

**AGREEMENT FOR
CONSTRUCTION MANAGEMENT SERVICES
SAN MATEO COUNTY
YOUTH SERVICES CENTER**

This Agreement, made and entered into on the _____ day of _____, 2002, between the County of San Mateo, a political subdivision of the State of California, hereinafter referred to as County, located at 400 County Center, Redwood City, CA 94063, and Turner Construction Company, a corporation of the State of Delaware, hereinafter referred to as Construction Manager, located at 1625 Clay Street, Oakland, CA 94612.

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, the County of San Mateo may retain independent contractors to perform special services for the COUNTY; and

WHEREAS, COUNTY intends to construct the Youth Services Center; and

WHEREAS, COUNTY desires to have the Youth Services Center completed on time and within budget, and requires qualified professional construction management services to provide the entire design and construction of the Project; and

WHEREAS, the Board of Supervisors of San Mateo County believes that Construction Manager is experienced and fully qualified to provide the professional services required by COUNTY; and

WHEREAS, Construction Manager is willing to provide such professional services to the COUNTY in accordance with the provisions of this Agreement;

NOW, THEREFORE, IT IS MUTUALLY AGREED by the parties hereto as follows:

TABLE OF ARTICLES

<u>Article</u>	<u>Title</u>
1	This Agreement
2	The Project
3	Construction Manager
4	County
5	Design Phase
6	Construction Phase
7	Time
8	Payment
9	Changes
10	Insurance and Bonds
11	Disputes
12	Contract Termination
13	Emergencies
14	Liquidated Damages
15	Hold Harmless
16	Miscellaneous Provisions

DEFINITIONS and TERMS USED IN THIS AGREEMENT

<u>TERM</u>	<u>DEFINITION</u>
BOC	Board of Corrections. (Paragraph 5.5)
CEQA	California Environmental Quality Act. (Paragraph 7.5)
Construction Budget	Anticipated cost of the Construction Work. (Paragraph 2.3)
Construction Cost	The cost of the Construction Work. (Paragraph 5.15)
Construction Contract	The contract between the Construction Manager and the Contractors. (Paragraph 6.5)
Construction Documents	Drawings, specifications, and other provisions setting forth in complete detail the construction of the Project. (Paragraph 5.10)
Construction Work	Labor, material and services required by the Construction Documents. (Paragraph 6.5)
Consultants	Those entities under contract with Construction Manager to provide design or other services to the Project, but not Construction Work. (Paragraph 3.1)
Contract Amount	Maximum amount payable to Construction Manager under this Agreement. (Paragraph 8.7)

<u>TERMS</u>	<u>DEFINITION</u>
Contract Time	The period of time from the date of this Agreement until the date specified in this Agreement for achieving Substantial Completion. (Paragraph 7.3)
Contractors	Those entities performing the Construction Work pursuant to contracts with the Construction Manager. (Paragraph 6.5)
Final Completion	The date after Substantial Completion when all of Construction Manager's obligations under this Agreement are complete in every detail, excluding warranty work . (Paragraph 7.4)
Eligible Change	A change directed by the County, an Unforeseeable Condition, or an Unforeseeable Delay. (Paragraph 9.2 – 9.5)
NEPA	National Environmental Protection Act. (Paragraph 7.5)
Project	The new County facility known as the Youth Services Center as planned and conceived by County. (Paragraph 2.1)
Project Cost	Total cost to be incurred by the County in completing the Project. (Paragraph 5.15)
Substantial Completion	The date in the progress of the Project when the Project is sufficiently complete in accordance with the Construction Documents to allow the County to use and occupy the Project. (Paragraph 7.2)

ARTICLE 1 THIS AGREEMENT

- 1.1 This written Agreement is the entire agreement between the parties. 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 herein.
- 1.2 This Agreement will be administered utilizing a series of Work Increments. Work Increments include the tasks which are listed, all work necessary to complete those tasks and all work necessary to complete the Work Increment. Subsequent Work Increments shall not be commenced until County has issued written approval of preceding Work Increments and authorization to proceed.
- 1.3 The Table of Articles, titles and headings contained herein are solely to facilitate reference to various provisions and in no way affect or limit the interpretation of any provision or the Agreement.

- 1.4 This Agreement shall be interpreted in accordance with the laws of California and any action arising from or related to this Agreement shall have as its venue the County of San Mateo.
- 1.5 Construction Manager shall ensure that its performance and that of the Contractors and Consultants with respect to this Agreement shall be in full compliance with all legal requirements 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.
- 1.6 In the event that any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal or otherwise unenforceable pursuant to applicable laws by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
- 1.7 Construction Manager shall include in each contract with Contractors and Consultants a clause incorporating the applicable terms and conditions of this Agreement thereby obligating Contractors and Consultants to Construction Manager in the same manner as Construction Manager to County.
- 1.8 Notices are documents issued for the sole purpose of notification, are clearly titled, and are valid only if written. A separate written notice is required for each subject and issue. 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 mail to the address specified in this Agreement or as revised in writing.
- 1.9 No person or entity shall illegally be excluded from participation in, denied the benefits of or be subjected to discrimination under this Agreement on account of their race, sex, color, national origin, marital status, religion, age, sexual orientation or disability. Construction Manager shall ensure full equal employment opportunity for all employees under this Agreement. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Construction Manager to penalties, to be determined by the County Manager, including but not limited to i) termination of this Agreement; ii) disqualification of the Construction Manager 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 Construction Manager'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 Construction Manager under the Agreement or any

other contract between Construction Manager and County; Construction Manager shall report to the County 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 Construction Manager 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. Construction Manager shall provide County with a copy of its response to the Complaint when filed.

- 1.10 Construction Manager shall comply with the County Ordinance which prohibits discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

ARTICLE 2 THE PROJECT

- 2.1 The Project is the new County facility known as the Youth Services Center as planned and conceived by County. Construction Manager shall develop the architectural program which will define the full requirements and criteria of the Project. The architectural program is to be based on the functional program titled "San Mateo County, California, Youth Services Center Needs Assessment and Master Plan Update", prepared by Voorhis Associates, Inc., dated February 26, 2002, as amended, and is to include everything necessary to provide a fully functional and operational facility as defined and approved by County.
- 2.2 The County is considering constructing the Project in four components consisting of:
- A. Component 1 – Juvenile Hall, Group Receiving Home and demolition of the existing juvenile hall.
 - B. Component 2 – Juvenile Courts.
 - C. Component 3 – Probation Department Administration and Juvenile Probation.
 - D. Component 4 – Community School.
- 2.3 Construction Budget The Construction Budget is the anticipated cost of the Construction Work. The Construction Budget is:
- A. Component 1 \$51,339,437 for construction and \$5,133,944 for furnishings.
 - B. Component 2 \$6,495,870 for construction and \$649,587 for furnishings.
 - C. Component 3 \$9,645,712 for construction and \$964,571 for furnishings.
 - D. Component 4 \$5,870,243 for construction and \$587,024 for furnishings.

Components 1 - 4 of the Construction Budget shall not be combined or commingled. Within each Component, the amount for construction shall not be combined or commingled with the amount for furnishings. Components of the Construction Budget may not be changed except by express written authorization from County, which

authorization may be granted by the Assistant County Manager.

The Assistant County Manager will have the authority to agree to amendments to the Agreement provided the maximum amounts payable under Article 8 are not changed.

