

Contract No.: _____
Approved: _____

AGREEMENT

KIMBALL AVENUE MEDIAN IMPROVEMENTS

THIS AGREEMENT is made and entered into this 21st day of May, 2024 by and between THE CITY OF CHINO, a municipal corporation, hereinafter called “**City**”, and **Metrocell Construction**, hereinafter called “**Contractor**”.

WITNESSETH, that the parties hereto mutually agree as follows:

ARTICLE I: For and in consideration of the payments and agreements hereinafter mentioned to be made and performed by City, Contractor agrees to perform and complete all of the work for the project entitled “KIMBALL AVENUE MEDIAN IMPROVEMENTS” in a good and workmanlike manner in accordance with all plans and specifications therefor, to furnish at Contractor’s sole cost and expense all tools, equipment, labor, and materials necessary therefor, except such materials and equipment as are expressly stipulated to be furnished by City, and to do everything required by the Contract Documents.

ARTICLE II: Contractor shall be responsible for furnishing all labor, materials, equipment, tools, and services, furnishing and removing all plants, temporary structures, tools, and equipment, and doing everything required by this Agreement and by the Contract Documents. Contractor shall also be responsible for all losses and damages arising out of the performance of the Work, from the action of the elements, or from any unforeseen difficulties that may arise during the prosecution of the Work until its acceptance by City; for all risks of every description associated with the Work; and for all expenses resulting from the suspension or discontinuance of the Work. City shall pay Contractor, and Contractor shall receive, for completing the Work in accordance with the requirements of the Contract Documents and in full compensation therefor, the price named in the Bid Proposal. Subject to any additions or deductions that may be made by change order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive a total contract amount of **Two Hundred Fifty Thousand Three Hundred Ninety-Nine Dollars and Forty Cents (\$250,399.40)** for completion of the contract work.

ARTICLE III: The City hereby employs said Contractor to perform the work according to the terms of this Agreement for the above-mentioned price(s), and agrees to pay the same at the time, in the manner, and upon the conditions stipulated in the Contract Documents; and the said parties for themselves, their heirs, executors, administrators, successors and assignees, do hereby agree to the full performance of the covenants herein contained.

ARTICLE IV: Contractor shall begin work within five (5) calendar days after receiving a Notice to Proceed from the City and the work shall be completed within Forty-Five (45) working days from the date on which the work was started. If the work is not completed within said time period, liquidated damages shall apply.

ARTICLE V: The Notice Inviting Bids, the Summary of Work, the Instructions to Bidders, the Bid Documents, the Required Post-Bid Documents, the General Provisions, the Special Provisions, the Technical Specifications, and all other drawing, plans, or specifications for the Work

(collectively, "**Contract Documents**") are hereby incorporated into and made part of this Agreement.

ARTICLE VI: Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

ARTICLE VII: No officer or employee of the City shall have any financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is interested, in violation of any State statute or regulation. Similarly, Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

ARTICLE VIII: This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Bernardino, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Bernardino, State of California.

ARTICLE IX: Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

ARTICLE X: No officer or employee of the City shall be personally liable to the Contractor, or any

successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

ARTICLE XI: The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

ARTICLE XII: In the course of its work under this Agreement, the Contractor, its agents and employees shall be bound by and comply with all applicable federal, state and local laws and requirements.

ARTICLE XIII: The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed on the day and year first above written.

Approved as to Form:

Approved as to Content:

Fred Galante, City Attorney

Hye Jin Lee, PE, Director of Public Works

METROCELL CONSTRUCTION

Dated:

By:

(Signature)

Name:

(Please Type or Print Name)

Title:

(Please Type or Print Title)

CITY OF CHINO

Dated: _____

Linda Reich, City Manager

ATTEST:

Natalie Gonzaga, City Clerk

Date