

AMENDMENT NO. 2

This Amendment, hereinafter referred to as "AMENDMENT NUMBER 2" to Agreement Number MA-060-21011194, hereinafter referred to as "AGREEMENT" and dated the _____ day of _____, 20_____ is

BY AND BETWEEN

County of Orange, a political subdivision of the state of California,

hereinafter referred to as "COUNTY"

AND

Archico Design Build Inc.

hereinafter referred to as "CONTRACTOR"

WHEREAS, unless otherwise defined herein, the terms capitalized in this AMENDMENT NUMBER 2 have the same meaning as defined in the AGREEMENT;

WHEREAS, COUNTY and CONTRACTOR (collectively referred to as "Parties") entered into the AGREEMENT on April 27, 2021, to complete the Project pursuant to the terms of the AGREEMENT, including the plans and specifications, for Seven Million One Hundred Forty Six Thousand Dollars and Zero Cents (\$7,146,000.00);

WHEREAS, the AGREEMENT has been modified by twenty-seven Change Orders and one Amendment, as follows: nine Change Orders in 2021 executed on May 13, May 18, July 7, August 19, August 24, September 14, October 5, November 1, and December 10, in the amounts of \$5,866.08, \$6,715.75, \$7,934.19, \$152,351.82, \$199,809.47, \$92,231.34, \$4,815.00, \$108,904.28, and \$91,756.78; Amendment Number 1 for \$273,551.20; eleven Change Orders in 2022 executed on February 11, March 25, April 6, April 8, May 20, May 25, June 7, June 21, July 14, August 31, and December 6, in the amounts of \$140,256.85, \$107,114.75, \$94,562.78, \$38,323.90, \$206,975.47, \$9,457.84, \$106,434.48, \$86,795.16, \$171,197.39, \$165,408.94, and \$197,879.60; and five Change Orders in 2023 executed on

1 January 18, May 9, May 15, July 10, and August 31, in the amounts of \$207,785.82, \$138,595.89,
2 \$134,478.65, \$163,445.64, and \$44,188.25 related to unforeseen conditions found within the scope of
3 work during the course of demolition, excavation, and construction. The total not-to-exceed of those
4 Change Orders and Amendment Number 1, to date, was \$2,956,837.32;

5 **WHEREAS**, as set forth in *Unilateral Change Order* No. 26, issued on August 31, 2023, the
6 current adjusted contract price is \$10,102,837.32;

7 **WHEREAS**, CONTRACTOR presented COUNTY with Request for Change 116 dated
8 February 28, 2023, in the amount of \$550,473.97 which generally contains claims for additional costs
9 including but not limited to extended overhead and operating costs related to the work performed from
10 June 1, 2022 to January 31, 2023 (“Claim 1”);

11 **WHEREAS**, CONTRACTOR presented COUNTY with an additional request dated September
12 26, 2023 in the amount of \$407,146.91 which generally contains claims for additional costs including
13 but not limited to extended overhead and operating costs related to the work performed from February
14 1, 2023 to August 21, 2023 (“Claim 2”);

15 **WHEREAS**, COUNTY and CONTRACTOR have negotiated and agreed on an equitable
16 increase to the not-to-exceed amount allowed by the AGREEMENT of \$880,407.99 which shall
17 compensate CONTRACTOR for Claim 1 in the amount of \$499,326.76 and Claim 2 in the amount of
18 \$381,081.23 (reflecting a reduction of \$26,065.68 for overhead that was previously paid to
19 CONTRACTOR pursuant to previously executed , Change Order 23, Change Order 24, Change Order
20 25, and Change Order 26) (“Equitable Adjustment”);

21 **WHEREAS**, COUNTY and CONTRACTOR agree that the Equitable Adjustment compensates
22 CONTRACTOR for all direct and indirect amounts, costs, profits, overhead, extended overhead,
23 operating costs, labor, salaries, payroll, materials, benefits, equipment, bonds, taxes, fees, changes, work,
24 damages, expenses, and delays incurred to complete the Project and AGREEMENT, including but not
25 limited to all other costs or expenses incurred during the extended time for Project completion after the
26 AGREEMENT’s initial contemplated completion date, any sums due for payment or compensation of

1 any kind and for any direct or indirect impact damages or hindrance from any cause whatsoever, whether
2 such delays, hindrances and impacts were reasonable or unreasonable, foreseeable or unforeseeable,
3 avoidable or unavoidable;

4 **WHEREAS**, COUNTY and CONTRACTOR agree that the Equitable Adjustment also
5 compensates CONTRACTOR for any effects the aforementioned Change Orders and Amendment may
6 have had on the Project in its entirety and/or on the time required to complete the Project and the Claims
7 are not in dispute;

