

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eric J. Firstman SBN 111534 Meyers, Nave, Riback, Silver & Wilson 555 12th Street, Suite 1500 Oakland, CA 94607 TELEPHONE NO.: 510-808-2000 FAX NO.: 510-444-1108 ATTORNEY FOR (Name): County of Santa Clara	FOR COURT USE ONLY						
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court							
CASE NAME: County of Santa Clara v. Turner Construction							
<table border="0" style="width:100%;"> <tr> <td style="width:33%;"><input checked="" type="checkbox"/> CIVIL CASE COVER SHEET</td> <td style="width:33%;">Complex Case Designation</td> <td style="width:34%;"></td> </tr> <tr> <td> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) </td> <td> <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>	<input checked="" type="checkbox"/> CIVIL CASE COVER SHEET	Complex Case Designation		<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: JUDGE: DEPT:
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Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input checked="" type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (<i>not specified above</i>) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (<i>not specified above</i>) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (*check all that apply*): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (*specify*):
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: 9/16/15
 Eric J. Firstman _____ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36) Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
 - Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
- Declaratory Relief Only
- Injunctive Relief Only (*non-harassment*)
- Mechanics Lien
- Other Commercial Complaint Case (*non-tort/non-complex*)
- Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

TURNER CONSTRUCTION, a New York corporation; BEST CONTRACTING SERVICES, INC., a California corporation; and DOES 1 through 125, inclusive.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

COUNTY OF SANTA CLARA, a public entity.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

The Superior Court of California, County of Santa Clara
Downtown Superior Court
191 North First Street
San Jose, CA 95113

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Eric J. Firstman SBN 111534 (510) 808-2000
Meyers Nave Riback Silver & Wilson
555 12th Street, Suite 1500, Oakland, CA 94607

DATE: _____ Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 Orry P. Korb (SBN 114399)
Steve Mitra (SBN 244054)
2 Christopher R. Cheleden SBN 181185)
Santa Clara County Office of the County Counsel
3 70 West Hedding Street, East Wing, 9th Floor
San Jose, California 95110-1770
4 Telephone: (408) 299-5900
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11

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

12 Attorneys for the County of Santa Clara

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SANTA CLARA**

16 COUNTY OF SANTA CLARA, a public)
entity,)
17)
Plaintiff,)
18)
v.)
19)
TURNER CONSTRUCTION, a New York)
20 corporation; BEST CONTRACTING)
SERVICES, INC., a California corporation;)
21 and DOES 1 through 125, inclusive,)
22)
Defendants.)
23

Case No.
**COUNTY OF SANTA CLARA'S
COMPLAINT FOR DECLARATORY
RELIEF, BREACH OF CONTRACT,
AND NEGLIGENCE**

24 Plaintiff County of Santa Clara alleges as follows:

25 **I. PARTIES**

26 1. Plaintiff County of Santa Clara (“**Plaintiff**” or the “**County**”) is, and at all times
27 mentioned herein is, a County, duly organized and existing pursuant to the laws of the State of
28 California.

1 approximately 576,000 people within a five-mile radius.

2 7. Santa Clara County voters approved Measure A on November 4, 2008, authorizing
3 the County to borrow \$840 million to fund the earthquake retrofitting of VMC and other hospital
4 maintenance and refurbishing projects known as the Seismic Safety Project. Within the Seismic
5 Safety Project is the construction of a new 366,000 square foot 168-bed inpatient building
6 (hereinafter the “**Bed Building**”), the construction of the North Utility Loop (hereinafter the
7 “**NUL**”), and upgrades to the Central Utility/Energy Plant (hereinafter, the “**Energy Plant**”).
8 Together, the Bed Building, the NUL, and the Energy Plant will be referred to herein as the
9 “**Project.**”

10 8. At all times VMC and the Project have been and remain subject to state seismic
11 safety laws which set forth seismic safety requirements for hospitals and critical care facilities
12 such as VMC. The seismic safety laws establish requirements for design, design review,
13 permitting, inspection, completion and licensing, and establish the Office of Statewide Health
14 Planning and Development (“**OSHPD**”) as the responsible regulating agency.

15 9. The County advertised the contract for the Project in 2008 and awarded the contract
16 to Turner in compliance with California law including the requirements of the seismic safety laws.

17 10. The County awarded the work of the NUL and the Energy Plant to Turner as design
18 and build projects, where Turner provided both the design and the construction. Performing
19 construction work of this nature on a design and build basis is customary in the construction
20 industry. In the bidding period, Turner provided the County with evidence of its qualifications to
21 perform this design and build work.

22 11. The County awarded the work of the Bed Building to Turner based on a
23 combination of (i.) design and build contracting for portions of the scope of work where Turner
24 provided the design and the construction, such work including building exterior cladding,
25 elevators, window washing systems, fire sprinklers, seismic anchorage, fire alarm and nurse call
26 systems, (ii.) “design assist” contracting where Turner and its subcontractors performed pre-
27 construction services that included assisting the project designers in completing the Bed Building
28 design by performing design review, constructability and computer modeling, such work including

1 framing/drywall, ceiling systems, mechanical systems, plumbing systems, electrical systems, and
2 (iii.) allowances and construction for lump sum public bid to conform the plans and specifications.
3 Performing portions of hospital construction work on a design and build method, and other
4 portions on a design assist method, is an industry standard practice in the hospital construction
5 industry involving the construction and installation of complex systems. In the bidding period,
6 Turner provided the County with evidence of its qualifications to perform this design and build
7 and design assist work.

8 **B. The County / Turner Construction Contract.**

9 12. The County and Turner entered into a written contract for the Project, dated
10 February 25, 2009 (the “**Contract**”). The Contract, including the technical specifications,
11 drawings, and contract change orders, is too voluminous to attach to this complaint as an exhibit,
12 but are all incorporated herein by reference.

13 13. Under the terms of the Contract, Turner (defined as the “**DBC**” in the Contract) was
14 required to provide a broad scope of design and construction services for the Project, as stated in
15 Article 1.1 of the Agreement (Document 005000):

16 DBC [Turner] shall perform all design and construction services, and provide all
17 material, equipment, tools and labor, necessary to complete the work described in
18 and reasonably inferable from the Request for Proposal (RFP) Documents (the
19 “**Work**”). The DBC accepts the relationship of trust and confidence established
20 between it and the COUNTY by this Agreement. The DBC agrees to furnish the
21 services set forth in the RFP Documents and to use its best efforts to complete the
22 Work in the most expeditious, economical and thorough manner consistent with
23 the interest of the COUNTY.

24 14. Under the Contract, Document 011100, “**Summary of Work**”, Turner agreed that:
25 “Unless otherwise specified, the DBC agrees to furnish all tools, equipment, apparatus, facilities,
26 labor, material, and transportation necessary to perform and complete the Work in a good and
27 workmanlike manner to the satisfaction of the County, in the manner designated, and in strict
28 conformity to the Contract.”

29 15. Under the Contract, Document 011100, “**Summary of Work**”, Turner agreed to
30 provide the following General Responsibilities on the Project:

- The Design-Build Contractor (DBC) shall provide design, design/assist,

1 pre-construction, and construction services for this project. The work
2 includes furnishing all labor, materials, equipment, and tools necessary to
3 complete the project as delineated in the contract documents. Trade
4 contractors will contract directly to the DBC.

- 5 • The DBC shall cooperate with Hospital Facilities, Santa Clara County and
6 its' agents to complete the project in accordance with the Project schedule
7 and in a manner consistent with the goals and objectives of Santa Clara
8 Valley Medical Center.
- 9 • The DBC is responsible to comply with all City, County, State, and
10 Federal laws, codes, and licensing requirements for construction of a
11 building of this size, type, and complexity.
- 12 • The DBC shall provide competent staff, experienced in OSHPD
13 construction of major hospitals. The Owner has the right to demand
14 removal of staff felt to be incompetent to perform the tasks and duties
15 assigned.
- 16 • The use of Building Information Modeling (BIM) is required throughout
17 this project including; coordination of site utilities, structural steel, wall
18 framing, suspended ceiling systems, and
19 Mechanical/electrical/plumbing/fire protection, and pneumatic tube trades,
20 at a minimum. BIM shall also be used for activity scheduling, quantity
21 formulation, and costing.

22 16. Under the Contract, Document 011100, Attachment C – “Design Build Central
23 Plant Upgrades Scope of Work”, Turner agreed to provide all design and construction services for
24 the Energy Plant upgrade project:

25 The Design Build Contractor (DBC) shall provide all engineering design and
26 construction services for a complete system including engineering design,
27 construction documents, submittals, shop drawings, calculations, labor, materials,
28 tools, equipment, transportation, temporary construction, and special services to
obtain an OSHPD permit as required for furnishing and installing the central plant
upgrades. All work shall be in compliance with all governing codes, including
State, Local, Federal, and OSHPD, as well as within industry standards.

29 17. Under the Contract, Document 011100, Attachment C – “Design Build Site
30 Utilities Scope of Work”, Turner agreed to provide all design and construction services for the
31 North Utility Loop project:

32 The Design Build Contractor (DBC) shall provide all design and construction
33 services for a complete system including engineering and design, construction
34 documents, submittals, shop drawings, calculations, labor, materials, tools,
35 equipment, transportation, temporary construction, and special services to obtain a
36 permit as required for furnishing and installing the site utilities. All work shall be
37 in compliance with all governing codes, including State, Local, and Federal, as
38 well as within industry standards.

18. The Contract contains the following clauses regarding breaches, defaults, and

1 terminations for cause:

2 **2.03 BREACHES, DEFAULTS AND TERMINATION FOR CAUSE**

- 3 A If DBC fails to begin delivery of material and equipment, to commence
4 Work or a designated portion of the Work within the time specified, to
5 maintain the rate of delivery of material, to execute the Work or
6 designated portion of the Work in the manner and at the specified
7 location(s), or fails to maintain a work program which will ensure
8 County's interest, or, if DBC is not carrying out the intent of the Contract,
9 County's written notice may be served upon DBC and Surety on its
10 faithful performance bond demanding satisfactory compliance with the
11 requirements of the Contract Documents.
- 12 B If the County deems that the DBC has persistently or repeatedly refused or
13 failed to supply an adequate workforce, or material of proper quality, or
14 otherwise refuses or fails to prosecute the Work, or any separable part
15 thereof, with such diligence as will ensure its completion within the
16 Contract Time(s) specified in the Contract Documents or authorized
17 extension thereof, or if DBC should fail to make prompt payment to
18 Subcontractors or Suppliers, or persistently disregards laws, ordinances, or
19 County's written Directions, or has failed in any other respect to prosecute
20 the Work with the diligence and resources required by the Contract
21 Documents, the County may, after providing at least 7 Days prior written
22 notice to the DBC identifying the defaults to be remedied, and the DBC's
23 continued failure to remedy the default(s):
- 24 1 provide any such labor and/or materials required to perform the
25 Work or designated portion of the Work and deduct the cost from
26 any money due or to become due to the DBC; or
 - 27 2 if the County considers that the default(s) constitute sufficient
28 basis for such action, provide the DBC and the DBC's Sureties
with an additional 7 Days written notice, that if the defaults are not
remedied, the DBC's control of the Work or designated portion of
the Work will be terminated.
- 29 C Should County exercise its rights to terminate DBC's control of the Work
30 or designated portion of the Work as noted in this Document 007000.2.03,
31 "Breaches, Defaults, and Termination for Cause", County may, without
32 prejudice to any other rights or remedies of County, including rights or
33 remedies under the Performance Bond:
- 34 1 take possession of the Project Site or designated portion of the site
35 and all or any of the DBC's materials, equipment, tools,
36 appliances, and construction equipment and machinery owned by
37 the DBC as may be on the site and necessary for the performance
38 of the Work or designated portion of the Work;
 - 39 2 accept assignment of any and/or all Subcontractor, Supplier, and/or
40 rental agreements; and/or
 - 41 3 complete the Work or designated portion of the Work by whatever
42 reasonable method(s) County may deem expedient and
43 appropriate.

1 D If County terminates the DBC's control of the Work or portion of the
2 Work for reasons provided in this Document 007000.2.03, "Breaches,
3 Defaults, and Termination for Cause", the DBC will not be entitled to
4 receive any further payments until the entire Work or designated portion
5 of the Work is completed and Accepted. DBC and its Sureties are liable to
6 County for any additional cost of completing the Work or designated
7 portion of the Work, including compensation for additional managerial,
8 administrative and consulting services, plus the assessment of Liquidated
9 Damages assessed pursuant to Document 007000.7.03, "Liquidated
10 Damages."

11 E If the costs incurred by County as the result of termination of DBC's
12 control of the Work or a portion of the Work pursuant to this Document
13 007000.2.03, "Breaches, Defaults, and Termination for Cause", exceed the
14 unpaid Contract Sum, the DBC must pay the difference to County.

15 F Upon Completion and Acceptance of the entire Work, DBC is entitled to
16 the return of all unused materials and its equipment, tools, and appliances,
17 except that DBC will have no Claim on account of usual and ordinary
18 depreciation, loss, wear and tear.

19 G If County terminates DBC's control of the Work for cause, and if it is later
20 determined that the termination was wrongful, such default termination
21 will automatically be converted to and be treated as a termination for
22 convenience. In such event, DBC will be entitled to receive only the
23 amounts payable pursuant to Document 007000.2.04, "Termination for
24 County's Convenience", and DBC specifically waives any Claim for any
25 other amounts or damages, including, but not limited to, any Claim for
26 consequential damages or lost profits.

27 **C. Turner's Performance Under The Contract.**

28 19. Turner proceeded to perform work under the Contract starting in 2009. During the
course of the Project, the Contract was modified through written change orders executed by
Turner and the County, including the following change orders that added days to the Contract:

a. Change Order #48, dated April 9, 2010, which added 183 calendar days and set
a new Final Project Milestone Date of June 18, 2013, without awarding liquidated damages or
delay costs to either the County or Turner.

b. Change Order #180, dated May 27, 2011, which added 289 calendar days to the
Contract and set a new Final Project Milestone Date of April 2, 2014. Change Order #180
released bid contingencies and included consideration of liquidated damages from Turner due to
project delays, and identified zero days of County-responsible days of delay or delay costs.

c. Change Order #406, dated September 3, 2013, which added 375 days to the
Contract and set a new Final Project Milestone Date of April 10, 2015. The Change Order recites

1 that it is a settlement and compromise of disputed claims by the County and Turner for liquidated
2 damages and delay.

3 d. Change Order #541 dated March 25, 2014, that added 270 days to the Contract
4 and set a new Final Project Milestone Date of January 5, 2016. The Change Order allows Turner
5 to request compensation for further costs that might result from changed work in the pharmacy
6 area of the basement, but nothing else.

7 20. Under the present terms of the Contract, the Final Project Construction Milestone is
8 September 19, 2015 and the Final Project Milestone is January 16, 2016. Liquidated damages
9 begin to accrue on September 19, 2015.

