

SAN MATEO COUNTY  
COUNTY MANAGER'S OFFICE

DATE: June 25, 2001  
HEARING DATE: July 3, 2001

TO: Honorable Board of Supervisors  
FROM: Paul T. Scannell, Assistant County Manager *Paul T. Scannell*  
SUBJECT: **Amendment to Agreement for Construction Management/Architectural/Engineering Services for a new Sheriff's Forensics Laboratory and Coroner's Offices at San Mateo County Tower Rd. Complex, Belmont, CA**

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**Recommendation:**

Adopt a Resolution amending Agreement with Turner Construction Co. to further delineate instructions on change order and trade contractor processes and procedures and authorize the Assistant County Manager to execute said amended agreement.

**Background:**

On May 8, 2001, by Resolution No.64426, the San Mateo County Board of Supervisors authorized and directed the County Manager to execute an Agreement for complete construction management / architectural/engineering services in connection with the new San Mateo County Sheriff's Forensics Laboratory and Coroner's Office at Tower Rd. Government Center, Belmont, CA.

**Discussion:**

The amended agreement specifically addresses in more detail than offered in original Agreement and to the betterment of the County's interests, instructions to Turner Construction in Para.2-Definitions; Para.3-Turner's Responsibilities; Para.4-Payments; Para.6-County's Responsibilities; insertions of Paras.12-Release, 14-Liquidated Damages, 15-Payment of Damages, Para.26-Guarantees and Warranty, 32-Existing Conditions, 33-As-Built Documents and 34-Adjacent Facilities.

**Fiscal Impact:**

None

Cc: Sheriff Donald Horsley  
Robert Foucrault, Dep. Coroner  
Lee Lazaro, Sheriff's Office  
Sara Medina, County Manager's Office  
Chris Motley, County Counsel  
Frank Battipede, County Manager's Office

RESOLUTION NO \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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**RESOLUTION AUTHORIZING ASSISTANT COUNTY MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT FOR COMPLETE CONSTRUCTION MANAGEMENT / ARCHITECTURAL / ENGINEERING SERVICES IN CONNECTION WITH THE NEW SAN MATEO COUNTY SHERIFF'S FORENSICS LABORATORY AND CORONER'S OFFICE, TOWER RD. GOVERNMENT CENTER, BELMONT, CALIFORNIA**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, there has been presented to this Board of Supervisors for its consideration and acceptance an amendment to an agreement, reference to which is hereby made for further particulars, whereby the County of San Mateo agrees to enter into an amended agreement with Turner Construction to render professional services as set forth in said agreement;

**WHEREAS**, this Board has been presented with a form of such amended agreement and said Board has examined and approved same as to both form and content and desires to enter into same; with such changes other than cost as may later be approved by the County Manager and the County Counsel; and

**NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED AND ORDERED**

that the President of this Board of Supervisors hereby authorized and directed the Assistant County Manager to execute said amended agreement as is approved by the County Manager and the County Counsel for and on behalf of the County of San Mateo.

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**AGREEMENT BETWEEN COUNTY OF SAN MATEO  
and  
TURNER CONSTRUCTION COMPANY**

This agreement is between the County of San Mateo, a political subdivision of the State of California, hereinafter referred to as County, and Turner Construction Company, hereinafter referred to as Turner.

The parties hereto mutually agree to the terms and conditions set forth herein:

1. CONTRACT DOCUMENTS.

The Contract Documents consist of the Agreement and each of the following documents, which are incorporated herein by reference. Each of the documents listed but not attached, indicated by \*, is a Deliverable described in the Deliverables in Exhibit C. The development of Deliverables is the responsibility of Turner. Upon completion, each Deliverable will be presented to County for approval and upon approval by County shall be incorporated herein and shall be a standard to be met by Turner for performance of the contract.

Exhibit A - San Mateo County Sheriff's Forensics Laboratory and Coroner's Office  
Drawings and Specifications\*

Exhibit B -

- 1) San Mateo County Sheriff's Forensics Laboratory / Coroner's Office Needs Assessment/  
Design Program, (Tower Road Only) - Completed by Turner/HOK Nov.1999, Resolution # 62958
- 2) Amendment No.1 to Turner Agreement - Continuation of Design Services per Exhibit H, 1/13/00  
completed by Turner/HOK - Apr. 2000
- 3) San Mateo County General Conditions (Rev. Feb.21, 1998)

Exhibit C - Deliverables Description

Exhibit D - Project Description

Exhibit E - Project Schedule\*

Exhibit F - Cost Summary\*

Exhibit G - Payment Schedule\*

The table of contents, titles and headings contained within the Contract Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretations of the provisions to which they refer.

2. DEFINITIONS.

2.1. Project is the total management, services, Work and construction planned or contemplated by County. The Project includes all labor, material, equipment, as-built drawings, punch-list and guarantees.

2.2. Work is the total of all of Turner's obligations under the Contract Documents, which includes the design, development, management and supervision necessary to ensure completion of the Project within

the schedule and the budget.

2.3. Contract Time is the period of time indicated in Exhibit D, Project Schedule, for achieving Final Completion of the Project. The term "day" as used in reference to the Contract Documents shall mean calendar day unless specifically designated otherwise.

2.4. Trade Contractors are those contractors performing the Construction Work, as described in Paragraph 3.5 below pursuant to Trade Contracts awarded by County which may be assigned to Turner.

2.5. Substantial Completion is the stage at which the entire Project is sufficiently complete in accordance with the Contract Documents to allow County to use and occupy the entire Project as intended. Prior to Substantial Completion, Turner shall have ensured the inspection of the Project, and the testing and placement into operation of all equipment and systems.

2.6. Final Completion is that day after Substantial Completion when the Project is complete, including completion of corrective measures, except for only minor items which are incomplete due to special circumstances beyond the control of Turner, its subconsultants and the Trade Contractors. The date of Final Completion will be as shown on the recorded Notice of Completion.

2.7 Unforeseeable Conditions are those conditions encountered in the performance of the work on the Project below the surface of the ground or conditions unknown by or concealed from Turner at variance with the conditions indicated by the Contract Documents between Turner and County other than Exhibit A, or conditions unknown or concealed from Turner differing materially from those ordinarily encountered and generally recognized as inherent in the type of Project provided for in this Agreement. Unforeseeable Conditions does not include conditions which were known or should have been known by Turner, but are unknown to the Trade Contractors, including but not limited to errors in the Plans and Specifications or those conditions not included or wrongly included in the Plans and Specifications. Unforeseeable Conditions also include occurrences beyond Turner's control which are acts or neglect of the County or by changes ordered in the Project by County, or by labor disputes, fire, unusual delay in transportation, unusually adverse weather conditions, unavoidable casualties or by any other unforeseeable cause beyond Turner's or the Trade Contractor's control, which County agrees would justify a delay, in which case Turner will be eligible for an extension of the Contract Time, subject to the provisions of paragraph 9.4. Rain shall not be considered unusually adverse unless and until the cumulative days of rain in the year in which the day for which delay is claimed exceeds the five year average of the cumulative days of rain as determined by the National Weather Service.

2.8 Eligible Change is a change in the Contract Documents resulting from a Revision Order initiated and approved by the County or a Revision Order as a result of an Unforeseeable Condition which results in a change in the Contract Amount or the Contract Time.

### 3. TURNER'S RESPONSIBILITIES.

3.1. Intent. It is the intent of this agreement that Turner will have full responsibility for the administration and management of the design and of all phases of construction of the Project for a lump sum payable to Turner on a monthly basis. The construction work will be bid by the County with specifications and bid documents developed by Turner. As part of the construction management and to facilitate such management, Turner may, at the option of County, be assigned the contracts with the Trade Contractors ("Trade Contracts") and whether the contracts are assigned or not, Turner shall manage the work

of the Trade Contractors and the payments to the Trade Contractors in accordance with the Cost Summary approved by the County and made a part of the Agreement as Exhibit E, which budget will be established as part of the Design phase. It is the intent of the parties that County will be informed and has the right of approval of all changes in the work required by the Trade Contracts, but the County will not be involved in the administration of or be responsible for reimbursement or payment of Revision Orders except for Eligible Changes. Any entitlement to an increase in the Contract Amount or Contract Time on the part of any Trade Contractor or subconsultant, other than pursuant to such an approved Revision Order for an Eligible Change shall be the financial responsibility of Turner. Turner's work under this contract is limited to design, development, management and supervision; Turner shall not bid on any Trade Contract.

3.2. Phased Contract. Turner's Work includes services for the design, management and supervision of the construction as specified in the Deliverables, attached hereto as Exhibit B and incorporated herein. It is understood that the work will be provided in phases as shown in the Project Schedule, attached hereto as Exhibit E and incorporated herein. Each Deliverable shall be incorporated into the Contract Documents upon the approval of the County and become the description of and the performance requirement for the further services to be provided by Turner. Upon County's approval, a Deliverable shall become an Exhibit to the Agreement. Only changes to the Deliverables after the date of the approval may be the basis for additional compensation to Turner for work beyond the scope of this Agreement. No change prior to County approval may be the basis for additional compensation.

3.3. Project Budget. As part of each Project Design Phase and prior to any bidding, Turner is required to establish construction budget cost estimates for each element to be bid for the Project, the total of which shall be, upon approval of the County, the Conceptual Design Construction Budget and shall be incorporated herein in Exhibit F to the Contract Documents. The Final Construction Budget shall be the total of the amounts of all Trade Contracts and shall be incorporated herein in Exhibit F and the amount included in the Final Construction Budget in paragraph 3.3.2.

3.3.1 It is anticipated by the parties that certain portions of the Work will be bid before final documents for the remainder of the Work are complete and approved by the County. Turner shall manage these phased construction bids and contracts in accordance with the proposed Construction Budget. Should the costs for the first phases of construction rise above Turner's estimates or the proposed Construction Budget, Turner shall, at no additional cost to County, prepare options for the County's approval to reduce costs in subsequent phases, which approval should not be unreasonably withheld. Should the County reject any increase in the projected Construction Budget or the Final Construction Budget, it shall be Turner's responsibility to manage the Project, including the remainder of the contracts with the Trade Contractors, to ensure that there is no increase in the Final Construction Budget.

3.3.2 Included in the Final Construction Budget, Exhibit F, in addition to the amounts of

the Trade Contracts, shall be a dollar amount to be determined at the time of award of the Trade Contracts not to exceed 3% of the total amount of the Trade Contracts which amount shall be available to Turner as part of the Construction Budget to be expended at Turner's recommendation and upon County's approval. Any amount not expended shall be shared equally between Turner and County. In no event shall any amount more than the amount of the Final Construction Budget be reimbursed by County.

3.4. Services. In consideration of the fees as provided in Exhibit F, Turner agrees to provide the services, knowledge and skills, including the coordination and management, necessary to ensure that the Project as indicated and detailed in Exhibit C, attached hereto and incorporated herein, is designed and completed according to the intent stated herein and in accordance with the accepted Contract Documents within the Project schedule, attached hereto as Exhibit E and incorporated herein, and within the Cost Summary, attached hereto as Exhibit F and incorporated herein. The tasks concurrent with that responsibility include but are not limited to the following and as more detailed in Exhibit B, Deliverables, attached hereto and incorporated herein:

3.4.1. Design of the entire Project, including redesign if necessary to ensure conformance with the Cost Summary, Exhibit F and incorporated herein. The Drawings and Specifications, when provided to and approved by County, shall be Exhibit A to the contract and incorporated herein.

3.4.2. Assistance to the County in the Programming Phase, and space planning coordination including meetings and development of consensus with the user groups.

3.4.3. Assistance to the County in the CEQA process.

3.4.4. Development of the bid packages necessary for public bidding of Trade Contracts required for the construction of the Project and assistance in the prequalification of Trade Contractors. County will advertise for bidders, award the contracts to Trade Contractors and, upon award, may at County option, assign the contracts to Turner.

3.4.5. Management of all phases of the entire Project with monthly reports to County. The reports will be in a format and with the information as required by County.

3.4.6. With respect to this Agreement and all attached documents, full compliance and assurance of full compliance by the Trade Contractors and subconsultants, with all legal requirements including but not limited to those related to the design, bidding, construction and management of the Project, including but not limited to compliance with the applicable Public Contract Code, Government Code, Public Resources Code and all applicable State and local building codes and ordinances.

3.5. Contracts with Trade Contractors. All construction work shall be performed under contracts bid by the County as required by the Public Contracts Code. Bidding will include prequalification for each Trade Contractor unless omission of prequalification is approved in writing by County. After the bidding process, Turner will review the apparent low bidder's bid forms and advise County with respect to its recommendation of award. County will make an award to each Trade Contractor as soon as possible in light of the schedule of the Board of Supervisors. Upon award, County may assign the individual Trade Contracts to Turner by a separate agreement. At Turner's request, County shall consider rejecting one or all bids for a portion of the Project if the apparent low bid is significantly in excess of the amount budgeted for such portion.

#### 4. PAYMENTS.

4.1 Payments to Turner. County agrees to pay, and Turner agrees to accept in full for the above Work, the sum of Two Million Four Hundred Ten Thousand Six Hundred and Seventy Four Dollars (\$2,410,674) which sum will be paid according to the Payment Schedule attached hereto as Exhibit G and incorporated herein and subject to the additions and deductions as provided in these Contract Documents. Payments will be made within 15 days after approval by County of an invoice from Turner. In addition, Turner shall be paid the amount of Ten Thousand dollars for each 7 calendar day period Final Completion is achieved prior to the date indicated for Final Completion on Exhibit E, Project Schedule, attached hereto and incorporated herein, which period shall be certified by the County Manager's office.

4.2. Payments to Trade Contractors. Upon award of the Trade Contracts, each Trade Contractor will qualify for payments under its contract. Turner will administer payments to the Trade Contractors. County shall make payments for Turner's payment to the Trade Contractors, provided that County shall pay Turner amounts payable to the Trade Contractors upon certification by Turner that the money is properly owed and that the Trade Contractor has completed that portion of the work equal to the proportion of money to be paid. County's payment to Turner shall be a condition precedent to Turner's payment to the Trade Contractors. The total amount reimbursed by County for each Trade Contractor shall be no more than the amount of the original Trade Contract amount with such Eligible Changes as are approved with Revision Orders or payable within the Final Construction Budget. The only basis for any written Revision Order in the contract between Turner and County increasing the amount of the payments to Trade Contractors payable by County shall be an Eligible Change.