2.4 The Project includes, but is not limited to, the following:

- A. Interior finishes.
- B. Furniture, furnishings and equipment selection and installation.
- C. Graphics and signage required by code and as requested by County.
- D. Telephone and data conduit and wiring.
- E. Security systems.
- F. Civil engineering.
- G. Roadways, new and temporary.
- H. Landscaping.
- I. Recreational fields and playgrounds.
- J. Studies of existing site utilities.
- K. Site utility design, installation and connection to local network.
- L. Site lighting.
- M. Energy efficiency and conservation.
- N. Emergency power, surge suppression.
- O. Demolition of existing Juvenile Hall and landscape the site.

2.5 The location of the Project is the County-owned land shown on the topographic survey titled "92-Polhemus San Mateo County Facilities, San Mateo, California," prepared by DES Architects Engineers, Job Number 8846.01, Sheet No. C1.1.

ARTICLE 3 CONSTRUCTION MANAGER

3.1 Construction Manager agrees to the terms and provisions of this Agreement and to perform the services required with its own personnel or the services of Consultants and will provide all required facilities, equipment, supplies and incidental services required under this contract. Consultants are those entities under contract with Construction Manager to provide design or other services to the Project, but not Construction Work. Construction Manager further agrees to furnish business administration, design and construction management skills, knowledge and judgment, and to perform in an expeditious and economical manner and in a manner comparable to the performance of construction management services provided by other skilled construction managers to ensure that the Project is completed in accordance with this Agreement. Construction Manager shall require equal performance of Consultants.

3.2 Construction Manager agrees to:

- A. Manage all aspects of the Project including programming, design, permits, approvals, bidding, and construction.

- B. Provide the Architectural Program.
 - C. Provide the design of the Project.
 - D. Provide assistance to County in bidding the Construction Work.
 - E. Accept assignment of bids and enter into Construction Contracts.
 - F. Manage the Project to ensure that the Project is completed within the Contract Time.
 - G. Manage the Project to ensure that the Project is completed within the Construction Budget.
- 3.3 Construction Manager will identify, schedule, manage and coordinate all tasks necessary to complete the Project. Certain tasks may be performed by the County and Construction Manager is responsible for scheduling, managing and coordinating, provided that County is responsible for performance of such tasks and shall bear the responsibility of any failure to adhere to Construction Manager's schedule, management and coordination.
- 3.4 Construction Manager shall ensure that all personnel provided by it under this Agreement are thoroughly experienced and knowledgeable to perform their respective tasks and functions. Assignments of key staff shall be made subject to County approval. Once assigned to this Project, Construction Manager agrees that key staff will not be changed without written approval of County and County agrees that such approval shall not be unreasonably withheld. County reserves and shall have the right to require Construction Manager to add or remove from the site such personnel as County may deem appropriate at various stages of the Project. Construction Manager agrees to locate its full-time staff assigned to this Project at the Project site. Construction Manager shall keep on the Project site during the progress of the Construction Work a competent superintendent satisfactory to the County. The superintendent shall represent Construction Manager and all directions given to him shall be as binding as if given to Construction Manager.
- 3.5 Construction Manager is not empowered to act as agent for County except as for such powers as are given Construction Manager as set forth in this Agreement and such additional powers as may be granted by County in writing.
- 3.6 Construction Manager's negotiations and contracts with Consultants, Contractors, suppliers, and other parties pursuant to Construction Manager's obligations under this Agreement shall be conducted in County's best interests. Such contracts shall not be binding on County except as Construction Manager is empowered to act for County under this Agreement.
- 3.7 Construction Manager shall make monthly reports to County of its management of the entire Project. The reports will be in a format as required by County and will contain sufficient information to clearly define the current status of the Project relating to schedule, budget and significant issues.

- 3.8 Construction Manager shall facilitate weekly and monthly progress meetings, preconstruction meetings, and other meetings as necessary to complete the Project. The County shall be invited to all meetings.
- 3.9 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.
- 3.10 Construction Manager shall continuously maintain adequate protection of County property from damage or loss. Precaution shall be exercised at all times for the protection of persons and property. Construction Manager shall provide adequate protection of the Project site, other areas that Construction Manager uses or controls, and adjacent property, its improvements and its occupants. All damage done to existing property that is damaged by Construction Manager shall be neatly repaired or replaced at Construction Manager's expense. Construction Manager shall keep and maintain such warning signs and barriers as may be required to protect the public. Construction Work shall be executed in a careful, orderly manner, with the least possible disturbance to the public and occupants of the area.
- 3.11 The County will continue to use adjacent facilities. Construction Manager shall take care to disrupt the County as little as possible. Construction Manager shall provide legal and safe access to all facilities at all times. In order to facilitate use of adjacent facilities, County may order Construction Manager to alter or temporarily cease operations.
- 3.12 The County wishes to keep the neighbors informed of the developments and progress of the Project. Construction Manager shall contribute to this effort by participating in community meetings, issuing notifications to the neighborhood, and as further directed by County.

ARTICLE 4 COUNTY

- 4.1 The County's Assistant County Manager, or his designated representative, will represent County in all matters pertaining to this Agreement and is authorized to exercise all powers and grant such approvals required of County as specified herein. Construction Manager shall take no instruction from any person other than the Assistant County Manager or his designated representative.
- 4.2 County shall advertise for bidders, receive and open bids, consider Construction Manager's recommendations, determine the lowest responsive and responsible bidder, and may assign the lowest responsive and responsible bid to Construction Manager.
- 4.3 If the County observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Construction Documents, the County will give prompt notice

thereof to Construction Manager. Notwithstanding, Construction Manager is fully responsible for compliance with the Construction Documents.

- 4.4 The County reserves the right to perform Construction Work and other work related to the Project with County's own forces or by contract.
- 4.5 County will pay costs of printing documents for County use.
- 4.6 County shall be allowed seven calendar days to make decisions with the exception of decisions of the Board of Supervisors. Decisions shall not be binding unless in writing.

ARTICLE 5 DESIGN PHASE

- 5.1 The Architect, for the purpose of this Agreement, is KMD Architects. The term Architect shall include its appointed representatives and consultants. Construction Manager shall have full responsibility for employing and paying the Architect and for the management and administration of the Architect and design of the Project.
- 5.2 The design of the Project shall comply with the standards of the design and construction profession. Design shall proceed through a series of design phases and each phase shall be based on the preceding approved phase. The design process and documentation shall be in accordance with standards of the American Institute of Architects. Each Master Plan option shall determine the best facility configuration and location on the site for that option and include conceptual Project cost and time estimates.
- 5.3 Component 1 will be constructed first. Components 2, 3, and 4 will be constructed at a later date and in any order. In the Functional Program Verification and Architectural Program and Master Plan Work Increments, the Construction Manager and its Consultants need to resolve strategic issues such as: construction phasing, incorporating existing facilities, site constraints, infrastructure capacities, vehicular and pedestrian traffic circulation, access, separation of public, service, and security vehicles, parking, and public transportation. A Project Statement, which is a document that clarifies and defines the scope of the Project including design criteria, construction plan, budget, and schedule, will need to be developed.
- 5.4 Work Increment 1 - Functional Program Verification
This Work Increment applies to Components 1 through 4 and includes:
 - A. Review Voorhis Associates Inc. Needs Assessment and Master Plan Update.
 - B. Review Net-to-gross factors.
 - C. Review Construction cost estimate.
 - D. Review Program Statement by Voorhis.
 - E. Provide written report on review findings.
- 5.5 Work Increment 2 - Architectural Program and Master Plan
This Work Increment applies to Components 1 through 4 and includes:

- A. Architectural Program.
- B. Two Master Plan options, each with variations as to phasing and utility of present buildings.
- C. Security and circulation plan, identifying secure and free zones, separate parking and circulation for security, visitor, staff and emergency access.
- D. Feasibility study of consolidating facility kitchen with other County kitchens.
- E. County and BOC consensus.
- F. Final Architectural Program, Master Plan, and Project Statement.
- G. Conceptual construction schedule and project cost estimate for the final approved Master Plan.
- H. Topographical site model @ 1"=160', showing the approved Master Plan, existing buildings, and the relationship of the Project to the neighborhood.
- I. Architectural renderings of the approved Master Plan depicting the site, exterior elevations, and each category of interior spaces.
- J. Review County-commissioned physical plant inspection reports.