10 21. During the course of the Project, there were disputes between the County and
11 Turner regarding, *inter alia*, compliance with California building codes, workplace safety, quality
12 of construction, and Turner's ability to complete the Project by the dates agreed upon in the
13 Contract. Examples of disputes included the following:

14 a. Turner's failure to build the project in accordance with the OSHPD-permitted
15 documents;

16 b. Turner's failure to properly perform its design assist and pre-construction
17 computer modeling responsibilities (called "BIM" or Building Information Modeling);

18 c. Turner's failure to implement required quality control, make contractually
19 required pre-inspections of work, and failure to supervise its subcontractors;

20 d. Turner's failure to provide reasonable, reliable, or accurate schedules for the
21 Project;

22 e. Turner's and its subcontractors' failure to properly construct and protect the
23 Bed Building roof, which resulted in a defective roof;

24 f. Turner's failure to properly perform above-ceiling work, including inexcusable
25 failure to observe construction requirements implemented by OSHPD in response to specific
26 earthquake experiences;

27 g. Turner's failure to complete contractually required patient mock-up rooms.
28

1 22. On September 3, 2014, there was a steam accident in vault VC-01 along the NUL.
2 Following this incident, the County repeatedly requested information from Turner regarding the
3 safety of the NUL design and Turner’s plans to ensure no similar accident occurred again.

4 23. In 2014, Turner continued to fall further and further behind schedule:

5 a. In May, 2014, Turner projected a Final Project Milestone of May 2, 2016,
6 118 days behind schedule;

7 b. In July, 2014, Turner projected a Final Project Milestone of June 21, 2016,
8 168 days behind schedule;

9 c. In October, 2014, Turner projected a Final Project Milestone of July 12, 2016,
10 189 days behind schedule;

11 d. In December, 2014, Turner projected a Final Project Milestone of August 15,
12 2016, 223 days behind schedule. The County repeatedly objected to Turner’s late completion
13 forecasts.

14 **D. The County’s Finding Of Turner’s Material Breach.**

15 24. The County and Turner exchanged extensive correspondence throughout the
16 Project regarding Turner’s performance and failures in performance. Notwithstanding the
17 County’s notices, protests and demands, Turner persistently and repeatedly refused and/or failed to
18 supply an adequate workforce to the Project and refused and failed to prosecute the Work with
19 diligence required to complete the Project within the Contract time.

20 25. By February of 2015, Turner projected a Final Project Milestone of December 27,
21 2016. This was 357 days behind the Contract’s required Final Project Milestone as agreed upon in
22 Change Order #541.

23 26. On or about February 26, 2015, the County sent Turner a Notice of Material Breach
24 under the Contract’s General Conditions, Article 2.03.A regarding Turner’s work on the Bed
25 Building. However, the delays and understaffing continued.

26 27. By May of 2015, Turner projected a Final Project Milestone of October 14, 2016.
27 This was 391 days behind the Contract’s required Final Project Milestone as agreed upon in
28 Change Order #541.

1 contingencies at the time of bidding, including but not limited to “cost of delays and related lost
2 productivity to hospital inspection processes.” Those bidding instructions are part of the Contract
3 between Turner and the County.

4 37. On or about May 27, 2011, the County and Turner executed Change Order 180 to
5 the Contract, which by its terms resolved the excluded contingencies. The Change Order
6 contained a general release of Settled Issues (which included the contingencies), a release of
7 known and unknown claims under Civil Code Section 1542, and a requirement that Turner
8 “indemnify, defend and hold the County harmless from any and all Costs claimed or asserted in
9 any manner (including stop notices) by Contractor’s subcontractors or suppliers of any tier for
10 performance of the Work included in th[e] Change Order and the Settled Issues.”

11 38. An actual controversy has arisen and now exists between the County and Turner
12 concerning their respective interpretation of these Contract documents. The County contends that
13 bid contingencies were resolved as part of Change Order 180 and that Turner must defend and
14 indemnify the County against subcontractor claims based on those contingencies. Turner disputes
15 the County’s contentions.

16 39. The County desires a judicial determination of its rights and duties under the
17 Contract, and a declaration as to whether Change Order 180 resolved certain bid contingencies.

18 40. A judicial declaration is necessary and appropriate at this time under the
19 circumstances in order for the County to ascertain its rights under the Contract, guide the conduct
20 of Turner and the County, and to calculate the cost to complete the work.

21 WHEREFORE, the County prays for relief as set forth below.

22 **SECOND CAUSE OF ACTION**

23 **(Declaratory Relief regarding Interpretation of Change Order 541)**

24 41. The County hereby incorporates by reference all previous allegations set forth in
25 this Complaint hereinabove as if fully set forth herein.

26 42. On or about March 25, 2014, the County and Turner executed Change Order 541 to
27 the Contract, which by its terms granted Turner an additional 270 calendar days to complete the
28 Project. Turner and the County agreed in the change order that Turner could only request further

1 time related costs (home and field overhead costs) that might result from the work of the two
2 Pharmacy rooms in the basement (which requests were not ever made).

3 43. An actual controversy has arisen and now exists between the County and Turner
4 concerning their respective rights and duties. The County contends that Turner may only request
5 further amounts that it proves resulted from the Pharmacy as agreed in the change order. Turner
6 disputes the County's position.

7 44. The County desires a judicial determination of its rights and duties under the
8 Contract, and a declaration as to whether the County's interpretation of Change Order 541 is
9 correct.

10 45. A judicial declaration is necessary and appropriate at this time under the
11 circumstances in order for the County to ascertain its rights under the Contract, guide the conduct
12 of Turner and the County, and to calculate the cost to complete the work.

13 WHEREFORE, the County prays for relief as set forth below.

14 **THIRD CAUSE OF ACTION**
15 **(Negligence Against Turner and BCS)**

16 46. The County hereby incorporates by reference all previous allegations set forth in
17 this Complaint hereinabove as if fully set forth herein.

18 47. On information and belief, the County pleads that BCS is, and at all times relevant
19 to this action was, a subcontractor hired by Turner to perform, *inter alia*, installation of roofing for
20 the Bed Building portion of the Project.

21 48. Turner owed the County a duty to exercise reasonable care in the performance of its
22 work on the Project, in accordance with the standard of care that applies to design and
23 construction in the locale of the Project.

24 49. As a subcontractor working on the Project, BCS owed the County a duty to
25 exercise reasonable care in the performance of its work on the Project, in accordance with the
26 standard of care that applies to design and construction in the locale of the Project.

27 50. Turner and BCS breached their duty of care to the County as a result of the failure
28 to properly perform work and failure to meet the standard of care that applies to design and

1 construction in the locale of the Project, resulting in physical damage to property, including, *inter*
2 *alia*, damage resulting from water penetration through the roofing system installed by Turner and
3 BCS.

4 51. As a direct and legal result of Turner's and BCS' negligence, the County has been
5 damaged because the roofing system of the Bed Building has been infiltrated by water, which
6 water has damaged other building components.

7 52. As a direct and legal result of Turner's and BCS' negligence, the County has
8 incurred and will incur damages in the form of costs to remove, remediate, and replace the
9 defective roofing at the Bed Building, in amounts subject to proof but within the jurisdictional
10 minimums of this Court.

11 53. The County reserves its right to name and join additional Doe defendants should
12 the County discovery further defective work that stands un-remedied.

13 WHEREFORE, the County prays for judgment as set forth below.

14 **FOURTH CAUSE OF ACTION**
15 **(Breach of Contract Against Turner)**

16 54. The County hereby incorporates by reference all previous allegations set forth in
17 this Complaint hereinabove as if fully set forth herein.

18 55. Turner's breaches of the Contract, delays, and failures to perform as set forth in the
19 County's Notice of Default, were and remain material breaches of the Contract, causing the
20 County damages.

21 56. In addition, regarding the defective roof, Turner breached the Contract by, *inter*
22 *alia*, failing to properly perform its work and failing to install the roof in a correct and
23 workmanlike manner, resulting in physical damage to property, including, *inter alia*, damage
24 resulting from water penetration through the roofing system.

25 57. As a direct and legal result of Turner's breach of the Contract, the County has been
26 damaged because the roofing system of the Bed Building has been infiltrated by water, which
27 water has damaged other building components.

28 58. As a direct and legal result of Turner's breach of the Contract, the County has

1 incurred and will incur damaged in the form of costs to remove, remediate, and replace the
2 defective roofing at the Bed Building.

3 WHEREFORE, the County prays for judgment as set forth below.

4 **FIFTH CAUSE OF ACTION**

5 **(Breach of Contract – Third Party Beneficiary Against BCS)**

6 59. The County hereby incorporates by reference all previous allegations set forth in
7 this Complaint hereinabove as if fully set forth herein.

8 60. The County pleads on information and belief that BCS and Turner entered into a
9 written contract under the terms of which BCS agreed to provide the labor and materials necessary
10 to install, *inter alia*, the roof for the Bed Building in a good and workmanlike manner, free from
11 all defects.

12 61. Article 11.10 of the Agreement (Contract Document 005000) provides “The
13 COUNTY shall be a third party beneficiary of all contracts between the DBC and any other design
14 or engineering entities; subcontractors; suppliers and other agreements between the DBC and
15 entities for which the subject matter of the contract includes the Work.” Under Civil Code section
16 1559, the County may enforce the contract between BCS and Turner, because that contract was
17 made expressly for the benefit of the County.

18 62. BCS breached its contract by, *inter alia*, failing to properly perform its work and
19 failing to install the roof in a correct and workmanlike manner, resulting in physical damage to
20 property, including, *inter alia*, damage resulting from water penetration through the roofing
21 system.

22 63. As a direct and legal result of BCS’ breach of its contract with Turner, the County
23 has been damaged because the roofing system of the Bed Building has been infiltrated by water,
24 which water has damaged other building components.


25 64. As a direct and legal result of BCS’ breach of its contract with Turner, the County
26 has incurred and will incur damaged in the form of costs to remove, remediate, and replace the
27 defective roofing at the Bed Building, in amounts subject to proof but within the jurisdictional
28 minimums of this Court.

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5) For such other, further and different relief as the Court deems just and proper.

DATED: September 16, 2015

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: 

Eric J. Firstman
Attorneys for Plaintiff
County of Santa Clara

2525477.1

EXHIBIT A



County of Santa Clara

Facilities and Fleet Department
Capital Programs Division

2310 North First Street, 2nd Floor, Suite 200
San Jose, California 95131-1011
(408) 993-4600 FAX (408) 993-4695

DC#: BB1-15455

May 15, 2015

Turner Construction Company
950 S. Bascom Avenue,
Suite 3010, 3rd Floor
San Jose, CA 95128

Attention: John de Ruiter
Vice President

Subject: **Notice of Default under Contract Article 2.03B**

Dear John,

The work of the Bed Building continues to languish. Subcontractor manpower on-site continues at alarmingly low levels. There remains substantial available work throughout all floors, yet the work sits idle without subcontractor crews to perform the work. Turner continues to schedule the crews remaining in the Bed Building to work inefficiently. Turner's construction schedules and letters indicate that Turner plans to continue this slow progress going forward. In many areas, progress has ground to a halt.

The County has worked very hard to assist Turner. The County has made many compromises, attended many meetings, settled many doubtful change orders, and approved specification changes requested by Turner, all in the spirit of advancing the project and helping with jobsite morale. Yet Turner does not improve. The job continues to languish.

Having tried all other options, on February 26, 2015, the County provided Turner with formal notice of material breaches of our Contract under General Conditions, Article 2.03.A, and requested improvement and assurances of improvement. The County attaches this formal notice to this letter and restates it here. That same week, the County also began a program of photo-histories of the patient rooms, to assess progress. Two weeks later, on March 9, 2015, the County received Turner's response to the County's February 26 letter, which is also attached to this letter.

Notice of Default under Contract Article 2.03B

The County is aware of the many contentions by Turner and has taken steps to consider Turner's letter very carefully and to review the Project record very carefully. The County has evaluated the issues raised by Turner and has performed its own independent investigations including what are now ten weeks of photographic history of Turner's work progress. The County has made every effort to be fair and to consider the evidence here, in particular the photographs of work progress.

Based on this careful review, the County has determined that Turner remains in material breach of our Contract. Please note that the County is now making this determination under **General Conditions, Article 2.03.B**, and for the following reasons:

1. Turner has persistently and repeatedly refused to supply an adequate work force on the project with the required diligence to ensure completion within the contract time.
2. Turner has failed to provide the County with assurances it will correct its breaches of contract as demanded in the County's February 26, 2015 letter.
3. Turner has failed to perform and continues to fail to perform material terms of the Contract pertaining to the relationship of trust and confidence that Turner accepted in our Contract.

The County reviews each ground in this letter. The Contract still allows Turner an additional seven-day time period to take action before the County has rights to take action to supplement the work or take additional action with regard to the project. This Notice is for the Bed Building only.

Ground 1. Turner has persistently and repeatedly refused to supply an adequate work force on the project with the required diligence to ensure completion within the contract time. Turner is stalling.

Turner's March 9 letter acknowledges that Turner is intentionally understaffing the job and slowing of progress in the Bed Building. This fact has also been verbally confirmed through jobsite discussions with Turner's staff and is shown in the photo-history. Turner is stalling. In Attachment A to this letter, we provide a partial photo-history of example patient rooms that Turner has understaffed and slowed progress, starting on February 24, 2015 and continuing to May 7, 2015. As shown in these photos, the work barely progresses. Below are examples:

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Room 3A111 on February 24, 2015.



Room 3A111 ten weeks later on May 7, 2015. The drywall reveal panels were installed, about 2 hours' worth of work.



Room 3A131 on February 24, 2015.



Room 3A131 ten weeks later on May 7, 2015. Sheetrock was added on the right wall and the stub wall near the door, about 2 hours' worth of work.



Room 3A171 on February 24, 2015.



Room 3A171 ten weeks later on May 7, 2015. The drywall reveal panels were installed, about 2 hours' worth of work.



Notice of Default under Contract Article 2.03B

The stalling and lack of progress in these patient rooms is typical of over 100 patient rooms that languish due to Turner’s decision, to understaff the work and slow the progress of the work. The County acknowledges some progress on the sixth floor, but this progress is insufficient for a ten week duration. Turner’s March 9 letter gives no indication that Turner intends to remedy this understaffing and slow progress, let alone provide the assurances of performance the County had demanded in its February 26 letter.

In Change Order 541, the County and Turner agreed to a time extension that resulted in a Contract Final Construction completion date of September 19, 2015. As the chart below shows, Turner has no plan to meet this date. The chart shows Turner scheduling later and later dates, including pushing back completion by a full 111 days between January and February of 2015.

