

CONSTRUCTION MANAGER AT RISK CONSTRUCTION CONTRACT

This Contract is made and entered into the ____ day of _____, 2017, by and between the Orange County Civic Center Authority, a California joint powers authority (“OWNER”), and Kiewit Infrastructure West Co. (“CMAR”), with OWNER and CMAR sometimes individually referred to as “Party” or jointly as “Parties”.

OWNER and CMAR agree as follows:

1. CONTRACT DOCUMENTS

Contract Documents, which together comprise the complete agreement between OWNER and CMAR, consist of the following: the Guaranteed Maximum Price (GMP) Package(s) as approved by the Director of OC Public Works or his or her designee (“DIRECTOR”); this Contract; the General Conditions; Supplemental General Conditions; the Non-collusion Declaration; Special Provisions; Addenda and Bulletins; Attachments; Appendices; Plans; Standard Plans; Standard Specifications; all Reference Specifications mentioned in any Contract Documents; and all modifications and amendments to the foregoing issued after the date of execution of the Agreement, including Amendments and Change Orders. The Contract Documents also include the Faithful Performance Bond and the Labor and Material Payment Bond unless such bonds are expressly not required for this Project by the Supplemental General Conditions. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2. SCOPE OF WORK

The Fullerton Creek Channel Improvement project has two phases. Phase 1 consists of improving the channel north wall and lowering the channel invert. The limit of Phase 1 is from downstream of Western Avenue to upstream of Beach Boulevard.

Phase 2 consist of removal of the existing concrete trapezoidal lining and constructing a U-channel with sheet pile walls and lower the concrete channel invert. The limit of Phase 2 is from upstream of Beach Boulevard to downstream of the I-5 Freeway.

Other items of work or details not mentioned above that are required by the Plans, Standard Specification, or Special Provisions, shall be performed, placed, and constructed.

3. CONTRACT PRICE, CONTINGENCY AND TIME

3.1 CONTRACT PRICE

OWNER shall pay CMAR for all work required by the Contract Documents a Contract Price as authorized and amended by GMP(s) not exceeding the total sum of ~~Thirty Two million dollars (\$32,000,000)~~ Fifty million dollars (\$50,000,000), as it may be adjusted pursuant to the “CHANGES” Section of the General Conditions, and in accordance with the “PAYMENTS” Section of the General Conditions. CMAR warrants and represents that it has studied all available contract documents and has identified risks inherent to the Project, including risk associated with incomplete designs, and agrees that the GMP reflects those risks (either in the GMP items or in the CMAR Contingency). CMAR will not be paid for any work performed after

the GMP(s) have been exhausted, unless due to use of OWNER Contingency or OWNER directed change. In the event a GMP is not entered into by March 18, 2017, this contract is null and void.

3.2 CONTINGENCY

“Contingency (CMAR’s)” means a fund to cover cost growth during the Project used at the discretion of the CMAR usually for costs that result from Project circumstances. The amount of the CMAR’s Contingency will be a separate line item in the GMP. Use and management of the CMAR’s Contingency during the construction phase is described in Section 2.7 of the Design Phase Services Contract, as reproduced in part below for reference. In the event of a discrepancy between the Design Phase Services Contract, and this Construction Contract, this Construction Contract shall control.

“Contingency (OWNER’s)” means a fund to cover cost growth during the Project used at the discretion of the OWNER usually for costs that result from OWNER directed changes or unforeseen site conditions. The amount of the OWNER’s Contingency will be set by the OWNER and will be in addition to the project costs included in the CMAR’s GMP. Use and management of the OWNER’s Contingency during the construction phase is described in Section 2.7 of the Design Phase Services Contract.

2.7.3.4 CMAR’s Contingency is an amount the CMAR shall use under the following conditions:

- (1) At its discretion for increases in the Cost of the Work which are not the OWNER’s responsibility, or
- (2) With written approval of the OWNER for increases in General Condition Costs. CMAR’s Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission.
- (3) Unused CMAR Contingency shall be shared equally by OWNER and CMAR at the end of the Project.

2.7.4 OWNER’s Contingency are funds to be used at the discretion of the OWNER to cover any increases in Project costs that result from OWNER directed changes or unforeseen site conditions. OWNER’s Contingency will be added to the GMP amount provided by the CMAR, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CMAR at the time that OWNER’s Contingency is used. Any OWNER Contingency not utilized shall revert to the OWNER after Project completion.”

