

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

THIS SETTLEMENT AND MUTUAL RELEASE AGREEMENT (“Agreement”) is entered into between the COUNTY OF FRESNO (“COUNTY”) and KLASSEN CORPORATION (“KLASSEN” and/or “Contractor”) (COUNTY and KLASSEN are collectively referred to herein as the “Parties”).

RECITALS

A. KLASSEN was the successful bidder on a COUNTY Project for construction of a Sheriff Substation, Vehicle and Evidence Storage building, parking lot and associated site improvements, located at 1129 North Armstrong Avenue, Fresno, California 93727 (the “Project”). On June 25, 2020, COUNTY opened bids for construction of the Project, and on July 7, 2020, the Project was awarded to low bidder KLASSEN, including the base bid and two additive bids, and Contract No. 19-S-04 (the “Contract”) for the performance of the same, in the amount of \$11,364,500.00, was signed by COUNTY and KLASSEN on August 10, 2020. The Contract incorporated by reference therein a set of Project Plans, General Conditions and other Contract Documents, all of which also governed the Project. The Contract required KLASSEN to complete the work within 322 calendar days, with liquidated damages being imposed at a rate of \$1,500.00 per day for every day beyond such time until the Project was completed, subject to permissible delays described in the Contract Documents. Notice to Proceed was issued by COUNTY on November 9, 2020, making the initial completion date September 27, 2021 (322 days).

B. During construction of the Project, various issues, allegations and disputes arose between the Parties. KLASSEN asserted claims against the COUNTY for additional time and compensation on the Project related to various alleged delays which KLASSEN alleged were beyond its control, as well as extra work claims which KLASSEN alleged entitled it to additional time and monetary compensation on the Project. COUNTY asserted that the Project should have been completed no later than January 1, 2022, and that substantial completion was not reached until February 12, 2024, when COUNTY alleged final occupancy and beneficial use occurred. Accordingly, under the Contract, COUNTY asserted it was entitled to liquidated damages on the Project in the amount of \$1,158,000.00 (772 days at \$1,500.00/day), and that after crediting the withheld contract balance sum and back charging KLASSEN additional sums for alleged contract completion work and assessment of other damages allegedly caused by failure of total completion during such period when the Contract allegedly remained incomplete beyond the occupancy date, COUNTY alleged it suffered damages in the sum of at least \$1,841,288.80.

C. On December 10, 2024, KLASSEN filed a Complaint for Damages (the “Complaint”) against the COUNTY in Fresno County Superior Court Case No. 24CECG05369 (the “Action”). The allegations set forth in the Complaint filed in the Action are incorporated herein by reference as though set forth in full.

D. COUNTY denies the allegations in the Complaint filed in the Action, and maintains that it is entitled to a complete offset and monetary damages from Klassen based on the claimed liquidated damages and actual damages sought, as noted in subsection “B,” above. On February 24, 2025, COUNTY filed its Answer to the Complaint and a Cross-Complaint (“Cross-Complaint”) for damages against KLASSEN in the Action.

E. The Parties wish to avoid continued litigation between each other relative to their claims and defenses which were or could have been asserted arising out of the Project and/or in the Action, and in that regard agree to the following settlement and compromise:

AGREEMENT

In consideration of the foregoing Recitals, the mutual understandings contained in this Agreement, and other good, valuable, and sufficient consideration, the Parties hereto agree as follows:

1. **Payment to KLASSEN.** COUNTY agrees to pay KLASSEN, and KLASSEN agrees to accept, the total sum of Seven Hundred Thirty-Seven Thousand Four Hundred Five Dollars and Sixty-One Cents (\$737,405.61) as full and final settlement of all KLASSEN's claims against the COUNTY arising out of or relating to the Project ("Settlement Payment").

a. The Settlement Payment is for all sums that may be due and owing on the Contract, for any and all proposed change orders, claims of extended performance costs, time extensions, claims for defective plans, claims of interference of contractor's means and methods, field overhead, home and field office overhead or otherwise alleged to have been experienced by the contractor.

b. Additionally, the Settlement Payment by the COUNTY includes and takes into account all credits/claims for overpayment and/or reimbursement that may exist to those payments (i.e., offsets, liquidated damages, back charges).