Version	Data Date	Milestone Description	Forecasted Completion	Contractual Completion	Delay/ Gain	Variance to Contract (Total Float)
Rev 000	- 19Mar09	Final Construction Completion	31Aug12	31Aug12	0	0
Rev 078	- 01Jul11	Final Construction Completion	22Dec13	15Dec13	NA	-7
Rev 185	- 03Sep13	Final Construction Completion	16Mar15	15Dec13	-8	-456
Rev 214	- 07Apr14	Final Construction Completion	26Oct15	23Dec14	+14	-307
Rev 218	- 05May14	Final Construction Completion	28Dec15	19Sep15	-63	-102
Rev 222	- 02Jun14	Final Construction Completion	11Jan16	19Sep15	-14	-116
Rev 227	- 07Jul14	Final Construction Completion	12Feb16	19Sep15	-32	-148
Rev 232	- 11Aug14	Final Construction Completion	12Feb16	19Sep15	0	-148
Rev 235	- 02Sep14	Final Construction Completion	29Feb16	19Sep15	-17	-165
Rev 240	- 06Oct14	Final Construction Completion	14Mar16	19Sep15	-14	-179
Rev 243	- 03Nov14	Final Construction Completion	06Apr16	19Sep15	-23	-200
Rev 247	- 01Dec14	Final Construction Completion	28Apr16	19Sep15	-22	-222
Rev 251	- 05Jan15	Final Construction Completion	18May16	19Sep15	-20	-242
Rev 255	- 02Feb15	Final Construction Completion	06Sep16	19Sep15	-111	-353
Rev 259	- 02Mar15	Final Construction Completion	20Sep16	19Sep15	-14	-367
Rev 264	- 06Apr15	Final Construction Completion	01Sep16	19Sep15	19	-348

Although Turner did change its schedules to show improvement of 19 days on April 6, 2015, this does not indicate improvement as Attachment A shows.

It is now apparent that even if Turner staffed the project and diligently worked starting tomorrow, Turner will be unable to recover the schedule and unable to meet the contractual completion date. Rather, it is clear that the Project is severely late, Turner is understaffing the Project, and Turner is, in fact, slowing the Project. All of the foregoing is a material breach of our Contract.

Ground 2. Turner has failed to provide the County with assurances it will correct its breaches of contract as demanded in the County’s February 26, 2015 letter.

The County made a legitimate request in its February 26, 2015 letter for assurances of performance, listing many areas where Turner has disregarded our Contract, including inadequate progress, inadequate staffing and workforce, inadequate site management and

Notice of Default under Contract Article 2.03B

supervision, inadequate and unreliable scheduling, inadequate quality control, schedule delay, and disregard of our Contract on steps to follow to request extra compensation or time extension. These subjects are covered primarily in the Contract's General Conditions, Articles 3, 6 and 7, and in the specifications, Sections 01 32 04 and 01 45 00.

Turner's March 9, 2015 letter did not provide assurances of performance; to the contrary, it stated that Turner would continue to breach our Contract. This is a material breach in itself.

Ground 3. Turner has failed to perform and continues to fail to perform material terms of the Contract pertaining to the relationship of trust and confidence that Turner accepted in our Contract

Article 1.1 of the Agreement says: "The DBC accepts the relationship of trust and confidence established between it and the COUNTY by this Agreement. The DBC agrees to furnish the services set forth in the RFP Documents and to use its best efforts to complete the Work in the most expeditious, economical and thorough manner consistent with the interest of the COUNTY." Turner's actions, delaying the work, providing inaccurate information and inaccurate statements, materially breach its obligations in Article 1.1 and has had a substantial negative effect on the work.

Analysis of Turner's Justification.

As justification for its conduct, Turner's March 9 letter states for the first time that Turner is "pacing" its work, which Turner describes as a series of labor mobilizations and demobilizations that Turner claims were caused by the County, the IORs, and the design team. Turner's letter identifies nine alleged County-caused "constraints" to the Bed Building to which Turner was supposedly "pacing" its work.

The County has very carefully considered Turner's nine "constraints." In Attachment B to this letter, the County examines the construction records for each "constraints" by floor and provides a timeline and location for each. It is very clear that these alleged "constraints" were not real constraints that held up the work of the Bed Building, most were minor issues solved in 2014 or early January 2015. For the few instances where there was actual work, it was to isolated small areas, and there was an easy work-around.

In short, the nine "constraints" have little to do with actual delays to the actual work of the Bed Building. Turner's understaffing and slowing the work is the cause of the delays and lack of progress.

Below is a brief summary of the nine "constraints" that Turner claims held up the Bed Building. The summary starts in the Basement and moves up to the roof.

Notice of Default under Contract Article 2.03B

1. Turner's Letter Contains No Justification For Holding Up the Work in the Basement.

Turner identifies a single issue in the Basement, and that was the County's agreement to permit Turner to install 12 electrical outlets in the several Pharmacy rooms instead of waiting until later this year to install direct power to pivot furniture equipment when it arrives. The Pharmacy is no more than approximately 15% of the Basement area and Turner received the change order for this on January 21, 2015.

- The County finds that these 12 electrical outlets could not have held up the work in the Pharmacy or in the Basement.

2. Turner's Letter Contains No Justification For Holding Up the Work on the First Floor.

Turner identifies a question about the window shades in Room 1A125 that the County answered on February 18, 2015.

- The County finds that the window shades in a single room did not hold up the work of the First Floor.

3. Turner's Letter Contains No Justification For Holding Up the Work in the Lobby Link.

Turner identifies a single issue as holding up work in the Lobby Link, that being Turner's design-build decision to move the sprinkler system water connection from the Lobby Link to the second floor. The County consented to this change on January 6, 2015. The work was minor.

- The County finds the water connection was a Turner design build decision. Further, it did not hold up any work it in the Lobby Link.
- The County also finds that Turner's design and construction failures at VC-1 will delay the Lobby Link even further. These delays are caused solely by Turner.

4. Turner's Letter Contains No Justification For Holding Up the Work in the Patient Rooms on Floors 2, 3, 4, 5, and 6.

Turner relies on a series of alleged "design issues". The County finds these issues did not hold up the work and that many were resolved before the "pacing" period Turner references. In chronological order:

Questions and Answers in June/July 2014 (Patient Lift Rails and T-Bar Ceiling Questions). The County answered Turner questions on the Patient Lift Rails on June 25, 2014 and on the T-Bar Ceiling Framing on July 17, 2014. The County finds that these were Turner problems that the County helped Turner solve, a full six months before the alleged "pacing".

- The County finds the June/July 2014 questions were minor, were answered, and had no effect on Turner in 2015.

Notice of Default under Contract Article 2.03B

The County and OSHPD Granted Turner Relief From Specifications on March 26, 2014 and December 2, 2014 (Turner Requested Change to Frame Ceilings). For 24 of the 168 patient rooms, based on a Turner request for relief, the County and OSHPD allowed Turner to frame the ceilings instead of hanging the ceilings per the approved plans, on March 26, 2014, and then later on December 2, 2014, further allowed Turner to change the location of light and HVAC ducts in order to finish the framing. (The County and OSHPD allowed Turner to frame the ceilings in the first instance only because Turner had installed significant above ceiling work without realizing it also had to install the wires to hang the ceiling system. The County and OSHPD could have required Turner to remove its work and then install it correctly to hang the ceilings, but allowed Turner to frame the ceilings instead to assist Turner.) This final change was agreed on December 2, 2014, long before the “pacing” period, and it did not hold up the patient rooms.

- The County finds that if Turner had been required to provide the contract specified hung ceilings, then Turner would have been delayed significantly because it would have had to tear-out and rebuild the work correctly.
- The County, therefore, finds that Turner saved significant time by framing the ceilings, then saved more time by changing the light locations and HVAC ducts. The County allowed these changes to assist Turner.

The County and OSHPD Agreed to Above Ceiling Twist-Ties on January 8, 2015. At the request of Turner’s subcontractor, the County agreed in December 2014 and then OSHPD agreed on January 8, 2015, that Turner could twist tie the low voltage wiring above the ceiling without having to install junction boxes to locate the twist tie.

- The County finds this change was trivial and saved time and materials for both Turner and its electrical subcontractor.

Turner’s Edge of Slab and Three (3) Northeast Terrace Patient Rooms. This is the only issue that actually involves a delay to any patient room in the “pacing period.” This involves three of the 168 patient rooms, where Turner is waiting for a fire stopping detail to be approved by OSHPD. The cause of this problem is the edge of concrete slab that Turner installed.

- The County finds that these three rooms comprise a tiny fraction of the 168 patient rooms (1.7%) of all of the patient rooms, and that work on these three rooms is not holding up the work on any other patient rooms on the floors two to six.

Future Casework. Finally, Turner makes unintelligible references to “design issues” regarding the Casework. None of the patient rooms are ready for casework under even the most optimistic assumptions, and Turner is many months away from installing casework in any patient room on any floor,

- The County finds that future casework “design issues” are not holding up any work in the patient rooms.

5. Turner’s Letter Contains No Justification For Holding Up the Work on the Fifth Floor (Gurney Alcove)

Notice of Default under Contract Article 2.03B

In this small area of the 5th Floor where gurneys are located, Turner asked a question on February 6 and the County answered it with a yes on February 9, 2015, telling Turner to follow the plans.

- The County finds that the small Gurney Alcove did not have any effect on the Patient Rooms and the question the County answered in three days had no effect on the work.

6. Turner's Letter Contains No Justification For Holding Up the Work on the Sixth Floor (Linen Chute)

This is another instance where the County had to help Turner. Because Turner started this work after it had performed substantial framing, Turner did not have room to meet fire rating requirements for the Linen Chute. Instead of requiring Turner to take out work in place, the County and OSHPD allowed Turner to meet fire-rating requirements using a different method (fire putty). In any event, this issue involves a very small area near the linen chute on the Level 6 ceiling, and was resolved on December 2, 2014, before the pacing period.

- The County finds this issue as Turner caused and more importantly, it is trivial and involves a very small area and did not have any impact on the patient rooms.

7. Turner's Letter Contains No Justification For Holding Up the Work at the End of the Hallways (3' x 5' Access Doors and Window Shades at the End of Hallways)

Turner's letter refers to a collection of end of hallway issues (also called end of corridor) that were trivial and small and had no effect on the work. They are:

Access Doors. Turner's letter refers to two different "design issues" at the end of the hallway on the 5th floor involving framing an access door approximately 3' x 5' in dimension (about the size of door to an attic at home), answered on January 15, and the location lights around another one of these access doors answered February 12, 2015.

- The County finds these little 3' x 5' doors had nothing to do with the patient rooms, and did not hold up any work.

Window Shades. Turner's letter also refers to two "design issues" at the end of several hallways where the County had deleted window shades (called Mecho Shades) and Turner asked the question on how to frame or fill in the resulting empty area where the window shades had been located. These were questions about a 6" x 6" void above the window.

- The County finds the deleted window shades had no effect on the Bed Building or the patient rooms.

The above justifications provided by Turner are excuses. The fact is that in many areas, Turner has slowed the work to the point where it is very close to a work stoppage. This is a material breach of our Contract and the delays have and will have serious impacts on the County.

Notice of Default under Contract Article 2.03B

Further, Turner never made contract requests for time extensions or gave contract notices over these issues as Turner agreed in our Contract it would do if it actually believed it was being delayed, and it is a breach of contract to assert these issues late and after the fact.

Analysis of Turner's Other Contentions

Turner's March 9 letter makes many statements and arguments and excuses. Many of these are off-subject. Many parts of the letter are hard to follow, other parts string together subjects and arguments with the overall point unclear.

The County will not respond to the letter on a line-by-line basis but will instead refer Turner to the Contract and to the County's many letters over the years regarding the laundry-list of issues Turner continues to restate. So there is no ambiguity about this:

1. There is manpower available. Turner has made a conscious choice to understaff the job.
2. Turner never said anything about "pacing" until its March 9, 2015 letter. If Turner is pacing its work, it never gave the County notice and it never asked the County's consent.
3. Turner's contentions about delay causes are without merit as discussed in this letter and in Attachment B.
4. The Bed Building is simple and straightforward. The Turner staff has grossly mishandled the project.
5. Turner has not followed our Contract for requesting time extensions and has disregarded the Contract. The County has advised Turner of this repeatedly.
6. Turner made a very clear agreement in Change Order 406 and accepted the \$9.25 Million. Change Order 406 is a deal. The County rejects Turner's backpedaling.
7. Turner and the County agreed that settlement discussions were confidential. Turner's letter breaks the confidentiality agreement, which is untrustworthy and unprofessional. Turner's letter also mischaracterizes the settlement discussions, inviting the County to disregard the confidentiality agreement. With a full reservation of rights to enforce our confidentiality agreement, the County responds that –
 - a. The County insisted that Turner follow the Building Code, which Turner seems to now acknowledge it must;
 - b. Turner rejected the County's terms which were very reasonable and very fair and would have settled all of the issues once and for all and avoided future disputes, although for much less that Turner wanted; and,
 - c. It was and is the County's information that Turner kept for itself either all or most of the \$9.25 Million paid in Change Order 406, and whatever it passed

Notice of Default under Contract Article 2.03B

down to its subcontractors, it did very late. The County was reasonable in demanding proof and assurances that settlement money go to subcontractors.

8. Turner's "list" of delay and disruption causing issues, shows only one thing and that is the unwillingness of Turner staff to handle a hospital project.
9. Finally, in the attachment to Turner's letter, Turner attaches schedule charts from Turner's litigation consultant, that change the project schedules and change the facts. If the schedule is meaningless as Turner contends, then it is this level of schedule change that has caused it. Turner has ceased any effort to meet contractual completion deadlines and repeatedly adjusted the critical path to suit its claims approach. Despite Turner's contention, the County does not and has not ever accepted these schedule manipulations and has repeatedly objected to each of the updates and restates its objections here.

Conclusion

It is with regret that the County writes this letter. Turner's understaffing the work, disregarding our Contract and Turner's obligations in our Contract and failure to provide assurances of correction, and the untrustworthiness of Turner's justifications and positions throughout, however, are material breaches of our Contract that Turner must remedy.

Turner's fundamental job under our Contract is to build the Project and to build it in an expeditious, economical and thorough manner consistent with the interests of the County. Turner's job is to maintain at all times an adequate work force to ensure completion within the agreed Contract time. That fundamental job requires materials, workers and subcontractor staff that by Turner's choice are currently not on site. Turner's March 9 letter admits, and its conduct demonstrates, that Turner is not meeting this fundamental obligation, and has no intention to do so.

The County's only option, therefore, at this time is to find Turner in material breach under General Conditions Article 2.03.B, which the County does in this letter. This letter is limited to the Bed Building and the County will address the developing issues in the North Utility Loop separately.

If Turner is in fact pacing its work in response to the North Utility Loop issues, then this is material information that the County requests that Turner provide immediately.

As stated previously, this letter is limited to the Bed Building project. Under the Contract, this letter will permit the County to exercise remedies allowed under the Contract's General Conditions.

Notice of Default under Contract Article 2.03B

Sincerely,



Alex Gallego, Director of Facilities, SCVHHS
Owner's Authorized Representative

Attachments: (A) Photo-log comparison of work in Patient Rooms
(B) Analysis of Turner's Justifications for Delay
(C) County's Article 2.03A Letter (BB-15164)
(D) Turner's March 9, 2015 Response to the County's Article 2.03A Letter

CC: Abhi Gupta, Turner Construction
Travelers Casualty and Surety Company of America
Federal Insurance Company
Fidelity and Deposit Company of Maryland/Zurich American Insurance Company
Liberty Mutual Insurance Company

Attachment A to County's May 15, 2015 letter

Unstaffed Work Sits Idle

The following photographs were taken in the patient rooms over a 10 week period, starting February 24, 2015.

