

**FIRST REVISED AND RESTATED
AGREEMENT**

(To be completed and submitted after Contract is Awarded)

THIS AGREEMENT, made and entered into this 7th day of November, 2017, by and between the CITY OF SALINAS, a California Charter City and municipal corporation, hereinafter called "City", and Newton Construction & Management Inc., a California corporation, hereinafter called "Contractor", both of which are hereinafter collectively referred to as "the Parties."

RECITALS

WHEREAS, on February 7, 2017, the Salinas City Council Approved Resolution No. 21118 (N.C.S.) approving awards of Job Order Contract (JOC) for Miscellaneous Type B Building/Building Maintenance Work 2016-JOB03-Type B for one-year terms, with four one-year renewal options to Staples Construction Company Inc., Newton Construction & Management Inc., and Ausonio Inc. for guaranteed minimum amounts of \$50,000 and maximum amounts of \$1 million; and

WHEREAS, on February 7, 2017, the City and Contractor entered into a Contract Agreement regarding the "JOB ORDER CONTRACTING (JOC) for Miscellaneous Type B Building/Building Maintenance Work, including demolition work, and other matters (the "Original Contract Agreement") to furnish and provide all labor, materials, tools, appliances, equipment, and all other things required or necessary to be furnished, provide or done, and build, erect, construct and complete the work at the time and in the manner provided; and

WHEREAS, the City desires to increase the not guaranteed annual maximum contract value of each of the three JOC contracts to an "estimated annual value of One Million Dollars (\$1 Million)", and to include any unused allocations to be carried-over to the following year(s) or until contract termination; and

WHEREAS, each of the three contracts shall have a not guaranteed maximum value of Five Million Dollars (\$5 million); and

WHEREAS, each of the three contracts will have a term of five years, unless the maximum value of five million dollars is reached, in which case the contract will end; and

WHEREAS, the minimum contract value of each JOC contract will remain at \$50,000.

NOW, THEREFORE, in mutual consideration of the covenants, terms, and conditions set forth herein, the Parties agree that the JOC contracts with: Ausonio Incorporated; Newton Construction & Management Incorporated; and Staples Construction Company are hereby revised and restated in their entirety as follows:

W I T N E S S E T H

FIRST: Contractor hereby covenants and agrees to furnish and provide all labor, materials, tools, appliances, equipment, plant and transportation, and all other things required or necessary to be furnished, provide or done, and build, erect, construct and complete the work at the time and in the manner provided, and in strict accordance with, the Contract Documents therefore, for

**JOB ORDER CONTRACTING (JOC)
for Miscellaneous "Type B" Building/Building Maintenance Work
2016-JOB03-Type B**

Adopted by the Council of the City of Salinas on November 7, 2017, and identified by the signature of Contractor and the signature of the Mayor of the City of Salinas.

The Contract is an indefinite-quantity contract for construction work and services for one Five-Year term. The Minimum Contract Value of Job Orders that the Contractor is guaranteed the opportunity to perform under this Contract is \$50,000 (for life of contract). The, Not-guaranteed, Estimated Annual Contract Value is \$1,000,000 with a Maximum Aggregate Contract Value of \$5,000,000 (for life of contract). The contract will have a term of five (5) years unless the maximum aggregate contract value of five million dollars is reached, in which case the contract will end. At the discretion of the Owner, and if deemed to be in the public interest, the Annual Estimated Maximum Contract Value of this Contract may be increased.

SECOND: It is expressly understood and agreed that this Contract consists of the following documents, all of which are incorporated into this agreement and made a part hereof as fully and completely as if set forth herein verbatim, to wit:

- a) **Notice to Bidders;**
- b) **Signed and executed Bid and Proposal of Contractor, and if any signed Addendum, as accepted by City of Salinas;**
- c) **Bidder's Statement of Financial Responsibility, Technical Ability, and Experience;**
- d) **Insurance Certification;**
- e) **Completely executed and signed all required City of Salinas forms;**
- f) **Instructions to Successful Bidder and General Conditions;**
- g) **Bond of Faithful Performance;**
- h) **Bond of Faithful Performance-Addendum;**
- i) **Payment Bond (Labor and Materials);**
- j) **Payment Bond-Addendum (Labor and Materials);**
- k) **Certificate of Insurance;**
- l) **Bidder's Statement of Subcontractors;**
- m) **JOC Special Conditions;**
- n) **Construction Task Catalog®;**
- o) **Standard Specifications, Design Standards, and Standard Plans, Public Works Department, City of Salinas, 2008 Edition, or as amended, or otherwise indicated in the Specifications;**
- p) **Technical Specifications; and**
- q) **this Agreement**