5.6 Work Increment 3 - Schematic Design.

This Work Increment applies to Components 1 through 4 and includes:

- A. Schematic design documents.
- B. Schematic designs for each program component.
- C. Exterior elevations.
- D. Review Voorhis Associates, Inc. Program Statement for compliance with Titles 15, 19 and 24.
- E. Conduct meetings with County representatives of each user department.
- F. Ensure compliance with County standards for furniture, communications infrastructure, carpet, fire alarm, mechanical equipment, energy management, and card access review.
- G. Project and Construction cost estimates.
- H. Monthly cash flow projection.
- I. Construction time estimate.
- J. Submissions for BOC and local Fire Department.
- K. Architectural renderings as requested by County.

5.7 Work Increment 4 - Design Development

This Work Increment applies to Component 1 and includes:

- A. Design Development documents.
- B. BOC Submissions for approval.
- C. Project and Construction cost estimates.
- D. Construction time estimate.

5.8 Work Increment 5 - Construction Documents

This Work Increment applies to Component 1 and includes:

- A. Construction Documents.
- B. Submissions for Permits and BOC approval.
- C. Submissions for Third party plan check.

- D. Plan check and permit comments incorporated into Construction Documents.
- E. Construction Cost estimates by bid package.
- F. Project cost estimate.
- G. Construction time estimate.

5.9 Work Increment 6 - Bidding

This Work Increment applies to Component 1 and includes:

- A. Bidder prequalification.
 - B. Bid packages.
 - C. Bid period administration and addenda.
 - D. Bid assistance on the Construction Work.
 - E. Recommendation of lowest responsive and responsible bidders to County.
 - F. Project cost estimate incorporating lowest bids.
- 5.10 Construction Documents are the drawings, specifications, and other provisions setting forth in complete detail the construction of the Project. Construction Manager shall review the Construction Documents to verify that the design is complete in every detail to provide a fully functional Project. Construction Documents shall be suitable for competitive bidding and subsequent construction of the Project.
- 5.11 Construction Manager shall provide Bid Packages for soliciting bids. Bid Packages shall divide the Construction Documents into categories consistent with common industry trade practice and in the interest of obtaining the lowest bids. Bid Packages shall include, but are not limited to: Construction Documents, Notice to Contractors, Instructions to Bidders, General Conditions, Special Provisions, Supplementary General Conditions, Guarantee Form, Specifications, Drawings, and Addenda as issued. Construction Manager shall prepare all documents required for the Bid Packages except the Notice to Contractors, Instructions to Bidders, General Conditions, Supplementary General Conditions, and Guarantee Form which will be provided by the County with input from Construction Manager. Construction Manager shall incorporate documents provided by County into Bid Package.
- 5.12 Construction Manager will provide documents and information as requested to County and others involved in the Project. This includes, but is not limited to, County's environmental consultant.
- 5.13 Should the total of all lowest bids for the Construction Work exceed the Construction Budget as may be amended by County, Construction Manager will provide options for County approval to reduce the Construction Cost. Upon County approval, Construction Manager shall, at no additional cost to County, redesign portions of the Project and rebid as necessary to bring the total of the lowest bids within the Construction Budget. If the total of all lowest bids for the Construction Work cannot be brought within the Construction Budget, the County may terminate the Project. Any Construction Contract awarded before all bids are received for the total Construction Work shall be in accordance with the Construction Budget.

- 5.14 Sustainable Design. The Project will comply with the County's Sustainable Building Policy. The design shall incorporate recycled and recyclable materials, high-efficiency - low energy-consuming mechanical systems, passive energy reduction techniques such as use of natural ventilation, abundant interior daylight and solar energy production systems wherever practicable. The LEED (Leadership in Energy and Environmental Design) rating system shall be used as a guide in the design of the facility. The Project shall be designed to qualify for LEED certification as a minimum and a higher rating if feasible. Construction Manager shall submit the LEED certification application and is responsible for obtaining the certification.
- 5.15 Cost Estimates. Construction Manager is required to provide cost estimates and value engineering at each Work Increment and Construction Cost estimates for each bid package prior to bidding. Cost estimates include Project cost estimates and life cycle Cost Analysis. Project Cost is the total cost to be incurred by the County in completing the Project including, but not limited to design costs, Construction Cost, Construction Manager, utility connection fees, material testing, special inspection, environmental impact analysis, County personnel, County consultants, off-site improvements and any other costs necessary to complete the project. Construction Cost is the cost of the Construction Work. Life cycle cost analyses shall assist the County in its goal to achieve the most cost-effective performance possible over the life of the project and shall be required at Schematic and Design development. A monthly cash flow schedule showing Construction Manager's estimated billing to the County for the remainder of the Agreement shall be provided with schematic design documents.
- 5.16 Survey of Site. Construction Manager shall provide a licensed land surveyor or civil engineer, as necessary, for the design of the Project, including a survey of the site, grades and lines, rights-of way, easements, encroachments, boundaries and contours, locations of existing buildings, paving, other improvements, trees, and information regarding service and utility lines.
- 5.17 Geotechnical. Construction Manager shall provide the services of soils engineers, as necessary, to determine the location of rock and related geotechnical consultation and soil bearing values. The soil engineer and scope of work required shall be subject to the approval of County. Conditions encountered but not reported on the soils report shall be governed by paragraph 9.4, with regard to claims arising prior to substantial completion. With regard to all claims, suits, actions, damages, losses, expenses or costs of every name, kind and description brought about as a result of soil conditions not known or discovered by soils engineers brought after substantial completion, County shall indemnify and save harmless the Construction Manager.
- 5.18 County will make available existing drawings of the buildings on the site. These drawings are not current as-builts and require verification.

- 5.19 Permits and Codes. The design of the Project shall comply with County facility standards and applicable building codes, including Titles 15, 19, and 24 of the California Code of Regulations. Construction Manager shall provide independent code compliance plan review by a firm acceptable to County. Construction Manager shall obtain and pay for all permits, licenses, certificates, approvals, utility connections and services necessary for the proper execution and completion of the Project. Construction Manager shall cooperate with State and County officials in regard to the construction of this Project, take such action as necessary to monitor response from such officials, and meet the requirements of codes, laws and directives.
- 5.20 The Project shall be commissioned by an independent agent employed by County. The commissioning agent shall review the design at each Work Increment. Construction Documents shall require Contractors participation in commissioning as part of the Construction Work. Construction Manager shall schedule and coordinate commissioning activities to assure completion and approval of commissioning prior to Substantial Completion. County shall bear the responsibility for the consultant's failure to adhere to Construction Manager's schedule.
- 5.21 Construction Manager shall provide plans to demolish the existing juvenile hall, design a closure for the buildings that will remain, grade and restore the site. Construction Work on the existing juvenile hall site will be completed after Substantial Completion of the Youth Services Center.