For the 3rd, 4th and 5th Floors, the photographs show available work that sits idle, week after week. Subcontractors that ordinarily would staff this idle work include Brady (framing and drywall), Ad-In (lay-in ceilings) and Jerry Thompson (painting), and to a lesser extent, Rosendin (electrical) and FW Spencer (HVAC).

The work progress shown in these photographs is proof. The photographs show the typical progress on patient rooms on typical floors of the Bed Building.

Third Floor

Room 3A171 -

The following two side-by-side photos are Room 3A171 on the third floor, on February 24th, 2015. The drywall has been installed, but only the far wall at the patient door has been taped. The hat channel for the 'serpentine' hard ceiling has been installed, but the box framing has not.



February 24, 2015 at 16:32



February 24, 2015 at 16:32

Ten weeks later, the 'serpentine' hard ceiling box stud framing and drywall reveal panels (right photo) have been installed, but no other work has been done.



May 07, 2015 at 10:35



May 07, 2015 at 10:35



May 07, 2015 at 10:35

Room 3A111 -

Progress in Room 3A111 is similar. The below photos show the room as of February 24, 2015.



February 24, 2015 at 16:26



February 24, 2015 at 16:26

In ten weeks' time, Turner hung drywall on the right-hand side wall and the drywall reveal panels on the left-hand side wall. but accomplished little else:



May 07, 2015 at 10:20



May 07, 2015 at 10:20



May 07, 2015 at 10:20

Fourth Floor

Room 4A183 –

The photographs below were taken in Room 4A183 on the fourth floor. On February 24th, the box framing and hat channels for the 'serpentine' hard ceiling was installed and ready for drywall (left photo, red arrow). The drywall on the walls was installed, and the drywall on the wall with the patient room doors has been taped.



February 24, 2015 at 16:02

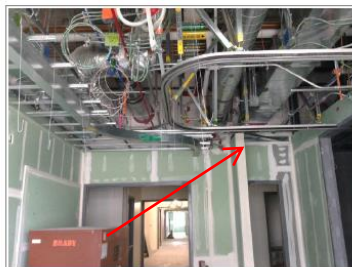


February 24, 2015 at 16:02

Ten weeks later, on May 7, 2015, very little has changed. The stub wall between the patient room door and the medicine cabinet has been covered with drywall (middle



May 07, 2015 at 10:04



May 07, 2015 at 10:04



May 07, 2015 at 10:04

photo, red arrow). The drywall reveal panels have been installed (left photo, red arrows), and the side walls have been taped. None of the constraints cited by Turner in its March 9th letter would have prevented more significant progress in this room.

Fifth Floor

Room 5A121 –

The photographs below were taken in Room 5A121 on the fifth floor.

On February 24th, the box framing and hat channels for the ‘serpentine’ hard ceiling were installed and ready for drywall (left photo, red arrows). The drywall on the walls was in place, had been taped and appears to have been sanded at least once.

By March 4, 2015 (right photo, red arrows), the drywall on the ‘serpentine’ hard ceiling was installed. The next step is to finish the drywall preparation, paint the walls, and install the T-bar ceiling grid.



February 24, 2015 at 15:47



February 24, 2015 at 15:47



March 04, 2015 at 12:00

Ten weeks later, on May 7, the painting was done, but there is still no T-bar grid installed. Only the “L” clip along the wall with the patient bathroom is in place. In ten weeks, no significant work has occurred in this patient room and there were no constraints that would have prevented work from moving forward.



May 07, 2015 at 09:16



May 07, 2015 at 09:16



May 07, 2015 at 09:17

Sixth Floor

Turner applied some resources to the 6th Floor patient rooms in the 72 days that elapsed between February, 24, 2015 and May 7, 2015 time period. Turner's Schedule Rev. 0177 part of Change Order 406 stated that Turner would and paint all of the patient rooms in Area 6A in 15 days and complete all of the ceilings in Area 6A in 20 days for a total of 35 days. It shows –

FINISHES - 6A							
R6A-5130	PAINT (prime & 1st coat) - 6A	15	15	15	09-Jan-14	30-Jan-14	-258
R6A-5210	MED GAS FIXTURES - 6A	13	13	13	16-Jan-14	04-Feb-14	-220
R6A-3075	PATIENT LIFT SADDLES - 6A	15	15	15	16-Jan-14	06-Feb-14	-193
R6A-5200	T-GRID CEILING GRID - 6A	20	20	20	16-Jan-14	13-Feb-14	-258

The following photographs show that in the 72 days that the photographs cover, Turner completed most of a 15-day activity (painting) but not the 20 day activity (ceilings).

The following photographs were taken in Patient Room 6A183.

In the first set of photographs, taken on February 24, 2015, the 'serpentine' hard ceiling is installed and painted (left photo, red arrow). Blue low voltage data wire has been run, and green low voltage cable for the nurse call system is in place near the top of the drywall in the right-hand photo (right photo, red arrow). Electrical junction boxes are hanging in place, ready for the ceiling light installation. Though not clearly visible here, the fire alarm junction boxes and flexible water lines for the fire sprinklers are also ready for installation in the ceiling.



February 24, 2015 at 14:41



February 24, 2015 at 14:41



February 24, 2015 at 14:41

The next steps of work are clear: painting the walls and installing the T-bar grid for the lay-in ceiling tile. None of the lights, fire alarm boxes, or sprinkler lines can be set until those tasks are complete. By the following Wednesday, March 4th, the rooms have been painted up to just above where the lay-in ceiling tile will go (right photo, red arrow):



March 04, 2015 at 11:22



March 04, 2015 at 11:22

But then the work stalls. By the following week, March 11th, no additional progress has been made. The T-bar grid is not installed. No additional work on the HVAC, electrical, or cable systems has been done:



March 11, 2015 at 08:57



March 11, 2015 at 08:57



March 11, 2015 at 08:57

The condition of the room is unchanged the following week. On March 19, 2015, the room is in the same condition as it was on March 4, 2015, two weeks prior:



March 19, 2015 at 08:00

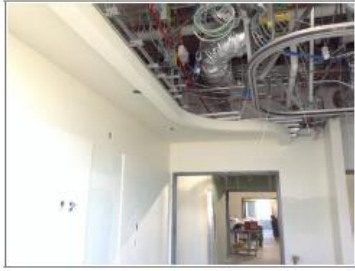


March 19, 2015 at 08:00



March 19, 2015 at 08:00

The following week, March 26, 2015, the only apparent progress is the installation of an "L" clip along the bathroom wall, near the top of the bathroom door frame (right photo, red arrow):



March 26, 2015 at 08:15



March 26, 2015 at 08:15



March 26, 2015 at 08:15

In its March 9th letter, Turner cited no constraints that would have prevented more work proceeding in this room during this time. Yet in over three weeks, the only progress towards completion of the ceiling grid installation was the installation of this single “L” clip. By the following week, April 2, 2015, nothing more has been done, except for a little additional work at the “L” clip assembly (right photo, red arrow):



April 02, 2015 at 09:03



April 02, 2015 at 09:03



April 02, 2015 at 09:03

Finally, by April 9, 2015, the T-bar ceiling has been installed, over a month after the room had been painted and the T-bar ceiling work could have commenced. There are only about 31 patient rooms on each floor of the Bed Building, and several of them have ‘hard’ ceilings that are framed with metal studs and completely covered in drywall, and do not require lay-in ceilings at all. It took Turner over a month to install approximately 25 of the lay-in ceilings, and this slow pace of work occurred because Turner had only a single installer doing the work for the entire building.

Only now can the next above-ceiling tasks advance – setting the light fixtures, the fire alarm junction boxes, and the flexible water lines for the fire sprinklers. These items all require the ceiling grid in place for proper location and anchoring.



April 09, 2015 at 08:42



April 09, 2015 at 08:42



April 09, 2015 at 08:42

By the following week, April 16, 2015, the spotlight fixtures have been located, but no other work has progressed.



April 16, 2015 at 07:55



April 16, 2015 at 07:56



April 16, 2015 at 07:56

By May 7, 2015, the diffuser and a few additional ceiling tiles have been set. This small amount of progress should not have taken 10 weeks' time to complete.



May 07, 2015 at 09:04



May 07, 2015 at 09:05



May 07, 2015 at 09:05

Concluding comments

The photographs provide visible proof of extremely slow work progress on all of the patient rooms. Nothing prevented this work from going forward and Turner has not identified anything that would have prevented this work from going forward.

In early March 2015, the County headcounts for the Bed Building were approximately 130 to 150 workers each day, including Turner staff and supervisors. Personnel were scattered throughout the building's seven floors, basement, roof and exterior.

Turner has records of actual subcontractor staffing, per floor and location. What the County has observed is that each week, only a handful of actual tradespeople are actually working on the floors and the patient rooms, more on the 6th Floor than other locations.

The photographs reflect lack of staffing, nothing else.

Attachment B to County's May 15, 2015 letter

Turner's Justifications

Turner relies on nine "constraints" as justification for its subcontractors not working in February 2015.

The County has reviewed each of the nine constraints. The County finds that:

1. The "nine constraints" did not hold up Turner. Each issue was minor and many were from 2014 and outdated.
2. The project critical path ran through the patient rooms. This is shown by Turner's schedule in Change Order 406.
3. Turner "nine constraints" identify delays to only 3 patient rooms. The other 165 patient rooms were not affected and there is no justification for not working in them.

Turner is an experienced California hospital contractor. It is inconceivable that Turner would be held up or affected by these types of minor issues.

Turner's Experience

The County discusses Turner's nine constraints in the context of Turner's proposal to the County to be hired for this project, which is clear:

Turner Integrity Accountability Innovation Healthcare

December 23, 2008

Mr. Duane Oberquell
Director of Facilities
Santa Clara Valley Health & Hospital System
800 Thornton Way
San Jose, CA. 95128

Kevin T. Antonelli
Vice President & General Manager
60 S. Market St., Ste. 1100
San Jose, CA 95113
phone: 408.295.7598
fax: 408.295.7698

Re: Proposal for the County of Santa Clara SCVHHS Seismic Safety Project
Santa Clara Valley Medical Center – Replacement Bed Building 1
Project # 2007 - 20340

Dear Mr. Oberquell:

I am pleased to have the opportunity to respond to the request for proposal for the Design-Build Construction Services of the Seismic Safety Project (SSP) Replacement Bed Building 1 project for Santa Clara Valley Medical Center.

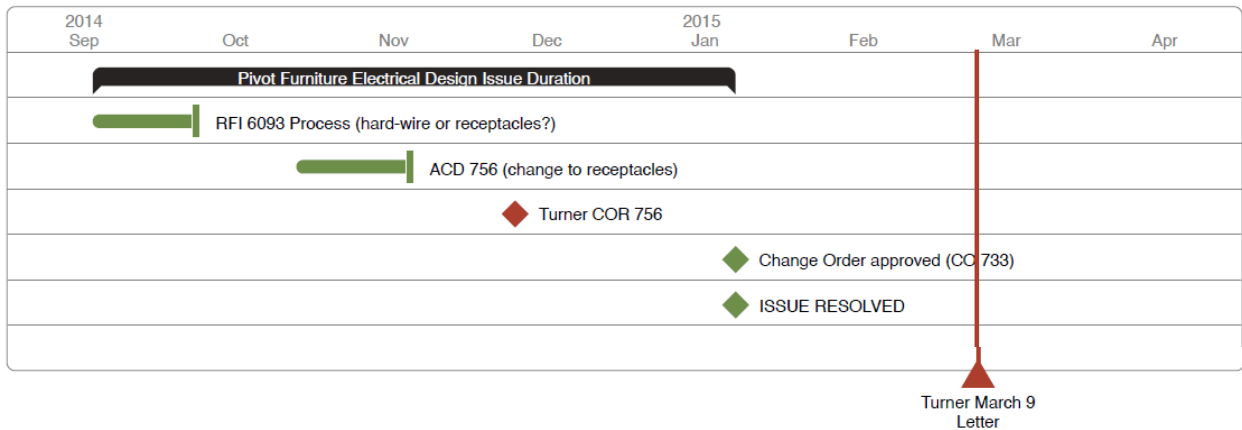
I believe the following highlights make Turner the most qualified firm for this vital project:

- ▶ **Team qualifications** – Our proposed project team has unparalleled OSHPD 1 experience. In fact, you will find that each and every one of our key team members has worked on an OSHPD 1 project. We will utilize this wealth of knowledge for this project to ensure a smooth running project from start to finish.
- ▶ **Building Information Modeling (BIM)** – We have been utilizing BIM on hospital construction projects for several years and with great success. We have the in-house expertise that has real life hospital construction experience using BIM first hand.

1. Turner’s Letter Contains No Justification For Holding Up the Work in the Basement.

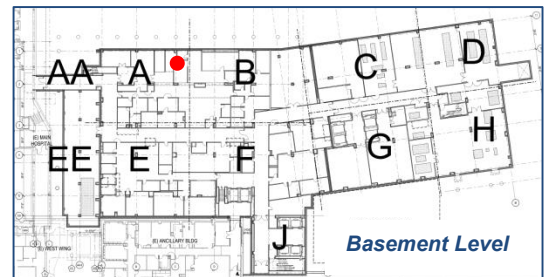
Turner identifies a design change for the pivot furniture in two rooms in the Basement Pharmacy. This is a small, isolated issue affecting only a few small areas. The “design change” was to have plug-in style outlets instead of direct power to the furniture. It was fully resolved by January 21, 2015, 47 days before Turner’s March 9 letter.

Timeline



Location

The two rooms with the electrical outlets are located in the basement level, Packaging/Bar Coding (BA072) and Compounding (BA078A).



Discussion

The two basement rooms with the electrical outlets are shown by the red dot on the Basement Level Floor Plan. The design team requested the change after learning from the furniture manufacturer that the furniture systems came with electrical plugs that required receptacles.

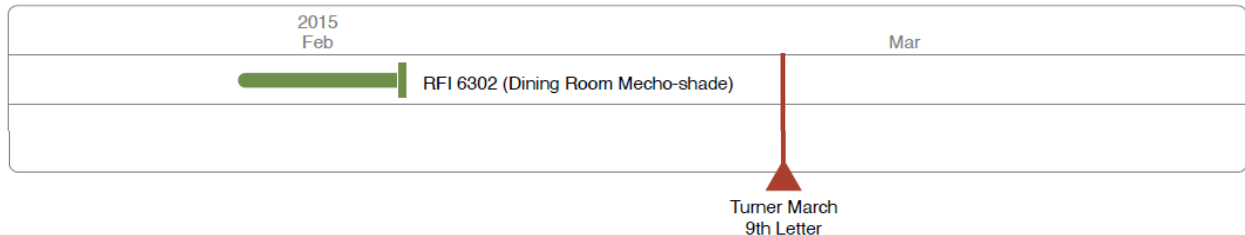
For this simple change, Turner’s letter lists RFI 6093, ACD 756, COR 756, and change order 733. The above timeline shows the initiation and resolution dates of each.

