

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is entered into this 29th day of August, 2024, by and between MiraCosta Community College District (“District”) and Ayuma House Planning Company (“Contractor”); the District and Contractor are collectively referenced herein as the Parties. This Agreement is entered into with reference to the following Recitals, all of which are incorporated herein.

RECITALS

WHEREAS, on or about November 17, 2023, the District and Contractor entered into a contract for the Contractor to construct (“Contract”) a public works improvement commonly known as the Bid #C14-23 OC Barrier Removal P (“Project”).

WHEREAS, during the course of Project construction, disputes and disagreements arose between the District and the Contractor; the disputes and disagreements included without limitation, the Contractor’s assertion of additional compensation due for allegedly additional or changed Project work (“Contractor Claims”) and the District’s assertion of the right to deductions for defective work and delayed Project completion (“District Claims”).

WHEREAS, the District and the Contractor desire to fully and finally resolve the District Claims and the Contractor Claims upon and subject to the terms and conditions of this Agreement.

WHEREAS, the District and the Contractor previously executed a Settlement Agreement and Mutual Release dated August 20, 2024 concerning the same subject matter as this Agreement; the District and the Contractor intend for this Agreement dated August 29, 2024 to supersede and replace the Settlement Agreement and Mutual Release dated August 20, 2024.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged by the District and the Contractor and the District agree as follows:

1. Resolution of Contractor Claims and District Claims. The District and Contractor agree that the Contractor Claims and the District Claims are fully, finally and completely resolved by the District’s payment of Forty Eight Thousand Seven Hundred Seventeen Dollars (\$48,717) to the Contractor (“Settlement Proceeds”). The District and the Contractor acknowledge and agree that the Settlement Proceeds reflect District and Contractor compromises of the claims and demands asserted in the District Claims and the Contractor Claims. The District and the Contractor agree that that the Settlement Proceeds shall be incorporated into and made a part of the Contract Price.
2. Deduction of Unused Allowance. The District and Contractor agree that: (i) the Allowance incorporated into the Contract Price under the Contract for unforeseen conditions was not fully utilized during Project construction; (ii) at the conclusion of Project construction, the sum of Two Thousand Six Hundred Seventy Dollars (\$2,670) remained unused (“Remaining Allowance”); and (iii) the Remaining Allowance is to be deducted from the Contract Price under the Contract.
3. Final Adjusted Contract Price. The District and Contractor acknowledge and agree

- (i) The original Contract Price was _Five hundred eleven thousand Dollars (\$511,000.00) which included a sixty thousand dollar (\$60,000) owner allowance;
 - (ii) The Final Adjusted Contract Price (after deducting the Remaining Allowance and incorporation of the Settlement Proceeds, and reduction for street light pole in Change Order 02) is the sum of five hundred fifty-seven thousand and forty-seven Dollars (\$557,047).
- 4. Prior Contract Price Disbursements and Contract Price Due Contractor. The Contractor acknowledges that except for retention in the amount of Forty Thousand Four Hundred Fourteen Dollars (\$40,414) (“Retention”) and the Settlement Proceeds due under this Agreement, all payments due the Contractor under the Contract have been disbursed and paid by the District to the Contractor. The Contractor further acknowledges and agrees that the final payment due the Contractor is Eighty-Six Thousand Four Hundred Sixty-One Dollars (\$86,461), which consists of the deduction of the Retention, the Settlement Proceeds and deduction of the Remaining Allowance (“Final Payment”).
- 5. Project Close-Out. The Contractor acknowledges and agrees that the following items must be completed/provided by the Contractor as part of the Contractor obligations under the Contract: (i) completed and executed DSA Form 6C; and (ii) all warranty letters/warranties required by the Contract. (“Project Close-Out Items”). The Contractor shall compile, assemble and deliver all Project Close-Out Items to the District no later than August 30, 2024.
- 6. Final Payment. Upon delivery of all Project Close-Out Items to the District, the Contractor may submit a billing for the Final Payment. The District will make payment of the Final Payment within forty-five (45) days after the date of receipt of the Contractor’s Final Payment billing.
- 7. Warranty. The warranty obligations of the Contractor under the Contract shall be deemed to commence as of August 19, 2024.
- 8. Future Bidding Opportunities. Contractor agrees to refrain from submitting bids, proposals or any responses to any District procurement of any work, labor, goods, products, materials or services (“Contractor Bids”) from the date of this Agreement to September 1, 2029. The Contractor agrees that: (i) any Contractor Bids submitted on or prior to September 1, 2029 shall be subject to summary rejection by the District for non-responsiveness; and (ii) the Contractor waives the right, if any, to object to or protest District rejection of any Contractor Bids pursuant to the foregoing. For purposes of this Paragraph 8, the term “Contractor” shall include:
 - (i) any predecessor in interest to Ayuma House Planning Company.
 - (ii) any successor in interest to Ayuma House Planning Company.
 - (iii) any firm or entity that is a subsidiary or parent of Ayuma House Planning Company.
 - (iv) any Affiliate of Ayuma House Planning Company (an Affiliate means any entity, individual, firm, or corporation, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Ayuma House Planning Company).
 - (v) any firm or entity in which Jeffrie Deno owns any equity interest.

