

## AGREEMENT

**THIS AGREEMENT**, made on \_\_\_\_\_, by and between the City of San Luis Obispo, a municipal corporation and charter city, San Luis Obispo County, California (hereinafter called the Owner) and **Smith Mechanical-Electrical-Plumbing** (hereinafter called the Contractor).

### WITNESSETH:

That the Owner and the Contractor for the consideration stated herein agree as follows:

**ARTICLE 1, SCOPE OF WORK:** The Contractor shall perform everything required to be performed, shall provide and furnish all of the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to complete all the work of construction of

### **HVAC AIR HANDLER REPLACEMENT AT PARKING SERVICES, SPECIFICATION NO. 2000075-07**

in strict compliance with the plans and specifications therefor, including any and all Addenda, adopted by the Owner, in strict compliance with the Contract Documents hereinafter enumerated.

It is agreed that said labor, materials, tools, equipment, and services shall be furnished and said work performed and completed under the direction and supervision and subject to the approval of the Owner or its authorized representatives.

**ARTICLE II, CONTRACT PRICE:** The Owner shall pay the Contractor as full consideration for the faithful performance of this Contract, subject to any additions or deductions as provided in the Contract Documents, the contract prices as follows:

Item No.	Item	Unit of Measure	Estimated Quantity	Item Price (in figures)	Total (in figures)
1.	Demolition	LS	1	---	\$6,788
2.	Ductwork	LS	1	---	\$52,995.00
3.	Refrigerant Piping	LS	1	---	\$12,530.00
4.	Equipment	LS	1	---	\$62,805.00
5.	Electrical	LS	1	---	\$18,145.00
6.	Startup, Test, & Balance	LS	1	---	\$6,003.00
7.	Fire Alarm Integration	LS	1	---	\$6,570.00
8.	Landscaping Gravel	LS	1	---	\$2,862.00
9.	Controls – Integration of Mitsubishi/Trane TE-200 for	LS	1	---	\$11,191.00

	compatibility off future installatiton of DDC controls over BACnet IP				
10.	Air Balancing Report	LS	1	---	\$350.00

**BID TOTAL: \$180,239.00**

Payments are to be made to the Contractor in compliance with and subject to the provisions embodied in the documents made a part of this Contract.

Should any dispute arise respecting the true value of any work omitted, or of any extra work which the Contractor may be required to do, or respecting the size of any payment to the Contractor, during the performance of this Contract, said dispute shall be decided by the Owner and its decision shall be final, and conclusive.

**ARTICLE III, COMPONENT PARTS OF THIS CONTRACT:** The Contract consists of the following documents, all of which are as fully a part thereof as if herein set out in full, and if not attached, as if hereto attached:

1. Notice to Bidders and Information for Bidders
2. Standard Specifications and Engineering Standards
3. Special Provisions, any Addenda, Plans and Contract Change Orders
4. Caltrans Standard Specifications and Standard Plans 2015
5. Accepted Bid and Bid Bond
6. List of Subcontractors
7. Public Contract Code Sections 10285.1 Statement
8. Public Contract Code Section 10162 Questionnaire
9. Public Contract Code Section 10232 Statement
10. Labor Code Section 1725.5 Statements
11. Bidder Acknowledgements
12. Qualifications
13. Non-collusion Declaration
14. Agreement and Bonds
15. Insurance Requirements and Forms

**ARTICLE IV INDEMNIFICATION:** The 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 the 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. Should conflict of interest principles preclude a single legal counsel from representing both the City and the Contractor, or should the City otherwise find the Contractor's legal counsel unacceptable, then the Contractor shall reimburse the City its costs of defense, including without limitation reasonable legal counsel 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.

The Contractor obligations under this section apply regardless of whether such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of the City under any provision of this agreement, the Contractor shall not be required to indemnify and hold harmless the City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where the City is shown to have been actively negligent and where the City's active negligence accounts for only a percentage of the liability involved, the obligation of the Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of the City.

**ARTICLE V.** It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said bid conflicting herewith.

**IN WITNESS WHEREOF**, the parties to these presents have hereunto set their hands this year and date first above written.

**CITY OF SAN LUIS OBISPO**  
a Municipal Corporation

**CONTRACTOR:**  
Smith Mechanical-Electrical-Plumbing

By: \_\_\_\_\_  
Whitney McDonald,  
City Manager

By: \_\_\_\_\_  
Larry Brannon  
Its: President

APPROVED AS TO FORM

(2<sup>nd</sup> signature required if Corporation)

By: \_\_\_\_\_  
J. Christine Dietrick,  
City Attorney

By: \_\_\_\_\_  
Dane Austen  
Its: Vice President

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