Conclusion

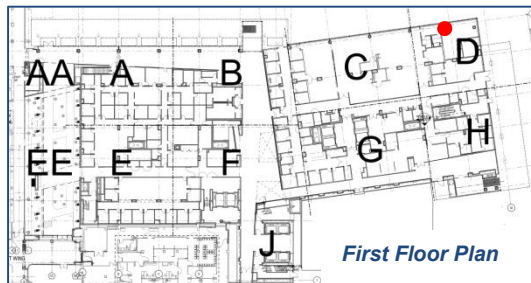
This was an isolated and very small issue that did not hold up work in the two rooms, or in the Pharmacy, or in the Basement.

2. Turner's Letter Contains No Justification For Holding Up the Work on the First Floor.

Turner's letter identifies RFI 6302 as a delay. Reading the RFI shows that it is a minor question related to a window shade.



Location



Discussion

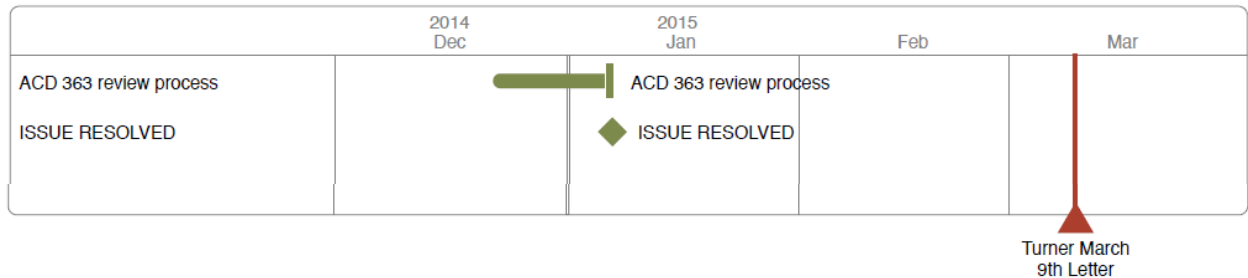
RFI 6302 addressed an isolated issue regarding the mecho-shades in Room 1A125 (ADL Living/Dining Room), shown by the red dot on the plan above. In one corner of this room, the ceiling height at the window is lower than the rest of the room. The solution was straightforward and only required a small step transition at mecho-shades in this location using existing details in the drawings.

Turner submitted this RFI on February 11, 2015, and the architect responded on February 18, 2015. As the timeline above shows, it was resolved prior to Turner's letter. Once again, Turner cannot cite this as a reason why work could not proceed in the Bed Building.

3. Turner's Letter Contains No Justification For Holding Up the Work in the Lobby Link.

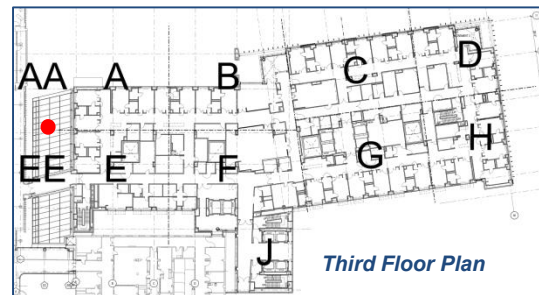
Turner identified a single issue holding up work in the Lobby Link. Turner caused this issue, and Turner resolved this issue two months before Turner's March 9th letter.

Timeline



Location

The Lobby Link is an atrium that will connect the new Bed Building with the existing Main Hospital building. The atrium is open to the first and second levels, and covered with a glass panel roof adjacent to the third floor, shown by the red dot on the plan below.



Discussion

Turner and its subcontractor prepared the fire sprinkler system design that Turner cites as a delay. Turner and its subcontractor changed the point of connection for the sprinklers. The ACD was submitted to OSHPD on December 22, 2014, and approved on January 6, 2015.

Turner did not mark the ACD to request expedited review from OSHPD. This can mean only one thing, which is that it was not time sensitive. The design changes were approved by OSHPD on January 6, 2015 so this issue cannot have prevented Turner from advancing the work as of its March 9th letter.

Conclusion

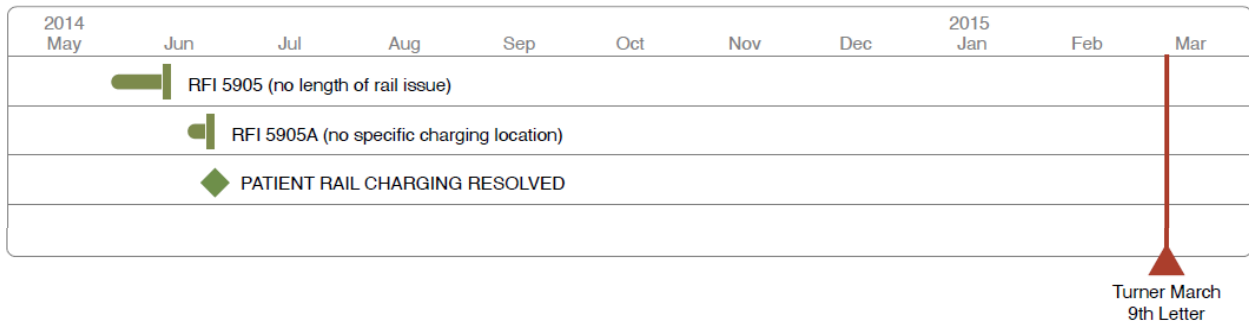
Turner's fire sprinkler design change did not delay the work.

4. Turner’s Letter Contains No Justification For Holding Up the Work in the Patient Rooms

The following Turner-cited issues occurred in the patient rooms of the Bed Building. Only one of the issues affected progress in three of the patient rooms. The remaining issues did not hold up the work or were resolved long before Turner’s ‘pacing’ period.

(A.) Patient Lift Rails and T-Bar Ceiling

(i) Patient Lift Rail Transformers (June/July 2014). This issue had no effect on the work progress. It was resolved eight months before Turner’s letter.

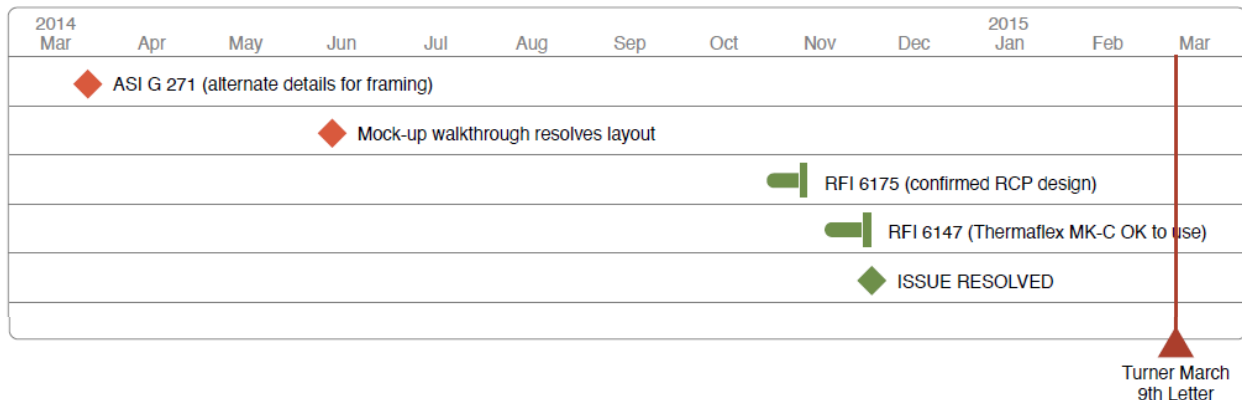


(ii) T-bar Ceiling Questions (July 2014) This issue had no effect on the work progress. It was also resolved eight months before Turner’s letter.



(B.) Relief from specifications for ceiling framing in isolation rooms (March and November 2014)

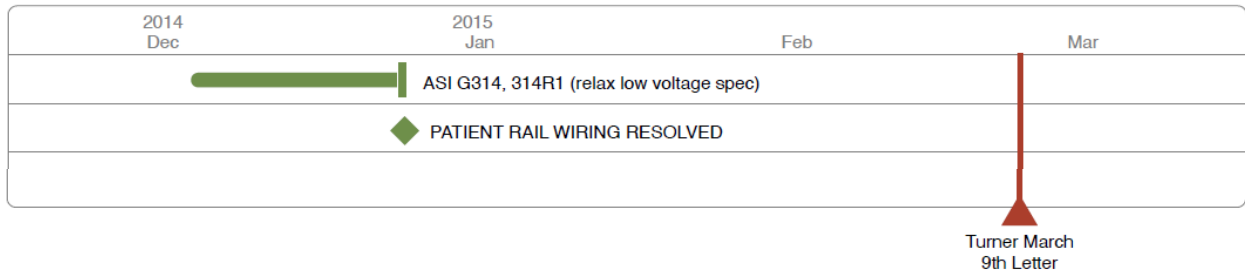
The County and OSHPD granted Turner relief from specifications in March 2014 and again in November 2014. The County and OSHPD assisted Turner. This assisted



Turner in 24 of the 168 patient rooms. This was done months before Turner’s March 9 letter.

(C.) Above Ceiling Twist Ties (December 2014)

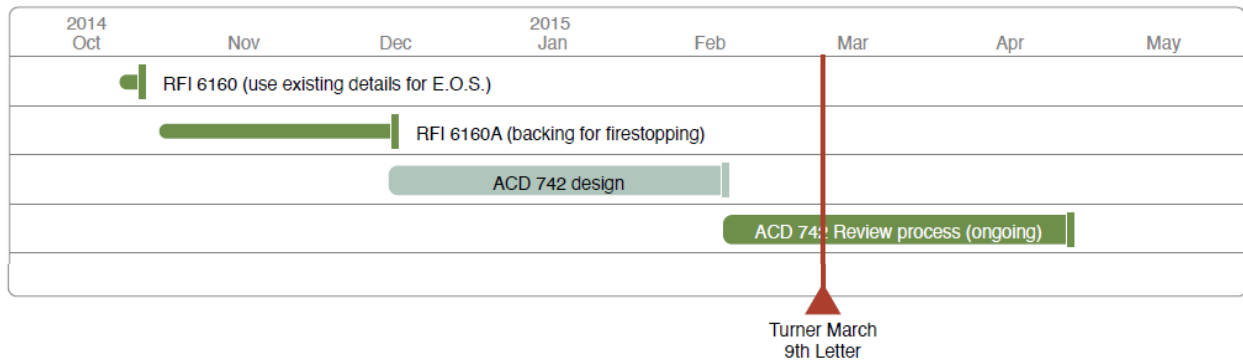
The County and OSHPD allowed Turner to use twist ties for wire connections instead of installing electrical junction boxes. This assisted Turner and reduced its work and had no effect on the work progress. It was resolved months before Turner’s letter.



(D.) Turner’s Edge of Slab at Three Northeast Patient Rooms

This is an isolated issue that affects 3 out of 168 patient rooms (1.7%). The affected rooms have a unique edge-of-slab condition that has required development of location-specific fireproofing details that OSHPD must approve. Because the issue is so isolated and specific to these three rooms, resolving it has no effect on the remaining 165 patient rooms.

Timeline. ACD 742 is not yet resolved, but that fact does not prevent work in other reas.

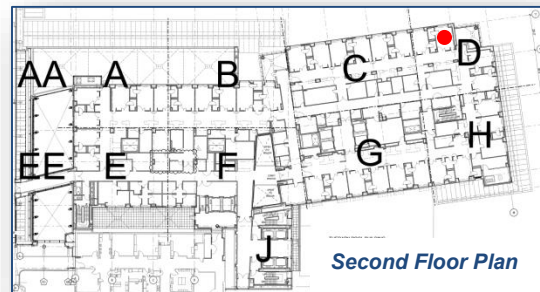


Location. The red dot shows the location of the three affected rooms. The plan shown is the second floor, but the third and fourth floors are similar.

Discussion

This issue effects 3 Bariatric Patient Room 2A125, 3A125, and 4A125. All three rooms are located in the same corner of the building. The outdoor terrace is located at this corner.

There are approximately 168 patient rooms in the building, so this issue affects 1.7% of the rooms. This is a limited and unique issue related to fireproofing at the corner intersection between the curtain wall and edge of slab. In these rooms, at the corner the edge of slab is recessed by a few inches, as shown in the detail above noted as “LINE OF EOS”. The fire-rated wall must be offset with a dog-leg to accommodate this recessed edge.

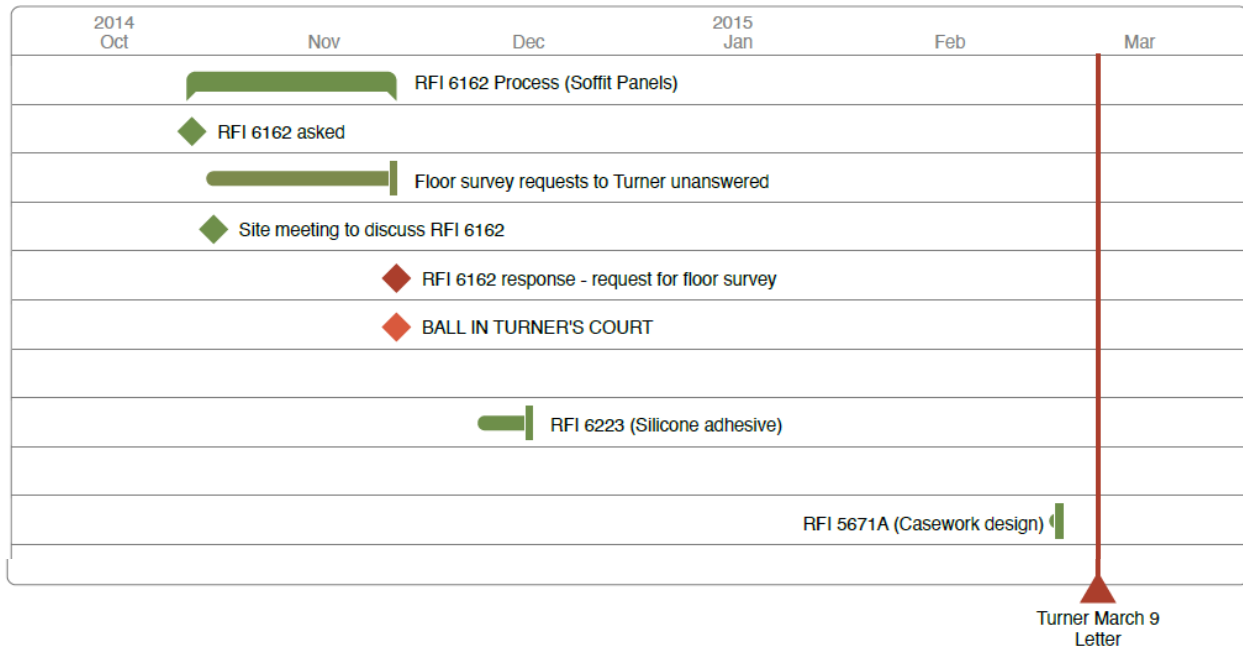


The architect submitted ACD 742 to OSHPD on February 19, 2015 and provided Turner with a preview of the design. The solution in the coming ACD 742 does not have widespread application and cannot be said to be holding up work in any other area.

(E.) Future Casework

The three documents Turner referenced as relating to this issue (RFI5671A, RFI 6162, and RFI 6223) each relate to a separate issue. None are impediments to any current work activity and were not at the time of Turner’s March 9, 2015 letter. This is future casework.