9. Payment of Subcontractors; Contractor Indemnity. Contractor shall remain solely responsible for payment of its subcontractors, material suppliers, laborers, trust funds or any person or entity providing work, labor, materials or services relating to Project construction. The Contractor shall defend, indemnify and hold harmless the District and the District's employees, agents, representatives, Board of Trustees and each member thereof (collectively, "Indemnified Parties") from and against any and all claims, losses, damages, demands or liabilities asserted by Contractor's subcontractors, material suppliers, laborers, trust funds or any person or entity providing work, labor, materials or services for the Project (collectively "Subcontractor Claims"). Contractor's obligations hereunder include reasonable costs, attorneys' fees and/or expenses incurred by the Indemnified Parties. In the event any action or proceeding is brought against an Indemnified Party by reason of any Subcontractor Claims, Contractor upon written notice from the Indemnified Party to the Contractor shall defend same at the Contractor's expense, with counsel reasonably acceptable to the Indemnified Party.
10. Mutual Waiver and Release. Except for the obligations set forth herein, the Parties, for themselves and, as applicable, their respective assigns, predecessors, successors-in-interest, Board of Trustees, officers, directors, Board of Directors, shareholders, employees, representatives, and agents do hereby fully and forever waive, release, discharge, and dismiss any and all past, present and future claims, demands, action, causes of action, rights, damages, costs, expenses and compensations whatsoever, in law or in equity, in the nature of an administrative proceeding or otherwise (known, unknown, contingent, accrued, inchoate or otherwise), that they have, may have had or may have, now or in the future, against the other, and/or their respective assigns, predecessors, successors-in-interest, Board of Trustees, officers, directors, board of directors, sureties, employees, representatives and agents, arising out of or relating in any way to the Contract and/or the Project.
11. Exclusions From District Waiver and Release. The provisions of Paragraph 10 notwithstanding, the District shall not be deemed to have waived, limited, restricted or modified in any way: (i) any warranty rights of the District arising under the Contract, this Agreement, or by operation of law; or (ii) any latent defect rights of the District relating to work, labor, materials or services provided by or through Contractor for the Project.
12. Waiver of Civil Code §1542 Rights. The Parties hereby acknowledge that they are familiar with Civil Code §1542, which provides as follows:

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

In connection with the Mutual Waiver and Release set forth in Paragraph 10 and except for the exclusions set forth in Paragraph 11, the Parties waive and relinquish any and all rights and benefits under Civil Code §1542. The District and Contractor each acknowledge that they may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Project, the Contractor Claims, District Claims and/or the Contract, but that it is the Parties' intent to fully, finally and forever waive rights under Civil Code §1542, whether known or unknown, suspected or unsuspected, which concern, arise out of, or related in any manner to the Project, and the Contract.

13. No Effect Performance Bond. This Agreement and the terms hereof shall not limit, restrict or modify the terms of the Performance Bond.
14. No Admission of Liability. The Parties agree and acknowledge that this Agreement is a compromise and shall not at any time, for any purpose whatsoever, be construed as an admission by any Party of any liability, obligation, or responsibility to the other Party, and that each Party disclaims and denies any liability, obligation, or responsibility to the Party.
15. Independent Judgment; Advice of Counsel. The Parties have read this Agreement in its entirety and are fully aware of its contents. Each Party executes this Agreement acting upon its independent judgment and after the opportunity to obtain advice relating to this Agreement from independent legal counsel, without any representation, express or implied, of any nature, from each to the other, except as expressly set forth herein.
16. Interpretation; Governing Law. This Agreement shall be interpreted, enforced, and governed by and under the laws of the State of California. This Agreement shall be construed as a whole in accordance with its fair meaning and not strictly for or against any Party hereto.
17. Successors and Assigns. The provisions of this Agreement shall bind and benefit the respective successors and assigns of the Parties hereto. Nothing in this Paragraph shall create any rights enforceable by any person other than the Parties, except for the rights of the successor-in-interest and assigns of the Parties.
18. Entire Agreement. This Agreement and following constitute the entire agreement and understanding of the Parties concerning the subject matter hereof, superseding and replacing all prior discussions, agreements, proposed agreements, or understandings, whether written or oral.
19. Further Acts. Each of the Parties agrees to do any further acts and to execute and deliver any other documents or instruments as may be reasonably required to give full effect to the provisions and intent of this Agreement.
20. Severability. If any paragraph, section, sentence, clause or phrase in this Agreement is determined by a court of competent jurisdiction to be illegal, null or void or against public policy, such portion of the Agreement shall be deemed severed here from, but the remaining paragraphs, sections, sentences, clauses, phrases or other portions of this Agreement shall not be affected thereby, and shall remain in full force and effect.
21. Authority to Execute. Each person executing this Agreement on behalf of the District or the Contractor represents and warrants to the other party that he/she has full and complete authority to bind and commit each such party to this Agreement and to the provisions hereof.


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22. Effectiveness and Enforcement of Agreement Subject to District Board of Trustees Approval.

Notwithstanding execution of this Agreement on behalf of the District and the Contractor, this Agreement is not effective nor enforceable against the District unless this Agreement is approved by the District's Board of Trustees in a public meeting of the Board of Trustees conducted in accordance with requirements of applicable law.

This Agreement is executed and entered into as of the date set forth above.

District
MiraCosta Community College District

Signature:  _____

By: Tim Flood

Title: Vice President Admin. Services

Contractor
Ayuma House Planning Company

Signature:  _____

By: JEFFRIE DENO _____

Title: PRESIDENT _____