

## SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement ("Agreement") is made and entered into as of \_\_\_\_\_ (date) by and between the County of San Mateo ("County"), on the one hand, and Turner Construction Company ("Turner"), on the other hand (both collectively hereinafter referred to as "the Parties").

### RECITALS

A. Turner and the County entered into a written contract dated October 22, 2002, (the "CM Contract") pursuant to which Turner agreed to provide construction management services in connection with the design and construction of the new County facility known as the Youth Services Center (the "Project").

B. The Parties intend to further amend the CM Contract to provide for the most recent changes, adjustments, credits and payments that they have agreed to. Said CM Contract amendment includes Revision Order 23 and will provide for a total Contract Amount, including Eligible Changes, of \$127,808,501.

C. Substantial Completion of the Project has been accomplished. Even though the Project is being used and occupied by the County, Final Completion will not occur until all Punch List A work and Punch List B work is completed and accepted by County.

D. Turner has alleged that it is owed additional payments, compensation and/or damages under the CM Contract, as amended, and has threatened to file a claim against the County in connection therewith. County has alleged that it is entitled to compensation and damages from Turner in connection with the Project and pursuant to the CM Contract, as amended. Hereinafter these allegations are referred to as "the Claims"

E. The Parties desire to enter into this Agreement for the purposes of settling and fully resolving all outstanding, threatened and potential claims and disputes, of any nature, that they may have against each other in connection with the Project, subject to and for the consideration reflected in the following terms, conditions, representations, and warranties.

### AGREEMENT TERMS AND CONDITIONS

NOW, THEREFORE, FOR ADEQUATE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE as follows:

1. **Incorporation of Recitals**

The parties hereby incorporate each of the above recitals as a part of this Agreement.

## **2. Settlement of Claims between the County and Turner**

a. Except for warranty claims, and claims arising out of the breach of this Agreement, the County, for itself and its collective and respective Supervisors agents, employees, and officers, ("County Affiliated Parties") does hereby release and forever discharge Turner, its officers, employees, attorneys, sureties, insurers and other related entities of and from any and all claims (monetary or otherwise), debts, liabilities, liquidated damages, costs, actions, judgments, demands, obligations, contracts, suits, expenses, losses, attorney's fees, damages and causes of action of any kind or nature arising out of or related to the Project, which the County may now or hereafter have or claim to have against Turner.

b. Except for claims arising out of the breach of this Agreement, Turner, for and on behalf of itself, its officers, employees, agents, attorneys, sureties, insurers, subcontractors on the Project, and other related entities ("Turner Affiliated Parties"), hereby releases and forever discharges the County and its Affiliated Parties of and from any and all claims, which Turner may now or hereafter have or claim to have against the County, arising out of or related to the Project.

## **3. Documentation and Payments**

a. On or before the date of execution of this Agreement, the Parties shall execute the CM Contract amendment referenced in Recital B. This Agreement shall not be enforceable or effective until or unless said CM Contract amendment is fully executed and effective. Accordingly, this Agreement will become enforceable and effective upon the execution of both this Agreement and the CM Contract amendment by both Turner and the County.

b. Notwithstanding the terms of the CM Contract, as amended, within 30 days of the effective date of this Agreement, County shall pay to Turner all sums owing under the CM Contract, as amended, including all unpaid retention.

c. Attached hereto as Exhibit A is a list of outstanding punch list items whose completion requires County management or oversight.. Any County responsibility for paying for or completing said Punch List A work shall not impact any warranty or other obligations that might apply to such work under the CM Contract, as amended, or this Agreement.

d. Within 30 days of the County's receipt of any insurance claim payouts that County receives from its Builders' Risk Insurance in connection with the Project (i.e., under Westchester Surplus Lines Ins Co, Policy Number IMC 120714396 001), County shall pass such payout amounts on to Turner.

e. As a final settlement sum, in addition to the payments described in subsections b and d, above, County shall pay Turner the sum of \$1,373,969

(hereinafter for purposes of this Agreement referred to as the "Adjustment Payment"). Attached hereto as Exhibit B is a list of all of the outstanding items to be completed by, and at the sole cost of, Turner ("Punch List B"). County shall pay the Adjustment Payment to Turner within 15 days of the completion of all of the Punch List B items; provided, however, said 15-day period shall not commence until all outstanding stop notice claims have otherwise been fully resolved so as to fully protect County and its interests, to the satisfaction of the County.

#### **4. Waiver of California Civil Code section 1542**

a. In addition to the specific and express releases set forth herein, each of the Parties hereby further releases the other party from any and all unknown and/or unanticipated injuries, losses, or damages, arising out of the allegations and matters related to or arising out of the Claims, as well as from those now known or disclosed. Turner and County specifically and fully waive any right or benefit under provisions of California Civil Code section 1542 which provides that:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.*

b. Turner and County understand and acknowledge the significance and consequence of such specific waiver of Civil Code section 1542 and nevertheless elect to and do release any claims, known or unknown, which they may have or in the future may have against any other party hereto, and further elect to and do assume all responsibility for claims that they may incur or in the future incur, except as specifically provided otherwise in this Agreement.

