

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

THIS SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS (the "Agreement") is made and entered into as of the 21st day of December 2018, by and between PJHM ARCHITECTS ("Architect") and the NEWPORT-MESA UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California ("District"), (collectively referred to herein as the "Parties"), for the purpose of amicably resolving, settling, and releasing all claims arising out of or relating to the herein-below defined Agreement for Architectural Services.

RECITALS

A. On or about May 25, 2016, the District and Architect entered into an Agreement for Architectural Services for the Architect to provide certain design professional services for the Estancia Aquatic Facility and Future Theater (the "Agreement for Architectural Services").

B. A dispute has arisen between the Parties and they now desire to terminate the Agreement for Architectural Services.

C. The Parties each recognize that further continuation of the dispute among them will require substantial time, effort, and expense unless such matter is settled and terminated among them at this time.

D. To avoid the uncertainties and expense of litigation related to the dispute, the Parties have reached a full and final settlement of all claims, demands, and/or causes of action which the Parties have or may have, relating to or arising out of the Agreement for Architectural Services. The Parties have memorialized that settlement in writing in this Agreement.

NOW, THEREFORE, in consideration of the facts recited above, and the covenants, conditions, and promises contained herein, the Parties hereby agree as follows:

1. Settlement Provisions.

1.1 The District shall seek approval by its Board of Education of this Agreement not later than the next regularly scheduled Board of Education meeting following full execution of this Agreement. Within ten (10) business days of approval of this Agreement by the District's Board of Education, the District shall pay to Architect the sum of Twenty-Six Thousand Seven Hundred Dollars (\$26,700.00), payable to PJHM Architects.

1.2 The Parties shall each bear their own costs and attorney fees in connection with the dispute.

1.3 The District shall allow for the Architect to resign as the Architect of Record with the DSA and close the project with DSA. If the District thereafter chooses to commence a new Estancia Aquatic Center project with a different architect, it will not use any of the instruments of services prepared by Architect.

2. Release.

Upon full execution of this Agreement and approval by the District's Board of Education of this Agreement, the Architect and the District, on behalf of themselves and their principals, insurers, sureties, officers, directors, employees, agents, attorneys, and other representatives, hereby forever release, discharge and acquit each other and their respective principals, insurers, sureties, officers, directors, employees, agents, attorneys, and other representatives, from any and all claims, costs and obligations of every kind, known and unknown, matured and unmatured, now existing or arising in the future, of any kind or nature whatsoever, arising out of or in any way relating to the Agreement for Architectural Services.

3. Civil Code Section 1542 Waiver.

It is understood and agreed that the release contained herein extends to all claims of every nature and kind whatsoever, known and unknown, arising out of or in any way relating to the Agreement for Architectural Services and there is expressly hereby released with regard to such claims all rights under California Civil Code Section 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."

Upon full execution of this Agreement and approval by the District's Board of Education of this Agreement, the Parties waive any and all rights arising out of or in any way relating to the Agreement for Architectural Services they may have under Section 1542 as it presently reads or as it shall hereinafter be amended. In connection with this waiver, the Parties acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected or facts in addition to or different from those they now know or believe to be true with respect to the claims released herein. Nevertheless, they intend through this Agreement to release fully, finally, and forever, in the manner described

herein, all claims released herein. Accordingly, this release shall remain in effect as a full and complete release of the claims released notwithstanding the discovery or existence of any such additional facts or different claims relating thereto.

4. **No Admissions.** This Agreement and the negotiations preceding it are not intended to be, nor shall they at any time be, deemed, construed or treated in any respect as an admission of liability by the Parties for any purpose.

5. **Construction.** This Agreement shall be interpreted and governed by the laws of the State of California and shall be construed as if drafted by the Parties, and each of them.

6. **Warranty of Authority and Order of Execution of Agreement.** Each person who signs on behalf of any party hereto by affixing his or her name below thereby warrants and represents that he or she has the full legal authority to bind his or his respective party to all of the terms, conditions, and provisions of this Agreement; that his or her respective party has the full legal right, power, capacity, and authority to enter into this Agreement and perform all of the obligations herein; and that no other approvals or consents are necessary in connection therewith.

7. **Amendments.** This Agreement may not be modified, amended or altered, except in a writing signed by each of the Parties.

8. **Counterparts.** This Agreement may be signed and delivered in three counterparts, each of which, when so signed and delivered, shall be an original, but such counterparts together shall constitute the one instrument that is the Agreement, and the Agreement shall not be binding on any party until all Parties have signed it.

9. **Complete Agreement.** This Agreement is intended by the Parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to such subject matter. This Agreement may be signed in counterparts, and a copy signed by facsimile or a copy returned by email shall have the same effect as an original.

10. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon, each of the Parties, and their respective heirs, assigns and successors in interest.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

**NEWPORT-MESA UNIFIED SCHOOL
DISTRICT**

Date: _____, 2018

By: Timothy D. Holcomb, Assistant Supt., COO
Its Authorized Agent

PJHM ARCHITECTS, INC.

Date: Dec. 20, 2018



By: Thomas Hulse
Its Authorized Agent

APPROVED AS TO FORM:

PARKER & COVERT LLP

Date: _____, 2018

Jonathan J. Mott
Attorneys for Newport-Mesa Unified School District

APPROVED AS TO FORM:

WEIL & DRAGE



Date: Dec. 21, 2018

Peter L. Stacy
Attorney for PJHM Architects

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NEWPORT-MESA UNIFIED SCHOOL DISTRICT

Date: _____, 2018

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Its Authorized Agent

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Peter L. Stacy
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Attorney for PJHM Architects