4.3. Right to Withhold. County may withhold or, on account of subsequently discovered information, nullify the whole or a part of any progress payment or payment to such extent as may be necessary to protect County from loss on account of:

1. Defective Work not remedied by Turner following written notice from the County.
2. Uninsured third party claims filed or reasonable evidence indicating probable filing of claims until tender of the claim is accepted by Turner.
3. Failure of Turner to make payments when due to subconsultants or Trade Contractors or for material, labor or equipment.
4. Uninsured Damage to County's property for which Turner Construction Company is solely responsible pursuant to this Agreement.

5. Persistent failure of Turner to pay fees in accordance with the Contract Documents.
6. County's cost of correcting deficiencies in the Project or undertaking any Work of the Trade Contractors assigned to Turner Construction Company.
7. Liquidated damages or anticipated liquidated damages.
8. Any amount owed by Turner to County or claimed by County to be owed by Turner.
9. Turner's failure to deliver as-built drawings, guarantees, operating manual, or other documents required by the Contract Documents.

4.4. No Assignment of Monies. Turner shall not assign any monies due or to become due under this Agreement without the written consent of County and of all sureties executing any bonds on behalf of Turner in connection with this Agreement.

5. PAYMENT LIMITS. Turner acknowledges that funds for the Project will come from the issuance of bonds. Accordingly, Turner agrees that the total cumulative payments for the Work plus the payments to Trade Contractors cannot exceed the cumulative amount available in Exhibit F and under the cash flow schedule contained in Exhibit G, attached hereto and incorporated herein. It is also agreed and contemplated by the parties that should the bonds not be sold or issued, this contract shall be terminated.

#### 6. COUNTY RESPONSIBILITIES.

6.1. Builder's Risk Insurance. County shall obtain builder's risk insurance, including earthquake and flood if available, in the amount of the value of construction. Turner shall be added as an additional named insured on such policy.

6.2. Permits. County will obtain the building permits necessary for construction of the building in accordance with the Project Schedule, Exhibit E.

6.3. Timely Decisions. County shall make all decisions required of County including Trade Contract awards in accordance with the Project Schedule but also in light of the schedule of the Board of Supervisors.

6.4. Geotechnical Information. County will provide geotechnical information sufficient for the design of the Project.

6.5. Pre-Construction Office. County shall provide office space prior to commencement of construction for one Turner staff person.

6.6. Printing Costs. County will provide for payment of all printing costs of bidding documents and printing of specific design documents for County use at County request.

6.7. Bidding. County will advertise for bidders and perform the actual bidding.

6.8. Space Planning. County will provide the space planning services for the Project with the assistance of Turner with respect to programming and space planning and coordination as provided in paragraph 3.4.2.

#### 7. CONTRACT DOCUMENTS SUPERSEDE REQUEST FOR PROPOSAL

DOCUMENTS. County and Turner acknowledge that the Contract Documents differ in some respects from the Request for Proposal upon which Turner submitted its proposal. County and Turner agree that the Contract Documents supersede all prior documents.



8. COMMENCEMENT AND PROSECUTION OF WORK. Turner will commence work immediately from the date of receipt of a signed contract from County to Turner and shall diligently perform to final completion of the Project. Delays in completion of the Project shall be established in accordance with the provision at paragraph 9 of this Agreement.

9. CHANGES TO THE CONTRACT DOCUMENTS.

9.1 Intent. A Change to the Contract Documents, as authorized by this section, is intended to be a formal procedure by which a change is made in the work to be performed under the Contract Documents either in the scope of the Project or in the Contract Amount or the Contract Time. It is anticipated that changes will arise by proposal from either County or Turner, but such proposal shall not be a Change to the Contract Documents until it is embodied in a written Revision Order or Unilateral Revision Order. Since it is anticipated that development of the Deliverables specified in Exhibit B will involve changes during the development of such Deliverables, changes related to such Deliverables prior to County approval of the Deliverable shall not be considered Changes in the Contract Documents and it is only after approval by County of the Deliverable that a change will be considered a change in the Contract Documents and require a Revision Order or be eligible for a change in the Contract Amount or Contract Time. It is explicitly agreed, and the entire section on Changes in the Contract Documents shall be interpreted in light of the specific agreement that County shall have no financial responsibility for any Change other than an Eligible Change.

9.2. Notification. Should County, during the progress of the Project, order any alterations, deviations, additions, or omissions from the Work or a suspension or delay in the progress of the Project (each of which is hereinafter a "Change"), it shall be at liberty to do so and the same shall in no way affect or make void the Contract Documents. Changes may arise from proposal by County or Turner. Such change requested by one party shall be termed a Revision Order Proposal and shall be a Revision Order only upon agreement of the parties to the terms thereof. A change may be made unilaterally by order of the County without the agreement of Turner and such change shall be termed a Unilateral Revision Order. In addition, County has the specific right to order Turner to proceed with a Change pending the completion of a Revision Order Proposal, Revision Order or a Unilateral Revision Order by way of a written Change Directive. Separate authorization by the Board of Supervisors shall be required for any Change which would cause an increase in the payments to Turner or to the Trade Contractors in excess of \$25,000 or if the total amount of all such changes exceeds 15% of the original contract price. It is hereby contemplated by the parties hereto that such separate authorization may require four weeks to obtain. In no event shall Turner be obligated to proceed under an order from County which would cause the Contract Sum to exceed funds legally available to pay for such Change.

No order, statement, or conduct of County shall be treated as a Change to the Contract Documents unless embodied in a written Change Directive , Revision Order

or Unilateral Revision Order duly executed on behalf of County. No extra work shall be performed or a change be made, unless pursuant to a Change Directive, Revision Order or Unilateral Revision Order signed by County, and Turner is warned from proceeding with any Work other than that ordered by County pursuant to the procedures provided herein.

### 9.3. Change Process.

9.3.1. Proposal. As soon as possible so as not to cause delay of the Project and in no event later than seven (7) days after receipt of a Revision Order Proposal or receiving a Unilateral Revision Order, or in the proposal itself where Turner is making a request for a Change, Turner shall submit a proposal, in accordance with the requirements and limitations set forth herein, for any adjustments to the Contract Sum or Contract Time arising from such Change. In addition, Turner shall promptly after receipt of a proposed Eligible Change provide County an estimated date for the provision of such proposal. Turner's written statement of the monetary effect of a proposed Eligible Change shall be submitted in the form of a lump sum proposal supported with a detailed itemized breakdown of all increases and decreases in the Contract Sum, including all labor, equipment and materials, as required by the following paragraphs, and utilizing the same guidelines for Direct Costs and Markups as are provided in paragraph 9.3.4(b)(ii) below. Turner will use a form which has been approved by County. Turner shall, upon request of County, allow inspection of any original unaltered Trade Contractor bid, estimate, agreements, or purchase orders relating to the proposed Eligible Change and documents substantiating all costs associated with the cost proposal. Any proposal will be developed into a Revision Order upon agreement of County and Turner to the terms thereof.

9.3.2. Unilateral Revision Orders. County shall have the right to issue a Unilateral Revision Order ordering a Change. The Contract Time and Contract Amount shall be as stated in the Unilateral Revision Order, provided that should Turner disagree with the terms thereof, Turner shall give County written notice within fifteen (15) days of receipt of the Unilateral Revision order of the disagreement and the grounds therefore and shall keep records as required for Time and Material Changes provided for in paragraph 9.3.4(b) (ii) below.

9.3.3. Negotiated Revision Orders for Changes Less than \$10,000. For any Eligible Change for which County and Turner do not agree to the lump sum cost of the Change but County and Turner agree will not exceed \$10,000 or for an Eligible Change of any price for which the difference in the amount of the County's estimate and Turner's estimate does not exceed \$10,000, the parties may agree that the work

ordered by the change shall proceed and that the amount to be paid will not be determined by the time and material method below but shall be a lump sum between the amounts of the respective estimates given which will be negotiated by the parties. These Eligible Changes shall be established by a Negotiated Revision Order and the work may proceed only after execution of this Negotiated Revision Order, with the price added after later negotiation of the parties. Upon establishment of the amount to be paid, the Negotiated Revision Order shall be a Revision Order. Turner shall include its monthly report a listing of the Negotiated Revision Orders with the amount estimated by County, the amount estimated by Turner and the difference in amount between the two estimates ("difference") shown individually and totaled. In no event shall County pay for such change more than the higher estimate for such change.

**9.3.4. Time and Material (T & M) Changes.**

**9.3.4(a) T & M Process.** If Turner and County have failed to agree beforehand on the effect of a proposed Eligible Change on the Contract Sum and Contract Time and cannot agree that the lump sum or difference in lump sum estimate is less than \$10,000, County shall establish a budget not-to-exceed (NTE) price for Eligible T & M changes. Turner shall proceed and shall maintain a daily job force account record containing a detailed cost summary of Direct Costs required to implement the Eligible Change. Such force account record shall become the basis for payment for the Eligible Change and shall be subject to adjustment based upon later audit by County. Such budget shall in no way limit Turner's entitlement to compensation as a result of such Eligible Change. Turner shall provide a weekly accounting of Direct costs and Management Fee compared to the NTE and shall keep such records as are necessary to establish the cost of such Eligible Change. In implementing such Eligible Change, Turner shall notify County when Direct Costs and Management Fee incurred have reached approximately 80% of the NTE budget.

Upon completion of the work under the Eligible Change, or if the period required to implement the Eligible Change extends over more than one monthly payment cycle, then as part of each monthly application for payment, Turner shall submit its invoice for the Eligible Change covering only those Direct Costs which are in addition to the requirements of the Contract without such Change with records necessary to demonstrate the cost.

9.3.4(b) T & M Costs. For Eligible T & M Changes, Turner shall receive compensation only for the following items related to the Eligible Change plus a prorated amount of the Design/Build Fee as specified in Exhibit E.2 for that period of extension in the Contract Time caused by the Eligible Change or a prorated amount based upon the additional personnel added to accomplish the Eligible Change subject to the provisions of paragraph 9.4 below:

9.3.4(b)(i) Design work by Subconsultants, the actual direct costs of such Subconsultants, or a lump sum amount to be negotiated by County and Turner prior to performing any design work.

9.3.4(b)(ii) Direct Costs, which are the following costs incurred by Turner other than payments to Trade Contractors in connection with an Eligible Change above those that would be incurred if the Eligible Change had not occurred. At the beginning of the Project, Turner shall provide a complete listing of all of Turner's hourly labor rates.

9.3.4(b)(ii)(1) Turner's Wages and Benefits. Wages and salaries of Turner's supervisory and administrative personnel assigned to the Project, but only to the extent that the Eligible Change extends the Contract Time or additional personnel are added to accomplish the Change.

In connection with the additional personnel costs stated in the preceding paragraph, costs paid or incurred by Turner for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits actually paid such as sick leave, medical and health benefits,

holidays, vacations and pensions, provided such costs are based on wages and salaries included in allowable labor costs.

9.3.4(b)(ii)(2) Trade Contractor Costs.

Payments made by Turner to Trade Contractors in accordance with the requirements of the applicable Trade Contracts. Trade Contracts shall not include more than a 15% markup on the Trade Contractor's direct and actual costs for any and all overhead and profit and shall include no other overhead and profit.

9.3.4(b)(ii)(3) Costs of Materials and Equipment Incorporated in the Project.

Costs, including transportation of materials and equipment incorporated or to be incorporated in the completed construction of the Project to the extent such costs are not covered in paragraph 9.3.4 (b)(ii)(2), Trade Contractor Costs.

9.3.4(b)(ii)(4) Miscellaneous Costs.

9.3.4(b)(ii)(4)(a) Sales, use or similar taxes imposed by a governmental authority which are related to the Change and for which Turner or the Trade Contractors are liable.

9.3.4(b)(ii)(4)(b) Fees and assessments for permits, licenses and inspections related to the Eligible Change which Turner is required to pay under the Contract Documents which are not otherwise paid to Turner as a Reimbursable item.

9.3.4(b)(ii)(4)(c) Fees of testing laboratories for tests required to be performed by Turner under the Contract Documents.

9.3.4(b)(ii)(4)(d) Royalties and license

fees paid for the use of a particular design, process or product required by the Change; the cost of defending suits or claims for infringement of patent rights arising from County's requirements in connection with the Change.

9.3.4(b)(ii)(4)(e) Increases in Bond and insurance premiums payable by Turner in connection with a Change.

#### 9.4. Time.

Turner shall identify any adjustment in Contract Time which is directly attributable to the proposed Eligible Change within seven days following receipt of the proposed Eligible Change or a Unilateral Revision order or within such additional time as may be agreed with County or for changes proposed by Turner, in the proposal itself. Regardless of the source of the proposed change in Contract Time, Turner's request for a Change in Contract Time must at County request be supported by a detailed schedule analysis indicating the activities which will be affected and the additional time being requested.

Each estimate for the effect of a proposed Change as submitted by Turner shall state the amount of the extension in Contract Time Turner considers should be allowed for making the proposed Change. Failure to request an extension of Contract Time when submitting a cost proposal in response to a proposed Change shall constitute waiver of Turner's right to subsequently claim adjustment in Contract Time based upon such Change.

#### 9.5. Records.

Turner shall maintain its records in such a manner as to provide a clear distinction between the direct costs of extra work in connection with T & M Changes and the cost of other operations. This requirement pertains to proposed Changes to the Agreement and work Turner considers to be potential T & M Changes.

#### 9.6. Emergencies.

Changes in the Work made necessary due to unexpected or unforeseen site conditions, or other changes where the extent cannot be determined until completed, or under any circumstances whatsoever deemed necessary by County, are types of emergency changes which may be authorized by County in writing to Turner. Turner shall commence performance of emergency Changes immediately upon authorization. These Changes will be performed as T&M Changes unless agreed otherwise by the parties.

### 10. TERMINATION RIGHTS AND COSTS.

10.1 County shall have the right to cancel the Project at any time during the Design Phase, if changes to the Project arising from environmental review process are deemed by the County not to be in its best interests or if County is unable to obtain financing, including a determination by County that such financing is not in the best interests of the County. In addition, County may terminate this Agreement for cause at any time, and may terminate at any time in the best interests of the County upon 60 days advance notice. Turner may terminate the Agreement only if County should substantially fail to perform its responsibilities as provided herein.

