

Attachment 3

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**Three duplicate originals
Job Order Contract C with Newton
Construction & Management, Inc.**



COUNTY OF SANTA BARBARA
Agreement Conditions for:
General Building Construction Job Order Contract
Project 8001-21 BC:-.....

1. **CONTRACT**: This Agreement incorporates by reference all of the General Conditions, JOC Special Conditions, Construction Task Catalog[®], and Job Order Contracting Technical Specifications provided by COUNTY for the Contract identified above. CONTRACTOR acknowledges receipt of all such documents as were not already in Contractor's possession. Said incorporated documents, this Agreement, any Notice to Bidders, any Bid Addenda, the Bid Bond, the Faithful Performance Bond, Payment Bond, and Letter of Bondability are referred to herein as the "Contract" or "Contract Documents." Copies of all said documents are on file in the Department of General Services Office of the COUNTY and have been and will be made available to the CONTRACTOR during the term of this Agreement.
2. **WORK**: CONTRACTOR agrees, at his own proper cost and expense, to furnish all the work and all equipment and materials necessary to perform and complete the work described in the documents referred to above, in a good and workmanlike manner to the satisfaction of the Director of General Services of said COUNTY, all in strict accordance with the Contract Documents provided.
3. **EXCAVATIONS**: Before any pavement resurfacing, displacement or excavation of the ground that may be required by any performance under this Agreement, the CONTRACTOR shall obtain an inquiry identification number by calling Underground Service Alert (USA) 8-1-1 or by such other means as may be required; shall conform to all requirements of Government Code Sections 4215 through 4217 regarding any such pavement resurfacing, displacement or excavation, including the payment of any fees required; and shall facilitate performance by the COUNTY of any obligation required of the COUNTY under said Sections. No Job Order shall be performed unless and until the provisions of such Sections are complied with and the COUNTY Representative is notified regarding the compliance.
4. **COUNTY REPRESENTATIVE**: The COUNTY Representative referred to in the Contract Documents shall be determined per individual Job Order.
5. **PAYMENT**: The Contract is an indefinite-quantity contract for construction work and services. The Maximum Contract Value is \$1,000,000; however, California Public Contract Code allows for the Maximum Contract Value to be increased up to \$5,185,091 within the one-year term. The County therefore reserves the right to increase the Maximum Contract Value upon mutual consent and provided additional bonds are provided. As full compensation for furnishing all labor, supervision, overhead, materials and equipment and for doing all the work required, necessary, proper for or incidental to completing the Detailed Scope of Work called for in each individual Job Order issued pursuant to this Contract, CONTRACTOR shall be paid the Job Order Price.

The CONTRACTOR assumes and will provide against any and all loss or damage arising out of the nature of each Job Order undertaken, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of a Job Order until its acceptance by the COUNTY, and assumes any and all expenses incurred by or in consequence of suspension or discontinuance of a Job Order, for well and faithfully completing each Job Order and the whole thereof, in the manner and to the requirements of the Contract and the Job Order and directions of the COUNTY Representative, hereunder.

6. **RIGHT TO AUDIT**: CONTRACTOR shall maintain and make available all books, papers, job descriptions, records, detail costs, estimates, claims, and accounts, including payment, property, payroll, personnel, subcontractors, sub-subcontractors and financial records related to or which arise out of a Job Order or under the terms or conditions of the Contract. The form of record keeping shall be subject to approval by COUNTY. These books, papers, records, claims, and

accounts shall be made available for examination during normal business hours by COUNTY or COUNTY'S representative and shall be retained at CONTRACTOR'S principal place of business in California for audit during normal business hours at such place for four (4) years after recording of the Notice of Completion of the final Job Order. CONTRACTOR shall provide an office to enable COUNTY and COUNTY'S representative to conduct such audit.

The COUNTY will have the right to audit CONTRACTOR'S project records. Records must be made available in a form satisfactory to the Santa Barbara County Auditor-Controller.

7. **EXTRA WORK:** Extra work, materials, resolution of disputes, corrections, and/or changes to the Detailed Scope of Work as are required for the proper completion of the work or the improvement contemplated may be effected or authorized by issuance of a Supplemental Job Order.

8. **COMPLIANCE WITH LAW, AMENDMENTS:** CONTRACTOR shall keep fully informed of all laws, ordinances and regulations which do or may affect the conduct of a Job Order, the materials used therein or persons engaged or employed thereon and all such orders of bodies and tribunals having any jurisdiction over same. If it be found that the Contract Documents for a Job Order conflict with any such law, ordinance or regulation, the CONTRACTOR shall immediately report same to the COUNTY Representative in writing. CONTRACTOR shall at all times observe and comply with and shall cause all agents and employees to observe and comply with all such laws, ordinances, regulations or decrees as the same now exists or may be hereafter amended and all superseding provisions thereof. CONTRACTOR acknowledges, particularly, the provisions of Sections 9364 and Sections 9550 and 9566, inclusive, of the Civil Code of California. CONTRACTOR shall protect and indemnify the County of Santa Barbara, the Board of Supervisors, the Director of General Services, and/or any officer, agent or employee of the COUNTY against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or decree whether by CONTRACTOR, or a subcontractor, agent or employee.