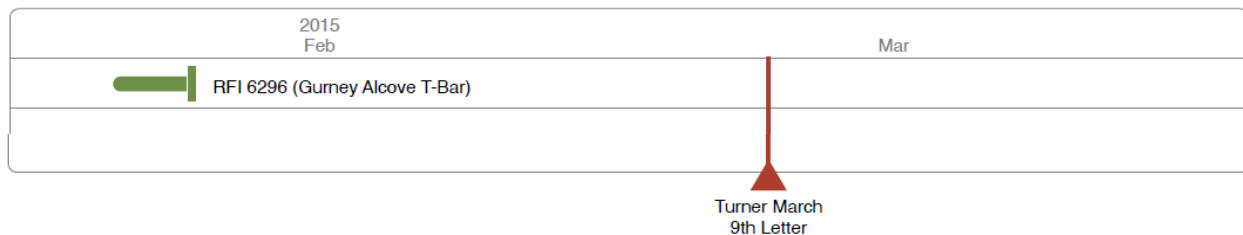
Timeline. The three items related to this issue were answered by the date of Turner’s letter. Information from Turner remains outstanding.



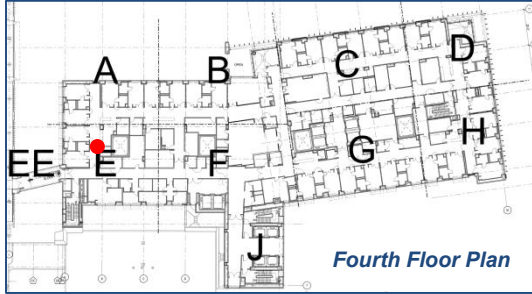
5. Turner’s Letter Contains No Justification For Holding Up the Work on the Fifth Floor (Gurney Alcove)

These were minor questions regarding certain details for the T-bar ceiling system. They were easily and quickly resolved well before Turner’s March 9th letter. One of the items affected only a small interior room. The other was an issue that Turner needed to resolve with the product manufacturer.

Timeline



Location



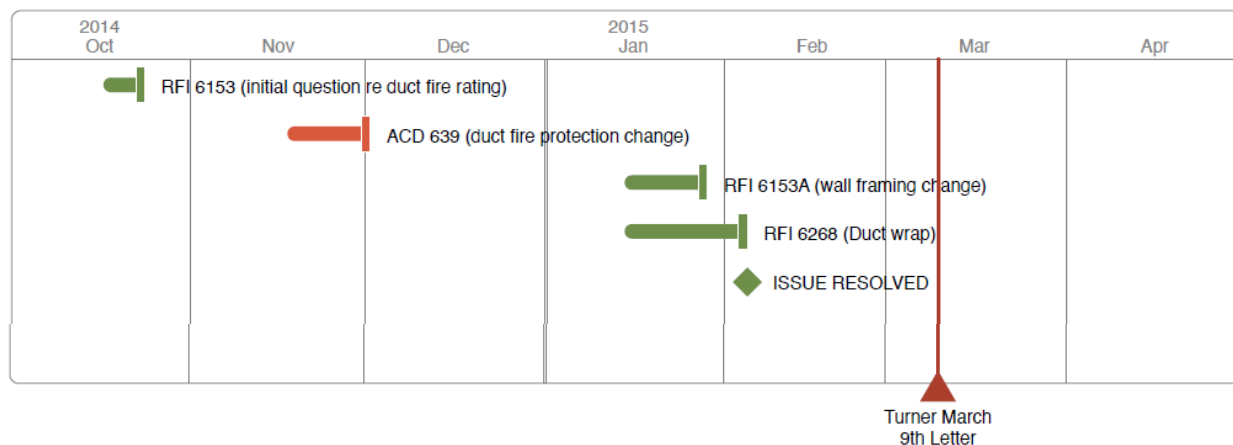
Discussion

RFI 6296 relates to a very isolated location at the 5th floor Gurney Alcove (4AA03). Turner asked whether the 2 inch angle for the ceiling tile, as shown on the OSHPD approved drawings was correct, and the design teams' answer was "yes". This RFI response was approved on February 9, 2015, but the County wonders why the question was asked in the first place, since the drawings were clear.

6. Turner's Letter Contains No Justification For Holding Up the Work on the Sixth Floor (Linen Chute)

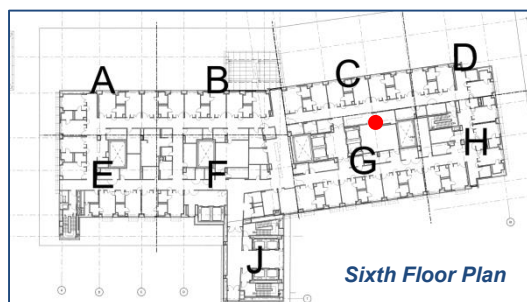
This is a minor issue related to the linen chute on the sixth floor. This issue was caused by a Turner mistake and is a limited issue that has no effect on the patient rooms. It was fully resolved prior to Turner's March 9, 2015 letter.

Timeline. This item was resolved before March 9, 2015.



Location. The Linen Chute (6AS01) is located in the interior core of the building, near the main elevator banks.

Discussion. The linen chute in question is located in the interior of the building, between the Soiled Utility Room (6A118) and a General Storage Room (6A159). The chute acts like a chimney because it runs vertically through the floors of the building. To minimize the risk of fire passing through the floors through the chute, it must be enclosed in a shaft wall with a 2-hour fire rating.



Because Turner framed the surrounding areas too soon, it could not fit the two-hour drywall required for the shaft. The County and OSHPD assisted Turner by permitting a different method (fire putty).

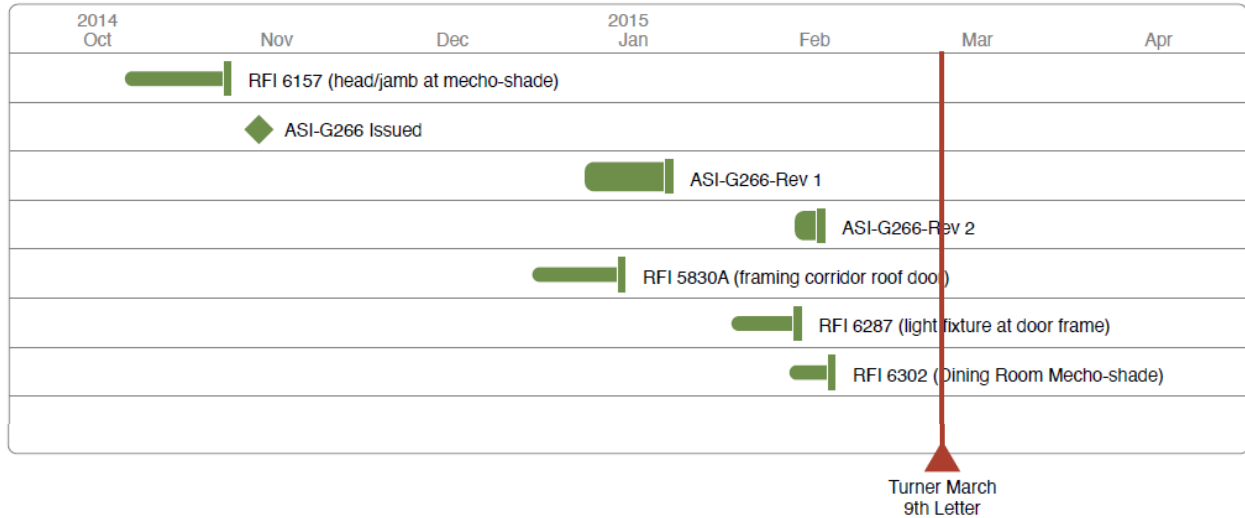
Conclusion.

Turner caused the linen chute fire rating issue and the County and OSHPD assisted in the solution. The linen chute framing did not affect any other areas of the building except for an isolated location.

7. Turner’s Letter Contains No Justification For Holding Up the Work at the End of the Hallways (3’ x 5’ Access Doors and Window Shades at the End of Hallways)

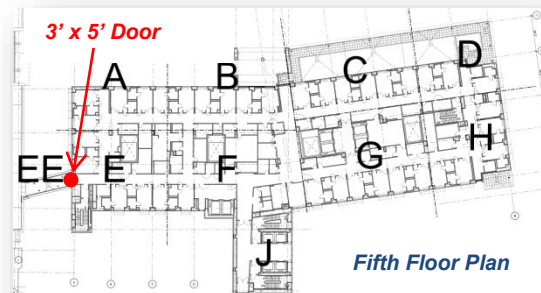
This is a collection of small issues at the end of hallways. None involved the patient rooms and none prevented widespread work on the project. All of the issues cited by Turner were resolved before its March 9 letter.

Timeline. All of the components of this item were resolved before March 9, 2015.



Location. Each item has a discrete location, as discussed below or shown on the floor plans.

Discussion. Turner cites several RFIs, ASIs, and a change order request as part of this issue. Each of these is limited in scope and represents an isolated location, and none are holding up work in other parts of the building.



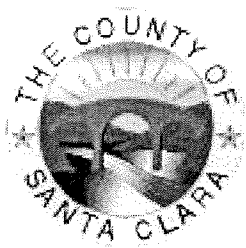
RFIs 5830 and 5830A address an area near the fifth floor corridor (5AC09). At this location, there is a door that provides access to the roof. The door sits on a sill and is used only for maintenance access to the roof area. Turner had questions regarding the wall framing around the door at this passageway (RFI 5830), and later had follow-up questions (RFI 5830A). The architect provided responses to RFI 5830A on January 12, 2015, and the IOR concurred two days later. The solution to this issue was very localized and did not prevent work in other areas of the Bed Building.

RFI 6287 involved an isolated issue in the same location. The hallway lights at the fifth floor corridor passageway (5AC09) door required a soffit to work with the door at that

location. Turner submitted the RFI on February 2, 2015, and the architect provided a response on February 12, 2015 with a sketch showing the correct construction method. This was not an issue that would have prevented work in other areas of the Bed Building.

RFI 6157 and **ASI G-266 / G-266R1** address the deletion of the mecho shades at the end of certain corridor locations. The RFI was asked on October 21, 2014, and answered on November 6, 2014. In the RFI response, the architect referred Turner to two details in the permitted drawing set that would be used to complete the work around the areas where the mecho shades were deleted.

ASI G-266 was issued on November 12, 2014 and concurred by OSHPD on November 13, 2014. Clarifying details were added in revision 1 on January 8, 2015, and the specification revisions were issued on February 13, 2015, but Turner had more than sufficient information as of the November 13, 2014 ASI to understand and plan for the work. The issue was fully resolved by the date of Turner's March 9, 2015 letter, and as noted, these are several locations where this situation occurs, but they do not justify Turner not performing work in other areas of the Bed Building.



County of Santa Clara

Facilities and Fleet Department
Capital Programs Division

2310 North First Street, 2nd Floor, Suite 200
San Jose, California 95131-1011
(408) 993-4600 FAX (408) 993-4695

DC#BB1-15164

February 26, 2015

Turner Construction Company
1111 Broadway, Suite 2100
Oakland, CA 94607

Attention: John de Ruiters
Vice President

Subject: **Demand for Satisfactory Performance Under Section 2.03.A of the General Conditions of our Contract; Demand for Adequate Assurances of Performance**

Dear John,

The work of the Bed Building continues to languish. Sub-contractor staff on-site is at alarmingly low levels. There is substantial available work throughout all floors; yet the work sits idle without subcontractor crews to perform the work. Turner's recent construction schedules indicate that Turner plans to continue this slow progress on a going-forward basis.

This lack of progress is not acceptable to the County. The lack of subcontractor staff is not acceptable to the County.

Turner's schedules show the Bed Building project as seriously delayed and that the delay is getting worse with each passing month. Our Contract Construction Milestone completion date is September 19, 2015. Turner's most recent construction schedule shows this Milestone completion date as Sept 9, 2016 - almost a year late. More alarming is the fact that, since the start of this calendar year, Turner's schedules have shown the delay accelerating at a rapid pace as Turner has added three months of this delay into its schedules in January and February alone. This forecasted delay is unnecessary and unacceptable and supports the inference that Turner will not meet the actual contract completion date.

In the face of these continuing delays Turner has taken no steps to provide the County with realistic justifications for delay that are grounded in the actual facts of this project. Our Contract has very specific methods and formats for Turner to use to provide legitimate reasons for construction delay. Turner has made no attempt to comply with these requirements to justify any of these delays or reduced staffing. Turner has instead written

Demand for Performance
Santa Clara Valley Medical Center Seismic Safety Project
Bed Building No. 1
February 26, 2015

letters and given piece meal notices that avoid the issues, when what is called for is for Turner to follow the Contract and build the project.

In fact, comparison of Turner's recent/current schedules to the baseline schedule in Change Order #406 indicates an intentional element to these delays that reflect Turner preferences for progress, staffing and cash flow. (By way of example, Turner repeatedly shows construction tasks taking much longer than necessary and illogical sequences of construction tasks that have the effect of showing later completion dates than necessary).

Turner's actions are even more troubling when we consider the fact that Turner is well aware of the County's need for this project. In addition to the beds in the Bed Building, this project will allow the County to gain another 32 acute care bed spaces in its acute care facilities that are currently blocked for isolation procedures, and further, this project will allow the County to start construction of its new Emergency Room (that cannot start until the nursing facilities in the Bed Building become operational.) Turner's forecasted construction delays could impact these additional beds and construction of the Emergency Room on what will likely be a day for day basis.

Turner is also well aware of its agreements and promises in our Contract that it has not followed and is disregarding. Regarding the subject of this letter, these include Turner's promises: to provide an adequate workforce; to meet its schedule milestones; to perform the Work timely; and to complete the Work in the most expeditious, economical and thorough manner consistent with the interest of the County; to provide the County with contemporaneous information and analysis regarding any claims or delays, and to request time extension if justified and how to do so; and to prosecute the Work diligently and to meet all requirements of the Contract.

In many letters and e-mails the County and URS have advised Turner of unexcused construction delays and demanded recovery schedules and improved progress. Yet Turner persists in understaffing the work and forecasting unnecessary construction delay. The County and URS have also provided Turner with many letters and notices that document Turner's failures in site management, scheduling and quality control in the Bed Building, and the resulting excessive and unexcused construction delays. The County and URS have responded to Turner's schedule assertions and schedule updates. While I need not recite all of these letters here I refer you to the following examples of correspondence I have sent to Turner on the subject of the patient rooms overall project progress (or lack thereof):

- January 28, 2014 Serial 13530
- August 5, 2014 Serial 14312
- September 6, 2014 Serial 14465
- My e-mail of January 28, 2015 regarding open above-ceiling inspections
- January 29, 2015 Serial 15070

A key example here and a subject of many the letters I reference is Turner's lack of progress in the patient rooms, corridors and supporting areas of the Bed Building. Change Order 406 dated September 3, 2013 attached a Turner schedule update as the Contract's new "Official

Project Schedule" and states that "Contractor warrants . . . the dates shown are ones the Contractor reasonably believes can be achieved." This schedule showed the separate work activities and the specific dates and a timeline for each activity to close up the walls in all of the patient rooms and corridors, drop the ceiling tiles, install doors and hardware, throughout all seven floors of the Bed Building and the basement of the Bed Building. The schedule showed all of this work completed on a rolling basis with -

- the 3rd Floor and 4th Floor in January/February 2014;
- the 7th Floor in February 2014;
- the 5th Floor Acute care in February/March 2014;
- the basement in March/April 2014; and then
- the Lobby Link, 1st Floor, 2nd Floor ICU and 6th Floor Acute care in April 2014.

