by this Addendum, including all attachments, which are incorporated herein by mutual agreement of the parties; and

WHEREAS, in procuring these services City has complied with the cooperative purchasing procedures set forth in Section 3-223 of the City of Maricopa’s City Code; and

WHEREAS, the parties now desire to amend the Agreement known as TCPN Contract #R5148 entered into between The Cooperative Purchasing Network and FCI Construction, Inc. for job order contract services (“Agreement”).

NOW, THEREFORE, City agrees to retain and does hereby retain Contractor and Contractor agrees to provide the services required according to the terms and conditions and for the consideration hereinafter set forth in the Agreement which shall be amended as follows:

1. All reference to “TCPN Participant” or “TCPN Members” in the Agreement shall refer to the City of Maricopa, Arizona, an Arizona municipal corporation.

2. The following provisions shall be added to the Agreement:

A. SCOPE OF WORK: Contractor shall perform all work, through qualified professionals employed by Contractor, and provide all material, equipment, tools and labor, necessary to complete the work described in and reasonably inferable from this Addendum and as set forth in Contractor’s proposal set forth in Exhibit A hereto. The design and construction services must be in accordance with all applicable codes, standards and requirements.

B. SCHEDULE: Contractor shall complete all work to be performed pursuant to this Agreement within six (6) months of receiving a Notice to Proceed from the City. Upon receipt of written notice that the construction is ready for final inspection and acceptance, the City and the Contractor will jointly inspect the work. If the work is satisfactory to City, the City will issue a final acceptance letter.

C. COST: In accordance with the terms and conditions of this Agreement, City shall compensate Contractor for its work as follows:

See Exhibit A, which is incorporated into this Agreement

In no event, shall the total compensation under this contract exceed TWO HUNDRED NINETEEN THOUSAND EIGHT HUNDRED TWENTY and 00/100 Dollars (\$219,820.00). Exhausting the total amount payable for activities described herein shall not relieve Contractor of its obligations to perform such work. Should City request additional work beyond that specified herein, Contractor shall charge, and City shall pay, a rate as mutually agreed upon in writing prior to Contractor performing the additional work.

Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible thereof.

D. CONTRACTOR BILLING: Contractor shall bill City on a time and expense basis in a total amount not to exceed Section 2(C) above. City shall pay such billings within thirty (30) days of the date of receipt of the Contractor's invoice.

E. CHANGE ORDERS: The City reserves the right to make, at any time during the progress of work, such alterations as may be found necessary or desirable. Upon receipt of such request, Contractor shall prepare a proposal in significant detail, using the rates established in the Agreement and a detailed description of any schedule impact. The City will negotiate in good faith and as expeditiously as possible the appropriate adjustments and will execute an appropriate change order reflecting the agreed upon terms of the adjustment.

F. INDEMNIFICATION: Contractor shall defend, indemnify, and hold City, its officers and employees harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including attorneys' fees, which arise out of, or is in any way connected with the performance of work under this Agreement by Contractor, or any of Contractor's employees, agents or subconsultants, and from all claims by Contractor's employees, subconsultants and agents for compensation for services rendered to Contractor in the performance of this Agreement, notwithstanding that City may have benefited from their services. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Contractor or Contractor's employees, subconsultants or agents. This section shall survive the expiration or early termination of the Agreement.

G. ARBITRATION: In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Contractor and the City. In the event that the parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and Contractor shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Contractor. The results of the arbitration shall be nonbinding on the parties, and any party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

H. GOVERNING LAW AND VENUE: The terms and conditions of the Agreement and this Addendum shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in the Agreement or this Addendum shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of the Agreement or this Addendum or to recover any damages for and on account of the breach of any term or condition in the Agreement or this Addendum, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

I. NOTICES: All notices to the other party required under the Agreement or this Addendum shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City:

City of Maricopa
City Manager
39700 W Civic Center Plaza South
Maricopa, AZ 85139

If to Contractor:

FCI Constructors, Inc.
Attn: Brian Lewis
10922 West Glenn Dr.
Glendale, AZ 85307

J. STANDARD OF PERFORMANCE: While performing the services, Contractor shall exercise the reasonable care and skill customarily exercised by reputable members of Contractor's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its skill and expertise. Contractor shall be responsible for all errors and omissions Contractor commits in the performance of the Agreement and this Addendum that are a breach of this standard.

K. INDEPENDENT CONTRACTOR: Contractor shall at all times during Contractor's performance of the services retain Contractor's status as independent contractor. Contractor's employees shall under no circumstances be considered or held out to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Contractor.

L. ENTIRE AGREEMENT: The Agreement, this Addendum and any attachments represent the entire agreement between City and Contractor and supersedes all prior negotiations,

representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of the Agreement or this Addendum shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

M. LICENSE: Contractor represents and warrants that any license necessary to perform the services under the Agreement or this Addendum is current and valid. Contractor understands that the activity described herein constitutes “doing business in the City of Maricopa” and Contractor agrees to obtain a business tax license pursuant to Article 8-1 of the City of Maricopa’s City Code and keep such license current during the term of this Agreement. Any activity by sub-consultants within the corporate city limits, will invoke the same business tax regulations on any sub-consultants, and Contractor ensures its sub-consultants will obtain any required business tax license.

N. CONFLICTS OF INTEREST: The provisions of A.R.S. §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to the Agreement and this Addendum.

O. NO KICK-BACK CERTIFICATION: Contractor warrants that no person has been employed or retained to solicit or secure the Agreement or this Addendum upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in the Contractor. For breach or violation of this warranty, the City shall have the right to annul the Agreement and this Addendum without liability, or at its discretion to deduct from the compensation to be paid Contractor hereunder, the full amount of such commission, percentage, brokerage or contingent fee.

3. All other terms and conditions of the Agreement are to continue in full force and effect as stated and agreed to in the Agreement.

IN WITNESS WHEREOF, the parties have caused this Addendum to be signed by their duly authorized representatives as of the day and year first above written.

CONTRACTOR:

FCI Constructors, Inc.

By: _____

Title: _____

CITY OF MARICOPA
An Arizona municipal corporation

Christian Price
Mayor

ATTEST:

APPROVED AS TO FORM:

Vanessa Bueras
City Clerk

Denis M. Fitzgibbons
City Attorney