ARTICLE 6 CONSTRUCTION PHASE

- 6.1 Construction Manager will proceed to Work Increment 7 only after the approval of County. In addition to the right of termination provided in Article 12, County has the option of terminating this Agreement after receiving bids and prior to construction.
- 6.2 Work Increment 7 - Construction
This Work Increment applies to Component 1 and includes:
- A. Construction Contracts.
 - B. Construction Work management.
 - C. Architectural administration of the Construction Contracts.
 - D. Project Summary Booklet.
- 6.3 Work Increment 8 - Project Closeout
This Work Increment applies to Component 1 and includes:
- A. Assistance to County in occupying the Project.
 - B. As-built documents.
 - C. Operations and maintenance manuals and training.
 - D. Occupant booklet.
- 6.4 Work Increment 9 - Demolition
This Work Increment applies to Component 1 and includes:

- A. Existing juvenile hall demolition.
 - B. Site restoration.
 - C. Closeout.
- 6.5 Construction Work is the labor, material and services required by the Construction Documents. Contractors are those entities performing the Construction Work pursuant to contracts with the Construction Manager. Construction Contract is the contract between the Construction Manager and the Contractors.
- 6.6 Construction Manager will not perform Construction Work or bid on any Construction Contract.
- 6.7 All Construction Work shall be performed under contracts bid by the County as required by the Public Contract Code. Construction Manager shall prequalify the Contractors pursuant to Construction Manager's criteria. After the County opens bids, Construction Manager will review the bids and recommend the lowest responsive and responsible bidder to the County. If County decides to proceed into construction, County will award the bids and may assign bids to Construction Manager and Construction Manager agrees to accept the assignment. If bids are assigned to Construction Manager, it shall be by an Assignment of Bid form as prescribed by County. County shall consider, in consultation with Construction Manager, rejecting one or all bids. County will issue a Revision Order to this Agreement thereby permitting administration of payments by Construction Manager to Contractors. Construction Manager shall be responsible for the performance of Contractors.
- 6.8 The Construction Manager shall provide for architectural administration of the Construction Work by the Architect, which includes:
- A. Observe Construction Work for compliance with Construction Documents.
 - B. Review and comment on submittals and shop drawings.
 - C. Provide interpretations of the intent of the Construction Documents, issue supplemental instructions, sketches or other correspondence, respond to questions about the Construction Work.
 - D. Review and verify requests for payment.
 - E. Advise Construction Manager and County of Construction Work which does not conform to Construction Documents.
 - F. Review Contractor guarantees, operating instructions, equipment lists and manuals for compliance with Construction Documents.
 - G. Provide advice and interpretation to the County as requested.
- 6.9 Construction Manager will manage the Construction Contracts in accordance with County General Conditions in which all references to Owner shall mean Construction Manager and references to Architect shall mean the design professional employed by Construction Manager. County will be informed and has the right of approval of all changes in the Construction Work, 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 Contractor or Consultant other than pursuant to an Eligible Change shall be the financial responsibility of Construction Manager.

- 6.10 Construction Manager shall provide a Project Summary booklet, which is an 8½ X 11 inch size document summarizing the Construction Documents. It shall include floor plans, finishes, site plans and a description of the building systems such as mechanical, electrical, security, communication, and fire suppression.
- 6.11 The Project shall comply with the County Ordinance relating to Recycling and Diversion of Construction and Demolition Debris.
- 6.12 Construction Manager shall manage tests and inspections as required by law. County shall pay for these tests and inspections. If any Construction Work should be covered before it is inspected, Construction Manager shall, at its expense, uncover the Construction Work for inspection and then replace the cover.
- 6.13 Construction Manager shall ensure that all Construction Work is in accordance with the Construction Documents. Construction Manager shall promptly correct all defective Construction Work and all Construction Work rejected by the County or Architect. Construction Manager shall not receive a time extension for correcting such work. All such Construction Work shall be corrected to comply with the Construction Documents without cost to the County.
- 6.14 County shall have access to the Project at all times.
- 6.15 Construction Manager shall submit to County a daily record of Contractors' activity. Such records shall include Project name, date, weather, names of contractors, count of personnel by company, material deliveries, description and location of activity and events. The record of daily activity shall not be used as a Notice to County. The County shall receive copies of all correspondence, notices, approved shop drawings, test reports and such other documents.
- 6.16 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. Soil may be contaminated by petroleum products or other substances. In the event any suspected asbestos or other hazardous material is encountered during construction that may be disturbed by the Project, Construction Manager shall stop immediately and notify the County. Construction Manager shall instruct its employees and Contractors 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. County will be responsible for the mitigation and abatement of the hazardous material, and Construction Manager will provide bid documents thereof, and will be responsible for scheduling,

coordinating and monitoring the work.. All Claims for adjustment in time or money shall be processed as provided by the terms of this Agreement.

- 6.17 Construction Manager shall maintain at the site as-built documents consisting of one copy of all drawings, specifications, addenda, approved shop drawings and samples, change orders, field orders, Revision Orders, Revision Order instructions from Consultants and other documents relating to the Project. All documents shall be marked neatly and legibly by Construction Manager 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 Work of the Project.
- 6.18 At the completion of the Project, Construction Manager shall review Contractor's as-built drawings and correct any discrepancies or omissions. Construction Manager shall then include the changes in the Construction Documents. Documents, consisting of one reproducible set and one set in electronic format, showing the Project as finally constructed shall be delivered to the County.
- 6.19 In addition to any other warranties in the Construction Documents, Construction Manager warrants that each Contractor shall warrant that the Construction Work conforms to the Construction Documents and is free of any equipment or material deemed defective for reasons including, but not limited to, failure to perform as advertised or failure to meet the requirements of the Construction Documents or a defect in workmanship performed.
- 6.20 Warranties will begin upon Substantial Completion. All warranties shall remain effective until at least one year after Substantial Completion except where a longer period is specified in the Construction Documents or normally provided by the manufacturer.
- 6.21 With respect to warranties concerning the Construction Work, Construction Manager will ensure that all warranties are secured from the Contractors and will at the conclusion of the Construction Work assign to the Owner all warranties obtained from all Contractors performing the Construction Work.

Turner Construction Company, itself, extends no warranty of any kind and all implied warranties, except that of title are expressly disclaimed, including any implied warranties that could exist in fact or in law (including any warranty of merchantability or fitness for purpose). This paragraph is not intended to limit the force of Article 15.

- 6.22 County shall notify Construction Manager in writing of any failure or defect in the Construction Work. Construction Manager agrees to correct such condition within ten calendar days after being notified by County. If Construction Manager fails to remedy within the time allowed after receipt of notice any failure of or defect in the Project, or damage resulting therefrom, County shall have the right to take reasonable actions to replace, repair, or otherwise remedy the failure, defect, or damage at Construction Manager's expense and withhold such cost from payments due.

- 6.23 With respect to all warranties, express, or implied, from Construction Manager, Contractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Construction Manager shall (a) obtain all warranties that would be given in normal commercial practice; (b) require all warranties to be executed in writing to the benefit of County, unless directed otherwise by County; and (c) during Construction Manager's warranty period, enforce all warranties for the benefit of County, unless otherwise directed by County.
- 6.24 All guarantees and warranties must be submitted in triplicate to County on the Contractor's letterhead in the form prescribed by County. Construction Manager shall assemble and bind each set of guarantees, certificates, warranties, operating instructions and maintenance manuals into clearly organized files with an index, a list of Contractors and suppliers including their names, addresses, and phone numbers and present to County at the completion of the Project.
- 6.25 Warranties shall not limit County's rights with respect to latent defects or fraud.
- 6.26 Whether or not expressly provided in the Construction Documents, all obligations of Construction Manager, Consultants, Contractors, including but not limited to warranties and indemnity obligations, shall run to the benefit of County.
- 6.27 Construction Manager shall provide training for County in the use and maintenance of the Project and provide an occupant booklet. The occupant booklet shall describe the features of the building that would be helpful to occupants including operation of electrical, mechanical, communication, and security systems.

