

AGREEMENT FOR DESIGN-BUILD SERVICES

COUNTY OF PLACER
PLACER COUNTY FACILITIES MANAGEMENT
CAPITAL IMPROVEMENTS DIVISION

HEALTH AND HUMAN SERVICES CENTER, Project No. PJ00113

THIS AGREEMENT, made this day _____ by and between **Turner Construction Company** a New York corporation, whose place of business is at 2500 Venture Oaks Way, Suite 200, Sacramento, California 95833 hereinafter called ("Contractor"), and the **County of Placer**, a political subdivision of the State of California, hereinafter referred to as ("County").

The parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

Article I. Work

- 1.1 Contractor shall provide, furnish, and perform all necessary planning, architectural, engineering, and all other design services of any type, procurement, permitting and support services, construction, landscaping, clean-up, and all other construction services of any type, provide and furnish all necessary supplies, materials and equipment (except those to be provided by County, if any) and all necessary supervision, labor, and services required for the complete engineering, design, procurement, quality assurance, construction and all necessary installation, start-up and testing required for a complete, operational, and fully functional Project, as further described in Section 01 11 00 Summary of Work and Section 01 11 01 Summary of Work – Design Services of the Division 1 General Specifications, and Contractor's Best and Final Proposal (hereinafter, the all-inclusive obligations of the Contractor set forth in this sentence shall be referred to as the "Work"). Except with regard to any material to be provided and/or installed by County, Contractor shall fully commission and turn over a complete, operational, and fully functional Project to County. Without limiting the generality of this Agreement, Contractor shall provide the following work and Services:
- 1.2 Contractor shall prepare complete designs, engineering, working drawings, shop drawings and generate drawings and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials and equipment and for the construction of the complete, operational, and fully functional Project, and shall furnish the services of all necessary supervisors, engineers, designers, draftsmen, and other personnel necessary for the preparation of those drawings and specifications required for the Work, including the pertinent information for natural gas, water supply, and any other utilities, as required.
- 1.3 Contractor shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project, including the permanent interconnection for electricity, natural gas, water supply, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.
- 1.4 Contractor shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct

the complete, operational, and fully functional Project. Contractor shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

- 1.5 Contractor shall obtain, at Contractor's expense, all governmental and private approvals, licenses, and permits required to complete the Work; provided, however, County will be responsible for paying the cost of all fees imposed by regulating agencies with jurisdiction over the project except as may otherwise be noted in the Contract Documents. Contractor shall design and construct complete, operational, and fully functional Project in full compliance with all applicable laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems.

Article II. County's Project Manager and Representatives

- 2.1 County may assign all or part of its rights, responsibilities and duties to the Project Manager or other representative. County shall inform Contractor in writing of such assignment and the extent of its representative's authority.
- 2.2 All notices or demands to County under the Contract Documents shall be to County's Project Manager at:

Health and Human Services Center Project Manager
County of Placer, Facilities Management Capital Improvements Division
11476 C Avenue
Auburn, CA 95603

or to such other person(s) and address(es) as County shall provide to Contractor.

Article III. Contract Time and Liquidated Damages

- 3.1 Contractor shall complete the Work within the following schedule reflecting the date the Contract Time commences to run as set forth in the Notice to Proceed and the General Conditions. County reserves the right to modify or alter the Commencement Date of the Work.
- 3.2 Therefore, Contractor accepts the following completion obligations:
 - 3.2.1 Contractor acknowledges that it is in County's best interests to begin work as soon as possible after County award of the Contract and issuance of the Notice to Proceed. As noted elsewhere in this agreement, Contractor may, at its option, phase preparation and issuance of Construction Documents to facilitate commencement of work such as site work, utilities installation and foundation installation. County will reasonably phase its reviews and approvals of such phasing to support Contractor's work.
 - 3.2.2 Contractor shall diligently pursue completion of the work, Contractor shall achieve Substantial Completion of the entire project within **928** (nine hundred and twenty-eight) calendar days of the date on which County issues the Notice to Proceed (Design).
 - 3.2.3 Contractor shall achieve Final Completion within **50** (fifty) calendar days of the date when County certifies Substantial Completion as defined in the General Conditions.
 - 3.2.4 While the parties acknowledge that Substantial Completion shall be defined in the General Conditions Section 1.09, Contractor agrees it shall fully participate in and cooperate with the County in obtaining all necessary permit final approvals required to operate the Project.