3.3 CONTRACT TIME

Within 10 calendar days of the OWNER’s execution of the Contract and the first GMP package, CMAR shall submit to OWNER for its review: acceptable bonds (as detailed below); proof of insurance; and initial job progress schedule as required by the Contract Documents. If OWNER rejects the submitted documents, CMAR will have 5 additional calendar days to resubmit. If CMAR fails to submit documents within the required time(s), the Contract Time (as defined below) will be reduced by the number of days which exceed the time for submittal. If CMAR fails to submit acceptable documents by the second submission, OWNER may, at its sole

discretion, void the Contract or reduce the Contract Time by the number of days between OWNER's rejection of the second submission and OWNER's approval of the documents.

Upon OWNER's approval of the bonds, insurance, and initial job progress schedule, OWNER will deliver to CMAR a signed copy of the Agreement and a Notice to Proceed with the work. CMAR shall not commence construction until OWNER issues the Notice to Proceed. The GMP package(s) shall contain a number of working days, as defined in the General Conditions, within which CMAR must complete the GMP package work.

The OWNER and A-E will not be responsible for the failure of the CMAR to plan, schedule, and execute the work in accordance with the approved Project Schedule and Schedule Update(s) or the failure of the CMAR to meet the Contract completion dates or the failure of the CMAR to schedule and coordinate the work of his own trades and subcontractors or to coordinate with others separate Contractors.

4. BONDS

Within 10 calendar days after award of the Contract, CMAR shall furnish a Faithful Performance Bond and a Labor and Material Payment Bond, each in an amount equal to 100% of the Contract Price, issued by a surety in accordance with the requirements of the General Conditions of the Contract.

The bonds shall be in the form of the models included in these Contract Documents, and must be approved by OWNER. CMAR shall submit the bonds in duplicate, all of which shall bear original signatures. The signature of the surety representative must be notarized.

5. LIQUIDATED DAMAGES

In accordance with Government Code Section 53069.85, CMAR agrees to forfeit and pay to OWNER a sum per day ("Liquidated Damages") as agreed up in each GMP package. OWNER may deduct such sum from any payments due or to become due to CMAR. If the Liquidated Damages exceed the unpaid balance of the Contract Price otherwise owed to CMAR, then CMAR shall immediately pay OWNER the difference.

6. CMAR SHALL PERFORM 45% OR MORE OF THE WORK

CMAR shall be capable of performing, and shall perform with its own organization, work amounting to at least 45% of the GMP amount. However, any GMP Item designated as a Specialty GMP Item will be excluded from the GMP amount for purposes of this Section only.

7. EMPLOYEE ELIGIBILITY VERIFICATION

CMAR hereby certifies that it complies with all applicable laws and regulations regarding the eligibility of its employees to work in the United States, and that all of its employees performing work under this Contract meet all citizenship or immigration status requirements to do so. CMAR shall obtain all documentation necessary to verify the employment eligibility status of covered employees as described by U.S. Citizenship and Immigration Services Form I-9. CMAR shall retain such documentation for the period prescribed by law. CMAR shall indemnify, defend with counsel approved in writing by OWNER, and hold harmless the OWNER, its agents, officers, and employees from any sanctions or liability that may be assessed in connection with

any alleged violation of federal or State laws or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

8. SECURING WORKERS' COMPENSATION INSURANCE CERTIFICATION

CMAR, by executing this Contract, hereby certifies:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

9. PARTIES' REPRESENTATIVES

9.1 OWNER'S REPRESENTATIVES

- 9.1.1.** DIRECTOR will designate in writing the person who will act ex-officio as OWNER's representative during construction of the Project. Unless otherwise expressly stated in the Contract Documents, OWNER's designated representative will issue and receive all written communications on behalf of OWNER for the Project. The designated representative shall also coordinate any communications to or from OWNER's Architect-Engineer ("A-E") in connection with the Project. The Project Manager shall manage the routine responsibilities of OWNER, but is not authorized to make decisions for OWNER that materially affect this Contract or create additional legal liabilities for OWNER.

OWNER has the final decision in all matters affecting the work. OWNER has the authority to enforce CMAR's compliance with the Contract Documents. OWNER's decision is final and binding on all questions relating to: quantities; acceptability of material, equipment, or work; execution, progress, or sequence of work; and interpretation of the Contract Documents. All labor, materials, tools, equipment furnished by CMAR and all work performed by CMAR shall be subject to the approval of OWNER.

