

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONSTRUCTION MANAGER AT RISK CONSTRUCTION SERVICES FOR
TEMPE TOWN LAKE DOWNSTREAM DAM REPLACEMENT

PROJECT NO. 6504221

ADDENDUM NO. 1

This Addendum made and entered into on the ____ day of _____, 2014, by and between the City of Tempe, an Arizona municipal corporation (“City”), and PCL Construction, Inc., an Arizona corporation (“CM@Risk”), amends the original Contract made and entered into by and between the same parties on November 7, 2013 (“Contract”).

R E C I T A L S:

- A. The parties hereto entered into that Construction Manager at Risk Contract for Construction Services (“CMAR”), defining certain rights and obligations between the parties in order to provide construction management services.
- B. Pursuant to that CMAR, on September 19, 2013 the City awarded a contract to Steel-Fab, Inc. (T14-00401 (C2013-169)) to design and fabricate steel gate assemblies and to provide associated control and operating equipment. This contract included a clause authorizing assignment to the prime contractor, PCL Construction, Inc.
- C. Pursuant to the assignment clause, the City, CM@Risk, and Steel-Fab, Inc. entered into an Assignment and Assumption Agreement on _____.
- D. The parties desire to further define their respective rights and obligations with respect to that Assignment and Assumption Agreement.

- E. The parties intend that the following sections shall be integrated into the Contract in place of the former similarly identified section, if any, and that this Addendum be given the full force and effect of law as the Contract.

Now therefore, in consideration of the mutual promises and covenants as more particularly set forth below, the parties do hereby amend the Contract to read as follows:

1. CM@Risk's Representations. CM@Risk represents and warrants to and for the benefit of City the following:

- (a) The Assignment and Assumption Agreement and all other documents required to be executed by CM@Risk pursuant to the terms thereof have been duly authorized, executed and delivered and the Agreement constitutes valid and binding obligations of CM@Risk enforceable in accordance with its terms, and;
- (b) To the best of CM@Risk's knowledge and belief, the Assignment and Assumption Agreement will not violate or contravene any agreement, indenture, or instrument to which CM@Risk is a party or by which it or its property may be bound, or be in conflict with, result in a breach of, or constitute a default under any such agreement, indenture, or other instrument, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of CM@Risk except as expressly disclosed herein; and no approval by a third person is required.

2. Notices. Notice with respect to the Contract shall be addressed as follows:

If to CM@Risk: PCL Construction, Inc.
1711 W. Greentree Drive, Suite 201
Tempe, Arizona 85284

If to City: Andy Goh, PE
Deputy Public Works Director/City Engineer
City of Tempe Public Works Department
Engineering Division
31 E. 5th Street
Tempe, AZ 85281

3. The Assignment and Assumption Agreement between the parties and Steel-Fab, Inc. is hereby approved by the City subject to the provisions therein, as indicated in Exhibit A,

“Assignment and Assumption Agreement,” Exhibit B, “GMP-2 Summary,” and Exhibit C, “Gate Change Order,” attached hereto and incorporated herein by this reference.

4. All other provisions of the original Contract where not inconsistent with this Addendum shall remain binding on the parties hereto.

DATED this ____ day of _____, 2014.

CITY OF TEMPE, ARIZONA

By: _____
Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

CM@Risk warrants that the person who is signing this Addendum on behalf of CM@Risk is authorized to do so and to execute all other documents necessary to carry out the terms of this Addendum.

PCL Construction, Inc.

Signature

Name

Title

Federal I.D. No./Social Security No.