ARTICLE 7 TIME

- 7.1 Time is of the essence of this Agreement. The term day as used herein shall mean calendar day unless specifically designated otherwise.
- 7.2 Substantial Completion is the date in the progress of the Project when the Project is sufficiently complete in accordance with the Construction Documents to allow the County to use and occupy the Project. Prior to the date of Substantial Completion, Construction Manager shall have inspected the Construction Work, completed corrective measures, taken all steps necessary to obtain approval of BOC and all other approvals necessary for occupancy, placed into operation all equipment and systems, and completed testing and commissioning. Construction Manager agrees to achieve Substantial Completion by the date specified in Paragraph 7.5 as may be modified by Revision Order.
- 7.3 Contract Time is the period of time from the date of this Agreement until the date specified in this Agreement for achieving Substantial Completion.
- 7.4 Final Completion is the date after Substantial Completion when all of Construction Manager's obligations under this Agreement are complete in every detail excluding

warranty work. Construction Manager agrees to achieve Final Completion within sixty calendar days after Substantial Completion.

- 7.5 This Agreement will be performed in accordance with the following schedule. Items indicated by "others" are not to be performed by Construction Manager, however Construction Manager will schedule and monitor these items to ensure compliance with this schedule.

<u>Tasks</u>	<u>Start Date</u>	<u>Finish Date</u>
Work Increment 1 Functional Program Verification		9/30/02
Work Increment 2 Architectural Program and Master Plan		11/18/02
Work Increment 3 Schematic Design		1/15/03
Work Increment 4 Complete Design Development		4/24/03
Work Increment 5 Complete Construction Documents		9/30/03
Work Increment 6 Bidding Completed		11/27/03
Work Increment 7 Construction	12/30/03	
Substantial Completion of Work Increment 7		11/30/05
Work Increment 8 Project Closeout		1/31/06
Occupancy by others	3/1/06	
Work Increment 9 Demolition of existing juvenile hall	4/12/06	
Substantial Completion of Work Increment 9		7/1/06

- 7.6 Project Schedule. Within thirty calendar days of the date of this Agreement, Construction Manager shall prepare a detailed project schedule incorporating the above schedule and all other tasks to be performed prior to the start of construction. Construction Manager shall maintain the schedule so that it represents the current status and progress of all tasks involved with the Project.

- 7.7 Construction Schedule. Within thirty calendar days after notice from County to proceed with construction, Construction Manager shall submit to County a preliminary schedule for the Construction Work and within an additional sixty calendar days submit to County a final schedule. The schedule shall be a series of tasks representing Construction Manager's plan for performing the Construction Work including all activities both on site and offsite, submittal due dates, submittal review periods, material purchasing, lead or fabrication times, punchlist and corrections, final inspection and approvals, and other events or activities having an effect on the progress or completion of the Project. For each task, the schedule shall show the duration, the start and finish dates, predecessors and successors. The schedule shall be submitted in Gantt chart format and with a

separate task list showing all data in spreadsheet format. Except for procurement, no single task on the schedule may exceed twenty-one calendar days in duration.

Construction Manager shall have available on the Project site during the construction phase a construction schedule in a location readily accessible to the County. The schedule shall be updated at least monthly by Construction Manager to show actual progress of the Project, changes to the Construction Work and all other factors that could influence the date of Substantial Completion. Construction Manager shall issue a written schedule report to County at least monthly.

- 7.8 The construction schedule shall include an allowance for work days lost due to weather as follows: July 0, August 0, September 1, October 3, November 6, December 9, January 10, February 9, March 9, April 5, May 1, June 0. Additional Contract Time will be granted for adverse weather only to the extent the work days on the critical path lost due to weather in any month exceeds the number of days indicated above per month.
- 7.9 Contract Time incorporates County holidays as follows: January 1, Third Monday in January, Third Monday in February, Last Monday in May, July 4, First Monday in September, Second Monday in October, November 11, Fourth Thursday and Fourth Friday in November, and December 25.
- 7.10 Float is not for the exclusive use of either County, Construction Manager or Contractors.
- 7.11 Substantial Completion Procedure. When Construction Manager considers that the Project is substantially complete, Construction Manager shall provide a written notice to the County in which Construction Manager certifies that the Project is Substantially Complete, lists all deficiencies, and request acceptance. The failure to include any items on such list does not alter the responsibility of Construction Manager to complete the Project in accordance with the Construction Documents. Upon request by Construction Manager and approval by County, Substantial Completion may apply to portions of the Project. Applicable provisions would apply as if to the Project.
- 7.12 Construction Manager agrees to the County's use and occupancy of a portion of the Project before Substantial Completion. A list of corrective measures of the Project shall be prepared jointly by Construction Manager, County, and Architect for completion by Construction Manager. Occupancy by the County shall not be construed as being an acceptance by County of that portion of the Project. Portions of work for purposes of this paragraph means portions of work that have been signed off and accepted by County.

ARTICLE 8 PAYMENT

- 8.1 County will pay and Construction Manager agrees to accept the sum of Seven Hundred Forty Two Thousand, Two Hundred Two Dollars (\$742,202) as full compensation for services rendered in completing Work Increments 1 and 2. This sum includes Construction Manager's fee, expenses and the cost of consultants.

- 8.2 If County authorizes Construction Manager to perform Work Increments 3, 4, 5, and 6, County will pay and Construction Manager agrees to accept the sum of Five Million Fifteen Thousand Two Hundred Ninety Dollars (\$5,015,290) as full compensation for services rendered in completing these Work Increments. This sum includes Construction Manager's fee, expenses and the cost of consultants.
- 8.3 If County authorizes Construction Manager to perform Work Increments 7 and 8, County will pay and Construction Manager agrees to accept the sum of Two Million Nine Hundred Sixty Six Thousand Five Hundred Twenty One Dollars (\$2,966,521) for Construction Manager's profit and home office overhead and architectural administration of these Work Increments. In addition, County will reimburse for Work Increments 7 and 8 up to the maximum amount of Five Million Four Thousand Five Hundred Ninety (\$5,004,590) for site management expenses. These sums do not include the cost of the Construction Work.
- 8.4 If County authorizes Construction Manager to perform Work Increment 9, County will pay and Construction Manager agrees to accept the sum of Sixty Thousand Four Hundred Sixty Nine Dollars (\$60,469) for Construction Manager's profit and home office overhead and architectural administration of this Work Increment. In addition, County will reimburse for Work Increment 9 up to the maximum amount of Forty Two Thousand Dollars Two Hundred Thirty Two (\$42,242) for site management expenses. This sum does not include the cost of the Construction Work.
- 8.5 A construction contingency in the amount of Seven Percent (7%) of the Construction Cost, as determined at the time of Construction Contract award, is available to Construction Manager to be expended at Construction Manager's discretion during construction. This contingency shall be expended to cover such construction related items as repair of damaged or defective Construction Work, overruns in site management expenses, and any schedule acceleration necessary to recover schedule, purchasing gaps, weather protection for normal inclement weather, and changes in construction due wholly or in part to design errors, omissions or clarifications or any other expense necessary to complete the construction project. As to the first half of the contingency, any amount not expended shall be divided allocating 50% to County and 50% to Construction Manager. As to the second half of the contingency (i.e. once half of the contingency is expended), any amount not expended shall be allocated to County.
- 8.6 If County authorizes Construction Manager to perform Work Increments 7 and 9, the amount of the Construction Contracts will be added to this Agreement by Revision Order. County shall make payments for Contractor's work to Construction Manager for Construction Manager's payment to the Contractors in accordance with the procedure for progress payments identified within the Construction Documents. County shall pay Construction Manager amounts payable to the Contractors upon certification by Construction Manager that the money is properly owed and that the Contractor has completed that portion of the Construction Work equal to the proportion of money to be paid. The total amount paid by County for each Contractor shall be no more than the

amount of the original Construction Contract amount together with such Eligible Changes as are approved.