3.3 Liquidated Damages:

County and Contractor recognize that time is of the essence of this Agreement and that County may suffer financial loss in the form of additional contract administration expenses (including project management and consultants' expenses), delay and loss of public use, if the Work is not completed within the time specified in Paragraph 3.2.2 above plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Section 1.15 of the General Conditions and Paragraph 3.2.2 above, Contractor and County agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by County because of a delay in completion of the Work.

Accordingly, County and Contractor agree that Contractor shall pay County the following liquidated damages measures that apply separately and cumulatively:

- 3.3.1 Contractor shall pay County **One Thousand Dollars** (\$ 1,000.00) per calendar day for every day by which Substantial Completion exceeds the date set in Paragraph 3.2.2 above.
- 3.4 Liquidated damages for delay shall cover and be in lieu of the actual damages suffered by County as a result of delay. Liquidated damages are intended to compensate County for damages it incurs as a result of delay, but do not cover the cost of completion of the Work or damages not arising from delays. These liquidated damages shall be the County's sole remedy for recovery of damages due to delays in the Work.
- 3.5 Subject to the liquidated damages measures in the Contract Documents, Contractor shall have no liability for consequential damages arising out of the completion of the Work under the Contract Documents, except to the extent that such consequential damages arise from personal injury, property damage, or defective work, or are otherwise covered by any insurance maintained by Contractor or any Subcontractor, Supplier, design professional or any other party involved on the Project.
- 3.6 Compensable Delays claimed by the Contractor shall be evaluated and determined based upon the specific factors involved and the causes of the delays including trade standards and any other acceptable means for the resolution of Compensable Delays as may become agreeable to both parties.

Article IV. Contract Sum

- 4.1 County shall pay the Contractor the sum of the Base Project (\$79,789,777.00) as the "Contract Sum" for the completion of the Work in accordance with the Contract Documents and the amounts stipulated in the Contractor's Cost Proposal. The total Contract Sum shall be **Seventy-Nine Million, Seven Hundred and Eighty-Nine Thousand, Seven Hundred and Seventy-Seven Dollars (\$79,789,777.00)**.
- 4.2 The Contract Sum is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Contractor, its subcontractors, subconsultants, architects, engineers, and vendors or otherwise arising out of Contractor's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall

bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

Article V. Contractor's Representations and Warranties

In order to induce County to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 By execution of the attached, CERTIFICATION OF WORKERS' COMPENSATION, Contractor certifies awareness of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and compliance with such provisions before commencing the performance of this Agreement.
- 5.2 Contractor has visited the Project Site and has reasonably examined the nature and extent of the Work, site, locality, actual conditions, as-built conditions, and all local conditions and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.3 Contractor has reasonably examined all reports of exploration and tests of subsurface conditions, as-built drawings, drawings or reports, available for design and construction purposes, of physical conditions, including those which are identified in the Project Improvement Information⁶ or which may be apparent at the site and accepts the criteria set forth in these documents and the General Conditions to the extent of the information contained in these documents upon which the Contractor is entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in these documents.
- 5.4 After contract award, Contractor will conduct or obtain any additional examinations, investigations, explorations, tests, reports and studies, including but not limited to geotechnical investigations upon which the design will be based, that pertain to the surface and subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the site as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- 5.5 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.6 Contractor has given County prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered before contract award in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by County is acceptable to Contractor.
- 5.7 Contractor is duly licensed, organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.
- 5.8 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

5.9 Contractor confirms its intent to include in the Project the following pre-qualified subcontractors, who were listed in the Contractor’s RFQ earlier in this project. Contractor acknowledges its responsibility to provide County with a complete and updated list of subcontractors as they become known on the project, and that such listing shall be in accordance with the requirements of California Public Contract Code § 20133 *et seq.*

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Bid Items	Subcontractor’s License No.
Triad Steel Services	Steel	715892
Professional Asbestos Removal Corporation	Demo & Abatement	732375
Starch Concrete	Concrete	596214
BT Mancini	Metal Deck	229210
Ranker AMG	Glazing	720092
Performance Contracting	Acoustical Ceilings	474795
One Workplace	Furniture	852389
Schindler Elevation Corporation	Elevators	375733
Western States	Fire Protection	488359
ACCO	Plumbing & HVAC	120696
Helix	Electrical & Security	483309
Turner Construction Company	Self Perform	210639

Article VI. Contract Documents

Any and all obligations of the County and the Contractor are fully set forth and described herein. All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all said documents. The documents comprising the complete Contract are hereinafter collectively referred to as the Contract Documents.