10.2. If the Agreement is terminated prior to completion of the Project, Turner shall be compensated in accordance with the payment schedule of Exhibit F from the date of this Agreement to the date of termination for work completed to the date of termination.

10.3. In the event of termination, upon payment by County to Turner of all undisputed amounts then due to Turner, all studies, reports, schedules, designs and any other information in written or other form pertaining to the Project shall become County's property.

11. SUBCONTRACT/SUBCONSULTANT AGREEMENTS. Turner shall include in each contract with Trade Contractors or any design consultants or any subconsultants a clause incorporating the terms and conditions of the Contract Documents binding the Trade Contractors and the subconsultants in the same manner as Turner and County are bound.

12. RELEASE. At the time of final payment as a condition precedent to final payment, Turner shall execute and deliver a release in form and substance satisfactory to and contain such exemptions as may be found appropriate by County which shall discharge County, its officers, agents and employees of and from any and all liability obligations and claims arising under the Contract Documents.

13. NO WAIVER OF REMEDIES. Neither approval or inspection by County or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Project by County, nor any extensions of time, nor any position taken by County or its agents will operate as a waiver of any provision of the Contract Documents or of any power herein reserved to County or any right to damages herein provided, nor will any waiver of any breach of the Contract Documents be held to be a waiver of any other or subsequent breach, provided, however, that it is agreed that the approvals required of County of the Deliverables required by the Contract Documents shall constitute County's approval of that Deliverable. Remedies provided in the Contract Documents shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, County shall retain any and all equitable and legal remedies available to it. It is specifically agreed that inspection by the County is for the benefit of County only and imposes no responsibility on County for the findings of such inspection shall not operate as or be interpreted as for the benefit of Turner or its agents, assignees, trade

contractors or subconsultants.

14. LIQUIDATED DAMAGES. The occurrence and amount of damages the County will suffer if the Project is not completed within the specified times set forth are dependent upon many circumstances and conditions and, from the nature of the Project, it is impracticable and extremely difficult to fix actual damages. Damages which County itself would suffer in the event of delay include loss of the use of the Project, continued rent for the housing of employees, expenses of prolonged employment of staff related to the work, costs of administration, inspection and supervision and the loss suffered by the public within the County by reason of the delay in the completion of the Project to serve the public at the earliest possible time.

Accordingly, the parties hereto agree, and by execution of this Agreement, Turner understands, has ascertained and agrees that the amounts set forth herein as liquidated damages shall be presumed to be the amount of damages sustained by County itself because of the failure of Turner to manage the Project so that the entire Project is completed within the times specified. It is agreed that this amount is established only in consideration of the damage suffered by the County itself and does not include any amounts suffered and/or claimed by third parties as damages for delay in the completion of the Project. It is the intent of this contract that County shall not pay any amounts for or to the Trade Contractors above that amount of the contracts awarded to the Trade Contractors other than for an Eligible Change; however, if such payment to Trade Contractors by County shall be required in some manner unanticipated by the parties, the payment of liquidated damages to County by Turner does not absolve Turner of the further payments to County to reimburse the amounts paid by County to third parties, including Trade Contractors, for delay if such payments shall be required, and payment of liquidated damages to County by Turner shall not be a defense by Turner to the effect of the indemnity clause herein or to other further payments for damages to persons or entities other than County even if paid by County.

The amount of the liquidated damages to be paid by Turner to County in the event the Project is not complete by 30 calendar days after the date scheduled for Substantial Completion as extended, if applicable, pursuant to the terms of paragraph 9 related to Changes in the Agreement, will be Two Thousand Five Hundred (\$2500) for each calendar day, continuing to the time at which the Project is completed. Such amount is the actual cash value agreed upon as the loss to County resulting from Contractor's default, except as limited above with regard to payments, if any, to third parties, which shall be in excess of this liquidated amount.

15. PAYMENT OF DAMAGES. In the event Turner shall become liable for liquidated damages or other damages as set forth in the Contract Documents, County, in addition to all other remedies provided by law, will have the right to withhold payments which would otherwise be or become due Turner until the liability of Turner is finally determined. County will have the right to use and apply such payments, in whole or in part, to reimburse County for damages due or to become due



to County. Any remaining balance of such payments will be paid to Turner only after discharge in full of liability incurred by Turner under the above section otherwise. If the sum so retained by County is not sufficient to discharge the liabilities of Turner, Turner shall continue to remain liable to County until the liabilities are satisfied in full. No failure by County to withhold any payment as herein provided shall in any manner be construed to constitute a waiver of any right to damages or any right to any such sum or future withholding.

16. INDEMNITY AND HOLD HARMLESS. Turner shall assume the defense of and indemnify and save harmless, the County, its officers, employees, agents, the Trustee, if applicable, and each and every one of them from and against all claims, suits, actions, damages, losses, expenses or costs of every name, type and description, including those of Trade Contractors or other third parties, brought by reason of, or resulting from the performance of the work on the Project required by the Contract Documents. This defense, indemnification and hold harmless shall include but not be limited to the concurrent active or passive negligence of the parties indemnified hereunder, provided that this shall not apply to injury or damage for which those parties have been found in a court of competent jurisdiction to be solely liable by reason of their own negligence or willful misconduct and provided further that this shall not apply to those damages paid by the builder's risk insurance carried by County. It is the intent of this Agreement that County shall have no responsibility for, and this indemnity, hold harmless and defense includes, any costs or expenses related to the Project, including but not limited to the claims of Trade Contractors, above those approved in this Agreement.

17. BANKRUPTCY. If Turner should commence any proceeding under the Bankruptcy Act, or if Turner be adjudged bankrupt, or if Turner should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of Turner's insolvency, then County may, without prejudice to any other right or remedy, terminate the agreement and complete the Project by giving notice. In such case, Turner shall assign the Trade Contracts to County if requested to do so by County.

18. OWNERSHIP OF DOCUMENTS. It is agreed that all studies, reports, schedules, drawings, designs, specifications, models, notes, calculations and other work developed by Turner and its subconsultants and assignees in the performance of the Project, regardless of degree of completion and whether or not said services have been fully performed or paid for shall be the property of County, which ownership right includes the right to use same on the Project at no additional cost to County. Such ownership rights shall exist whether or not this Agreement is terminated. Turner agrees to and does hereby grant to County and any assignees or successor of County as owner of the Project a royalty-free license to any such Design Product as to which Turner or any design Consultant or subconsultants may assert any rights under the patent or copyright laws. Turner hereby assigns outright and exclusively to County all copyrights in the design appearance of the Building, Turner, as part of its

agreements with any such design Consultant and construction assignees, will secure such license and use rights from each such design Consultant, and shall defend, indemnify and hold County and any successors or assigns as owner of the Project harmless from any claims from such architects or engineers (including subcontracts) for claims by such Consultants of any level, including subconsultants or Trade Contractors for copyright or patent infringement.

19. SUBSTITUTION OF CONSULTANTS AND PERSONNEL. County's selection of Turner was based in part upon the identity of the consultants and subconsultants identified by Turner to be used for the Project and the identity of the personnel to be used by Turner. No substitution of the Consultants or subconsultants or the personnel shall be made without the written consent of County, and County shall have the right to approve the selection of substitute or additional personnel assigned to the Project.

20. SCHEDULE.

20.1 Turner agrees to design and manage the Project in such a way as to complete the Project in sufficient time for occupation by County in accordance with Exhibit E, Project Schedule or such extended date as may be permitted by written Change to the Agreement issued by County pursuant to paragraph 9 regarding Changes.

20.2 County and Turner shall comply with the Project Schedule attached as Exhibit E. County and Turner shall comply with the progress schedules which Turner shall prepare and update to reflect the Major Milestones and the actual progress of the Project as required under the Project Schedule.

20.3 Unless otherwise provided in the Contract Documents, County shall respond to Turner's request for information, review and provide its response within 15 days of Turner's request, except for those items for which Board of Supervisor's approval is necessary, in which case approval shall be obtained as early as possible in light of the schedule of meetings of the Board.

21. CLAIMS AND DISPUTES.

21.1 A Claim is a dispute about which there remains a disagreement as to a Change in the Agreement after following the procedures contained in paragraph 9 dealing with Changes to the Agreement. The procedure contained in paragraph 9 is a condition precedent to the filing of a Claim under this paragraph.

21.2 The parties specifically agree that there shall be no claims against County or payable by County other than those arising from changes initiated by County or from Unforeseeable Conditions.

21.3 The parties hereto mutually agree that the resolution of any claim or dispute arising between County and Turner under this Agreement will be resolved pursuant to

the following:

21.3.1 Any claim that Turner may have under the Agreement shall be submitted to the County within fourteen days of County's notification of its refusal to make a change in the Agreement under paragraph 9. The Notice of Claim shall be a document issued by Turner for the sole purpose of requesting an adjustment in the Contract Time or Contract Amount and clearly titled "Notice of Claim." Such notice does not constitute a waiver of any and all notice provisions of the Government Code. Upon receipt of the Notice of Claim, County and Turner shall then attempt to negotiate a resolution of such claim. Failure to present such Notice of Claim within the specified period constitutes a waiver of such claim. Any adjustment to the contract Amount or Contract Time, if any, shall be determined and issued in accordance with paragraph 9 of this Agreement concerning Changes to the Agreement.

21.3.2 Any dispute not settled by the above process within 60 days of Turner's submission shall, at County's or Turner's option be formally mediated.

21.3.3 The preceding steps shall be conditions precedent to the filing of any litigation. Any litigation between the parties shall be commenced and maintained in the appropriate court of competent jurisdiction within San Mateo County, State of California.

21.3.4 Turner agrees to proceed with all work on the Project pending the outcome of any claim, dispute, mediation or litigation, and County agrees to make payments for all Work not in dispute.

21.3.5 Turner shall manage its consultants and subconsultants and the Trade Contractors and subcontractors so as to avoid any dispute between those entities and County.

22. COUNTY REPRESENTATIVE. For purposes of the Agreement, the County's representative shall be the County Manager's Office and any approval required herein other than one requiring the payment of additional funds shall be provided by the County Manager or his designee.

23. NOTICES. Any notice may be served upon County or Turner by delivering it in writing, by overnight deliver service or by depositing it in an United States mail deposit box with the postage thereon fully prepaid and addressed to the party to be noticed at the address set forth below. Either party may change the address for notice by delivering notice of such change as provided above.

County: Paul Scannell, Assistant County Manager  
County Manager's Office  
400 County Center

Redwood City, CA 94063

Turner: Michael O'Brien, Vice President and General Manager  
Turner Construction Company  
353 Sacramento Street  
San Francisco, CA 94111

24. COUNTY'S RIGHT TO AUDIT. County reserves the right to fully audit all amounts paid under this contract, including the terms of all trade contracts and the amounts paid to third parties by Turner relating to the Project, trade contractors and suppliers at any level for the purposes of determining compliance with this contract and the legal requirements regarding payment of prevailing wages.

25. INSURANCE. Turner shall not commence work under this agreement until all insurance required under this section has been obtained and such insurance has been approved by the County Manager's Office. Turner shall furnish the County Manager's Office with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the contractor's coverage to include the contractual liability assumed by the contractor pursuant to this agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the County Manager's Office of any pending change in the limits of liability or of any cancellation or modification of the policy.

25.1. Workers' Compensation and Employer Liability Insurance: Turner shall have in effect, during the entire life of this agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this agreement, Turner makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of this work of the agreement.

25.2. Liability Insurance: Turner shall take out and maintain during the life of this agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this agreement, whether such operations be by itself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- |     |  |              |
|-----|--|--------------|
| (a) | Comprehensive General Liability                    | \$ 1 million |
| (b) | Motor Vehicle Liability Insurance                  | \$ 1 million |
| (c) | Professional Liability by<br>Design Subconsultants | \$ 1 million |

After three (3) years from the date this agreement is first executed the county may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar county agreements by giving sixty (60) days notice to Turner. County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the county, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the county or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this agreement to the contrary, immediately declare a material breach of this agreement and suspend all further work pursuant to this agreement.

## 26. GUARANTEES AND WARRANTY.

26.1 In addition to any other warranties in the Contract Documents, Turner warrants and each Trade Contractor shall warrant that its work performed under the Contract Documents, including all work performed by subconsultants, conforms to the Contract Documents and is free of any equipment or material deemed defective because it does not perform as advertised or meet the requirements of the Contract Documents and such defect is not inherent in the quality required or permitted under the Contract Documents, or any defect in workmanship performed, due to its failure to meet the requirements of the Contract Documents, by Turner or any consultant, Trade Contractor, subcontractor or supplier at any tier.

26.2 Unless noted otherwise, warranties will begin upon Substantial Completion of the Project. All warranties shall remain effective until at least one year after Substantial Completion except where a longer period is specified in the Contract Documents.

26.3 During the one year period following the date of Substantial Completion, Turner shall remedy at its own expense or the expense of Trade Contractors any failure of the Project to conform to the requirements of the Contract Documents. In addition, Turner shall remedy at its own expense any damage to County-owned or controlled real or personal property, when that damage is the result of either (a)Turners' failure

to conform to the Contract Documents or (b) any defect of equipment, material, workmanship or design. County shall take reasonable steps to mitigate its damages.

26.4 Turner shall restore the Project or any portion thereof, the contents thereof or equipment or other property damaged in fulfilling the terms and conditions of this Paragraph. Turner's warranty with respect to the portion of the Project repaired or replaced will run for one year from the completion of the repair or replacement.

26.5 County shall notify Turner in writing within a reasonable time after the discovery of any failure, defect or damage. Turner further agrees that within ten (10) calendar days after being notified in writing by County of any portion of Project not in accordance with the requirements of the Contract Documents or any defects in the Project, Turner will commence and prosecute with due diligence all work necessary to fulfill the terms of this warranty and to complete the work within a reasonable period of time.

26.6 If Turner fails to remedy any failure of or defect in the Project, or damage resulting therefrom and such failure, defect or damage is covered by Turner's warranty, within a reasonable time after receipt of notice, County shall have the right to take reasonable actions to replace, repair, or otherwise remedy the failure, defect, or damage at Turner's expense.