THIRD: That said Contractor agrees to receive and accept the following Adjustment Factors and Construction Task Catalog® Unit Prices as full compensation for furnishing all materials and for doing all the work embraced and contemplated in this Agreement and as set forth in the Proposal adopted by the City of Salinas, a true copy thereof hereto attached; also, for all loss or damage arising out of the nature of said work or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until the acceptance thereof by the City of Salinas and for all risk connected with the work, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the said Contract Documents and the provisions of this agreement, and the requirements of the City Engineer under them, to wit: The Adjustment Factors as set forth in the Proposal of said Contractor for the work to be constructed and completed under this Agreement, which Adjustment Factors shall be considered as though repeated herein.

The Contractor shall perform all 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 for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:

Normal Working Hours Adjustment Factor 7:00 am to 4:00 pm Monday to Friday, except for Owner Holidays:

1. 1 2 5 0 .

Other Than Normal Working Hours Adjustment Factor 4:00 pm to 7:00 am Monday to Friday, and all day Saturday, Sunday and Owner Holidays:

1. 1 8 5 0 .

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The undersigned Contractor further agrees to so plan the work and to prosecute it with such diligence that said work, and all of it, shall be completed on or before the expiration of the time specified in the Job Order after execution of the Contract on behalf of the City of Salinas and the receipt from the City of Salinas of a notice to proceed with the work.

FOURTH: The City of Salinas hereby promises and agrees with said Contractor to employ, and does hereby employ, said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby Contracts to pay the same at the time, in the manner and upon the conditions set forth in the Specifications and the said parties, for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained.

FIFTH: No interest in this agreement shall be transferred by the Contractor to any other party, and any such transfer shall cause the annulment of this Contract, so far as the City of Salinas is concerned. All rights of action, however, for any breach of this Contract are reserved to the City of Salinas.

SIXTH: The Contractor shall keep harmless and indemnify the City of Salinas, its officers, employees and agents, from all loss, damage, cost or expense that arises or is set up for infringement of patent rights of anyone for use by the City of Salinas, its officers, employees, or agents, or articles supplied by the Contractor under this Contract of which he/she is not entitled to use or sell. Contractor agrees to, at his/her own cost and expense, defend in court the City of Salinas, its officers, agents, and employees, in any action which may be commenced or maintained against them or any of the, on account of any claimed infringement of patent rights, arising out of this agreement.

Contractor shall indemnify and save the City of Salinas and its officers, agents, and employees harmless against all claims for damages to person or property arising out of Contractor's execution of the work, or otherwise by the conduct of the Contractor or its employees, agents, Subcontractors, or others (including the active and passive negligence of the City of Salinas, its officers, agents, and employees) in connection with the execution of the work covered by this Contract and any and all costs, expenses, attorneys' fees and liability incurred by the City of Salinas, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not, except only those claims arising from the sole negligence or willful conduct of the City of Salinas, its officers, agents, or employees. Further, Contractor at its own expense shall, upon written request by the City of Salinas, defend any such suit or action brought against the City of Salinas, its officers, agents, or employees.

Contractor shall reimburse the City of Salinas for all costs and expense (including but not limited to fees and charge of architects, engineers, attorneys, and other professional and court costs) incurred by the City of Salinas in enforcing the provisions of this Section.

SEVENTH: The Contractor agrees to immediately repair and replace all defective material and workmanship discovered within **1 year** after acceptance of final payment for each individual Job Order by Contractor and to indemnify said City of Salinas against all loss and damage occasioned by any such defect, discovered within said year, even though the damage or loss may not be ascertained until after the expiration thereof. Provided, however, that if such failure of the Contractor to perform should not, by reasonable diligence, be discoverable or discovered within said **1 year**, then the obligation of the Contractor to repair and replace said defective material or workmanship shall continue until **1 year** after the actual discovery thereof.