- 8.7 Contract Amount is the maximum amount payable to Construction Manager under this Agreement which is the sum of the amounts payable in accordance with Paragraphs 8.1 through 8.5. In no event shall County pay Construction Manager any amount in excess of the Contract Amount together with such Eligible Changes as are approved.
- 8.8 Site management expenses are the Construction Manager's actual costs incurred to manage the Construction Work which includes employees and facilities located at the Project site, insurance premiums based on the Construction Contracts, and other expenses related to managing the Construction Work as agreed to by County. At the completion of the Project, an accounting of actual site management expenses will be provided by Construction Manager. Any amount paid by County for site management expenses that is not substantiated by the accounting will be refunded to County by Construction Manager. Any cost overrun the site management expense shall be paid through the contingency as approved by the County.
- 8.9 Construction Manager shall submit to the County a breakdown and a monthly cash flow schedule of the Contract Amount. The breakdown shall allocate the Contract Amount to the various services, materials and installation so as to facilitate payment and be in such a form and in such detail as required by County. The breakdown and monthly cash flow schedule shall be revised to include approved Revision Orders. Construction Manager may invoice the County monthly for services performed and Construction Work completed. Invoices shall be based on the agreed Contract Amount breakdown. County will issue payment within thirty days.
- 8.10 At the time of final payment and as a condition precedent to final payment, Construction Manager shall execute and deliver a release in form and substance satisfactory to County which shall discharge County, its officers, agents and employees of and from any and all liability, obligations and claims arising under this Agreement.
- 8.11 County may withhold from any payment to be made under this Agreement to such extent as may be necessary to protect County from loss on account of:
- A. Material failure of Construction Manager to perform in accordance with this Agreement.
 - B. Defective Construction Work or Construction Manager's work under this Agreement not remedied by Construction Manager
 - C. County's cost of correcting deficiencies in the Project or undertaking Construction Work, provided Construction Manager has failed to make such corrections after written notice.
 - D. Damage to County property which is not covered by builder's risk insurance

- E. Failure of Construction Manager to make payments properly to Consultants, Contractors, or for material, labor, or equipment in accordance with the terms of the relevant documents.
 - F. Third party claims filed or reasonable evidence indicating probable filing of claims until tender of the claim is accepted by Construction Manager.
 - G. Liquidated damages or anticipated liquidated damages if Construction Manager has not submitted an acceptable schedule recovery plan..
 - H. Any amount owed by Construction Manager to County.
- 8.12 In the event Construction Manager shall become liable for liquidated damages, or other damages as set forth in this Agreement, County, in addition to all other remedies provided by law, will have the right to withhold payments from Contract Amount until the liability of Construction Manager 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 Construction Manager only after discharge in full of liability incurred by Construction Manager. If the sum so retained by County is not sufficient to discharge the liabilities of Construction Manager, Construction Manager 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
- 8.13 Should the owner fail to issue payment for amounts approved and owed under the Contract within thirty calendar days of the due date, then the Construction Manager may, upon fourteen days written notice to the Owner and provided the Owner does not pay the Construction Manager within said fourteen days, stop Work on the Project until Owner issues payment for the amount approved and owed.

ARTICLE 9 CHANGES

- 9.1 The County, without invalidating this Agreement, may accomplish changes in this Agreement and the Project consisting of additions, deletions or other revisions. All changes by County shall be accomplished by the procedure set forth herein which utilizes Change Orders and Revision Orders. It is explicitly agreed that County will have responsibility for only Eligible Changes. Requests from Construction Manager for additional compensation or time shall be resolved by the provisions of this Article.
- 9.2 An Eligible Change is a change directed by the County, an Unforeseeable Condition, or an Unforeseeable Delay.
- 9.3 A Change directed by County is a change initiated and approved by County after County approval of a Work Increment. Upon substantiation to the satisfaction of County of the cost and/or time for a Change directed by the County pursuant to the procedures in this Article, Construction Manager may be eligible for a Change in Contract Time and/or Contract Amount.

- 9.4 Unforeseeable Conditions are those conditions encountered in the performance of this Agreement which are unforeseeable and beyond Construction Manager's control, such as an act or neglect of County or changes in regulatory requirements. Unforeseeable Conditions do not include conditions which were known or should reasonably have been known by Construction Manager, but are unknown to the Contractors, including but not limited to errors or omissions in the Construction Documents. The Construction Manager shall be eligible for a change in Contract Time and/or Contract Amount for any Unforeseeable Conditions that occur under this Agreement.
- 9.5 Unforeseeable Delays are delays in the performance of this Agreement or the Construction Contracts which are beyond the Construction Manager's control, such as labor disputes, fire, unusual delay in transportation, or unusually adverse weather conditions as defined in this Agreement. Upon substantiating the delay and its impact on the Project, the Contract Time and Construction Manager's maximum site management expenses will be adjusted. The Construction Manager shall be eligible for a change in Contract Time and/or Contract Amount for any Unforeseeable Delays that occur under this Agreement.
- 9.6 A Change Order is a written document from the County directing a change in this Agreement or the Project. Upon receipt of a Change Order, Construction Manager shall promptly proceed with implementing the change. Within twenty calendar days after receiving a Change Order, Construction Manager shall advise the County of Construction Manager's disagreement, if any, with the terms of the Change Order, and shall state the nature and extent of the disagreement. Proceeding with the change without submitting a notice of disagreement indicates Construction Manager's full acceptance of the 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 Contract Time for changes ordered by Change Order. Construction Manager will not delay the Project for any reason including pending Revision Orders or unresolved price or time adjustment.
- 9.7 A Revision Order is a written document acknowledging a change and modifying the Contract Amount and/or Contract Time and is full compensation for the change and its effects on the schedule and all other impacts on this Agreement and the Project. The Contract Amount may be increased only by a Revision Order approved by the County. The signature of County and Construction Manager on the Revision Order indicates their final and conclusive acceptance of the stated terms and provisions. In the event the County and Construction Manager do not agree upon the adjustment to the Contract Amount and Contract Time, the County may issue a Revision Order unilaterally. A Revision Order issued unilaterally is signed by the County and issued to Construction Manager authorizing an adjustment in the Contract Amount and/or Contract Time as County deems equitable. Payments shall be made to Construction Manager on the basis of the unilateral Revision Order.

