

**AGREEMENT**

Division 00500

THIS AGREEMENT is made by and between COUNTY OF MONTEREY, a political subdivision of the State of California, hereinafter called "COUNTY," and Newton Construction & Management, Inc., hereinafter called "CONTRACTOR." For reference purposes, the date of this Agreement is the last date opposite the respective signatures below.

COUNTY and CONTRACTOR hereby agree as follows:

**ARTICLE 1. SCOPE OF WORK**

This Job Order Contract (JOC) is an indefinite quantity contract pursuant to which CONTRACTOR will perform a variety of Job Orders, consisting of specific construction tasks. The scope of this JOC is for general construction, repair, remodel and other repetitive related Work. COUNTY has published a Construction Task Catalog® (CTC) containing a series of construction tasks with preset Unit Prices. The CTC was developed using experienced labor and high quality materials. All Unit Prices are based on local labor, material and equipment prices including the current prevailing wages. CONTRACTOR will bid Adjustment Factors to be applied to the Unit Prices. The price of an individual Job Order will be determined by multiplying the preset Unit Prices and the appropriate quantities by the appropriate Adjustment Factor.

The scope of work for this Contract will be determined by the Detailed Scopes of Work issued in connection with individual Job Orders. The Scope of Work (SOW), for each Job Order will be explained to CONTRACTOR at a Joint Scope Meeting. COUNTY will provide a Request for Job Order Proposal and Detailed SOW to CONTRACTOR. CONTRACTOR will be required to review the Detailed SOW and develop a Price Proposal using appropriate tasks, quantities and the applicable Adjustment Factor. COUNTY will review CONTRACTOR's Proposal in detail and if found to be reasonable and acceptable, a Job Order may be issued. The agreed-upon price will be fixed price for the performance of the Detailed SOW.

CONTRACTOR shall, within the time stipulated, perform the contract **checked below** as herein defined and shall furnish all Work, labor, equipment, transportation, material, and services to construct and complete in a good, expeditious, workmanlike, and substantial manner, the project:

- PROJECT NO. JOC, BID NO. FACILITIES 2022-01**
- PROJECT NO. JOC, BID NO. FACILITIES 2022-02**
- PROJECT NO. JOC, BID NO. FACILITIES 2022-03**
- PROJECT NO. JOC, BID NO. FACILITIES 2022-04**

**ARTICLE 2. TIME FOR START AND COMPLETION**

Contract Time commences upon the written execution of the Contract by COUNTY and shall end either one year from the date signed by COUNTY or upon the payment by COUNTY to CONTRACTOR of the maximum amount payable under this Agreement, whichever occurs

earlier. COUNTY will not issue any new Job Orders after the expiration of this Agreement. Any Job Order authorized prior to the expiration of the Agreement must be completed within the time specified in the Job Order. In the event the scheduled completion for any Job Order extends beyond the term of this Agreement, CONTRACTOR and COUNTY agree that the terms of this Agreement shall continue in effect and be applicable for such Job Orders. A separate Job Order Notice to Proceed (NTP) will be issued for each Job Order. Each Job Order will specify a time limit for completion as stated on the Job Order NTP.

**ARTICLE 3. ADJUSTMENT FACTORS**

CONTRACTOR shall perform all Work required, necessary, proper for, or incidental to completing the Detailed SOW called for in each individual Job Order issued pursuant to this Contract for the Unit Prices set forth in the CTC. COUNTY shall pay CONTRACTOR the Job Order Price for completion of Work in accordance with Contract Documents and the Detailed SOW described in each Job Order multiplied by the following Adjustment Factors:

**ADJUSTMENT FACTORS**

The Minimum Contract Value is \$25,000. CONTRACTOR will have the opportunity to receive Job Orders totaling at least \$25,000 during the Contract term. The Maximum Contract Value is \$5,402,865 for the **JOC FACILITIES**  2022-01 or  2022-02 or  2022-03 or  2022-04. COUNTY does not guarantee CONTRACTOR will receive this volume of Work. COUNTY may award contracts or issue Job Orders to other contractors for the same or similar Work during the term of this Agreement. In no event will CONTRACTOR be issued Job Orders which, in total, exceed the Maximum Contract Value. At no time may the sum of the outstanding Job Orders exceed the amount of the Payment Bond and Performance Bond. A Job Order is outstanding until COUNTY has accepted the Work described in the Job Order by recordation of a Notice of Completion. CONTRACTOR will not be issued Job Orders which in total exceed the Maximum Contract Value.

ITEM	DESCRIPTION	ADJUSTMENT FACTORS
1.	<b>Normal Working Hours–General Facilities</b> 7 a.m. to 5 p.m. Monday through Friday	1.0700
2.	<b>Other than Normal Working Hours–General Facilities</b> Hours outside of Normal Working Hours including all day Saturday, Sunday, and COUNTY Holidays	1.0700
3.	<b>Normal Working Hours – Detention Facilities</b> 7 a.m. to 5 p.m. Monday through Friday	1.1500
4.	<b>Other than Normal Working Hours–Detention Facilities</b> Hours outside of Normal Working Hours including all day Saturday, Sunday, and COUNTY Holidays	1.1500

**ARTICLE 4. LIQUIDATED DAMAGES**

COUNTY and CONTRACTOR recognize that time is of the essence of this Agreement and that County will suffer financial loss, if all or any part of the Work is not completed within the time specified in the Job Order, plus any extensions thereof. Accordingly, COUNTY and CONTRACTOR agree that liquidated damages for delay will be established by COUNTY for

each Job Order. CONTRACTOR shall pay COUNTY the dollar amount stipulated in the Job Order for each day that expires after the time specified therein for CONTRACTOR to achieve Completion.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by COUNTY resulting from delay in completion of the Work.