9. **PAYMENTS NOT ACCEPTANCE:** No certificate given or payments made under this Contract, except the final payment shall be evidence of the performance of this Contract, either wholly or in part, against any claim upon CONTRACTOR. Final payment for a Job Order performed under this Contract shall not be made until the lapse of thirty (30) days after the Notice of Completion of said Job Order has been filed for record and no payment shall be construed to be acceptance of any defective work or improper materials. CONTRACTOR agrees that the final payment for each Job Order and the payment of undisputed contract amounts due for any related Supplemental Job Orders, shall release the County of Santa Barbara from any and all claims or liabilities on account of that Job Order or any related Supplemental Job Orders. In addition to guarantees required elsewhere, CONTRACTOR shall and does hereby guarantee all workmanship and material to be free of defects and fit for the purposes intended for a period of one year from and after either the date of acceptance of the Job Order or the recordation of the Notice of Completion by the COUNTY, and CONTRACTOR shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the COUNTY Representative, is or becomes defective during the period of said guarantee without expense whatsoever to the COUNTY.

10. **PREVAILING WAGE RATES:** CONTRACTOR shall comply with the California Labor Code, including but not limited to the payment of prevailing wages when required. The general prevailing wage rates determined by the Director of Industrial Relations, for the county or counties in which the work is to be done, are on file at the office of the General Services Department Capital Projects Division, 1105 Santa Barbara Street, Santa Barbara, CA 93101. Copies of these general prevailing wage rates shall be made available to any interested party on request. Changes, if any to the general prevailing wage rates will be available at the same location. The prevailing wage rates are also available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov/dlsr/pwd>. The CONTRACTOR shall post applicable prevailing wage rates at each job site.

No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered

with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

11. CONTRACT DOCUMENTS ACKNOWLEDGED: CONTRACTOR hereby declares that he has read the "Contract Documents" pertaining to the work to be accomplished hereunder and fully understands the intent and meaning of the same.

12. TIME FOR COMMENCEMENT, COMPLETION: The term of this Contract shall be for one year from the date of execution by both the CONTRACTOR and the COUNTY. The CONTRACTOR shall begin Work as indicated in the Notice to Proceed for each Job Order, unless otherwise provided, and shall complete each Job Order within its Job Order Completion Time. Attention is directed to the provisions of this Agreement pertaining to Liquidated Damages for failure to complete a Job Order within its Job Order Completion Time.

13. WORKERS' COMPENSATION INSURANCE: CONTRACTOR certifies as to knowledge of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. CONTRACTOR will comply with such provisions before commencing the performance of the work of this Contract.

14. PROGRESS PAYMENT NO WAIVER FOR DELAY: Any progress payment made after the Job Order Completion Time has expired will not constitute a waiver of any liquidated damages heretofore agreed upon as part of this Contract.

15. GUARANTEE BONDS: Before any performance under this Agreement, the CONTRACTOR shall provide the security required by statute for the payment of all workers and suppliers, and security for faithful performance of all terms and conditions of this Contract, in an amount and form approved by the COUNTY. Both securities shall contain provisions which automatically increase amounts thereof and/or time of completion or both for all Job Orders and Supplemental Job Orders provided pursuant to this Contract.

16. NON-DISCRIMINATION: The CONTRACTOR acknowledges that this Contract is subject to the provisions of Article XIII of Chapter 2 of the Santa Barbara County Code, providing against discrimination in employment. The CONTRACTOR agrees to perform all requirements of a contractor under the provisions of said Article and to pay all costs occasioned to the COUNTY by any noncompliance by the CONTRACTOR.

17. DISPUTES: Should any dispute arise respecting the construction or meaning of any of the Contract Documents affecting the work or respecting the true value of any extra work or work omitted, the dispute shall be resolved by the COUNTY Representative whose decision shall be final and binding upon the parties. If, after the decision of the COUNTY Representative as provided herein, claims (as defined in Public Contracts Code Section 20104) under this Contract are filed by CONTRACTOR against COUNTY and those claims are in the aggregate amount of \$375,000 or less, said claims shall be resolved pursuant to Public Contracts Code Sections 20104 through 20104.8, inclusive.

18. SUBSTITUTION OF MATERIALS, SUBSTITUTION OF CONTRACTORS: The COUNTY Representative is authorized to act on behalf of the awarding authority in any matters requiring consent, notice or hearing in order to substitute materials or equipment specified or to substitute subcontractors.


19. SURVIVAL: All provisions of this Contract which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

County of Santa Barbara General Services
Capital Division

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by the COUNTY

CONTRACTOR

Newton Construction & Management, Inc

By:  _____

Authorized Representative

Name: Eric Newton

Title: President

Address: 2436 Broad Street

City/State/Zip: San Luis Obispo, CA 93401

COUNTY OF SANTA BARBARA:

Janette D. Pell, Director
General Services Department

By:  _____
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Department Head

COUNTY SIGNATURE PAGE

ACCEPTED AND AGREED ON THIS DATE _____

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

"COUNTY"

County of Santa Barbara

By: _____

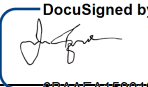
By: _____

Date: _____

ADDITIONAL COUNTY SIGNATURE PAGE

APPROVED AS TO ACCOUNTING FORM:

Betsy Schaffer, CPA, CPFO
Auditor-Controller

DocuSigned by:

By: _____
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Deputy

APPROVED AS TO FORM:

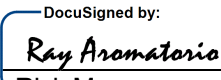
Rachel Van Mullen
County Counsel

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By: _____
DDA627A89DD64A5
Deputy County Counsel

APPROVED AS TO FORM:

Ray Aromatorio
Risk Management

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By: _____
Ray Aromatorio
Risk Manager

APPROVED AS TO FORM:

Janette D. Pell, Director
General Services Department

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By: _____
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Department Head