6.1 The Contract Documents which comprise the entire Agreement between County and Contractor concerning the Work consist of the following, including all changes, addenda and modifications thereto, as listed on Table of Contents and List of Drawings, Tables and Schedules:

- Request For Proposals – Phase 1 and Phase 2
- Notice of Award
- Notice to Proceed
- Agreement for Design-Build Services
- Certification of Nondiscrimination in Employment
- Certification of Worker’s Compensation
- Performance Bond
- Payment Bond
- General Conditions
- Supplemental or Special Conditions
- Design Criteria (as published in the Request for Proposals)
- Technical Proposal and Project Specifications (as submitted by the Design-Build Team)
- Design-Build Cost Proposal (as submitted by Design-Build Team and accepted by County)
- Drawings and Technical Specifications
- Addendum
- Approved Change Orders

- 6.2 The Contract Requirements for design and construction are as defined in the Contract Documents, unless otherwise specifically excluded, modified, or amended. Construction Documents produced by the Design-Build Contractor may serve as Contract Documents between the Design-Build Contractor and Subcontractor but are an instrument for fulfilling the Design-Build Contract Requirements as defined by the Contract Documents and do not replace them except and to the extent the design documents modified or amended the Design Criteria, approved by the County.
- 6.3 There are no Contract Documents other than those listed above in this Document, Article VI. The Project Improvement Information and other reports or information provided regarding or pertaining to existing conditions, the Geotechnical Report, and other information supplied through these documents, are not Contract Documents. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

Article VII. Miscellaneous

- 7.1 Terms used in this Agreement are defined in the 00 72 00 General Conditions and Section 01 42 00 References and Definitions and will have the meaning indicated therein.
- 7.2 It is understood and agreed that in no instance is any person, signing this Agreement for or on behalf of County or acting as an employee or representative of County, liable on this Contract, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of County is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing requirements of California Public Contracting Code §20133 *et seq.*
- 7.4 The Contract Sum includes all allowances (if any).
- 7.5 In entering into a public contract or a subcontract to supply goods, services or materials pursuant to a public contract, the Contractor or Subcontractor irrevocably offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act, (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time County tenders final payment to the Contractor, without further acknowledgment by the parties.
- 7.6 This Agreement is executed in the County of Placer and is intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings regarding this agreement initially shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California. Each party waives and federal court removal and/or original jurisdiction rights it may have
- 7.7 Contractor accepts the claims procedures established in the General Conditions of this Agreement, Section 1.12, as established under California Government Code Section 930.2 *et seq.*
- 7.8 County shall have the right to timely and fully review all phases of Contractor's design including, but not limited to, drawings, specifications, shop drawings, samples and submittals, as specified in the Contract Documents. Such review, approval and other action shall not relieve Contractor of

its responsibility for a complete design complying with the requirements of the Contract Documents; but rather, such review shall be in furtherance of County's monitoring and accepting the design as developed and issued by the Contractor, consistent with these Contract Documents. Contractor's responsibility to design and construct the Project in conformance with the Contract Documents shall be absolute.

7.9 By entering into this Agreement, the Contractor accepts and agrees to the terms and conditions of Insurance and Indemnification stipulated in Section 1.04 of the General Conditions.

7.10 INTERPRETATION:

1. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of the Agreement.
2. In the event of a controversy or dispute between the parties concerning the provisions herein, this document shall be interpreted according to the provisions herein and no presumption shall arise concerning the draftsmanship of such provision.

7.11 This Agreement supersedes any and all agreements, either oral or in writing, between the Parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party which is not embodied herein or any other agreement, statement, or promise not contained in this Agreement shall be valid and binding.

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereinabove named, on the day and year first herein written.

CONTRACTOR: Turner Construction Company

(If a Corporation, two signatures are required unless corporate authorization of a singular signature is provided.)

Dated: Apr 30, 2021

Dan Wheeler

Dan Wheeler (Apr 30, 2021 09:05 PDT)

NAME DAN R. WHEELER
TITLE VICE PRESIDENT

ADDRESS: 2500 VENTURE OAKS WAY, SUITE 200
SACRAMENTO, CA 95833

TELEPHONE: (916) 554-7933

APPROVED: STATE OF CALIFORNIA
COUNTY OF PLACER

CHAIR
BOARD OF SUPERVISORS

DATE OF BOARD APPROVAL

APPROVED AS TO FORM BY:

Robert Sandman

Robert Sandman (May 3, 2021 21:51 PDT)

COUNTY COUNSEL

APPROVED AS TO FUNDS BY:

Andy Sisk

Andy Sisk (May 3, 2021 08:59 PDT)

COUNTY AUDITOR

COUNTY OF PLACER
FACILITIES MANAGEMENT, CAPITAL IMPROVEMENTS DIVISION
11476 C AVENUE, AUBURN, CA 95603
(530) 886-4900