

**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 NEWTON CONSTRUCTION & MANAGEMENT, INC. (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

**BATTERY ELECTRIC BUS CHARGING INFRASTRUCTURE, SPECIFICATION NO. 20000403**

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.	SS <sub>(1)</sub>	Item Description	Unit of Measure	Estimated Quantity	Item Price (in figures)	Total (in figures)
1	17	Clearing and Grubbing	LS	1	\$6,000.00	\$6,000.00
2	15	Remove Chain Link Fence	LF	20	\$70.00	\$1,400.00
3	41	Concrete Removal	SQFT	402	\$32.00	\$12,864.00
4	26	Class II Aggregate Base	CY	11	\$400.00	\$4,400.00
5	80	Chain Link Fence	LF	53	\$140.00	\$7,420.00
*6	77	Pothole Existing Utilities	EA	4	\$500.00	\$2,000.00
7	51	Power Block Concrete Pad	LS	1	\$30,000.00	\$30,000.00
8	86	Power Block Mounting Plates	EA	6	\$300.00	\$1,800.00
9	86	Set Power Block	EA	2	\$3,000.00	\$6,000.00

10	15	Modify Charging Station Concrete Pad and Set Charger	EA	4	\$4,000.00	\$16,000.00
11	86	Pull Boxes	EA	3	\$3,000.00	\$9,000.00
12	86	Conduit, Bends, and Material	LS	1	\$55,000.00	\$47,000.00
13	86	Conductors	LS	1	\$92,000.00	\$92,000.00
14	77	Circuit Breakers	LS	1	\$25,000.00	\$25,000.00
15	12	Bollards	EA	4	\$1,800.00	\$7,200.00
16	40	Concrete Pavement	SQFT	402	\$30.00	\$12,060.00
17	84	Striping – Thermoplastic	LS	1	\$1,750.00	\$1,750.00

**BID TOTAL: \$290,135.20**

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.

**ARTICLE VI.** Contractor is subject to compliance with all Required Federal Clauses per Exhibit A.

**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:  
Newton Construction & Management,  
Inc.

\_\_\_\_\_  
Whitney McDonald, City Manager

By: \_\_\_\_\_  
Eric Newton  
Its: President and Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
J. Christine Dietrick  
City Attorney

By: \_\_\_\_\_  
Rodessa Newton  
Its: Treasurer