The work was straightforward and largely repetitive and a reasonable contractor would have supervised this work and completed this work without incident, on schedule and without excuses. For reasons known only to Turner, it did not supervise its subcontractors and the work went from one embarrassing error to another – sometimes the errors were repetitive of errors made in prior years such as zone of influence, sometimes the errors went to basic hospital earthquake safety requirements such as bracing of utilities, and sometimes the errors were just basic code errors and quality control such as the size of the medical gas piping. The errors continue and the delays continue and now the subcontractors have reduced their work forces and progress has nearly halted.

For these reasons, the County is now compelled to provide this letter under Section 2.03.A of Document 00 70 00 (General Conditions) of our Contract. The County is formally demanding satisfactory compliance with the requirements of the Contract Documents as provided in Section 2.03.A. This letter shall also serve as the County's written notice under Section 2.03.A that Turner (1) has failed to meet its agreements in our Contract, (2) has failed to maintain a work program that will ensure the County's interest as agreed in the Contract, and (3) has failed to carry out the intent of the Contract.

The County is further compelled to provide Turner with this notice of the County's reasonable belief that Turner is in material breach of its Contract duties listed in this letter and that Turner is taking no steps to improve or correct this material breach. By this letter, the County is requesting that Turner provide the County with reasonable and adequate assurances of performance and its plan to correct its performance to meet its contract obligations. The County provides Turner with notice of the County's right to find material breach in the event that adequate assurances are not forthcoming, consistent with the terms of the Contract Documents.

This letter is limited to the Bed Building. Regarding the North Utility Loop including the VC-1 start up work, the County has provided Turner with a separate letter.

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Demand for Performance
Santa Clara Valley Medical Center Seismic Safety Project
Bed Building No. 1
February 26, 2015

In closing, the County reiterates its many letters to Turner regarding these subjects and refers Turner to these letters and refers the performance bond surety to these letters that Turner can provide. The County requests that Turner provide the demanded adequate assurances within 10 calendar days of the date of this letter, to be followed by a meeting with Turner and its performance bond surety on the site to review Turner's plan to complete this severely delayed project. The County regrets this letter is necessary but has exhausted all other options available short of commencing the contract procedures it is now commencing.

Sincerely,



Ken Rado
Owner's Authorized Representative

CC: Abhi Gupta, Turner Construction
Travelers Casualty and Surety Company of America
Federal Insurance Company
Fidelity and Deposit Company of Maryland/Zurich American Insurance Company
Liberty Mutual Insurance Company

SCVMC Replacement Bed Building

Project # 1565401
 950 S Bascom Avenue #3010
 San Jose. CA 95128

Telephone: 408-648-4110 Fax: 408-648-4149

Transmittal

Cover Sheet, Detailed, Grouped by Each Transmittal Number

March 09, 2015

Date: 3/9/2015 **Transmittal No: 8836**

Transmitted To	Transmitted By
David Wilson URS Corporation 751 S. Bascom Ave. San Jose. CA 95128 Tel: 408.885.3378 Fax: 408.885.6002	Patty Heredia Turner Construction Company 950 S. Bascom Ave. Ste# 3010 San Jose. CA 95128 Tel: 408.648.4134 Fax: 408.648.4149

Acknowledgement Required

Package Transmitted For	Delivered Via	Tracking Number
Information. Review	Hand	

Item #	Qty	Item	Reference	Description	Notes	Status
001	1.00	Letter	SCVMC	TCCO Letter dated 03/09/2015 regarding Article 2.03A Letter (BB1-15164)		Sent

Cc:	Company Name	Contact Name	Fax Number	Copies	Notes
	Turner Construction Company	Abhishek Gupta	408-648-4149	1	
	Turner Construction Company	E.J. Saucier	408-648-4149	1	
	Turner Construction Company	Fred Rubis	408-648-4149	1	
	Turner Construction Company	Turner VMC	408-648-4149	1	
	URS Corporation	Diane Lagos	408.885.6007	1	
	URS Corporation	Document Control	408-885-6002	1	
	URS Corporation	Irma Neira	408-885-3262	1	
	URS Corporation	Jeff Draper		1	
	URS Corporation	Ken Rado	408-885-3262	1	
	URS Corporation	Lena Ng	408-885-6002	1	

Remarks

Mr. Ken Rado
c/o Mr Dave Wilson.

Please see enclosed SCVMC TCCO Letter dated 03/09/2015 regarding Article 2.03A Letter (BB1-15164)

Regards.
Patty Heredia

File: 00230

Patty Heredia

03/09/2015

Signature

Signed Date



Turner Construction Company
SCVMC Replacement Bed Building
950 S Bascom Avenue #3010
San Jose, CA 95128
phone: 408-648-4110
fax: 408-648-4149

March 9, 2015

Mr. Ken Rado
c/o Mr. Dave Wilson
URS Corporation
2400 Clove Dr.
San Jose, CA 95128

RE: SCVMC Replacement Bed Building – 1565401

Subject –Article 2.03A Letter (BB1-15164)

Dear Ken,

We have received your letter BB1-15164. Turner is pleased to hear that the County has an urgent need for this project, as the past history as well as the County's current attitude and actions suggested otherwise to us. In the past we perceived that we and our subcontractors were the only parties concerned about getting this project completed expeditiously. We are tempted to recite a history of this project and the extensive delays already acknowledged by the County to be its responsibility, in addition to those not yet so recognized, however to do so would divert attention from responding to the premises of your letter related to the current status of the project and our performance in respect to that status.

We respectfully reject the basic premises of your letter, including the allegation that the project suffers from "alarmingly low levels" of manpower. Turner and its subcontractors are working expeditiously, manning the project adequately and performing available work in a logical and appropriate manner. Your general statements suggesting otherwise make it difficult to respond, as you do not identify which work you claim is undermanned or available and not being performed. We will attempt to respond nonetheless, and to correct the County's misperceptions.

Regarding manpower concerns, recently the County complained that there were only 20 tradesmen on the project on a particular day when in fact there were actually 180 personnel onsite and working that day. Therefore, the absence of specific information in your letter has us wondering if your assertion of inadequate manpower is based upon such false information or otherwise.

In regard to Turner's own manpower, please be advised that it continues to be far and above that which was anticipated and/or should be required for a project of this magnitude at this stage of completion. We have discussed this fact with you on several occasions.

In regard to subcontracted trade labor, we believe that the manpower in the field continues to be appropriate to the availability of continuous constraint-free work. As you are aware, our subcontractors have been providing manpower to this project over a period of six years. During that extended period of performance they have repeatedly added or mobilized manpower to perform available work only to have to demobilize or reduce forces when the many obstacles of this project made it impossible to continue the pace of the work. This situation has happened time and time again and the same situation presents itself now. The result of this history, combined with the current status of available work, requires that the trades pace their work. Sometimes pacing leaves the impression that there is work available that is not being performed when in fact, given the realities of the open design issues, open inspection issues and open OSPHD issues, the manpower is appropriate to the available flow of work. Thus, what may appear to you as specific areas of

work not being performed due to inadequate manpower is in fact an appropriate response to the larger picture of available work. If the County wishes to authorize that our subcontractors perform a limited available area of work without the ability to continue to perform additional work upon completion due to the unavailability of adjacent work, the cost of performance to the County under those circumstances will be increased. We respectfully remind you that Turner has long been notifying the County about the inability to prosecute the work in the logical and continuous flow originally planned. These requests have been made for months and even years. The fact is that on this project there are multiple constraints operating at any given time which have prevented the ability to efficiently man the project. Currently and/or since year end, these constraints include:

1. **NE Terrace Patient Rooms** (Issue: 133 days old and counting) (Issue includes: RFI 6160: asked 10-23-14, answered 10-27-14. This was a confirming RFI based upon a field coordination walk with Stantec. Received Non-Actionable Answer; RFI 6160A: asked 10-30-14, answered 12-16-14: "ACD 742 required"; ACD 742: still open. Design Team sent ACD to OSHPD without design completed; ACD 763 is needed for the curtain wall scope; ACD 763 is on hold until we get the approval of ACD 742
2. **Linen Chute Rating on L6** (Issue includes: RFI 6153: asked 10-17-14, answered 10-23-14, Received Non-Actionable answer; RFI 6153A: created by URS 1-14-15, answered 2-18-15; RFI 6268: created by URS 1-15-15, answered 2-4-15; ACD 639: approved on 12-2-14, but will not work without modifications
3. **RCP's for hard lid Ceilings on L3-L6** (Issue includes: RFI 6147, ASI G-271, RFI 6175)
4. **End of Corridor Conditions** (Issue includes: RFI 6287, RFI 5830, RFI 5830A, RFI 6302, RFI 6157: asked 10-21-14, answered 11-7-14 "ASI G-266 required"; ASI G-266 approved 11-13-14, but had drawing discrepancies; ASI G-266R1 approved 1-14-15, but didn't have updated specs; ASI G-266R2 approved 2-17-15; COR 778
5. **Lobby Link Fire Sprinklers** (Issue includes: ACD 363)
6. **Patient Lift Transformers** (Issue includes: ASI G-314, ASI G-314R1, RFI 5905, RFI 5905A, Added Access Panels)
7. **T-Bar Ceiling Redesign** (Issue includes: ASI-G-012, RFI 6296, RFI 5938)
8. **Pivot Furniture Electrical Design** (Issue includes: RFI 6093, ACD 756, COR 756, CO 733)
9. **Casework Design** (Issue includes: RFI 5671A, RFI 6162, RFI 6223)

Where there is work that is ready and appropriate for prosecution, we are proceeding. Where, however, design information and/or County direction are lacking, we are not able to proceed. And when the latter-referenced impediments are removed, it takes some time to redirect forces. As an example, perhaps it would be useful to refer to the New Bathroom Mock-Up (which was the subject of the County's March 3, 2015 BB1-15187). Please note the following chronology:

January 22 – County issues email direction to perform a second mock-up

January 22 – Turner requests formal direction pursuant to the Contract (i.e., a UCO), including specific direction regarding the complete scope of the work to be performed and acknowledgment that the County directs that the work is to be performed prior to the required OSHPD approval of relevant design changes

January 22 – UCO issued for added mock-up (directing TCCO to proceed without OSHPD design approvals)

January 23 – Turner advises the County that the UCO is non-actionable due to the fact that the scope of work was improperly described; County advises that a revised UCO will be provided on the 26th

January 27 – UCO issued (again, directing TCCO to proceed ahead of OSHPD design approvals) adding to the scope of work and clarifying details

January 28 – SIS (Subcontractor direction from Turner) issued

February 3 – Submittal provided to County (5 workdays later...not 12 as County-claimed)

February 4 – Submittal Approved

February 8-12 – Field review to clarify scope (County claims that "no work was performed," but fails to understand that field review and coordination is part of the work)

February 11 – County letter regarding lack of progress

February 13 – Turner formally requests clarification of scope based on field review

February 17 – County further clarifies scope (added third wall of under-tile floating, but does not revise the UCO)

February 18-22 (Subcontractor mobilization, procurement and coordination) (County claims that no work is performed, and that procurement could have been performed faster)

February 23 – Physical work begins

The point of this chronology, and reference to the County's version of the same in its letter, is that the County claims Turner is responsible for a month of delay due to this issue, but the majority of the time represented was spent seeking and obtaining County direction and/or performing necessary preparatory work. The County, however, starts "counting days" when it thinks Turner should start working, while not acknowledging that Turner cannot start working until provided with complete and clear direction, and necessary preparatory work is performed, so that the construction activity can proceed properly, efficiently and completely. We also remind the County that the delays it erroneously attribute to Turner have occurred now, in 2015, in respect to this Bathroom Mockup, but the issue (the need to float walls due to uneven surfaces in the design) was brought to the Owner's Architect's attention several years earlier, only to be shelved as a result of competing priorities. Had this issue been resolved earlier, there would have been no need to be dealing with it now, over three years after Permit receipt. It also bears noting that as of today, and while Turner is proceeding as directed, a revised UCO has not been issued reflecting the full scope of work to be performed in the mock-up. Additionally, despite three years of County positioning regarding the strict requirement of OSHPD approvals prior to all field work, this work is and has been directed and is proceeding ahead of relevant OSHPD approvals.

We are rather struck by the County's statement that this project is a rather simple, straightforward forward project of repetitive work. Indeed, that was the project we contemplated when we contracted to perform this project. That is, this project is just a bed building—not a full hospital. There are no operating suites, no imaging centers or anything else of the like. That said, the reality is that this project has become anything but a simple project, as evidenced by more than 3 years of time extensions, more than 7500 RFIs (Requests for Information), nearly 800 ACDs (Amended Construction Documents—material change approvals from OSHPD), over 300 ASIs (Architect's Supplemental Instructions), over 1000 Notices of Impact and/or Delay and over 750 Change Orders (~250 of which were for Force Account work via Unilateral Change Orders, or UCOs). Accordingly, the County's Director of Facilities, Jeff Draper, in presentations last Spring to the Board of Supervisors, reported that the design of this project was indeed complex and was delayed by several factors, all of which are beyond Turner's control (See attached dated May 16, 2014). For example, given the many differing configurations of the patient rooms throughout the Project, often more than dozen "typical" conditions exist for a given design/construction element. When, as was the recently the case with sink/counter/cabinet dimensions, the County provides a design change/clarification as to one typical condition, but does not follow-through as to the others, progress suffers as time is taken to seek and obtain the same design information as to other relevant conditions. When this happens time and again, the Project suffers and the "repetitive" simplicity perceived by the County instead becomes an exercise in non-continuous operations coupled with dead-stops as work is simply not available.

There are other statements in your letter that should be addressed in the interest of accuracy:

Turner denies the County's allegations that Turner has failed to provide the County with required and/or proper notice and information regarding Project delays. The reasons for lost time have been tracked and reported to the County on a regular basis. The County levels a broad and general accusation that Turner has not followed the contract and/or has disregarded its obligations in many respects. This general accusation is denied, particularly with respect to notification of delays. Earlier in the same letter, the County decries Turner's piece meal notices. What the County fails to note is that the terms of the Contract require the iterative delay and impact notification process, with which we have abided. Moreover, the County fails to acknowledge that the Contract's reporting requirements are most appropriate for singular, isolated and non-recurring delays and impacts, where on this Project endemic, repeated, and pervasive impacts and delays both on and off the primary critical path have been the norm. In that respect, Turner has been continuously and repeatedly challenged to abide by the terms of the Contract, which call for certain reporting and analysis at the end of a particular delay, given a reality that the systemic delay and impact never ends...it just skips from one locus to another...it is often impractical and illogical to provide notifications and analysis in the manner described in the Contract. The County cannot be heard to say that they are not aware of the impacts and delays to the Project; this much is certain. Project delays have been reported to and discussed with the County in detail in bi-weekly schedule

meetings, bi-weekly job walks, and at least weekly Critical Issues List meetings, and are reported on in Monthly Reports, in weekly Constraint Logs and in weekly Impact and Potential Delay Logs. In addition to these meetings and reports, Turner provides the County with upwards of 30 different reports related to the Official Progress Schedule on a weekly basis. If the County doesn't know how the Project is being impacted, such is not the fault of Turner's reporting; it is due to the County's failure to pay attention to that reporting.