Liquidated damages for delay shall only cover project administrative (such as Project management and consultant expenses) and cost damages suffered by COUNTY as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from COUNTY (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

#### ARTICLE 5. NOTIFICATION OF THIRD-PARTY CLAIMS

COUNTY shall notify CONTRACTOR of the receipt of any third-party claim relating to the contract and is entitled to recover its reasonable costs incurred in providing the notification as provided in Public Contract Code Section 9201.

#### ARTICLE 6. COMPONENT PARTS OF THIS CONTRACT

The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

- Notice to Bidders
- Information for Bidders
- Bid, as accepted
- Noncollusion Affidavit
- Workers' Compensation Certificate
- Statement Concerning Employment of Undocumented Aliens
- Iran Contracting Certification
- Contractor's Certification of Good Faith Effort to Employ Monterey Bay Area Residents
- Written Plan to Recruit Monterey Bay Area Residents, when applicable
- Bid Bond or Bidder's Security
- Agreement
- Performance Bond
- Payment Bond
- Insurance Certificate
- Division 00710 General Conditions, **Bid Nos. FACILITIES 2022-01, FACILITIES 2022-02, FACILITIES 2022-03, FACILITIES 2022-04**
- Project Specifications
- Construction Task Catalog<sup>®</sup>
- Technical Specifications
- Community Development Block Grant (CDBG) Subrecipient Agreement
- Federal Provisions-Caltrans Local Assistance Manual
- Federal Emergency Management Agency (FEMA) Standard Provisions and Requirements
- Monterey County Telecommunications Cabling and Pathway Systems Requirements
- As issued, Addenda Nos: 1 and 2

All of the above-named Contract Documents are intended to be complementary. Work required by one of the above-named Contract Documents and not by others shall be done as if required by all.

**ARTICLE 7. CONSENT TO USE ELECTRONIC SIGNATURES**

The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C. Section 7001 et seq.; California Government Code Section 16.5; and California Civil Code Section 1633.1 *et. seq.* Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Contract Documents to this Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

The parties to this Agreement understand and agree that this Agreement can be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in PDF via e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.

IN WITNESS WHEREOF, the parties have duly executed this instrument with electronic signatures via DocuSign, which shall be for all purposes deemed an original thereof, on the dates set forth below.

**COUNTY OF MONTEREY**

**By:** \_\_\_\_\_

**Name:** Randell Ishii, MS, PE, TE

**Title:** Department of Public Works, Facilities, & Parks (PWFP) Director

**Date:** \_\_\_\_\_

**APPROVED AS TO FORM**

**CONTRACTS/PURCHASING**

**By:** \_\_\_\_\_

**Name:** Debra R. Wilson

**Title:** Contracts/Purchasing Officer

**Date:** \_\_\_\_\_

**APPROVED AS TO FORM**

**OFFICE OF THE COUNTY COUNSEL**

Leslie J. Girard, County Counsel

**By:**  \_\_\_\_\_  
DocuSigned by: A1933B26E717442

**Name:** Mary Grace Perry

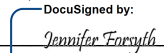
**Title:** Deputy County Counsel

**Date:** 10/4/2022 | 9:11 AM PDT

**APPROVED AS TO FISCAL TERMS**

**COUNTY AUDITOR-CONTROLLER**

Rupa Shah, Auditor Controller

**By:**  \_\_\_\_\_  
DocuSigned by: 4E7E687B75454AE...

**Name:** Gary Giboney

**Title:** Chief Deputy Auditor-Controller

**Date:** 10/4/2022 | 9:41 AM PDT

**APPROVED AS TO INDEMNITY/INSURANCE PROVISIONS**

OFFICE OF THE COUNTY COUNSEL, Leslie Girard, County Counsel-Risk Manager

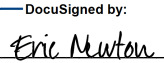
**By:** \_\_\_\_\_

**Name:** Danielle P. Mancuso

**Title:** Risk Manager

**Date:** \_\_\_\_\_

**CONTRACTOR: NEWTON CONSTRUCTION & MANAGEMENT, INC.**


**By:**  \_\_\_\_\_  
DocuSigned by: 1AB10E1BBD8D40A...

**Name:** Eric Newton

**Title:** President

*(Per California Corporations Code Section 313, for Corporations, first signatory should be Chair, President OR Vice President)*

**Date:** 10/3/2022 | 9:39 PM PDT

**By:**  \_\_\_\_\_  
DocuSigned by: 1AB10E1BBD8D40A...

**Name:** Eric Newton

**Title:** Treasurer

*(Per California Corporations Code Section 313, for Corporations, second signatory should be the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer OR CFO)*

**Date:** 10/3/2022 | 9:39 PM PDT

**COMPANY ADDRESS:**

STREET ADDRESS: 2436 BROAD STREET

CITY/STATE/ZIP: SAN LUIS OBISPO, CALIFORNIA 93401

**Contractor's License Type:** A, B, C-10, C-16

**License Number:** 783608

**License Expiration Date:** September 30, 2024

**NOTE:** CONTRACTORS ARE REQUIRED TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P O BOX 26000, SACRAMENTO, CALIFORNIA 95826

**INSTRUCTIONS:** If bidder is a corporation, the full legal name of the corporation shall be set forth above together with the signatures of two (2) officers authorized to sign per California Corporations Code Section 313 and the document shall bear the corporate seal; if bidder is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers; if bidder is a partnership, the full name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if bidder is an individual, his/her signature shall be placed above.