26.7 With respect to all warranties, express or implied, from Trade Contractors, subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Turner shall (a) Obtain all warranties that would be given in normal commercial practice; (b) Require all warranties to be executed, in writing, for the benefit of County, unless directed otherwise by County; and (c) During Turner's warranty period, enforce all warranties for the benefit of County, unless otherwise directed by County.

26.8 All guarantees must be submitted in triplicate to County on Turner's or the Trade Contractor's own letterhead in the form prescribed by County. Turner shall assemble and bind three sets of all guarantees, certificates, warranties, operating instructions and maintenance manuals into clearly organized files with an index, a list of Trade Contractors and suppliers including their names, addresses and phone numbers and present to County at the completion of the Project.

26.9 After Turner's warranty under this paragraph has expired, County may bring suit at its expense to enforce any Trade Contractor's, subcontractor's, manufacturer's or supplier's warranty, and Turner shall assign to County any rights it may have under such warranty.

26.10 Unless a defect is caused by the negligence of Turner or any Trade Contractor, subcontractor or supplier at any tier, Turner shall not be liable for the repair of any defects of material or design furnished by County nor for the repair of any damage

that results from a defect in County furnished material or design.

26.11 This warranty shall not limit County's rights with respect to latent defects or fraud.

27. BENEFIT OF CONTRACTS RUNS TO COUNTY. Whether or not expressly provided in the Contract Documents, all obligations of Turner, consultants, Trade Contractors and Subcontractors, including but not limited to warranties and indemnity obligations, shall run to the benefit of County.

28. SCOPE OF AGREEMENT. This is the final, complete and entire agreement between the parties, with the acknowledgment that this agreement shall be supplemented by specific exhibits, the preparation of which is a requirement of the Agreement and which themselves will become Performance Standards upon incorporation into this agreement. With the exception of those exhibits, this agreement supersedes any and all prior or contemporaneous agreements, communications or representations between the parties, either oral or in writing, relating to the subject matter of this Agreement.

29. ENTIRE AGREEMENT. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. Except as otherwise provided in the contract documents, no change resulting in an increase or decrease in the amount payable hereunder shall be authorized except by formal Change to the Agreement issued by County.

30. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon County and Turner and their respective partners, joint venturers, successors and assigns. Neither the performance of this Agreement nor any part thereof, may be assigned by Turner without the prior written consent of County.

31. GOVERNING LAW. This Agreement shall be construed in accordance with, and governed, by the laws of the State of California and any action brought in connection therewith shall have as its venue the County of San Mateo.

32. EXISTING CONDITIONS. Turner, by executing this Agreement represents that it has visited the site and familiarized itself with the local conditions under which the Project is to be completed and has correlated its site observations with the requirements of the Contract Documents. Turner shall carefully study and compare the Contract Documents and existing conditions and shall report to County any error, conflict, inconsistency, omission or any variance with laws, ordinances, codes, rules or regulations bearing on the Project as required. Turner shall report such condition to County in writing at such time as to allow at least twenty calendar days for a response with no delay to the Project. Any necessary changes shall be accomplished in accordance with paragraph 9 dealing with Changes in the Agreement.

33. AS-BUILT DOCUMENTS. Turner shall maintain at the site As-Built Documents consisting of one copy of all Drawings, Specifications, addenda, approved shop drawings and samples, Revision Orders, Revision Order instructions from Subconsultants and other documents relating to the Project. All documents shall be marked neatly and legibly by Turner to record all changes to the Project, field measurements, actual conditions, and adjustments made during construction, so as to maintain an accurate record of the construction of the Project. Upon completion of the Project, Turner shall deliver As-built documents in digital form and reproducible format to County and provide any explanation or clarification of the documents as requested by County.

34. ADJACENT FACILITIES. Turner shall provide adequate protection for all parts of the Project site, and adjacent property, its improvements and its occupants throughout the work on the Project. All damage done to existing property shall be neatly repaired or replaced at Turner's expense. Work shall be executed in a careful, orderly manner, with the least possible disturbance to public and occupants of the area. County will continue to use adjacent facilities. Turner shall provide legal and safe access to all facilities at all times. In order to facilitate use of adjacent facilities, County may order Turner to alter or cease operations by written Revision Order.

35. PEER REVIEW. County shall have the right, at its own expense and without delay to the Project, to submit any documentation of the Project for review to consultants of its choosing.

36. . Non-Discrimination No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days



such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

IN WITNESS WHEREOF, the parties hereto have signed this agreement of the date set forth opposite their names.

Dated: \_\_\_\_\_

COUNTY OF SAN MATEO

By \_\_\_\_\_  
Paul T. Scannell, Assistant County Manager

Dated: 5-3-01

TURNER CONSTRUCTION COMPANY

By Michael O'Brien  
Michael O'Brien, Vice President

## EXHIBIT C - DELIVERABLES DESCRIPTION

Turner shall provide the following deliverables at milestones established in Exhibit E, Project Schedule for the San Mateo County Sheriff's Forensics Laboratory/Coroner's Office.

Turner shall be guided by:

Exhibit B-1, San Mateo County Sheriff's Forensics Laboratory and Coroner's Office (Tower Road only) Needs Assessment, Design Program and Site Evaluations, completed by Turner/HOK in November 1999; Exhibit B-2, Amendment No.1 to Turner Agreement - Continuation of Design Services completed by Turner/HOK in April 2000; Exhibit B-3, San Mateo County General Conditions and provide written documents and recommendations for the project.

Concept Design Documents: Certain adjustments are anticipated as Turner develops the concept plans from Exhibits B-1, the Design Program and B-2, Amendment No.1, Preliminary Functional Schematic Concept Plans. These adjustments will be reviewed by the County and approved at meetings with County user department representatives attended by the Turner team.

### A. PHASE I - PROJECT DESIGN SCHEMATICS

#### 1 Preliminary Studies

The studies should include, but not be limited to:

- a) Understanding of project requirements
- b) Alternative energy-saving systems; use of solar or wind-generated devices
- c) Passive heating and cooling techniques
- d) Energy-conserving mechanical / electrical systems
- e) Cost-benefit analyses, life-cycle costing of approved systems
- f) Site configuration alternatives; one story, one story-and-a half, two story
- g) Report on recommended systems

#### 2 Documentation

- a) Single line plan drawings at 1/8" = 1'-0" showing all elements of the functional plan; laboratories, laboratory support spaces, circulation, toilets, lockers, vertical transportation (where required) office spaces.
- b) At least three alternate exterior elevations showing alternatives for materials, fenestration, massing.
- c) Construction budget cost estimates, the total of which, with the approval of the County shall be the projected construction cost.
- d) Reviews with and approvals from the County Project Team, consisting of members of the County Manager's Office, the Sheriff's Office, the Coroner's Office, Facilities and Maintenance, County Building Inspection and all City Departments having jurisdiction; fire, police, planning.

- e) Project Schedule showing periods for engineering systems coordination in each phase, as well as a CPM construction schedule showing milestones.

## B - PHASE II - COMPLETE A/E SERVICES

- 1) After approvals of Schematics are achieved, Turner will continue into Design Development and Construction Document Phases of the Agreement. Complete CM / Architectural Engineering services will include value engineering at no additional cost to the County and all services necessary for separate phases for design development and construction documents, including plan checking, and bidding and construction phases.
- 2) Turner shall prepare complete documents on CAD of each phase with bidding documentation in such detail as to assure that the County can receive public competitive bids from Trade Contractors. Should the total of all bids exceed the projected construction cost, Turner is to revise documentation at no additional cost to the County.
- 3) Documentation must be sufficiently complete and coordinated to assure that RFI's in the field are kept to a minimum. RFI's generated by a deficiency in the plans will be reviewed by Turner at no additional cost to the County. Delay resulting from said RFI's shall be the responsibility of Turner Team.
- 4) The documentation shall be defined as all documents necessary for construction of the building, including but not limited to:
  - a) Architectural/Engineering Plans and Details
    - 1) Plans at 1/8 in. = 1 ft. showing dimensioned locations of all components of the program and core elements; toilets, mechanical shafts, and where applicable, stairs, elevators.
    - 2) Exterior elevations and large scale sections and details of exterior walls.
    - 3) Enlarged plans and sections at 1/4 in. = 1 ft. of specialized areas showing approved functional relationships of core elements, laboratory spaces, laboratory support spaces and office space.
    - 4) Transverse and longitudinal sections at 1/8 in. = 1 ft. showing configuration of structure and suspended ceiling heights.

- 5) Interior elevations at 1/4 in. = 1 ft. showing pertinent architectural configuration, lobby design, locations of doors, locations of light switches, thermostats, fire-alarm strobe devices, built-in laboratory equipment and plumbing fixtures.
- 6) Details of partition and ceiling construction.
- 7) Details of built-in casework as required.
- 8) Details of door frames.
- 9) Finish schedules
- 10) Window and Door schedules
- 11) Hardware schedules
- 12) Contract specifications including hardware.
- 13) Composite reflected ceiling plans at 1/8 in. = 1 in. showing grid layout and locations of lighting fixtures, HVAC registers and returns, smoke detectors and ceiling tile pattern where applicable.
- 14) Project schedule for construction phase.
- 15) Guaranteed maximum construction cost estimate.
- 16) As-builts - Record Drawings on CAD

b. Mechanical - Electrical - Plumbing

- 1) Floor plans at 1/8 in. = 1 in. showing distribution of services.
- 2) Riser diagrams
- 3) Control panels
- 4) Fume hoods and other built-in laboratory equipment

- 5) Building management system diagrams and specifications and narrative description.
- 6) Complete fire alarm, sprinkler and smoke detection systems plans.
- 7) Cuts of fixtures.
- 8) Complete specifications of all systems.
- 9) Complete descriptions of interface with building systems.
- 10) Coordination with other trades employing CAD
- 11) Coordination with County Maintenance personnel.

c). Structural

A fully developed documentation shall be based upon the latest code requirements for seismic safety and include but not be limited to:

- 1) Structural Calculations
- 2) Foundation Plans
- 3) Structural System Plans
- 4) Reinforcing steel or steel column schedules
- 5) Structural/Seismic connections details

d). Construction Administration

- 1) The Turner Team shall, during the bid period, attend pre-bid conferences, answer bidder's questions and evaluate bids.
- 2) In the construction phase, Turner shall staff at least one full-time representative with 10 years experience in construction administration in projects of this type.
- 3) Turner shall review submittals and RFI's, interpreting the documents within seven calendar days and attend weekly meetings

- 4) At the completion of the project, Turner shall prepare Record Drawings submitted on CAD disks.
- 5) Turner shall engage and pay for all consultants necessary to provide the professional services required above.

4. Construction Budget

- a) The Construction Budget shall include all parts of the building including, but not limited to; structure, partitions, doors, frames, hardware, exterior envelope, finish core, fume hoods and other laboratory built-ins, HVAC and security systems, lighting and installed ceilings, all plumbing systems and all base and alternative energy source mechanical systems approved, tested and operational.
- b) The Construction Budget shall also include, for office spaces not limited to interior development of each user tenant space, itemized costs of hard wall interior partitions, interior glazing, cabinetry, lighting, HVAC, plumbing where required, painting, staining and other finishings and coordination of all owner-supplied furnishings, i.e., carpeting, modular workstations and telecommunications installations.

E. PROJECT SCHEDULE

The County needs to occupy the building no later than January, 2003. Turner is required to provide a CPM schedule for the project including all design phases that meets that date.



## EXHIBIT D - PROJECT DESCRIPTION

### 1. Project Site:

The building will be on a parcel at the San Mateo County Hillcrest / Tower Rd. Government Center in Belmont, CA, located at the intersection of I 280 on the west, Hwy. 92 on the south and Polhemus Rd. on the east. The site of the project is a vacant triangular portion lying adjacent to the embankment of Polhemus Rd. to the east, lower Tower Rd. (the former path of old Polhemus Rd.) to the west and the San Mateo County Elections Division office and warehouse building to its immediate south.

### 2 Current Program Demands:

Turner / HOK has successfully concluded preliminary needs assessments, design programming and site evaluations and a functional relationship plan upon which this Agreement will be based. It is anticipated that the new building will maximize efficiency by consolidating the operations of the crime lab with that of the Coroner's office because of existing conditions as defined in the needs assessment and summarized as follows:

#### a) Crime Lab:

The San Mateo County Sheriff's Crime Lab management, criminalists and forensic specialists are currently housed in a 75-year old building in only 13,000 s.f. of space adjacent to the Crystal Springs Rehabilitation Center across Tower Rd. from the proposed site. The building is dysfunctional due to its age, poor configuration, lack of space and adequate ventilating systems and a recent closing of one section subjected to Stachey- Botris mold infestation.

#### b) Coroner:

The Coroner is currently located at 617 Veterans Blvd. in Redwood City in 3,000 s.f. of similarly cramped conditions as the crime lab, in leased space at a cost of \$94,000 annually to the County.

### 2. Proposed Building:

#### a) The Needs Assessment, Design Program calls for the following space allocations:

i)	Forensics Lab spaces:	18,332 departmental gross sq. ft.
ii)	Forensics Lab administrative offices:	3,614 departmental gross sq. ft.
iii)	Coroner	2,040 departmental gross sq. ft.

Total departmental gross sq. ft.=	23,986
Incl. 1.25 gross building factor=	<b>30,000 total gross sq. ft.</b>

#### b) Configuration: The site is sloped and offers challenges of correct orientation for maximizing the benefits and minimizing the detriments of solar gain. Studies will be required to determine the best cost-benefit to site constraints of three possible configurations:

- i) one story
- ii) one and one-half story
- iii) two story



c) Mission Statement: The Design Team is to be guided by the County's Mission Statement for the project, dated Jan. 16, 2001, summarized as follows:

- i) Explore alternative energy sources including solar, wind, water and others.
- ii) Maximize use of passive energy systems and techniques
- iii) Maximize solar energy source systems through effective orientation
- iv) Specify recycled and recyclable materials
- v) Design low-energy mechanical and electrical systems
- vi) Provide life-cycle costing vs. initial cost analyses
- vii) Assist County in seeking alternate funding sources
- viii) Integrate structural expression with architectural design

d) Parking: Demands exist at this site which may exceed those at sites closer to public transportation. The demands are summarized from the Needs Assessment Design Program for the Tower Rd. location as follows:

i) Forensics Lab Employees	25
ii) Forensics Lab Visitors	3
iii) Forensics Lab Police Vehicles	6
iv) Service Vehicles	1
v) Forensic Investigator	1
vi) Coroner Staff	4
vii) Coroner Vehicles	6
 Total Parking Demand	 46

### 3. Environmental Impacts:

The County will prepare documentation with the assistance of the Design Team for all necessary requirements for environmental approvals. A public filing will be undertaken for a negative declaration, barring any mitigations which may be required for as yet, undetected environmentally protected species.