c. The Settlement Payment of the above amount shall be subject to all rules and laws concerning public works stop payment notices, as well as the rules associated with the Division of Labor Standards Enforcement ("DLSE") and the California Labor Code.

d. The Settlement Payment is due to KLASSEN within ten (10) calendar days after mutual execution of this Agreement.

e. The Settlement Payment is to be made by check made payable to KLASSEN delivered to KLASSEN's counsel, Zimmer & Melton LLP at: Zimmer & Melton, LLP, Attn: Nick Street, Esq., 11601 Bolthouse Drive, Suite 100, Bakersfield, California 93311.

2. Releases.

a. **Release by KLASSEN.** Except for the rights and obligations expressly retained or created by and described in this Agreement and in consideration of the covenants described herein, including but not limited to the payment described above, KLASSEN, on its own behalf and on behalf of its past, present and future officers and directors, assignees, stockholders, agents, representatives, successors-in-interest, and attorneys hereby forever releases and discharges COUNTY and all elected and administrative officers, employees and attorneys thereof from any and all claims, demands, actions, causes of action and rights of whatsoever character related to the Project whether known or unknown. Nothing herein is intended as a release of the obligations or reservations of rights set forth in this Agreement.

b. Release by COUNTY. Except for the rights and obligations expressly retained or created by and described in this Agreement, including Paragraph 5 of this Agreement, and in consideration of the covenants described herein, COUNTY hereby forever releases and discharges KLASSEN, and all of their past, present and future officers and directors, employees, assignees, stockholders, agents, representatives, successors-in-interest, sureties, and attorneys from any and all claims, demands, actions, causes of action and rights of whatsoever character related to the Project whether known or unknown. Nothing herein is intended as a release of the obligations or reservations of rights set forth in this Agreement.

3. Dismissal with Prejudice. Within ten (10) calendar days of the Settlement Payment clearing deposit, KLASSEN, through its counsel, must submit to the Court a Request for Dismissal of the Complaint, with prejudice, and within the same time period, COUNTY must submit to the Court a Request for Dismissal of the Cross-Complaint, with prejudice. Each Request for Dismissal shall include the statement "Each party to bear its own costs and attorney's fees. The Court shall retain jurisdiction to enforce the Parties' settlement per CCP § 664.6."

4. Waiver of Civil Code Section 1542. With respect to the releases described in Paragraph 2 of this Agreement, and with the exception of the reserved claims set forth in Paragraphs 5 and 6 which remain reserved, the Parties expressly waive all rights under California Civil Code section 1542 which provides that a general release does not extend to unknown or unsuspected claims which, if known, would have materially affected the settlement. California Civil Code section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
THE DEBTOR OR RELEASED PARTY.**

The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to the release of claims related to the Project and agree that this Agreement shall remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.

5. Mutual Rights Reserved. It is understood and agreed that both the KLASSEN's release of the COUNTY, as well as the COUNTY's release of KLASSEN, exclude the following:

a. Third Party Personal Injury/Property Damage Claims. Notwithstanding the mutual releases set forth above, the Parties agree to expressly except from this agreement releases of any and all rights they have against each other relative to claims from third party individuals or entities for personal injury and/or property damage relating to the Project. The Parties each acknowledge they are currently unaware of any such personal injury or property damage claims.

b. Matters Not Released. Any claim or potential claim that cannot be waived or released under applicable California or federal law or that relate to another project.

6. COUNTY's Rights Reserved, Indemnifications. It is understood and agreed that COUNTY's release of KLASSEN excludes, and indemnification rights exist, as follows:

a. Warranty, Latent and Patent Construction Defect Claims. Notwithstanding the COUNTY's releases set forth above, COUNTY specifically reserves all claims for warranty, latent and patent defects in construction it has in connection with the Contract and the Project. COUNTY acknowledges it is currently unaware of any such warranty or latent or patent defect claims.