- 9.8 Within twenty calendar days after receiving a unilaterally issued Revision Order, Construction Manager may give County written notice of its disagreement with the terms of the Revision Order, and shall state the nature and extent of the disagreement. Such notice of disagreement does not excuse performance by Construction Manager and Construction Manager shall proceed with the Project including the subject matter of the disagreement. Failure to present such notice of disagreement constitutes a waiver by Construction Manager of any entitlement to additional cost or time.
- 9.9 A Field Directive is a written document signed by County and issued to Construction Manager to perform as so specified. Construction Manager shall immediately comply with Field Directives. If Construction Manager believes an adjustment of Contract Amount or Contract Time is justified, a request may be submitted. If the County concurs with Construction Manager, a Revision Order will be issued.
- 9.10 Construction Manager shall not act or rely upon verbal instructions.
- 9.11 Method of Determining Adjustment. Adjustments to the Contract Amount and Contract Time for Eligible Changes occurring before Construction Contracts are awarded shall be equitable based on the nature and extent of the change and determined by negotiations between Construction Manager and County.
- 9.12 Adjustments to the Contract Amount and Contract Time for Eligible Changes occurring after Construction Contracts are awarded shall be determined in one or more of the following ways at the County's discretion.
- A. By negotiation based upon an estimate of the cost and time to perform the change. If the estimate is prepared by a Contractor it shall be verified by Construction Manager. The estimate shall include quantities of materials and man hours, and a breakdown of cost showing labor, materials, overhead and profit as allowed below, insurance, and other items of direct cost. Contractor's site management expenses are not allowed except for additional Contract Time. Estimated unit prices used to calculate cost shall not exceed published unit prices, such as those published by R. S. Means Company, Inc., unless it can be justified that the published unit prices do not apply.
 - B. By unit prices agreed to prior to the change or subsequently agreed upon.
 - C. By acceptance of a lump sum proposal and specified time.
 - D. If the adjustment to the Contract Amount or Contract Time is not determined prior to starting the changed work, the entity performing the work shall proceed and keep daily accurate records of the labor hours, materials, and other items of cost used in the performance of the changed work. Copies of the records shall be given to the Construction Manager daily. Construction Manager shall present at such time and in such form as County may prescribe, an itemized accounting together with appropriate supporting data as may be required by County to fully substantiate the cost of the change. County shall consider such accounting in its determination of equitable adjustment.

- 9.13 Adjustments to the Contract Amount for Eligible Changes may include overhead and profit not exceeding the following:
- A. Contractor's total overhead and profit on work performed by its forces pursuant to an Eligible Change shall not exceed fifteen percent (15%) of the direct cost of the work.
 - B. Contractor's total overhead and profit on work performed by subcontractors of the Contractor pursuant to an Eligible Change shall not exceed five percent (5%) of the direct cost of the work. Contractor overhead and profit on subcontractors will be allowed for one tier only.
 - C. Subcontractor's overhead and profit on work performed by its forces pursuant to an Eligible Change shall not exceed fifteen percent (15%) of the direct cost of the work. Subcontractor overhead and profit will be allowed for one tier only.
 - D. Construction Work that is not performed shall be credited to the County including an equitable amount for overhead and profit. Value engineering revisions initiated by Contractors and approved by County which decrease the Contract Amount shall be at direct cost only.
 - E. Consultants overhead and profit shall not exceed its standard published rates.
 - F. Construction Manager shall not receive overhead and profit on the first \$xxxxxx of Eligible Changes. Construction Manager may request overhead and profit at the rate of xxxxx percent of Eligible Changes thereafter.
- 9.14 Additional Contract Time and direct costs associated with the additional time plus overhead and profit as allowed herein will be granted only to the extent the time required to perform Eligible Changes affects the critical path. Construction Manager shall provide schedule analysis clearly indicating the impact of the Eligible Change on the construction schedule.
- 9.15 Claims. If Construction Manager wishes to request an adjustment in the Contract Amount or Contract Time, Construction Manager shall give the County a written Notice of Claim within seven calendar days after the occurrence or beginning of the event giving rise to such Claim except that notice shall be given immediately if delays or extra costs occur within such seven-day period. The Notice of Claim shall be given by Construction Manager before disturbing conditions which are the basis for the Claim, except in an emergency endangering life or property in which case the Construction Manager shall proceed in accordance with Article 13 Emergencies of the Agreement. Failure to present such Notice of Claim constitutes a waiver of such Claim. The adjustment to the Contract Amount or Contract Time, if any, shall be determined and issued in accordance with this Article.
- 9.16 Construction Manager is required to provide preliminary estimates of cost and time impacts of potential changes to the Project as requested by County using its best judgment of probable impacts. Such estimates shall be provided within seven days of receiving the estimate request. If County decides to order the change, a Change Order will be issued

and adjustments to the Contract Amount and Contract Time will be determined pursuant to the change procedures of the Agreement. If estimates are not received by County within the time allowed, Construction Manager will be responsible for any cost increase or schedule impact resulting from Construction Manager's failure to respond within the allowed time.

ARTICLE 10 INSURANCE AND BONDS

- 10.1 Construction Manager shall not commence Work under this Agreement until all required insurance and bonds have been obtained and accepted by County.
- 10.2 Construction Manager shall furnish the County with Certificates of Insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Construction Manager's coverage to include the contractual liability assumed by Construction Manager pursuant to this Agreement. Certificates of Insurance shall be filed with the County within ten days after award of the Agreement. These certificates shall specify or be endorsed to provide that thirty days notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.
- 10.3 Construction Manager shall have in effect during the entire life of this Agreement Workers Compensation and Employers Liability Insurance providing full statutory coverage and Construction Manager shall require all Contractors and Consultants to provide Workers Compensation and Employers Liability Insurance to full statutory limits. In signing this Agreement, the Construction Manager 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 this Agreement.
- 10.4 Construction Manager shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect it and any Contractor or Consultant, from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage including third party property damage 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 Construction Manager's or Contractor's operations under this Agreement, 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:

A.	Comprehensive General Liability	\$4,000,000
B.	Motor Vehicle Liability Insurance	\$4,000,000
C.	Professional Liability Insurance	\$4,000,000

- 10.5 The 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.
- 10.6 County shall obtain All Risk Builder's Risk Insurance, including earthquake and flood in the amount of the value of construction plus the value of approved changes, with a waiver of subrogation against Construction Manager or Contractors. Turner Construction Company and Contractors shall be added as an additional named insured on such policy and such policy shall require a minimum thirty day notice to Construction Manager of any cancellation.
- 10.7 Contractors shall provide payment and performance bonds on the full amount of their Contract.
- 10.8 Construction Manager shall provide a payment bond in the amount of 50% of the Construction Cost.

ARTICLE 11 DISPUTES

- 11.1 Should any dispute including breach, arise out of or relate to this Agreement, Construction Manager shall continue to perform the services specified herein and County and Construction Manager agree to pursue resolution of the disagreement by whatever means available. Neither the dispute resolution process, the resolution, nor lack of resolution shall delay, hinder, or alter the completion of the Project and Construction Manager shall proceed with the Project in accordance with County's direction to Construction Manager.
- 11.2 If Construction Manager defaults or neglects to perform this Agreement as required herein or ensure Construction Work in accordance with the Construction Documents, County may, after seven days written notice to Construction Manager and without prejudice to any other remedy County may have, and without termination of this Agreement or ordering the Construction Manager to stop work, make good such deficiencies in any manner the County deems expedient. In such case an adjustment to the Contract Amount shall be made deducting from the payment then or thereafter due Construction Manager, the cost of correcting such deficiencies, including the cost of additional services made necessary by such default, neglect or failure.

- 11.3 Construction Manager shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the management, design and construction of the Project. If Construction Manager performs any obligations of this Agreement or if Contractors perform any Construction Work contrary to laws, ordinances, rules and regulations applicable to this Agreement and the Construction Contracts and not covered under the Contingency (Paragraph 8.5) or Unforeseeable Conditions (Paragraph 9.4) or Unforeseeable Delays (Paragraph 9.5), Construction Manager shall bear all costs and delays arising therefrom.
- 11.4 If Construction Manager negligently fails to correct defective Construction Work or fails to supply materials or equipment in accordance with the Construction Documents, the County may order Construction Manager to stop work on any portion of the Project or the entire Project until the default has been corrected. Construction Manager shall not receive a time extension or compensation as a result of stopping work as directed by this provision.