Description	Rem Dur	Start	2001												2002			2003														
			J	A	N	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	
<b>Construction Phase</b>																																
Develop Prequal documents	10	04/23/01																														
Advertise for Prequals	10	05/07/01																														
Review Prequals	30	05/21/01																														
Bid Exterior Wall	20	06/18/01																														
Bid Structural Packages	20	06/25/01																														
Develop Bid Packages & Bid	45	08/20/01																														
Buildout Facility	300	10/01/01 *																														
Project Complete	0																															
<b>Design Phase</b>																																
Schemataic Design	55	01/30/01 *																														
Soils Report	40	03/05/01 *																														
Develop Schematic Design Estimate	11	04/06/01																														
County Approval	5	04/23/01																														
Design Development	35	04/30/01																														
Structurual Package	40	04/30/01																														
Exterior Wall Package	35	04/30/01																														
Working Drawings	55	06/18/01																														
D.D. Estimate Update	10	06/18/01																														
Award Testing/ Inspection	20	07/23/01																														
Final Cleanup of Dwgs.	15	08/27/01																														
County Plan Check	20	09/03/01																														

Start date	05/06/99
Finish date	11/22/02
Data date	01/08/01
Run date	04/12/01
Page number	1A
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Turner Construction Co./HOK  
San Mateo County Sheriff's Crime Lab  
EXHIBIT E



EXHIBIT F

To Follow

**Exhibit G**  
**Payment Schedule Estimate**

	Turner Costs	Construction Contracts	Total
March, 2001	\$ 210,000		\$ 210,000
April, 2001	\$ 155,000		\$ 155,000
May, 2001	\$ 175,000		\$ 175,000
June, 2001	\$ 185,000		\$ 185,000
July, 2001	\$ 195,000		\$ 195,000
August, 2001	\$ 161,000		\$ 161,000
September, 2001	\$ 126,010	TBD	\$ 126,010
October, 2001	\$ 94,000	TBD	TBD
November, 2001	\$ 90,000	TBD	TBD
December, 2001	\$ 90,000	TBD	TBD
January, 2002	\$ 90,000	TBD	TBD
February, 2002	\$ 90,000	TBD	TBD
March, 2002	\$ 90,000	TBD	TBD
April, 2002	\$ 90,000	TBD	TBD
May, 2002	\$ 90,000	TBD	TBD
June, 2002	\$ 90,000	TBD	TBD
July, 2002	\$ 90,000	TBD	TBD
August, 2002	\$ 90,000	TBD	TBD
September, 2002	\$ 90,000	TBD	TBD
October, 2002	\$ 67,000	TBD	TBD
November, 2002	\$ 52,664	TBD	TBD
<b>Total</b>	<b>\$ 2,410,674</b>	<b>TBD</b>	<b>TBD</b>

## GENERAL CONDITIONS

### 1. THE CONTRACT

#### 1.1 CONTRACT DESCRIPTION

The contract represents in its entirety and solely the agreement between the Trade Contractor and the Project Manager. The Work shall be bid by the County of San Mateo and, upon award the Contract shall be assigned to the Project Manager.

#### 1.2 CONTRACT DOCUMENTS

- A The Contract Documents form the contract and consist of the Notice to Contractors, Instructions to Bidders, Agreement, General Conditions, Special Provisions Supplementary Conditions, Performance Bond, Contractor's Bond, Specifications, Drawings, Addenda, Revision Orders, Unilateral Revision Orders, Change Orders and written interpretation and instruction issued in accordance with the provisions herein.
- B The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. The terms of the contract between the Project Manager and the County are included herein and to the degree that there are any inconstancy the contract shall be governing. The contract documents are not necessarily complete in every detail. The Contract is to include all labor, materials, equipment and other items as necessary for the proper execution and completion of the work or reasonably inferable as being necessary to produce the intended results.
- C An item designated by reference to the number, symbol, or title of a specific standard such as a commercial standard, a Federal Specification, a Trade Association Standard or other similar standard, shall comply with the requirements in the latest revision thereof and any amendments or supplement thereto in effect on the date of the bid. The standards referred to shall have full force and effect as though printed in the Specifications.
- D The Project Manager will arrange for the Trade Contractor to have access to one set of drawings. The Trade Contractor may at his expense arrange thru the Project Manager to reproduce more sets of the Drawings and Specifications as needed for construction of the work. All Drawings and Specifications and copies thereof are the property of the Owner. They are not to be used on other projects and with the exception of the signed contract set, are to be returned upon request at the completion of the work.
- E For convenience, the Specifications may be arranged in the several sections, but such separation shall not necessarily be considered as the limit of the work required of any separate trade. The terms and conditions of such limitations are wholly between the

Project Manager, the Trade Contractor and his Subcontractors.

- F In general, the Drawings will indicate dimensions, position, kind of construction; and the Specifications, qualities and methods. Work indicated in one but not the other shall be furnished as though fully set forth in both. Work not particularly detailed, marked or specified, shall be the same as similar parts that are marked, specified or detailed.
- G For detailed enumeration of the precedence of documents and specifications refer to section 01010 of the Specifications as prepared by HOK.
- H The "Project Manual" is a collection of Contract Documents assembled for the convenience of the parties and usually includes, but is not limited to, the Notice to Contractors, Instructions to Bidders, General Conditions, Supplementary Conditions, bid documents, Form of Agreement, and Specifications.

### 1.3 ERROR IN THE DOCUMENTS

- A Should an error or conflict appear in the contract documents, or a conflict with the documents and actual conditions, the Trade Contractor shall notify the Project Manager who will arrange to issue instructions. If the Trade Contractor proceeds with the work so affected without such instructions, he shall make good any resulting unacceptable work, damage or defect. It is the Trade Contractor's responsibility to verify all existing dimensions and dimensions of new work connecting to existing construction prior to proceeding with the work.
- B Whenever the documents could be construed to be ambiguous or conflicting, the Trade Contractor is deemed to have included the cost of the most expensive material, method, or requirement in the Contract Amount.

### 1.4 SUBSTITUTIONS

- A The intent of the Specifications is to specify high grade equipment and materials. It is not the intent of the specifications to exclude or limit the products of any responsible manufacturer, except when the Owner has adopted a specific system or product which will be noted, "No Substitutions Allowed," or similar language. Where equipment, material, or process is specified by the trade name or by the name of any particular patentee, manufacturer or dealer, it shall mean the specified item or any other product which is equal in every respect including quality, utility, serviceability, and aesthetic effect. The Architect in consultation with the Owner shall be the judge of equality between products, materials or methods.

- B Should the Trade Contractor wish to use equipment, materials or processes different from those specified, he shall request approval for the desired substitution. His request shall include all substantiating data required for the Architect to make any evaluation of the request. No substitution shall be made without written approval of the Architect. The Architect's refusal to approve a substitution shall not effect the progress of the work and is not grounds for a claim against the Owner or the Project Manager.

#### 1.5 SEPARATE CONTRACTS

- A The Owner reserves the right to let other contracts in connection with this Work on the project. The Project Manager and the Trade Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.
- B If any part of the Trade Contractors' Work depends for proper execution or results upon the work of another contractor, the Trade Contractor shall inspect and measure the existing work and promptly report to the Project Manager all defects or discrepancies with the drawings that render it unsuitable for such proper execution or results. The Trade Contractors' action of proceeding with his work shall constitute his acceptance of the existing work as fit and proper for the reception of his work.
- C The Trade Contractor shall make good any damage he may do to another contractor's work to the Project Manager's and the Owner's satisfaction.

#### 1.6 CONTRACT TERMINATIONS

##### A Owner's Right to Terminate Contract

If the Trade Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should fail to supply enough properly skilled workmen or proper materials, or if he should fail to diligently and expeditiously prosecute the work, or if he should fail to commence the work on the project site within ten calendar days of the date of the Notice to Proceed, or if he should fail to make prompt payments to sub-contractors or for materials or labor, or persistently disregard laws, ordinances or the instructions of the Owner to Project Manager, or otherwise breach any material provision of the contract between the Trade Contractor and Project Manager, the Owner may without prejudice to any right or remedy the Owner may have the Project Manager, after giving the Trade Contractor seven days' written notice, terminate the Contract or terminate the Trade Contractors right to proceed with the work and take possession of the premises and of all materials, tools

and appliances thereon and finish the work by whatever method the owner may deem expedient. In such case, Trade Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Trade Contractor thru the Project Manager. If such expense shall exceed such unpaid balance, the Trade Contractor shall pay the difference to the Owner and the Project Manager.

**B**    Emergency Termination

This Contract is subject to termination as provided by Section 4410 and 4411 of the Public Contracts Code of the State of California, being portions of the Emergency Termination of Public Contracts Act of 1949. Said Sections read as follows:

"Sec. 4410. TERMINATION OF CONTRACT FOR PUBLIC WORK IN EVENT OF NATIONAL EMERGENCY. In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment, or labor, as the result of an order or of a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the Contractor may, by written agreement, terminate said contract."

"Sec. 4411. INCLUSION OF TERMS AND CONDITIONS OF TERMINATION OF CONTRACT IN AGREEMENT: COMPENSATION TO CONTRACTOR. Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case."

"Compensation to the contractor shall be determined on the basis of the reasonable value of the work done, including preparatory work. As an exception to the foregoing, in the case of any fully completed separate item or portion of the work for which there is a separate contract price, the contract price shall control. The parties may in any other case adopt the contract price as the reasonable value of the work or any portions thereof."

1.7    NOTICES



- A Notices are valid only if written and shall be a document issued for the purpose of notification. A separate written notice is required for each subject and issue.
- B Written notice shall be deemed to have been duly served if delivered in person to the individual to whom it is addressed, or if sent by certified or registered mail to the address specified in the contract documents as may be revised by written notice.

## 1.8 ALLOWANCES

- A The Trade Contractor shall include in the contract amount all allowances stated in the contract documents. Items or services covered by these allowances shall be supplied as the Owner may direct, but the Trade Contractor will not be required to employ persons against whom he makes a reasonable objection.
- B Allowances for material and equipment shall cover the cost to the Trade Contractor, less any applicable trade discount, delivered the site, and all applicable taxes. The Trade Contractors' costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses required to complete the work shall be included in the contract amount and not in the allowance.
- C Whenever the cost of the material, equipment or service is more than or less than the allowance, the contract amount shall be adjusted by the procedure in Section 2, Contract Modifications.

## 2 CONTRACT MODIFICATIONS

### 2.1 MODIFICATION DOCUMENTS

- A The Owner or the Project Manager, without invalidating the contract and without consent of surety, may accomplish changes in the Work within the general scope of the contract consisting of additions, deletions or other revisions, the contract amount and the contract time being equitably adjusted accordingly. All such changes in the work shall be accomplished by Revision Order or Unilateral Revision Order issued by the Owner or a Trade Contract Change Order issued by the Project Manager as may be applicable in accordance with the provisions herein. The contract amount and the contract time may be changed only by a Revision Order or a Unilateral Revision Order. The changes to the Work shall be performed under the applicable provision of the contract documents. Trade Contractor agrees to promptly proceed with the Work as so changed. All contract modifications included, but not limited to, those related to change orders, claims, and other provision provided herein shall be issued in accordance with this section 2, Contract Modifications.

- B. A Revision/Change Order is a written order from the Owner or the Project Manager ordering a change in the Work. Upon receipt of a this Order, the Trade Contractor shall promptly proceed with the work as changed. Within twenty (20) calendar days after receiving a Revision/Change Order and prior to or simultaneously with proceeding with the change in the work, Trade Contractor shall advise the Project Manager of the Trade Contractors' disagreement, if any, with the proposed adjustment in the contract amount or contract time stated in the Revision/ Change Order, if any, and shall state the nature and extent of the disagreement. Proceeding with the work as changed without submitting a notice of disagreement indicates Trade Contractors' full acceptance of the Revision/Change Order including the proposed adjustment, if any, in contract amount and contract time. A Revision Order is required to adjust the contract amount and the contract time for changes in the Work ordered by the Change Order. The Trade Contractor will not delay the work for any reason including a pending Revision Order or unresolved price or time adjustment.
- C. A Revision Order is a written document signed by the Owner and The Project Manager and the Trade Contractor issued after execution of the Contract, stating their agreement upon a change in the Work and an adjustment in the contract amount and contract time as full compensation for and attributable to the Work as changed. No claim for an adjustment to the contract amount or contract time based upon changed or extra work shall be valid unless pursuant of a written Revision/ Change Order. As to the amount to be paid for the work performed pursuant to the Change Order.
- D. In the event the Project Manager and the Trade Contractor do not agree upon the adjustment to the contract amount and the contract time pursuant to a Revision/Change Order or claim, the Project Manager may issue a Revision Order unilaterally. A Unilateral Revision Order is a document signed by the Project Manager and issued to the Trade Contractor authorizing an adjustment in the contract amount and the contract time as the Project Manager deems equitable. A Unilateral Revision Order may be signed by the Trade Contractor and delivered to the Project Manager thereby indicating Trade Contractors' agreement with the provisions of the document to a Revision Order. The Project Manager may withdraw a Unilateral Revision Order prior to receiving such copy signed by the Trade Contractor.
- E. If Trade Contractor is in disagreement as to the adjustment in the contract amount or contract time as issued in a Unilateral Revision Order, the Trade Contractor shall give to the Owner and Project Manager written notice of his disagreement, the basis thereof, and all supporting documentation within ten (10) calendar days after delivery to the Trade Contractor of the Unilateral Revision Order. Such notice of disagreement does not excuse performance by the Trade Contractor of all obligations under the contract documents and the Trade Contractor shall proceed with the Work

including the Work ordered by the change order. Payments shall be made to the contractor on the basis of the Unilateral Revision Order. Failure to present such notice of disagreement constitutes a waiver by the Trade Contractor of any entitlement to additional cost or time.