8 **WHEREAS**, CONTRACTOR was previously compensated a portion of its Claims through
9 Change Order 17, Change Order 18, Change Order 19, Change Order 20, Change Order 21, Change
10 Order 22, Change Order 23, Change Order 24, Change Order 25, and Change Order 26 in the cumulative
11 amount of \$77,212.89, as a result of the extension of the Project's completion date and the additional
12 work ordered thereunder;

13 **WHEREAS**, CONTRACTOR agrees there are no other claims or monies outstanding that are
14 owed to it related to the Project or the AGREEMENT, and that no other claims or monies are in dispute
15 related to the Project or the AGREEMENT;

16 **WHEREAS**, CONTRACTOR agrees the sum of \$880,407.99 is a reasonable sum to fully
17 compensate it for its Claims incurred as a result of this Project and AGREEMENT;

18 **WHEREAS**, it is the intention of the COUNTY and CONTRACTOR for this AMENDMENT
19 NUMBER 2 to resolve, fully and completely, the Claims and all remaining issues and claims between
20 the Parties;

21 **WHEREAS**, it is the intention of the COUNTY and CONTRACTOR for this AMENDMENT
22 NUMBER 2 to resolve, fully and completely, CONTRACTOR's remaining obligations under the
23 AGREEMENT, except that nothing in this AMENDMENT NUMBER 2 is intended to waive, release or
24 modify the COUNTY's rights relating to the punchlist and warranty claims, all of which shall be
25 governed by the terms of the AGREEMENT;

26 **WHEREAS**, CONTRACTOR will complete the remaining items on the COUNTY's punchlist

1 as soon as reasonably practicable, but in no event later than thirty (30) days after the date of
2 CONTRACTOR's signature to this AMENDMENT NUMBER 2. Contractor shall not be required to
3 perform any additional "final construction cleaning." Nor shall Contractor be required to perform any
4 "punchlist" work not previously identified and required to be performed by the COUNTY as a condition
5 of this AMENDMENT NUMBER 2. Should CONTRACTOR fail to timely complete the punchlist
6 without cause, then COUNTY may deduct from the Final Payment due to Contractor under the
7 AGREEMENT an amount of \$500 for every day beyond the agreed upon punchlist completion period.

8 **WHEREAS**, the final adjusted contract price pursuant to this AMENDMENT NUMBER 2, is
9 \$10,983,245.31, calculated as follows:

11 Current Adjusted Contract Price	\$10,102,837.32;
12 Equitable Adjustment	\$880,407.99
13 Final Contract Price	\$10,983,245.31

14 **WHEREAS**, this AMENDMENT NUMBER 2 is executed voluntarily by COUNTY and
15 CONTRATOR without duress or undue influence on the part, or on behalf, of either of them and each
16 represent to each other that they have read and fully understand each of the provisions of this
17 AMENDMENT NUMBER 2 and have had the opportunity to consult the advice of competent legal
18 counsel of their own choosing regarding this AMENDMENT NUMBER 2.

19 **WHEREAS**, to effectuate the compensation described herein for the Claims, COUNTY and
20 CONTRACTOR have negotiated and agreed on the amendment of the AGREEMENT by this
21 AMENDMENT NUMBER 2, as stated herein, which accounts for all changes to date;

22 **NOW, THEREFORE, in consideration of the mutual covenants, agreements,**
23 **representations, and warranties contained herein, and other good and valuable consideration, the**
24 **receipt and sufficiency of which is hereby acknowledged, IT IS AGREED by and between the**
25 **Parties hereto as follows:**

26 1. The Parties agree the above recitals are true and correct and agree to each in all material respects.

- 1 2. The Parties hereby incorporate the above recitals into this AMENDMENT NUMBER 2 by this
2 reference as if they were fully stated within the body of this AMENDMENT NUMBER 2.
- 3 3. Subsections (a) and (b) of Clause 4. CONTRACT AMOUNT AND SCHEDULE of the
4 COUNTY/CONTRACTOR AGREEMENT are hereby deleted from the AGREEMENT in their
5 entirety and the following is substituted:
- 6
- 7 “a) The COUNTY agrees to pay and the CONTRACTOR agrees to accept in full
8 payment for the work above agreed to be done and the Claims as described in
9 AMENDMENT NUMBER. 2, the sum of: Ten Million Nine Hundred Eighty-Three
10 Thousand Two Hundred Forty-Five Dollars and Thirty One Cents (\$10,983,245.31),
11 which sum is to be paid according to the payments clause.”
- 12 4. Clause 6. LIQUIDATED DAMAGES; EXTENSION OF TIME of the COUNTY/CONTRACTOR
13 AGREEMENT is hereby deleted from the AGREEMENT in its entirety.
- 14 5. The plans and specifications comprising the required work for the AGREEMENT, as amended, are
15 hereby modified to include the additional services set forth to date, and as stated in
16 CONTRACTOR’s submitted Request for Change 116 and request dated September 26, 2023,
17 which are hereby incorporated by reference into the AGREEMENT.
- 18 6. COUNTY and CONTRACTOR hereby forever discharge each other and each other's respective
19 past or present agents, Board members, sureties, officers, directors, shareholders, owners,
20 members, managers, employees, independent contractors, consultants, representatives, attorneys,
21 direct and indirect parent companies, direct and indirect subsidiaries, companies under common
22 control with any of the foregoing, affiliates, predecessors successors, and assigns, and any and all
23 persons acting by, through, under, or in concert with them from any and all complaints, claims,
24 grievances, obligations, promises, agreements, controversies, demands, actions, causes of action,
25 suits, damages, losses, debts, penalties, costs, expenses, fees, liabilities, or other losses, of any
26 nature, asserted or unasserted, known or unknown, foreseen or unforeseen, direct or consequential,
legal or equitable which COUNTY and CONTRACTOR have, ever had, claimed to have had or
have, now have, or hereafter may have or claim to have against each other related to the Claims,