EIGHTH: The Contractor agrees at all times during the progress of the work to carry with insurance carriers approved by the City of Salinas full coverage workmen's compensation and public liability insurance in the form and to the extent called for in Section 7-1.12 of both the State of California Standard Specifications, Standard Specifications, Design Standards, and Standard Plans, Development and Engineering Services Department, City of Salinas, 2008 Edition. Certificates of Insurance shall specify whether coverage is on a "claims occurrence" or "claims made" form. If the policy is "claims made", Contractor shall be required to obtain a bond, which shall remain in effect until **12 months** following work completions.

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Contractor shall also advise the insurance carrier to inform the City of Salinas of the unpaid limits of the policy. Such insurance policy shall contain an endorsement that the same shall not be canceled nor the amount of coverage be reduced until at least **30 calendar days** after receipt by the City of Salinas by certified or registered mail of a written notice of such cancellation or reduction in coverage.

It is acknowledged by the parties to this agreement that all insurance coverage required to be provided by the Contractor or any other party in favor of the City of Salinas/additional insured is intended to apply first on a primary and non-contributing basis in relation to any other insurance of self-insurance (primary or excess) available to the City of Salinas and any employee of the City of Salinas. The Contractor agrees to have its policies endorsed accordingly. In addition, the Contractor also accepts to provide commercial general liability (CGL) endorsement form CG 20 10 11 85. An acceptable alternative would be the use of two ISO forms together: The CG 20 10 04 13 (“ongoing operations”) and the CG 20 37 04 13 (“completed operations”). The City of Salinas may also accept any other comparable endorsement, which does not further limit coverage and which may be approved and accepted by the City’s Legal Department staff.

NINTH: Contractor agrees to comply with all applicable federal, state and municipal laws and regulations, including but not limited to California Labor Code Division 2, Part 7, Chapter 1.

Apprenticeship Utilization: The Contractor agrees to comply with the Department of Apprenticeship Standards of the California Labor Code Section 1777.5, and the following:

Prior to commencing work on the Awarded Contract, the Contractor shall submit Contract Award information (form DAS 140) to all applicable apprenticeship programs that can supply apprentices to the site of the public work. **A copy of this information shall also be provided to the City of Salinas.**

The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the public work shall be no less than 1 hour of apprentice work for every 5 hours of journeyman work. The Contractor shall request dispatch of required apprentices from an Apprenticeship Program at least 72 hours prior to beginning of their work on the project. **Provide written documentation in the event no apprentices are dispatched.**

At the end of each month of work on the Contract, the Contractor and Subcontractors shall **submit a record of the utilization of apprentices for the previous months’ work.**

Within **60 calendar days** after concluding work on the Contract, each Contractor and Subcontractor shall **submit to the City of Salinas and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Contract.**

TENTH: Contractor agrees to comply with all requirements of the City of Salinas Local Hiring Preference Ordinance 2330, Salinas City Code Chapter 12, Article IV, which hereby establishes a local hiring requirement procedures on Public Works Contracts, with respect to person(s) hired directly by the Contractor and all persons hired by the Contractor’s Subcontractor(s).

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IN WITNESS WHEREOF, City of Salinas has caused this instrument to be executed and its corporate name and seal to be hereunto attached by its Mayor, pursuant to resolution theretofore duly adopted by the Council of the City of Salinas, and Contractor has caused this instrument to be executed, the day and year first herein above written.

CITY OF SALINAS, A Municipal Corporation

By: _____

Joe Gunter, Mayor

ATTEST:

Patricia Barajas, City Clerk

(Attach Notary Acknowledgment)

Contractor (signature in blue ink)

NOTE: Please refer to the “General Instructions to Low Bidder” for specific signature requirements.

I hereby approved the form of the foregoing Contract this _____ day of _____, 20____.

Christopher A. Callihan, Esq., City Attorney

Checked by the City Engineer on _____

James E. Sandoval
Deputy PW Director/ City Engineer

ALL SIGNATURES SHALL BE NOTARIZED EXCEPT THOSE OF THE CITY OFFICIALS