- F The Project Manager shall have authority to issue instructions to the Trade Contractor which may require minor changes in the work not involving an adjustment in the contract amount or an extension of the contract time.
- G Separate authorization by the Board of Supervisors shall be required for any change which would increase the payments to the Project Manager and the Trade Contractors for a change in excess of \$25,000. It is hereby contemplated by the parties hereto that such separate authorization may require four weeks to obtain. In no event shall the Project Manager and the Trade Contractors be obligated to proceed under an order from County which would cause the Contract Sum to exceed funds legally available to pay for such Change.
- H. Within 7 days of receipt of a Revision Order Proposal request, the Trade Contractor shall submit its proposal to the Project Manager for review and submission to the Owner for Authorization. Proposal shall include a full breakdown of all costs and supporting backup from material and equipment vendors.

## 2.2 VERBAL INSTRUCTIONS

Trade Contractors shall not accept verbal instructions. No work will be accepted by the Owner or the Project Manager that differs from the plans and specifications that has not been approved pursuant to the required written approvals.

## 2.3 METHOD OF DETERMINING ADJUSTMENT

- A The adjustment to the contract amount or contract time pursuant to a Revision/ Change Order, claim, or other provision provided herein shall be determined in one or more of the following ways at the Owners' and the Project Manager's discretion:
  - 1 By negotiation based upon Trade Contractors' estimate. The estimate shall include quantities of material, the effect on the schedule, and a breakdown of cost showing labor, materials, profit, overhead, and all other items of cost directly associated with the change of work. Indirect cost such as supervision and project management are not directly allowed but are considered included in overhead and profit as allowed herein. Estimated unit prices used to calculate cost shall not exceed published unit prices, such as those published by R. S. Means Company, Inc. discounted 20% , unless the Trade Contractor

If the Trade Contractor is delayed at any time in the progress of the Work by acts or neglect of the Owner or the Project Manager, or by any separate Contractor employed by the Owner, or by labor disputes, fire, unusual delays in transportation, unusually adverse weather conditions, unavoidable casualties or by any other unforeseeable cause beyond the Trade Contractors' control, which the Owner decides justifies the delay, then the contract time may be extended for such reasonable time as the Owner in his discretion may decide. Trade Contractors' claim for extension of time shall be made in writing to the Owner in accordance with Section 2.4A, Trade Contractors' claims. Only one claim is necessary in the case of continuing delay.

C HIDDEN CONDITIONS

Should concealed or unknown conditions be encountered in the performance of the work below the surface of the ground or no change in an existing structure be at variance with the conditions indicated by the contract documents, or should concealed conditions differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract, the contract amount and contract time shall be equitably adjusted as provided herein upon claim by Owner or by Trade Contractor. Contractor claims shall be in accordance with Section 2.4A, Trade Contractor Claims.

D HAZARDOUS MATERIALS

Asbestos or other hazardous material may be present in County buildings or on County property. Asbestos is typically in the form of pipe lagging, fire proofing, floor tiles, mastic, and plaster. In the event any suspected asbestos or other hazardous material is encountered during construction that may be disturbed by the work, the Contractor shall stop immediately and notify the County. The Contractor and all subcontractors shall instruct their employees of the type and location of the most likely forms of hazardous material to be encountered and of the procedure to be taken if encountered. Contractor will be responsible for the mitigation and abatement of the hazardous material upon authorization of Owner. All claims for adjustment in time or money shall be processed in accordance with Section 2.4C, Hidden Conditions.

2.5 OVERHEAD AND PROFIT

A Adjustments to the contract amount due to changes in the Work or any other reason, shall include overhead and profit as follows:

- 1 Trade Contractors' overhead and profit on the direct cost of work performed by himself shall be a total sum not exceeding fifteen percent (15%) of such costs.

- 2 Trade Contractors' overhead and profit on the direct cost of work performed by subcontractors shall be a total sum not exceeding five percent (5%) of such work.
- 3 Subcontractors' overhead and profit on the direct cost of work performed by subcontractor shall be a total sum not exceeding fifteen percent (15%) of the cost of the work. Subcontractor overhead and profit will be allowed for one tier only.
- 4 Overhead and profit shall not be applied to taxes, delivery charges and insurance.

The "direct cost of the work" is considered to be the cost of labor and material incorporated into the construction. Supervision and administration of the work, changes, or claims shall not be included in direct cost.

6. Changes to the work ordered by the Project Manager or Owner, which decrease the contract amount, shall decrease the Trade Contractors' overhead and profit in accordance with the above provisions. Value engineering revisions initiated by the Trade Contractor which decrease the contract amount shall be at cost only.

## 2.6 MAINTAIN RECORDS

Project Manager, the Trade Contractor and Subcontractor shall maintain records, in accordance with generally accepted accounting principles, relating to costs of changes to the work or claims for 4 years after the final completion. The owner will have the right to audit these records at any time up to 4 years after completion of the project and recover from the Trade Contractor or Subcontractor any amount paid by Revision Order but not substantiated by audit.

## 3 TRADE CONTRACTOR

### 3.1 DEFINITIONS

- A The term "Trade Contractor," as used herein, is the person or organization identified as such in the Agreement, and is referred to as if singular and masculine and includes his authorized representatives.
- B The term "Subcontractor," as used herein, includes only those persons or organizations having a direct contract with the Trade Contractor to perform a portion of Trade Contractors' work. "Subcontractor" includes one who furnishes material

worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.

3.2 GENERAL

- A It is the intent of the Specifications that all work be done in accordance with the best practices of the various trades involved and highest industry standards.
- B The Trade Contractor shall perform in good faith and cooperate with the Owner, the Project Manager and Architect.

- C It is the Trade Contractors' responsibility to diligently prosecute the work, using his best skills and attention, and the most appropriate techniques and equipment that are required to provide a finished product in compliance with the contract requirements. He shall insure that no work is done that does not comply with the contract documents.
- D The Trade Contractor shall attend all required preconstruction meetings and weekly progress meetings scheduled by the Project Manager.
- E Trade Contractor shall submit to Project Manager a daily record of Contractors' activity. Such record shall be delivered to Project Manager daily for previous days activity and shall include project name, date, weather, names of subcontractors, count of personnel by company, material deliveries, and description of activity and events including location. The record of daily activity shall not be used as a Notice to Project Manager.

### 3.3 EXISTING CONDITIONS

- A The Trade Contractor by executing the contract represents that he has visited the site and familiarized himself with the local conditions under which the work is to be performed and has correlated his site observations with the requirements of the contract documents.
- B The Trade Contractor shall carefully study and compare the contract documents and existing conditions and shall report to the Project Manager and Architect any error, conflict, inconsistency, omission, or any variance with laws, ordinances, codes, rules or regulations bearing on the work as drawn and specified. Trade Contractor shall report such condition to the Project Manager and Architect and in writing at such time as to allow at least twenty (20) calendar days for a response with no delay to the work. All necessary changes shall be accomplished in accordance with section 2, Contract Modifications.

### 3.4 SUBCONTRACTS

- A The Trade Contractor shall not be permitted to substitute any person or organization for any Subcontractor, person or organization listed by him in his bid without the prior, written consent of the Project Manager and the Owner, as provided for in Chapter 2 of Division 5, Title 1 of the California Public Contracts Code.
- B In addition to the information required in Form of Proposal regarding subcontractors, the Trade Contractor after execution of the Contract but prior to execution of the subcontract, shall submit the following information on each subcontractor: name, address, and nature of subcontractors' work, subcontractors' contract amount, and all

other information the Project Manager deems relevant. The Trade Contractor shall not contract with any such proposed person or entity to who the Project Manager, the Owner or the Architect has made reasonable objection.

- C Trade Contractor shall bind every subcontractor and every subcontractor agrees to be bound by the terms of the Contract Documents insofar as applicable to their work. The Trade Contractor shall be responsible for the acts and omissions of subcontractors.
- D Trade Contractor further agrees to pay each subcontractor promptly upon receiving payment from Project Manager.
- E Neither the acceptance of the name of subcontractor nor the suggestion of such name nor any other act of the Project Manager or Owner, nor anything contained in any contract document is to be construed as creating any contractual relation between the Project Manager or Owner and any subcontractor.

### 3.5 PERSONNEL AND LABOR POLICY

- A The Trade Contractor shall keep on the project site during the progress of the work a competent superintendent or Foreman satisfactory to the Project Manager. The Superintendent or Foreman shall not be changed except with the consent of the Project Manager. The Superintendent shall represent the Trade Contractor and all directions given to him shall be as binding as if given to the Trade Contractor. The Trade Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ any unfit person or anyone not skilled in the work assigned to him. The Trade Contractor shall be responsible to the Project Manager and the Owner for the acts and omissions of his employees and other persons performing work under a contract with the Trade Contractor.
- B No person shall, on the grounds of age (over 40), ancestry, creed, color, disability, marital status, medical condition, national origin, political or religious affiliation, race, sex, sexual orientation or any non-job-related criteria be excluded from participation in, be denied the benefits, or be subjected to discrimination under the Agreement.
- C Trade Contractor shall ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under the Agreement. Contractors' affirmative action policies shall be made available to Owner upon request.
- D It is the policy of the Owner that Trade Contractors on public projects employ their



workers from the local labor market whenever possible. Consistent with that policy, the Contractor is requested to employ his workers from the local labor market. "Local labor market" within the meaning of this section is defined as the labor market within the geographical confines of the County of San Mateo, State of California.

- E. The Trade Contractor shall forfeit, as penalty to the Owner, twenty-five Dollars (\$25) for each laborer, workman, or mechanic employed in the execution of the contract by him, or by any subcontractor under him, upon any of the work herein above mentioned, for each calendar day during which said laborer, workman, or mechanic is required or permitted to labor more than eight hours in violation of the provisions of Article 3, chapter 1, part 7, division 2 of the Labor Code.
- F. The Trade Contractor shall forfeit as penalty to the Owner, twenty-five dollars (\$25) for each laborer, workman or mechanic employed for each calendar day or portion thereof, if such laborer, workman, or mechanic is paid less than the general prevailing rate of wages hereinafter stipulated for any work done under the attached contract, by him, or by any subcontractor under him, in violation of the provisions of Article 2, Chapter 1, part 7, division 2 of the Labor Code.
- G. Apprenticeship Program: Contractor shall comply with the provision of Section 1777.5, chapter 1, part 7, division 2 of the Labor Code.
- H. The Trade Contractors' attention is directed to the provisions of the California Labor Code, Division 2, Section 1776, and the regulations implementing it in Title 8, California Administrative Code. The Trade Contractor shall be responsible for compliance by his employees and subcontractors. A certified copy of all weekly payroll records shall be furnished upon request of the Owner, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the Department of Industrial Relations.
- I. Payrolls shall contain the full name, address, and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen.
- J. The penalties specified in subdivision (f) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any moneys due or which may become due to the Trade Contractor.

### 3.6 SCHEDULE

- A. It is the Project Manager's intent that all work, including punch list, be completed within the contract time. The Trade Contractor shall, within two weeks of being awarded the contract, submit to the Project Manager a Fragnet Schedule for the work. The schedule shall indicate the dates for starting, completion, and the sequence of all tasks required to complete the Work including submittals, submittal review periods, material purchasing, lead or fabrication times, and other events or activities

having an effect on the progress or completion of the work. The effects of typical weather shall be allowed for in the contractors' schedule. The schedule shall allow minimum of 14 calendar days for the Architect to review each submittal. The schedule shall be submitted in CPM using SureTrak with 3 printed copies and one disk copy. No single task on the schedule may exceed two weeks in duration.

- B This schedule shall be revised as required by the progress and conditions of the work, change orders and all other factors that could influence the date of substantial completion.
- C Trade Contractor shall post a schedule on the project site in a location readily accessible to the Project Manager. The posted schedule shall be updated at least weekly by the Trade Contractor to show actual progress.

### 3.7 AS-BUILT DOCUMENTS

- A The Trade Contractor shall maintain at the site As-Built documents consisting of one copy of all drawings, specifications, addenda, approved shop drawings and samples, Revision Orders, Change Orders, instructions from the Architect, and other documents relating to the project. All documents shall be marked neatly and legibly by the Trade Contractor to record all changes to the work, field measurements, actual conditions, and adjustments made during construction.
- B Upon completion of the Work, Trade Contractor shall deliver as-built documents to the Project Manager and provide any explanation or clarification of the documents as requested by Project Manager, Owner or Architect.

## 4 THE OWNER

### 4.1 DEFINITION

The "Owner" is the person or organization identified as such in the Agreement, and is referred to as if singular in number and masculine in gender and includes his authorized representatives. The Owner may be the County of San Mateo, sometimes called "The County", or it may be a non-profit corporation specifically and legally formed for the purpose of financing the work for the County of San Mateo.

The "Project Manager" is the person or organization identified as such in the Agreement and is referred to as if singular in number and masculine gender and includes his authorized representatives. The Project Manager is Turner Construction Company, who has entered into contract with the County of San Mateo to Design and Oversee the construction of the

Project.

#### 4.2 GENERAL

- A The Owner shall furnish information, thru the Project Manager, after the bid date and not included in the contract documents in the form of drawings, reports, survey data, utility locations, plans of existing facilities and such other information as may be requested by the Trade Contractor. This information may serve as a guide for the performance of the Work but is not part of the Contract.
- B The Owner shall receive copies of all correspondence, notices, approved shop drawings, test reports and such material pertinent to the contract that he may request through the Project Manager. The Owner shall have access to the Work at all times.

#### 4.3 THE ASSISTANT COUNTY MANAGER

The Assistant County Manager for the County of San Mateo or his duly appointed representative is the duly appointed agent for the Owner and as such is empowered to act for the Owner in all matters as stated in the Contract Documents or as provided by law.

#### 4.4 OWNER'S CONSTRUCTION REPRESENTATIVE

- A The Owner has engaged a Construction Representative who will represent the Owner as provided herein and perform at the direction of the Owner.
- B The Owners' Construction Representative shall assist the Project Manager in determinations on matters involving the progress of the Work and compliance with the drawings and specifications. He shall receive copies of all communications regarding the project, have full access to the Work, and be kept informed of all actions taken.
- C The Owners' Construction Representative shall not interpret the plans, coordinate the Work, order changes in the Work, supervise the workmen, or perform any duty which is the responsibility of the Project Manager or the Trade Contractor.