1 the Project and/or the AGREEMENT.

2 7. COUNTY and CONTRACTOR hereby agree that this AMENDMENT NUMBER 2 constitutes
3 full mutual accord and satisfaction for all time, all costs, and all impacts related to any delays and
4 extended overhead claims for the Project and that upon payment to CONTRACTOR no amounts
5 are in dispute. CONTRACTOR further agrees to waive all right to file any further claims or
6 request for equitable adjustment arising out of or as a result of the AGREEMENT or this
7 AMENDMENT NUMBER 2 or the cumulative effect of this change on the performance of the
8 overall work under the AGREEMENT. COUNTY reserves its right to audit under the
9 AGREEMENT; however, COUNTY agrees that in the event of any such audit, it will work with
10 CONTRACTOR to mitigate the cost impact/expense of any such audit to CONTRACTOR and that
11 an audit, if any, would not, result in the repayment of any amounts paid to CONTRACTOR under
12 this AMENDMENT NUMBER 2, which is intended to be a full and final settlement of disputed
13 rights and claims. CONTRACTOR fully, completely, and irrevocably releases and discharges
14 COUNTY from liability related to the Claims and the AGREEMENT.

15 8. COUNTY and CONTRACTOR mutually release each other from all other claims (excluding
16 warranty claims that may arise); however, COUNTY reserves it right to comply with the
17 requirements of California's Civil Code regarding any stop payment notices and/or labor claims
18 received after this AMENDMENT NUMBER 2 is executed.

19 9. CONTRACTOR affirms that all warranties shall remain in place pursuant to the Project and
20 AGREEMENT.

21 10. Concurrent with the execution of this AMENDMENT NUMBER 2, CONTRACTOR will submit
22 its final invoice to COUNTY that will include any and all remaining contract balance, including
23 retention and the amounts added to the AGREEMENT under this AMENDMENT NUMBER 2.
24 COUNTY shall make final payment and release retention proceeds pursuant to the AGREEMENT
25 following the filing of the Project's Notice of Completion within fifteen (15) days after the date of
26 completion of the punchlist as required under Civil Code § 9204. The punchlist shall be deemed

1 completed no later than December 1, 2023. Either party may provide written notice to the other
2 that the punchlist was completed either before or after December 1, 2023.

3 11. CONTRACTOR hereby certifies that it has cleared any pending stop notices and paid all its
4 subcontractors the amounts they are due as of the date of this AMENDMENT NUMBER 2.

5 12. Both COUNTY and CONTRACTOR have worked hard to successfully complete the Project
6 despite several significant disruptions. If asked to provide a "reference" or "recommendation" by
7 a third party, COUNTY agrees that any response to that request will come from an individual
8 employed by the COUNTY's public works department, and not a third party consultant, project
9 manager or construction manager. Except as amended herein by this AMENDMENT NUMBER 2,
10 all other terms and conditions of the AGREEMENT, as amended, remain in full force and effect.
11 In the event of a conflict between this AMENDMENT NUMBER 2 and the AGREEMENT, as
12 amended, this AMENDMENT NUMBER 2 shall control.

13 13. This AMENDMENT NUMBER 2 may be executed in counterparts, each of which, when taken
14 together, shall be construed as one document. A photocopy or electronic signature shall be deemed
15 to have the same force and effect as an original. Signature pages may be delivered electronically or
16 by facsimile, and such copies of signatures shall be as binding and enforceable as original
17 signatures.

18
19 **IN WITNESS WHEREOF**, the Parties hereto have caused this AMENDMENT NUMBER 2 to the
20 AGREEMENT to be executed on the date last written below:

21
22 ARCHICO DESIGN BUILD INC.

23 Date: 11/21/2023

24 By Alan Alavi
Signature

25 _____
Alan Alavi, President

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COUNTY OF ORANGE

Date: _____

By _____

APPROVED AS TO FORM:
OFFICE OF COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By Lauren Kramer
Deputy County Counsel