ARTICLE 12 CONTRACT TERMINATION

- 12.1 County's Right to Terminate for Cause. If Construction Manager should be adjudged bankrupt, or if Construction Manager should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should fail to diligently and expeditiously prosecute this Agreement, or if it should fail to make prompt payments to Contractors or Consultants, or persistently disregard laws, ordinances or the instructions of the County, or otherwise breach any provision of the Agreement, the County may without prejudice to any right or remedy the County may have and after giving Construction Manager seven days' written notice, terminate the Agreement or terminate the Construction Manager's right to proceed with this Agreement and take possession of the premises and of all materials, tools and appliances thereon and finish the Project by whatever method the County may deem expedient. In such case, Construction Manager shall not be entitled to receive any further payment until the Project is finished. If the unpaid balance of the Contract Amount shall exceed the expense of finishing the Project, including compensation for additional managerial and administrative services, the amount of such excess shall be paid to Construction Manager for work performed. If such expense shall exceed such unpaid balance, Construction Manager shall pay the difference to the County.
- 12.2 County's Right to Terminate Without Cause. The County reserves the right to terminate this Agreement at any time. If such termination is without cause, Construction Manager shall be compensated on the basis of the reasonable value of the portion of Project completed as prorated against the Contract Amount plus reasonable closeout and demobilization costs. Payments pursuant to Paragraph 8.6 shall be made on the basis of the reasonable value of the portion of Project completed as prorated against Construction Cost. The total payments to Construction Manager shall not exceed the amount payable to the Construction Manager under this Agreement as amended.

12.3 Construction Manager's Right to Terminate Agreement. Except as provided by Emergency Terminations, if the Project should be stopped by the County, or an order of the court, or other public authority for a period of six months, through no act or fault of Construction Manager or of anyone employed by it, then Construction Manager may, upon thirty days' written notice to the County, terminate this Agreement and recover from the County the amount owed under the Agreement as amended for the portion of Project, if any, which was completed, plus reasonable closeout and demobilization costs. Payments pursuant to Paragraph 8.6 shall be made on the basis of the reasonable value of the portion of Project completed as prorated against Construction Cost plus Contractor's reasonable closeout and demobilization costs.

12.4 Emergency Termination. This Agreement is subject to termination as provided by Section 4410 and 4411 of the Public Contract Code of the State of California, being portions of the Emergency Termination of Public Contract 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 plus reasonable demobilization and closeout costs. As an exception to the foregoing, in the case of any fully completed separate item or portion of the Project 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.

ARTICLE 13 EMERGENCIES

13.1 In an emergency affecting the safety of life, the Project, or property, Construction Manager, without special instruction or authorization from the County, is hereby

permitted to act, at its discretion, to prevent such threatened loss or injury; it shall so act without appeal if so instructed or authorized. Any compensation claimed by Construction Manager on account of emergency work, beyond Construction Manager's contractual obligations, shall be determined by agreement. Construction Manager shall immediately notify the County in writing of such emergency and any compensation claimed.

- 13.2 In an emergency affecting the safety of life, the Project, or property or if an unsafe condition exists, the County 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, utilizing materials, equipment or facilities of Construction Manager or Contractor. The County's actions may be performed immediately and without notice to Construction Manager or Contractor. Construction Manager shall pay County for all costs which are attributable to Construction Manager or Contractor.

ARTICLE 14 LIQUIDATED DAMAGES

- 14.1 The occurrence and amount of damages the County will suffer if the Project is not completed through Work Increment 7 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, 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, Construction Manager 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 Construction Manager 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. As otherwise provided in this contract, County shall not pay any amounts for or to the Contractors above that amount of the contracts awarded to the Contractors other than for an Eligible Change; however, if such payment to Contractors by County shall be required in some manner unanticipated by the parties, the payment of liquidated damages to County by Construction Manager does not absolve Construction Manager of the further payments to County to reimburse the amounts paid by County to third parties, including Contractors, for delay if such payments shall be required, and payment of liquidated damages to County by Construction Manager shall not be a defense by Construction Manager 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. These liquidated damages shall not cover the cost of completion of the contract, which shall be in excess of the liquidated amount. In the event Construction Manager fails to make such payment of liquidated damages, County may deduct pursuant to this

Agreement the amount thereof from any money due or that may become due or payable through this Agreement to Construction Manager or to Contractors.

- 14.2 The amount of the liquidated damages to be paid by Construction Manager to County in the event the Project is not complete by the date specified for achieving Substantial Completion, as extended, if applicable, pursuant to the terms of Article 9 related to Changes in the Agreement, will be \$5,000 for each calendar day, continuing to the time at which the Project is substantially 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 or cost of completion, which shall be in excess of this liquidated amount. Based on all the circumstances existing at the time of execution of this Agreement, the parties agree that this amount has been fully negotiated and that this provision is not unreasonable. County agrees it will not claim loss of BOC funding against Construction Manager as a result of delay and Construction Manager agrees not to challenge the legality of this liquidated damages clause on the basis that the amount of loss based on BOC funding is known.

ARTICLE 15 HOLD HARMLESS

- 15.1 Construction Manager shall indemnify and save harmless the County, its officers, agents, employees and servants from all claims, suits, actions, damages, losses, expenses or costs of every name, kind and description, including those of Contractors or other third parties, brought as a result of or resulting from or related to this Agreement or the performance of the Construction Manager's work or the Construction Work required by the Construction Documents. 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 Contractor; or (2) damage to property of any kind whatsoever and to whomsoever belonging; or (3) by reason of any infringement or alleged infringement of the patent rights of any person or persons, firm or corporation in consequence of the use in, on, or about the Project, of any article or material supplied or installed on the Project; as a result of or arising from the Work, the Construction Work or the Project. 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 indemnity shall not apply to those damages paid by builders' risk insurance carried by County. It is the intent of this Agreement that County shall have no responsibility for claims of Contractors and this indemnity, hold harmless and defense includes any and all cost or expense related to the Project including but not limited to the claims of Contractors other than those approved as Eligible Changes.
- 15.2 The duty of Construction Manager 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 Construction

Manager to indemnify the County, its officers, agents, employees and servants against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

ARTICLE 16 MISCELLANEOUS PROVISIONS

- 16.1 Construction Manager shall maintain all drawings, specifications, calculations, cost estimates, quantity estimates, statements of construction cost, schedules, correspondence, internal memoranda, papers, writings and documents of any sort prepared by the various parties in connection with this Project. All such records shall be available to County upon request at reasonable times and places and shall be turned over to the County within thirty days of completion of the Project or termination of Construction Manager's services.
- 16.2 Construction Manager shall maintain records relating to this Agreement for four years after the final completion. Records related to costs shall be kept in accordance with generally accepted accounting principles. The County will have the right to audit these records at any time up to four years after completion of the Project and recover any amount paid by Revision Order but not substantiated by audit.
- 16.3 All documents prepared or obtained in connection with this Agreement are the property of County and subject to copyright by County.
- 16.4 Records of Construction Manager's personnel costs, Consultant costs, and reimbursable expenses pertaining to their services shall be kept on a generally recognized accounting basis, and shall be available to County upon request at reasonable times and places. Construction Manager shall not destroy any Project records until sixty days after advising County in writing and allowing County to accept and store the records. Construction Manager shall obtain written acknowledgment from County prior to destroying Project records.

In Witness whereof, the parties hereto have signed this Agreement on the date opposite their names.

Turner Construction Company

Dated: _____

By _____

County of San Mateo

Dated: _____

By _____
President of the Board