### 5. THE ARCHITECT

#### 5.1 DEFINITION

For the purpose of this contract, the term "Architect" means the person identified as such on the title pages of the Drawings and Specifications or other design professional identified

as the preparer of the Contract Documents in lieu of an Architect. Where no design professional is identified, the term "Architect" shall refer to the Project Manager. The term "Architect" shall include his appointed representative and consultants. The person is referred to throughout the contract as if singular in number and masculine in gender. Nothing contained in the Contract Documents shall create any contractual relationship between the Architect and the Trade Contractor.

- A The Architect for this Project is Hellmuth Obata and Kassabaum, commonly referred to as "HOK".

## 6. THE PROJECT MANAGER

### 6.1 DEFINITION

For the purpose of this contract, the term "Project Manager" refers to Turner Construction Company, which has entered into a contract with the County of San Mateo to provide Design of and Oversee the construction of the Project. The County of San Mateo will assign to the Project Manager the Trade Contracts and the Project Manager will be responsible for the performance of the Trade Contractors.

- A. The Project Manager will provide the general administration of the construction contract between Owner and Trade Contractor.
- B. The Project Manager will have authority to act on behalf of the Owner to the extent provided in the Contract Documents. The Owner's instructions to the Trade Contractor shall be issued through the Project Manager.
- C. The Architect shall at all times have access to the Work. The Architect will make periodic visits to the site to familiarize himself generally with the progress and quality of the work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Architect will endeavor to guard the Project Manager and the Owner against defects and deficiencies in the Work of the Trade Contractor.
- D. The Project Manager with input from the Architect will be the interpreter of the requirements of the Contract Documents and the judge of the Trade Contractors' performance thereunder. The Architect will, within 14 calendar days, render interpretations or answers to questions submitted by the Project Manager on behalf of the Trade Contractor. All interpretations and decisions of the Architect shall be consistent with the intent of the Contract Documents. In his capacity as interpreter and judge he will exercise his best efforts to insure faithful performance by all parties of the Contract. The Architect's decision in matters relating to esthetic effect will be final if consistent with the Contract Documents.

- E. The Architect will review submittals and assist The Project Manager in reviewing adjustments to the contract, due to Change Orders or claims, review applications for payment, conduct observations of the work to determine the dates of substantial completion and final completion, will receive and review written guarantees and related documents required by the contract and assembled by the Trade Contractor.

## 7 PERFORMANCE OF THE WORK

### 7.1 DEFINITION

- A. The term "Work" as used herein is all of the Trade Contractors obligations under the contract documents including, but not limited to, all labor, material, equipment, as-built drawings, punch-list, guarantees, and services required thereby. The Work may be the whole or part of the Project.
- B. The term "Project" is the total construction planned or contemplated by the Owner of which the Work may be the whole or a part. The Owner may perform other Work on the project site during the progress of the Work by owners personnel or contractors.

### 7.2 GENERAL

- A. The Trade Contractor shall provide, maintain and remove upon completion of the Work, all tools, machinery, equipment, temporary rigging, scaffolding, hoisting equipment, rubbish chutes, barricades around openings and excavation, ladders between floors, fences around buildings, and all other items as required for safe completion of the work, whether specifically designated or not and shall conform to all requirements in regard to operation, safety, and fire hazards of State and local authorities and of Underwriters.
- B. Deliver all materials and equipment to the project in the manufacturer's original sealed, labeled containers, if any, and protect all packaged and unpackaged items against moisture, dust, tampering or damage from improper handling or storage.
- C. Place all materials and equipment on order in time to avoid job delay or hindrance. Schedule deliveries to coincide with the construction schedule so that materials and equipment are promptly installed upon delivery.
- D. Except as specifically noted otherwise, the installation and/or maintenance directions provided by the manufacturer shall be followed for all materials and equipment.

- E. All materials shown on the drawings or specified herein shall be new, unused materials unless specifically marked otherwise.
- F. All materials not conforming to the requirements of these specifications shall be considered as defective and all such materials, whether in place or not, shall be rejected and shall be removed immediately from the site of the work.
- G. The Project Manager will provide various temporary services which are defined in the Trade Contractor Procedures Manual. The Trade Contractor will be responsible to provide any other temporary services required to complete his work.
- H. Shut down of utilities for any reason or duration shall be subject to approval by the Owner. The Owner requires a minimum of 14 days notice prior to authorizing a utility shut down. When shut-downs of 30 minutes or more are required, the Contractor shall provide alternate service for normal occupancy requirements. Utility shut-downs shall be scheduled during non-business hours.
- I. Prior to ordering materials, the Trade Contractor shall verify all measurements at the site and shall be held responsible for their accuracy. No extra compensation will be allowed for differences between actual measurements shown on the drawings.
- J. Fences, office facilities, enclosures, storage sheds, etc., required by the Trade Contractor in the performance of the work shall be located where approved by the Project Manager.
- K. The Trade Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the contract documents and shall not unreasonably encumber the site with any materials or equipment.
- L. The Trade Contractor shall keep the premises clean and free from accumulation of waste materials or rubbish.
- M. At the completion of the work, Trade Contractor shall remove all waste, surplus materials, and rubbish from and about the Work and shall clean all surfaces, removing all extraneous paint, mortar, dust, and stains, leaving the work bright, clean and polished.
- N. The Trade Contractor shall pay for and include all Federal, State and local taxes, direct or indirect, upon all materials, labor and equipment.



- O. Royalty and License Fees incidental to the use of any patented material, device or process shall be paid by the Trade Contractor and in the event of a claim of alleged infringement of patent rights, the Trade Contractor shall save the Project Manager and Owner free and harmless from loss on account thereof; and also defend, at his own expense, all suits that may be brought in such connection.
- P. The Trade Contractor shall continuously maintain adequate protection of all his Work from damage, and shall protect the Owners' property from damage or loss arising in connection with this contract.
- Q. Precaution shall be exercised at all times for the protection of persons (including Trade Contractors', Project Manager's and Owners' employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment and all hazards shall be guarded or eliminated in accordance with the safety provisions of the latest safety orders of the State of California (General Industrial Safety Orders and Construction Safety Orders), and in compliance with the Occupational Safety and Health Administration.
- R. All materials and workmanship shall be subject to inspection, examination, test and acceptance by the Owner at all times during manufacture and construction and at all places where such manufacture and construction are carried on.

### 7.3 TESTING

- A. The Owner will provide for testing of materials or workmanship as required by these specifications. The Trade Contractor thru the Project Manager shall coordinate and schedule tests with the testing firm. The costs of tests on materials at the project site will be borne by the Owner, except for retesting, as specified below, the material required for testing, and the Trade Contractors' labor required to facilitate the test or delayed by the test, which the Trade Contractor shall furnish. The Trade Contractor will cooperate with the Owners' testing representative in the taking of test samples. The Trade Contractor shall pay for all tests which are not at the job site.
- B. Required tests are specified elsewhere in the specifications.
- C. Should the results of any required tests fail to meet the requirements of the specifications, Trade Contractor shall at the Owners sole option correct the unacceptable condition or furnish new materials, as directed by the Owner, and additional tests shall be made at the Trade Contractors' expense until the materials are found to meet the requirements of the specifications.

- D. Should the results of any soil compaction tests fail to meet the requirements of the specifications, Trade Contractor shall recondition and/or recompact the fill, and additional tests shall be made at the Trade Contractors' expense until the compaction is found to meet the requirements of the specifications.
- E. Testing or inspection services required outside of the Owners regular working hours shall be paid for by the Trade Contractor.
- F. When existing building systems such as fire alarms, fire sprinkler systems, smoke detectors, halon systems, etc., are modified by the Work, the Trade Contractor shall test the entire system at the completion of the Work and demonstrate to the Owner that the system is functioning correctly and reliably.

#### 7.4 ADJACENT FACILITIES

- A. Trade Contractor shall provide adequate protection for all parts of the project site, and adjacent property, its improvements and its occupants throughout the work. All damage done to existing property shall be neatly repaired or replaced at the Contractors' expense.
- B. Work shall be executed in careful, orderly manner, with the least possible disturbance to public and occupants of the area.
- C. Owner will continue to use adjacent facilities. Trade Contractor shall take care to disrupt the Owner as little as possible. Trade Contractor in conjunction with the Project Manager shall provide legal and safe access to all facilities at all times. In order to facilitate use of adjacent facilities Owner may order Project Manager and Trade Contractor to alter or cease operations by written Change Order.

#### 7.5 PERMITS

- A. It shall be the responsibility of the Trade Contractor to obtain and pay for all permits, licenses, certificates, approvals, utility connections and services necessary for the proper execution and completion of the work.
- B. All fees which are for temporary approvals or services, such as those which are necessary for construction procedures, shall be paid by the Trade Contractor.
- C. In the event the Special Provisions require the Owner to pay any fee, the Contractor shall notify the Project Manager in writing, twenty (20) calendar days in advance of a required fee payment.

- D. It is the policy of the County to cooperate with State, County and City officials during the construction of this project, and it is the responsibility of the Trade Contractor and all his subcontractors to meet the requirements of government officials having responsibility for inspecting or observing construction projects by taking out permits for the work, calling for inspections and adhering to safety practices in accordance with the standard practice and project specifications. In the case of conflict of any of these provisions, the Owner should be notified. The term Inspector means a Public Building Construction Inspector or an individual performing the inspection as required by building codes or jurisdiction.

#### 7.6 LAWS

- A. Trade Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work. If the Trade Contractor performs any Work contrary to such laws, ordinances, rules and regulations, he shall bear all costs and delays arising therefrom.
- B. Project Manager and Contractor have all rights provided by law not specifically waived by this contract.

#### 7.7 EMERGENCIES

- A. In an emergency affecting the safety of life, the Work, or property, the Trade Contractor, without special instruction or authorization from the Project Manager, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury; he shall so act without appeal if so instructed or authorized..
- B. In an emergency affecting the safety of life, the work, or property or if an unsafe condition exists, the Project Manager or the Owner may, but is not obligated, take measures to mitigate the condition. Such measures may include expending labor or material, engaging other contractors, entering the project site the utilizing materials, equipment or facilities of Contractor. The Project Managrs' or the Owners' actions may be performed immediately and without notice to the Trade Contractor. The Trade Contractor shall pay the Project Manager or the Owner for all costs attributable to The Trade Contractor.

#### 7.8 SUBMITTALS

- A. "Submittals" are shop drawings, product data, maintenance information, samples, manufactures instructions, certifications, and similar documents or items which demonstrate the way the Trade Contractor proposes to conform the work to the information in the contract documents. The Trade Contractor shall review the entire

contract documents for other provisions relating to submittals and individual submittal requirements, if any.

- B The Trade Contractor shall review, stamp with his approval and submit with reasonable promptness and in orderly sequence so as to cause no delay in his Work or in the work of any other Trade Contractor, all submittals required by the Contract. Submittals shall be properly identified. At the time of submission, the Trade Contractor shall note in writing any deviation in the submittals from the requirements of the contract documents. By approving and submitting shop drawings and samples, the Trade Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data, and that he has checked and coordinated each shop drawing and sample with the requirements of the Work and of the contract documents.
- C The Architect will review submittals for conformance with the designed concept and with the information given in the contract documents. The Architects review will not relieve the Trade Contractor of responsibility for complying with the contract documents.

#### 7.9 CORRECTING WORK

- A The Trade Contractor shall promptly correct all work rejected by the Owner or The Project Manager as defective or as failing to conform to the contract documents, whether observed before or after the Notice of Completion and whether or not fabricated, installed or completed. The Trade Contractor shall not receive a time extension for correcting such rejected work and the Trade Contractor shall bear all costs of correcting such rejected work, including the cost of additional services or time thereby made necessary. All such defective or non-conforming work shall be removed from the site if necessary and the work shall be corrected to comply with the contract documents without cost to the Owner or the Project Manager. The Trade Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.
- B If any work should be covered before it is inspected, the Trade Contractor at his expense, must be uncovered the work for inspection and then replaced the cover.
- C If the Trade Contractor defaults or neglects to carry out the Work in accordance with the contract documents, or fails to perform any provisions of the contract documents, the Project Manager may, after seven days written notice to the Trade Contractor and without prejudice to any other remedy Project Manager may have, and without contract termination or ordering the contractor to stop work make good such deficiencies in any manner the Owner deems expedient. In such case an adjustment to



the contract shall be made in accordance with section 2, Contract Modifications, deducting from the payment then or thereafter due the Contractor, the cost of correcting such deficiencies, including the cost of additional services made necessary by such default, neglect or failure.

- D If the Owner deems it not expedient to correct work damaged or not done in accordance with the contract documents, a deduction from the contract price shall be made.
- E If the Trade Contractor fails to correct defective work or fails to supply materials or equipment in accordance with the contract documents, the Owner may order the Trade Contractor to stop the Work or any portion thereof until the cause of such order has been eliminated. Trade Contractor shall not receive a time extension or compensation as a result of stopping work as required by this provision.

## 8 TIME

### 8.1 DEFINITION OF OFFICIAL DATES

- A The "Contract Time" is the period of time indicated in the contract documents for achieving Substantial Completion of the Work. Time is of the essence of the contract. The term "day" as used in reference to this contract shall mean calendar day unless specifically designated otherwise.
- B. The Notice to Proceed shall establish the official date the work may commence and the start of the contract time.
- C. The date of "Substantial Completion" of the work is the date established by the Owner with the Trade Architect as herein provided. A date of beneficial occupancy or acceptance may be determined but they will not have official status in the contract.
- D. The date of "Final completion" is the date established by the Architect after substantial completion when the work is complete except for minor items of work which are incomplete due to special circumstances beyond the Trade Contractors' control as determined by the Owner. The date of Final Completion will be as shown on the recorded Notice of Completion.

### 8.2 SUBSTANTIAL COMPLETION

- A. Substantial Completion is the stage in the progress of the work when the entire Work, or a designated portion thereof acceptable to the Owner, is sufficiently complete in accordance with the contract documents to allow the Owner to use and occupy the

entire Work or portion thereof as intended. Prior to substantial completion the Contractor shall have inspected the Work, completed corrective measures, and tested and placed into operation all equipment and systems.