#### **5. Cooperation**

The Parties will execute all such further and additional documents as shall be reasonable, convenient, necessary, or desirable to effectuate or otherwise carry out the provisions of this Agreement.

#### **6 Representations and Warranties by Parties; Indemnification**

Each Party represents and warrants that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any claims released in this Agreement. Each Party agrees to indemnify and hold harmless the other Party against any claims released in this Agreement based upon any such transfer or assignment, or purported transfer or assignment. Turner agrees to indemnify and defend the County Affiliated Parties from and against any and all claims made or brought against any of them, by any contractor or subcontractor of Turner (including the Architect) in connection with the Project. Turner represents that, to the best of its knowledge, the Project is, or will be upon final completion, complete in every detail, free

of defect, and in compliance with all applicable laws and regulations, except as may exist in connection with the Punch List A work performed by County.

**7. Full Consideration**

Each party shall bear its own fees, costs, and any other expenses (including attorney's fees or consultant's fees) relating to or incurred in connection with this Agreement or the negotiations leading up to this Agreement.

**8. No Admission of Liability**

This Agreement does not constitute, nor shall it be construed as, an admission by either Party of the truth or validity of any real or potential claims, or any defenses, asserted or which could be asserted by either of the Parties.

**9. Successors and Assigns**

This Agreement and the obligations undertaken herein shall be binding upon and shall inure to the benefit of the successors, or assigns, or each of the Parties hereto, including their respective Affiliated Parties, and each of them, and all other persons, firms, corporations, associations, partnerships, or other entities whenever the context so permits.

**10. Choice of Law**

This Agreement is made and entered into in the State of California, and this Agreement and all rights, remedies, or obligations provided for herein, shall be construed and enforced in accordance with the laws of the State of California.

**11. Integration**

This Agreement contains the entire understanding and agreement between the Parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or other prior or contemporaneous agreement, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind either of the Parties hereto.

**12. Modification**

This Agreement shall not be modified by any oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties, and each of them.

**13. No Representations — Independent Advice from Counsel**

The Parties hereto, and each of them, acknowledge that this Agreement is executed voluntarily by each of them, without any duress or undue influence on the part of or on behalf of any of them. Each Party hereto further acknowledges that it has been represented in the negotiations for, and in the performance of, the Agreement by counsel of its own choice, that each has read the Agreement and had it fully explained to each by such counsel, and that each is fully aware of the contents of the Agreement and its legal effect. Each of the undersigned has read the foregoing agreement and has consulted with its attorney(s) concerning its contents and consequences.

**14. Joint Preparation of this Agreement**

The drafting and negotiating of this Agreement has been participated in by each of the Parties and/or their counsel, and for all purposes, this Agreement was drafted jointly by both Parties.

**15. Authority to Enter into this Agreement**

The Parties hereto, and each of them, represent and warrant that this Agreement has been or shall be approved by any and all Boards of Supervisors, corporate Boards of Directors, Committees, shareholders, members, partners, or principals whose approval is required to affect this Agreement and bind the Parties, and each of them, to the obligations set forth herein. Each Party agrees to fully indemnify and hold harmless the other Party for any and all damages, costs, attorneys' fees, other liabilities or expenses of any nature whatsoever which any such party may sustain or incur in consequence of any breach of the aforesaid representation or warranty. The persons whose signatures are set forth below each represent and warrant that (i) they have full authority to execute this Agreement on behalf of their respective entity; and (ii) they are acting within the course and scope of such authority in executing this Agreement.

**16. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original if fully executed, as shall photocopies of any such counterparts, and all of which shall constitute one and the same instrument. Facsimile copies of signatures to this Agreement shall be deemed an original signature.

**17. Waiver**

No breach of any portion, provisions,, or part of this Agreement can be waived unless it is done in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or other portion, provisions, or part of this Agreement.

**18. Validity**

If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, void, or unenforceable for any reason whatsoever, each such portion, provisions, or part shall be severed from the remaining portions, provisions, parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions, or parts of this Agreement.

**19. Captions/Headings**

The titles, captions, and headings contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any portion, provision, or part of this Agreement.

IN WITNESS WHEREOF, the County and Turner have executed this Settlement and Mutual Release Agreement, effective as of the date first above written.

**TURNER CONSTRUCTION COMPANY**

By \_\_\_\_\_  
(Printed Name)

Its: \_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

**COUNTY OF SAN MATEO**

By \_\_\_\_\_  
President of the Board

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