9.2. CMAR'S REPRESENTATIVES

- 9.2.1.** Representative and Alternate: Before starting work, CMAR shall designate in writing a representative who shall have complete authority to act for it. CMAR may also designate an alternate representative with complete authority to act for it. OWNER may rely on such representative or alternate as having the authority to execute Change Orders in any amount unless CMAR identifies to OWNER in writing the officer(s) or employee(s) with such authority. The representative or alternate shall be present at the work site whenever work is in progress or whenever weather conditions necessitate its presence to take measures necessary to protect the work, persons, or property. Any order or communication given to this representative shall be deemed delivered to CMAR. A joint venture shall designate only one representative and alternate. In the absence of CMAR's representative, instructions or directions may be given by OWNER to the superintendent or person in charge of the specific work to which the order applies. Such order shall be complied with promptly and referred to CMAR or its representative. CMAR's representative and alternate must be able to read, write, and speak English fluently.

- 9.2.2. Superintendent: Before starting work, CMAR shall submit to OWNER for its review and approval the name of the superintendent who will be employed full-time by CMAR and be present on site at all times while work is being performed. CMAR's superintendent must be well-qualified, and at OWNER's request CMAR shall provide documents or information to establish the superintendent's qualifications. CMAR's superintendent shall represent CMAR in the absence of CMAR's designated representative or alternate, and all directions given to the superintendent shall be binding as if given to CMAR. CMAR's representative or alternate designated in accordance with the preceding paragraph also may serve as CMAR's superintendent, provided that OWNER approves the selection of the superintendent.
- 9.2.3. The superintendent must read, write, and speak English fluently. OWNER may require CMAR to replace a superintendent whose conduct or performance is unsatisfactory. CMAR shall not change its superintendent without OWNER's consent unless the superintendent is unsatisfactory to CMAR or ceases to be in CMAR's employ. If CMAR's superintendent leaves the Project, CMAR shall replace him or her within 24 hours with a new, well-qualified superintendent acceptable to OWNER.
- 9.2.4. Alternate Supervision Plan: For Projects on which the original Contract Price is \$50,000 or less, CMAR may propose for OWNER's consideration a plan for providing supervision on the site that does not involve the presence of a full-time superintendent, representative, or alternate, as required by the preceding paragraphs. Any such plan must ensure that CMAR's supervision of the work is adequate and effective for purposes of completing the work timely and in compliance with the Contract Documents. OWNER may approve or reject CMAR's proposed plan in its sole and absolute discretion.
- 9.2.5. Emergency Contacts: CMAR shall provide OWNER with a list of names and telephone numbers at which CMAR's representative, alternate, superintendent, and other key personnel can be reached during non-working hours in the case of an emergency.

10. GOVERNING LAW AND VENUE—CODE OF CIVIL PROCEDURE SECTION 394

This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394.

The parties specifically agree that by soliciting and entering into and performing services under this agreement, the CMAR shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all work under this agreement is completed, and continuing until the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering this agreement, to waive any and all rights to request that an action be transferred for trial to another county under Code of Civil Procedure Section 394.

1) .

11. ENTIRE AGREEMENT

The Contract Documents represent the entire and integrated agreement between OWNER and CMAR and supersede all prior representations, statements, or agreements concerning the subject matter of this Contract, whether verbal or written.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed on the date first above written.

Dated: _____

ORANGE COUNTY CIVIC CENTER AUTHORITY
a California joint powers authority

By _____

Shane Silsby, Chairman

KIEWIT INFRASTRUCTURE WEST CO.
a California Corporation

Dated: _____

Signature: _____

Title: _____

Print Name: _____

Dated: _____

Signature: _____

Title: _____

Print Name: _____

APPROVED AS TO FORM:

Office of the County Counsel
Orange County, California

By: _____

Dated: _____

***IMPORTANT NOTICE FOR CORPORATIONS:**

Based on California Corporations Code Section 313: One of the following two methods must be used by a corporation when it enters into a contract with the County:

1. The document must be signed by two people. One of them must be the chairman of the board, the president or any vice president. The other must be the secretary, any assistant secretary, the chief financial officer or any assistant treasurer.
2. One corporate officer may sign the Document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally be a corporate resolution.