- B. When the Trade Contractor considers that the Work, or designated portion thereof acceptable to the Owner, is substantially complete, the Trade Contractor shall provide a written notice to the Project Manager and Owner in which the Trade Contractor certifies in writing that the Work or designated portion thereof is substantially complete with the exception of minor items and/or deficiencies which are to be specifically listed in the notice. The failure to include any items on such list does not alter the responsibility of the Trade Contractor to complete the Work in accordance with the Contract Documents.
- C. Upon receiving notice in accordance with paragraph 7.2B from the Trade Contractor, the Project Manager with the Architect will review the Work or designated portion thereof, and the Trade Contractors list of remaining work. When the Project Manager and the Architect determines that the Work or a designated portion thereof is substantially complete, the Project Manager and the Architect will establish a date of substantial completion, the time period within which the Trade Contractor shall complete the remaining work, and other conditions agreed to by the Owner, the Project Manager and the Trade Contractor.
- D. The guarantee period shall begin on the date of substantial completion. A separate date of substantial completion shall be established for designated portions of the Work as agreed to by Owner.
- E. Any Work used by the Trade Contractor prior to substantial completion shall be made new as of the date of substantial completion. Such Work may include light bulbs or tubes and systems or equipment requiring periodic maintenance.

8.3 LIQUIDATED DAMAGES

- A Should the Work not be Substantially Complete, as defined herein, within the Contract Time as may be revised, damages will be sustained by the Owner. It is understood and agreed that it may be impracticable or extremely difficult to determine the actual amount of damages which the Owner will sustain in the event of and by reason of such delay in completing the Work. For this reason the Owner has established a liquidated damages value of \$5,000. per calendar day and it is therefore agreed that the Trade Contractor will pay the Project Manager these damages should the Trade Contractor fail to meet the time periods established as part of the bid instructions for its portion of the work and the Owner assesses damages against the Project Manager. In the event the Trade Contractor fails to make such payment, the Project Manager may deduct the amount thereof from any money due or that may become due the Trade Contractor under the contract and should the balance due under the contract not be sufficient to cover the amount owed, the Project Manager shall have the right to recover the balance from the Trade Contractor, other contracts with the Project Manager, or the Trade Contractors' sureties.
- B The Owner may allocate liquidated damages to portions of the Work or to interim milestones. In the event the Trade Contractor fails to complete work remaining after Substantial Completion within the time periods established or fails to adhere to the conditions as agreed in establishing the date of Substantial Completion, liquidated damages shall apply.

84 USE AND OCCUPANCY PRIOR TO SUBSTANTIAL COMPLETION

- A The Trade Contractor agrees to use and occupancy of a portion of the work by Owner before substantial Completion.
- B Prior to the Owner occupying a portion of the work, a list of work to be completed or corrected shall be prepared jointly by the Project Manager, the Trade Contractor and Architect.
- C Occupancy by the Owner shall not be construed by the Trade Contractor as being an acceptance by Owner of that part of the work to be occupied.
- D The Trade Contractor shall not be held responsible for any damage to the occupied part of the work resulting from the Owner's occupancy.
- E Occupancy by the Owner shall not be deemed to constitute a waiver of any claims which Owner or Trade Contractor may have.



- F Use and occupancy by the Owner prior to Substantial Completion does not relieve the Trade Contractor of his responsibility to maintain all insurance and bonds required under the contract until the Work is completed and accepted by Owner. Trade Contractor shall obtain written endorsement of its insurance carrier and surety permitting occupancy by the Owner during the remaining period of work.

9 PAYMENTS

9.1 CONTRACT AMOUNT

The contract amount as stated in the agreement and, including adjustments authorized under the terms of the contract, is the total amount payable by the Project Manager to the Contractor for the complete Work.

9.2 CONTRACT AMOUNT BREAKDOWN

The Trade Contractor shall, before the first application for payment, submit to the Project Manager, the Architect and Owner a contract amount breakdown for the various parts of the work aggregating the total amount of the contract divided so as to facilitate payment. The contract amount breakdown shall be in such form as may be agreed upon by the parties and supported by such evidence as to its correctness that may be required by the Owner. The contract amount breakdown does not establish the value of work for contract modifications.

9.3 PROGRESS PAYMENTS

A The Owner shall make progress payments to the Project Manager for disbursement to the Trade Contractor for labor and materials incorporated into the Work as called for by the contract documents and approved modifications. No more often than once each month and on a day of each month agreed upon between the Project Manager and the Trade Contractor, the Trade Contractor shall submit to the Project Manager an application for payment consisting of a certificate of Payment, a calculation of completed work based on the contract amount breakdown and, if required by Owner or the Project Manager, receipts, releases, or other evidence showing the Trade Contractor's payments for materials, labor, subcontractors, and any such information as the Project Manager or Owner may require. Payment shall not be owed if the application does not conform to these requirements.

B Payment for labor and materials which have not yet been incorporated into the work on the project site is at the discretion of the Owner. Payment of labor and/or materials not yet incorporated into the work which are stored off-site, whether or not

specially fabricated for the project, can be made only when payment for such materials has been previously approved by the Owner at the time the contract amount breakdown is initially submitted and such contract amount breakdown is initially submitted and such payment shall be conditional upon submission by the Trade Contractor of a Bill of Sale in a form acceptable to the Owner or other such evidence as is required by the Owner to establish the Owner's title to such material or otherwise adequately protect the Owner's interest. All materials stored off-site shall be stored in a bonded warehouse at no additional expense to the Owner. Payment shall not be owed if the application does not conform to these requirements.

- C The Trade Contractor shall present the application for payment, as required herein, to the Project Manager for approval. The Project Manager with input from the Architect will review and adjust the certificate of payment to such amount as he decides is properly due and deliver it to the Owner for payment.
- D The owner will retain 10 percent of the amount of each payment due the Trade Contractor until after the date of final completion.
- E No certificate of payment issued nor payment made to the Trade Contractor nor partial or entire use of occupancy of the work by the Owner shall be an acceptance of any work not in accordance with the contract document.

#### 9.4 OWNER'S FAILURE TO ISSUE PAYMENT

If the Owner should fail to issue payment within 30 calendar days after the Project Manager submits the application for payment from, then the Trade Contractor may, upon fourteen days written notice to the Project Manager and provided the Project Manager does not pay the Trade Contractor within said fourteen days, stop work until Trade Contractor receives from the Project Manager the undisputed amount owed under the contract.

#### 9.5 PAYMENTS WITHHELD

- A The Owner may withhold or, on account of subsequently discovered information, nullify the whole or a part of any progress payment or retention payment to such extent as may be necessary to protect the Owner from loss on account of:
  - 1 Defective work not remedied by Trade Contractor.
  - 2 Third party claims filed or reasonable evidence indicating probable filing of claims.
  - 3 Failure of the Trade Contractor to make payments properly to subcontractors, or for material, labor or equipment.

- 4 The Owner's reasonable doubt that the Work can be completed for the balance then unpaid.
  - 5 Damage to another Trade Contractor's work.
  - 6 Damage to Owner's property.
  - 7 Persistent failure to pay fees in accordance with the contract documents.
  - 8 Owner's cost of correcting deficiencies in the work or undertaking any work due to contractors.
  - 9 Liquidated damages or anticipated liquidated damages as indicated by progress of the work in comparison with the Trade Contractor's schedule.
  - 10 Any amount owed to Owner or claimed by Owner.
  - 11 Trade Contractors' failure to deliver as-built drawings, guarantees, operating manuals or other documents.
- 9.6 The Trade Contractor shall not assign any monies due or to become due hereunder without the written consent of the Owner, The Project Manager and of all sureties executing any bonds on behalf of the Trade Contractor in connection with said contract.

9.7 FINAL PAYMENT AND RETENTION PAYMENTS

- A The final payment shall be the one made in response to the 100 percent completion certificate issued under section 8.3C which brings the total paid to the Trade Contractor to 90 percent of the contract amount. Trade Contractors' acceptance of the final payment shall constitute a waiver of all claims not already waived by the Trade Contractor except as previously made in writing and still unsettled.
- B The Owner will retain 10 percent of the amount of each payment due the Trade Contractor until 35 days after the date of recording the Notice of Completion. At that time if any work is still not complete, the Owner may continue to withhold all retention or, at the Owners option, the Owner may pay any portion of the retention.
- C As a prerequisite to the release of retention, Trade Contractor shall sign a Release of Liens in a form prescribed by Owner and the Project Manager.
- D Trade Contractor shall not be paid interest on retention.



10 INSURANCE

10.1 HOLD HARMLESS

- A The Trade Contractor shall indemnify and save harmless the Project Manager, the Owner, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, including those of third parties, brought as a result of the work required pursuant to this contract. This indemnification and hold harmless shall include but not be limited to all claims, suits, or actions brought for or on account of (1) injuries to or death of any person, including Trade Contractor; or (2) damage to property of any kind whatsoever and to whomsoever belonging; or (3) by patent rights of any person or persons, firm or corporation in consequence of the use in, on, or about the work, of any article or material supplied or installed under this contract; or (4) any other loss or cost as a result of this work. This indemnification and hold harmless shall, in addition, include but not be limited to the concurrent active or passive negligence of the Project Manager, the Owner, its officers, agents, or employees and servants, resulting from the performance of any work required by this Agreement of the Trade Contractor, provided that this shall not apply to injuries of damage for which Project Manager or Owner has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. Notwithstanding the above, Trade Contractor shall wherever it is necessary, keep and maintain at his sole cost and expense during the course of his operations under this contract such warning, signs, and barriers as may be required to protect the public. The provisions of the preceding sentence shall not impose any liability upon the Owner and are for the express benefit of the general public.
- B The duty of the Trade Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the Trade Contractor to indemnify the Project Manager, the Owner, its officers, agents, employees and servants against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

10.2 INSURANCE

- A The Trade Contractor shall not commence work under this contract until all required insurance has been obtained and such insurance has been approved by the Project Manager. The Trade Contractor shall furnish the Project Manager with Certificates of Insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Trade Contractor's coverage to include the contractual liability assumed by the Trade Contractor pursuant to this contract. Certificates of Insurance shall be filed with the Project Manager within ten

(10) days after award of the contract. These certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the Project Manager of any pending change in the limits of liability or of any cancellation or modification of the policy.

- B The Trade Contractor shall have in effect during the entire life of this contract Workers Compensation and Employers Liability Insurance providing full statutory coverage; and in case any work is sublet, the Trade Contractor shall require all subcontractors similarly to provide Workers Compensation and Employers Liability Insurance to full statutory limits. In signing this contract, the Trade Contractor makes the following certification, required by Section 1861 of the Labor Code:

“I am aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this contract.”

- C The Trade Contractor shall take out and maintain during the life of this contract such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him and any subcontractor performing work covered by this contract, from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims to include coverage on property in the care, custody and control of the Trade Contractor, and also including what are commonly known as the “X, C and U” exclusions (having to do with blasting, collapse, and underground property damage) which may arise from the Trade Contractor’s operations under this contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below. Such insurance shall include:

Comprehensive General Liability See Bid Package limits

2 Motor Vehicle Liability Insurance See Bid Package limits

- D The Project Manager, the Owner and their officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the Project Manager, the Owner, their officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the Project Manager or Owner or their respective officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

- E The Contractor shall purchase and maintain at his expense All Risk Property Insurance, excluding Earthquake and Flood coverage, in an amount covering all work and materials in the contract, including that of subcontractors, in an amount equal to the contract amount including adjustments. Subcontractors shall be included as insureds and the Owner, shall be named as a Loss Payee as its interests may appear. Said insurance shall be maintained in complete coverage throughout the duration of the contract and terminated on the date the Notice of Completion is recorded.

### 10.3 FAILURE TO PROVIDE INSURANCE

In case of the breach of any provision of this Article, the Project Manager, at its option, may take out and maintain at the expense of the Trade Contractor such insurance as the Project Manager may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be due, or become due, to the Trade Contractor, under this contract.

## 11 GUARANTEES AND CLOSEOUT

### 11.1 REQUIRED GUARANTEES

- A In addition to guarantees required elsewhere in the contract documents, the Trade Contractor shall guarantee all of the work, and each subcontractor shall guarantee his own work, for a minimum of one year after the date of substantial completion against defective material or faulty workmanship that may arise within that period. All guarantees must be submitted in triplicate to the Project Manager on the Contractors' own letterhead in the form prescribed by Project Manager.
- B In addition to the requirements of paragraph 10.1A, all standard manufacturer warranties shall be passed to the Owner which may extend the warranty period beyond one year.
- C In addition to the guarantees and warranties required by the contract documents, the Owner has all rights provided by law including those pertaining to latent defects.

### 11.2 REPAIR OF GUARANTEED WORK

- A If repairs are required in connection with guaranteed work, the Trade Contractor shall promptly upon receipt of notice from the Owner, and without expense to the Owner:
  - 1 Place in satisfactory condition in every particular all of such guaranteed work;

- 2 Make good all damage to the building, site, equipment, furniture, or contents thereof which, in the opinion of the Owner, is the result of work not in accordance with the terms of the contract documents; and

Make good all work disturbed in fulfilling such guarantee.

- B If the Trade Contractor disturbs any work guaranteed under another contract in fulfilling the requirements of the contract or of any guarantee, embraced in or required thereby, he shall restore such disturbed work to a condition satisfactory to the Owner and guarantee such restored work to the same extent as it was guaranteed under such other contract.
  - C A new full term guarantee period shall apply to repaired work upon completion of repairs.
- 11.3 The Owner may have defects corrected by whatever means the Owner deems expedient if the Trade Contractor, within seven (7) days after written notice, fails to proceed to comply with the terms of the guarantee, and the Trade Contractor and his surety shall be liable for all expense incurred by Owner.
  - 11.4 Assemble and bind three (3) sets of all guarantees, certificates, warranties, operating instructions, and maintenance manuals into clearly organized files with an index, a list of subcontractors and suppliers including their names, addresses, and phone numbers and present to Architect at the completion of the work.

++ END OF GENERAL CONDITIONS ++

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(Rev. February 21, 1998)