

WAIVER AND RELEASE AGREEMENT

This Waiver and Release Agreement (the "Agreement") is made and entered by and between Hal Hays Construction, Inc. (HHCI), and Humboldt County (the "County") (collectively, the "Parties") and shall be effective as of the last date executed below.

RECITALS:

WHEREAS, HHCI and the County entered into a construction contract (the "Contract") in connection with the construction of Humboldt County Juvenile Hall Replacement Facility - Project No. 170212 (the "Project") in accordance with the terms and provisions of the Contract, including all contract documents forming a part of the Contract;

WHEREAS, as required by the terms of the Contract, HHCI and Western Surety Company (the "Surety") made, executed and delivered to the County a Performance Bond No. 58739526 and a Payment Bond No. 58739526 (collectively, the "Bonds"), for the Project;

WHEREAS on November 8, 2018, the County served a Notice of Termination for Default upon HHCI ("Notice of Termination") and, also on November 8, 2018, the County served a written Notice of Claim on Performance Bond; and

WHEREAS, Surety is willing to arrange for the completion of the Contract pursuant to a Takeover Agreement (the "Takeover Agreement") that the County and the Surety are entering into contemporaneously with the execution of this Agreement.

NOW, THEREFORE, for and in consideration of the agreements and undertaking and other good and valuable consideration, the County and HHCI agree as follows:

1. The recitals set forth above are agreed by the Parties to be true and correct.
2. In consideration for, and effective upon the full execution of the Takeover Agreement between Surety and the County and full execution of this Agreement between the County and HHCI, but excepting any obligations arising under the Takeover Agreement or this Agreement, HHCI and the County, on behalf of themselves and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, managers, construction managers, architects, managing agents, partners, partnerships, parents, subsidiaries, affiliated and related entities, officers, directors, owners, principals, agents, attorneys, consultants, employees or former employees, servants, representatives, shareholders, former shareholders, and all persons, firms, Board of Supervisors, associations, and/or corporations connected with them, do hereby mutually release and forever discharge each other and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, managers, managing agents, partners, partnerships, parents, subsidiaries, affiliated and related entities, officers, Board of Supervisors members, directors, owners, principals, agents, attorneys, consultants, employees or former employees, servants, representatives, shareholders, former shareholders, and all persons, firms, associations, and/or corporations connected with them, to the fullest extent possible, of and from, on account of, or with respect to any and all demands, actions, causes of action, liabilities, defenses,

obligations, damages or claims of any and every kind and nature whatsoever at law, in equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, foreseen or unforeseen, asserted or unasserted, arising out of or in any way connected with, or resulting from the Project or the Contract Documents through the Effective Date of this Agreement ("Claims"), including without limitation all claims for additional or extra compensation arising from the Project; all claims for extensions of the contract completion date, whether compensable or non-compensable; the County's assessment of liquidated damages other than as expressly provided in the Takeover Agreement between Surety and the County; and all Claims pertaining to and arising under the County's Notice of Termination. Expressly excepted from this Agreement are claims arising from or related to defective work, non-conforming work, latent defects as that term is defined in Code of Civil Procedure 337.15, and claims or damages arising from work performed by HHCI in its capacity as a Completion Contractor pursuant to the Takeover Agreement. Further, this mutual waiver shall not apply to any potential subsequent claim for liquidated damages that the County may have arising out of the failure of the Completion Contractor, (as defined in the Takeover Agreement) to complete the Contract on or before August 30, 2020 in accordance with the terms of the Contract.

3. This Agreement shall not alter or modify any requirements of the Contract applicable to the performance of work by HHCI in its capacity as a Completion Contractor in accordance with the Takeover Agreement.

4. This Agreement may not be changed, amended or altered except in writing and executed by both the County and HHCI.

5. This Agreement may be executed in one or more counterparts, and by regular mail, facsimile, email, or PDF signature, each of which shall be deemed a duplicate original but all of which together shall constitute one and the same counterpart. Facsimile, email, or PDF signatures on this Agreement shall be deemed as original signatures for all purposes.

6. This Agreement shall be governed by and controlled by the laws of the State of California. Any action arising from this Agreement shall be brought in the County of Humboldt, State of California.

7. The provisions of this Agreement shall be applied and interpreted in a manner consistent to carry out the terms and purposes. This Agreement was jointly prepared by the Parties and shall not be construed against either as the drafter.

8. The Parties agree to cooperate fully and execute any and all additional or supplementary documents, and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and conditions of this Agreement.

9. HHCI expressly agrees and acknowledges that, through signing this Agreement, all terms herein shall be null and void absent consent to this Agreement by, and execution on behalf of, the County, through its Board of Supervisors.

10. In addition to any other condition precedent as set forth in this Agreement, the

Parties agree and acknowledge that the Agreement shall be null and void absent execution of the Takeover Agreement between the County and the Surety on or before the effective date of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above and each party warrants they have the full right, power and authority to execute this Agreement on behalf of the respective party.

COUNTY OF HUMBOLDT

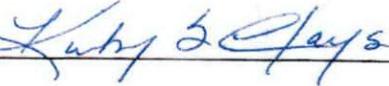
Dated: 10/8/19

BY: 

TITLE: Chair, Board of Supervisors

HAL HAYS CONSTRUCTION, INC.

Dated: 10-1-19

BY: 

TITLE: CEO