b. Claims of Defense and Indemnity. Notwithstanding the COUNTY's releases set forth above, COUNTY specifically reserves all claims for any and all continuing contractual obligations of KLASSEN relating to the Project (other than the liquidated damages and time-related claims which were the subject of the Cross-Complaint which are released), including all rights to seek defense and indemnity from KLASSEN. Further, COUNTY is not obligated to defend, indemnify, or hold harmless KLASSEN with respect to, or make any payment relating to any claims by, KLASSEN subcontractors, vendors, or any of their employees, including but not limited to any alleged pass-through claims, as the sole payment to be made to KLASSEN by COUNTY is the Settlement Payment provided for in this Agreement.

c. Employee Claims. Notwithstanding the COUNTY's releases set forth above, COUNTY specifically reserves all claims against KLASSEN based upon claims asserted by workers, trust funds, apprenticeship programs or other governmental agencies seeking penalties, wages, benefits or apprenticeship payments, trust fund contributions, damages, forfeitures, injunctive or other relief relating to the Project. With regard to any such matter listed in this paragraph, KLASSEN agrees to defend, indemnify, and hold harmless COUNTY from and against any actions, proceedings, causes of action, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, assessments, judgments, damages, deficiencies, penalties, fines, losses, costs or expenses, including attorney's fees, resulting from, based upon, arising out of, related to or incurred as a result of the same.

d. Claims by Subcontractors / Vendors. Notwithstanding the COUNTY's releases set forth above, COUNTY specifically reserves all claims against KLASSEN based upon claims by any subcontractor, vendor or taxing authorities seeking to recover for amounts that KLASSEN, its subcontractors or vendors allegedly did not pay. With regard to any such matter listed in this paragraph, or any claim by any subcontractor, vendor, or employee of any of the above relating to the Project, KLASSEN agrees to defend, indemnify, and hold harmless COUNTY from and against actions, proceedings, causes of action, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, assessments, judgments, damages, deficiencies, penalties, fines, losses, costs or expenses, including attorney's fees, resulting from, based upon, arising out of, related to or incurred as a result of the same.

e. Matters Not Released. Any claim or potential claim that cannot be waived or released under applicable California or federal law or that relate to another project.

7. Final Application for Payment and Final Change Order (Time). Within five (5) days of the full execution of this Agreement, KLASSEN shall issue a final Application For Payment and a Conditional Waiver and Release Upon Final Payment, each in the sum of \$737,405.61. Within seven (7) days of the full execution of this Agreement, COUNTY shall issue and the Parties shall execute a final Change Order relating to the Project, granting an extension of time of 772 days with no additional compensation, setting forth a new completion date of February 12, 2024.

8. Delivery of Warranties, Operation & Maintenance Manuals, and As-Built Drawings. Within thirty (30) days of the full execution of this Agreement, KLASSEN shall deliver to COUNTY all warranties, operation and maintenance manuals, and as-built drawings required by the Contract and Contract Documents relating to the Project, which includes KLASSEN ensuring that each of its subcontractors and vendors have done the same.

9. No Admission of Liability. Liability for the matters included in this Mutual Release and Settlement Agreement is disputed and this Agreement shall not be construed as an admission thereof as against either of the Parties.

10. Representations and Warranties. The Parties and signatories hereto each represent, covenant and warrant that they are authorized (individually or by their respective principals) to enter into and execute this Agreement and that they have not previously assigned any claims released or assigned in this Agreement, in whole or in part, or taken any other steps which would adversely affect the rights which are the subject of this Agreement. In the event that any of the above representations/warranties are breached or any of the representations and/or warranties contained in this subparagraph prove false, the breaching/misrepresenting party hereby agrees to defend, indemnify and hold the other party harmless from all damages, loss, liability, costs and attorneys' fees resulting from said breach/misrepresentation.

11. Consultation with Legal Counsel. The Parties represent that they have consulted legal counsel prior to the execution of this Agreement and have executed this Agreement with full knowledge of its meaning and effect.

12. Execution of Terms of Agreement/Continuing Jurisdiction Under CCP §664.6. The Parties agree to perform any acts and execute any documents consistent with the terms and conditions of this Agreement which may be needed, desired or required to effectuate the terms, conditions and provisions hereof. Further, before the Dismissals set forth above are filed with the Court, the Parties shall cooperate in filing an executed stipulation and proposed order noting this Agreement and requesting that the Court retain jurisdiction under Code of Civil Procedure §664.6.

13. Drafting of Agreement. The Parties agree that this Agreement shall not be construed in favor of, or against, any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

14. Amendment of Agreement. This Agreement can be amended only by a writing signed by each of the Parties hereto.

15. Agreement Binding on Successors. It is agreed that this Agreement, together with the releases, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors in interest and assigns of the respective Parties hereto.

16. No Prior Assignment; Indemnity. KLASSEN represents and warrants that it has not assigned or transferred, or purported to assign or transfer, to any person or entity any claim or other matter released in this Agreement. In the event that KLASSEN has assigned or transferred, or purported to assign or transfer, any claim or other matter herein released, KLASSEN shall defend and indemnify COUNTY and hold COUNTY and its past, present and future officers and directors, assignees, stockholders, agents, representatives, affiliates, servants, insurers, successors-in-interest, assigns, and attorneys, and all of them, harmless from any and all manner of actions, proceedings, causes of action, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, assessments, judgments, damages, deficiencies, penalties, fines, losses, costs or expenses, including attorney's fees, resulting from, based upon, arising out of, related to or incurred as a result of any such assignment or transfer or purported assignment or transfer.

17. Agreement Not to Bid / Propose. As further good, valuable, and sufficient consideration for this Agreement, KLASSEN agrees to refrain from bidding on or submitting proposals for COUNTY projects for a period of ten (10) years from and after the date of execution of this Agreement, and that if KLASSEN does so bid or propose, COUNTY may reject the same as a result of this Agreement.

18. No Other Actions. Except as provided herein, KLASSEN has not commenced or prosecuted and will not commence or prosecute any other action or proceeding for recovery of damages or for any form of equitable relief, declaratory relief or any other form of action or proceeding or arbitration against the COUNTY or any other person or entity based upon the claims released in this Agreement including, but not limited to, the Action. This Agreement shall constitute a judicial bar to the institution of any such action or proceeding or any assignment thereof.

19. Entire Agreement. This Agreement embodies the entire understanding between the Parties pertaining to the matters described herein. Each party acknowledges that no party, agent or representative of the other party has made any promise, representation or warranty, express or implied, not expressly contained in this Agreement, that induced the other party to sign this document. No modification of this Agreement shall be valid unless agreed to in writing by the Parties.

20. Attorney's Fees for Enforcement of This Agreement. Each party to this Agreement shall bear such party's own respective costs and attorneys' fees as incurred to date concerning the prosecution or defense of the above-referenced Action and the Project and in the preparation of this Agreement, with the exception of any reservation of such claims in this Agreement. Should suit or action be instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

21. Severability. If any provision of this Agreement or the application thereof to any person, place or circumstance shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

22. Authority. Each party that is not a natural person represents and warrants that the undersigned have the authority to act on behalf of and to bind it and all who may claim through it to the terms and conditions of this Agreement.

23. Convenience of Reference. The headings and numbers used in this Agreement are included for the purpose of convenience of reference only; they shall not be used to explain, limit, or extend the meaning of any part of the Agreement.

24. Counterparts. This Agreement may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Electronic, PDF or facsimile signatures, when received, shall have the same force and effect as original signatures.

25. Governing Law. This Agreement shall be construed in accordance with and be governed by the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Fresno, State of California.

IN WITNESS WHEREOF, the Parties hereby execute the Agreement.

Dated: August 11, 2025

KLASSEN CONSTRUCTION

By: Jerry D. Klassen

Name: Jerry D. Klassen

Title: Owner

Dated: August 19, 2025

COUNTY OF FRESNO

By: Ernest Buddy Mendes

Name: Ernest Buddy Mendes

Chairman of the Board of Supervisors

Title: of the County of Fresno

(Signatures Continue Next Page)

ATTEST:

BERNICE E. SEIDEL

Clerk of the Board of Supervisors

County of Fresno, State of California

By Alexandria Vining Deputy

(Signatures Continued from Last Page)

REVIEWED AND RECOMMENDED
FOR APPROVAL

Dated: August 11, 2025



Peter Wall
Peter Wall, Interim Fresno County Counsel

[END OF SIGNATURES]