The County's various and continued failures to provide a complete, buildable and permitted set of Contract Documents and timely, consistent and appropriate direction, has had the result of destroying the as-planned Critical Path reflected in the Official Progress Schedule. Nevertheless, Turner has persevered, and has managed to keep the Project moving as much as was practicable under the circumstances. Among the reasons for additional lost time, as reported and discussed with the County throughout the period of April 2014 through the end of last year (and including the 8-18 most critical Activities and/or paths of the Official Progress Schedule) are the issues and areas of impact identified in the attached Multiple Critical Path Status by Month (April 2014 through January 2015). Although a full analysis of these multiple critical paths is beyond the scope of this letter, as you know or will see, the ability of the project to move forward as planned has been constrained on multiple fronts, with multiple schedule activities 'riding the data date' awaiting issue resolution.

The County also states that Turner has "taken no steps to provide the County with realistic justifications for delay...". This statement is not correct in the extreme. In making this statement the County has ignored and denied the existence of every discussion, correspondence, meeting, demonstration and presentation from Turner to the County regarding project Delays. The County apparently has taken the position that where the County disagrees with materials provided or positions taken by Turner, the submissions or discussions never happened. The fact is that Turner has and continues to keep the County apprised of potential and current schedule-impact issues, and actively attempts to avoid schedule impacts wherever possible. The examples of this effort, however, are hundreds (thousands) of emails, letters, meetings, phone calls and discussions over the past several years, the cataloging of which serves no purpose except to prove the obvious, which is that the County's accusation is grossly overstated.

The County criticizes Turner for an alleged lack of contractual notice, and then proceeds to criticize Turner for providing the very "written letters and piece meal notices" required by the contract that the County's ignores having received. Turner is confident that the County's Authorized Representative has been kept up to date as to all Delay issues. The problem on this project has never been that the County didn't know what was going on. The problem on this Project is that the County either could not or would not do what was necessary to address the issues at hand. As a direct result, issues of incomplete design, inappropriate IOR practices and OSHPD overreach have gone both unchecked and unappreciated by the County, who is contractually liable for all of the actions/inactions of the architect, IORs, CM, and OSHPD, none of whom have any tangible motivation to keep this project on schedule.

You make several statements alleging that Turner has added unnecessary delay into the schedule, that the schedule has been manipulated by Turner to facilitate cash flow and lower staffing levels, that durations are too long for some activities, that the schedule suffers from illogical sequences showing later completion than required and that URS and the County have demanded recovery schedules due to "unexcused delays" and that Turner has not provided them. These statements are not correct.

First, we note that our schedule has been updated, adjusted, resequenced and reworked repeatedly not because it suits our needs, but because it is necessary in response to the County's issues. When work is suspended pending design changes, pending confirmation of prior changes omitted from the permit, or where the design is being challenged or reinterpreted by the IOR and/or OSHPD, the planned work is impacted and the schedule must be adjusted. This occurs whether the cause of the issue at hand is the County or Turner's own forces; work sequences and locations are adjusted and reflected in the schedule in an attempt to keep construction forces active and the job progressing, and to minimize or avoid the potential delay impact. This is not "manipulation"...this is schedule management. It is not done behind closed doors; the County is at the table every step of the way via weekly Owner Architect Meetings, Bi-Weekly Schedule Meetings, via Monthly Reports, and through multiple ad hoc and other meetings on and off the jobsite.

Second, the durations of Activities are established based on historical expectations. For instance, one might have assumed that RFIs to the Architect would be few during construction and would be answered within the contract-required 14 days. Instead, over 3200 RFIs have been required since issuance of the increment 4 Permit (11/1/11) and

RFIs routinely require approximately twice the contract-required response time, particularly taking into account added OSHPD review/concurrence requirements. As a result, when Turner schedules work being added into the schedule, it is reasonable to forecast based on the latter, rather than the former, expectation. Moreover, all Revisions to the Official Progress Schedule are submitted to the County in accordance with the Contract. If the County wishes to challenge or shorten durations, the County is always welcome to question them directly and to provide evidence that past practices and experience are not indicative of what we are to reasonably anticipate as we move forward.

Third, the County has indeed requested recovery schedules many times on this project, and where appropriate, Turner has adjusted the schedule to overcome/mitigate discrete delays. The problem is that the County is quick to demand recovery schedules assuming Turner fault, and very slow to accept County responsibility and/or assist in the recovery of lost time. Turner understands its responsibility to provide and implement recovery schedules. Turner's commitment to recovering lost time, regardless of the fault or cause of the delays at issue, is evidenced in Turner's weekly revisions to the Official Progress Schedule. Through these revisions, which are presented to and discussed with the County on at least a bi-weekly basis, Turner adds/modifies sequencing and activities, and determines and employs work-arounds where appropriate and feasible to avoid, mitigate and/or recover critical and non-critical delay. The problem on this project has been that the number of simultaneous constraints has resulted in multiple critical paths and multiple critical path delays, the resolution of one or more of which, in isolation, does not clear the project of the necessary constraints so that all impact can be recovered. Moreover, Turner is only one party on the Project; in order for effective recovery schedules to be determined and/or enacted, there needs to be collaboration on multiple fronts, including the County, CM, IOR, and AOR, which collaboration has not been forthcoming.

In its letter, the County makes mention of and quotes a phrase from Change Order #406, which states that the "Contractor warrants ... the dates shown are ones the Contractor reasonably believes can be achieved," but presents the phrase incompletely and out of context. The County apparently seeks to hold Turner to some sort of guaranty that the forecasted dates in the Change Order #406 schedule would be achieved. The actual language, however, was that the "Contractor warrants that the Schedule Revision provided as Attachment "A" represents Contractor's best information as of the data date indicated on the Schedule Revision, regarding necessary activities, their duration and appropriate logic ties, and the dates shown are one's that Contractor reasonably believes can be achieved." First, Change Order #406 did nothing to resolve Project issues delaying the work; all it did was acknowledge delay and provide partial compensation for past impacts. Second, this Change Order was signed in September 2013 and the referenced Schedule Revision had a July 1, 2013 data date. By September 2013, additional unresolved delays were impacting critical paths of the Project between 43 and 101 days (See September 2013 Monthly Report and Schedule Narrative, Schedule Revision 190). As such, Turner cannot be held to have warranted that there was or would be no delay--delay had already occurred both on and off the critical path notwithstanding the Change Order #406 settlement of past time and cost issues. Further, Turner, who does not control the architect, the construction manager, the inspector of record, OSHPD, or the County, cannot warrant that these parties will not delay the work alone or in tandem. What Turner was acknowledging was that the schedule was appropriate given the work required to be completed, assuming the availability of that work when required, and assuming reasonable oversight and support from County managed and/or liable parties. In the ensuing months, however, issues that had previously been delaying the work continued to impact and delay the Work, impacting durations and sequencing throughout the building and Project. In addition to this, the County soon after removed a 2 year suspension on the Pharmacy, leading to the need for late-stage design efforts, coordination, and approvals, which was eventually acknowledged by the County as adding 270 days to the Project schedule (see Change Order #541, April 30, 2014, relative to the Pharmacy impact and other critical and sub-critical Delays).

It is further notable that as of March 2014, the County and Turner had agreed to several measures that Turner suggested and the County agreed were necessary to provide for increased efficiency, manpower, and production throughout the project. Unfortunately, these agreements were part of a larger agreement that the County failed to ratify, which failure resulted in the efficiency agreements being either delayed in implementation and/or not being implemented (See March 13, 2014, Deal Points for Priority Wall Delay). The biggest of these agreements, which the County failed to thereafter ratify, regarded a deal that would have provided Turner's trade subcontractors with sorely needed financial relief for costs incurred due to County-acknowledged delays. Also included were specific agreements to provide timely payment under the Contract, increase IOR staffing, speed up RFI and Submittal turnaround, establish special meetings to address and resolve field issues more quickly and special work sessions with the AOR to improve turnaround times, expedited resolution of Change Order Requests, increase AOR manpower, improve the communication flow between the IOR

and DBC designers, and improve/enhance the inspection processes (the latter of which was identified and agreed to as "the most critical item that is dragging the project completion"). The County's delay and/or failure to live up to these agreements impacted the Work, Turner and its Subcontractors, and led, in part, to the issues of which the County currently complains.

Throughout your letter you use the phrase "[a]s Turner is well aware" and then go on to state positions that you know Turner rejects. Perhaps what is more disturbing about the use of the phrase is that the County might actually believe the positions to be true. Just by way of example, you state (in regard to purported lack of progress in patient rooms) that "the work was straightforward and repetitive and a reasonable contractor would have supervised this work and completed this work without incident, on schedule and without excuses." You then go on to talk about certain "errors" by Turner's subcontractors and Turner's supervision that are the reason, one would suppose, for whatever lack of progress did occur in patient rooms. The very next paragraph says that the County is invoking Article 2.03A which we all know is the "default" provision of this contract giving the County the right to terminate our contract. You know very well why the patient rooms have not progressed in accordance with the original contract schedule and for the original contract price and the cited "embarrassing errors" are not the reason. See below, which is a summary of the major delay/disruption causing design issues, changes, and direction since issuance of the Increment 4 Permit in November 2011, as of which the design should have been complete and buildable:

Issue	Number of ACDs	Number of ASIs	Number of RFIs	Number of CORs	Number of UCOs	Number of FMs	Total Number of Documents
ACD 320	6		9				15
ACD 330	4						4
Amico Boom	5	1	2	2	3		13
Ante Rooms	1	3	4				8
ASI G225	1	1					2
Casework		16	22				38
Ceilings		8	20				28
Corridor Walls	10	20	22				52
Deck Support Steel	7	1	19				27
Duct Access Panels		4	10		2	1	17
Footwalls	6	14	38				58
Framing	11	11	71				93
Headwalls	11	14	33				58
IDF Rooms	12	6	29				47
Interior Wall Termination	10		15				25
Level 1 Admin	1					2	3
Patient Bathrooms	4	3	32				39
Patient Lifts (from schedule updates)	1		3				4
Patient Lifts (from Turner mockup log)	11	4	76			2	93
Stairwells	29	8	91				128
Window Wall / EOS	7	2	23				32
Total:							784

Notwithstanding these challenges, Turner has been trying to expedite completion (which is not only better for the Owner, but it is better for Turner and its subs also). This, however, has been met with a lack of cooperation from the Owner and constant challenges, well known to the Owner, and with repeated impacts from the County's consultants, OSHPD and the IORs due to the failure of the County to control its designers. Some examples of this include:

1. The February 2012 OSHPD Stop Work Order, and subsequent threats of reinstatement, which was primarily the result of County AOR/IOR mismanagement, and the failure of the County's architect to provide for permitted documents that were buildable and matched the County-issued contract documents and/or the design as developed, agreed to and directed by the County.
2. The OSHPD RFI Concurrence process, which had been in force on this project since September 2011, despite there being no authority for the same, without any meaningful attempt by the County to either object to it or to recognize its repeated impact in delaying the delivery of design change/clarification information to the field.

3. The Mock-Up process, which has been dogged for years by design and IOR issues, and is only recently being appreciated and treated as what it is, a mock-up, so that designed work can be installed, tested, tweaked and refined before full scale implementation in the field. As recently as March 5, however, the Project IOR has threatened job progress by issuing a Notice of Non-Compliance to OSHPD regarding Mock-Up work installed by Turner at the County's direction (See NONC #100 and Turner correspondence dated March 6, 2015 regarding the same).

4. A multi-year history of RFI and Submittal turnaround times far beyond that required by the Contract and/or necessary to maintain scheduled progress.

Until 2012, we and the County dealt with the difficulties presented by this project in a cooperative way. We worked together to solve problems. Since the Spring of 2012, however, the tone and indeed administration of the project by the County has significantly changed. Instead of cooperation, there is a combativeness, almost to the point of gamesmanship, directed at us and our subcontractors, while the problems of this project within the responsibility of the County continue to result in unprecedented RFIs, ASIs, ACDs, etc. Imagine, since July 1, 2013 alone:

250 ACDs (Material Changes)

165 ASIs (Architect Supplemental Instructions)

1621 RFIs (Requests for Information)

254 NOIs (Notices of Impact and/or Potential Delay)

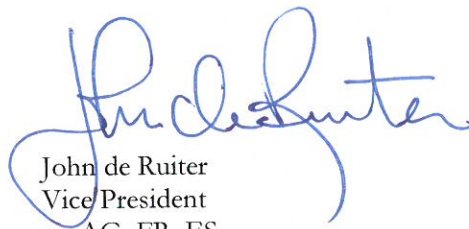
>300 Change Orders, totaling over **\$11M*** for added scope, including over **90/\$4M** Unilateral Change Orders for Force Account work (*excluding CO#406 for \$9.25M for Inc.3/4 Permit Delay and Patient Lift issues)

So much for a "straightforward and largely repetitive" project.

Despite what we consider to be the County's refusal to acknowledge the real sources of project issues that are within its responsibility and/or control, and the contentious attitude that we perceive in every email and letter, Turner and its subcontractors will continue to persevere and complete this project in the most expeditious manner that we can while adhering to the requirements of this contract. We look forward to meeting with and discuss these issues, and others of concern to the County, in the near future. Please contact me directly to set up a meeting at the County's convenience.

Sincerely,

TURNER CONSTRUCTION COMPANY



John de Ruiter
Vice President
cc: AG, FR, ES

Multiple Critical Path Status by Month-- Schedule Revision 218 through 255
(April 2014 to January 2015)

<p>REV 218 = April 2014 COR 614 / ACD 609 work / ACD 651 work (-73) ACD 651 & 563 dwgs / coordination (-67) ACD 563 delivery / re-mob and install (-59) RFI 5841 flashing design issue NE Terrace (-46) OH Elec Inspections / Crew Ties (-39) RFI 5817 Chase Wall Plumb (e&f) (-38) Drywall top down ongoing 6B (-25) Finish Chase wall Plumb level 4 (-24) Shaft 8 pending EJ / submittal 0017-078420-0 (-22) ACD 373 coordination with ACD 630 work (-20)</p>	<p>REV 240 = Sep 2014 Fire Sprinkler Rough Ins @ Hard Ceilings (-125) Elec Rough Ins @ Hard Ceilings (-120) Framing Hard Ceilings (-113) ACD 714 approval affecting 5B Framing of Hard Ceilings (-112) Corner Guard Roubh Ins are crew tied (-99) ACD 630 work (Impacted by ASI D36) (-98) MOP 031-R2 was introduced this month / Loop (-90) Pressure Test Cast Iron 1B (-90) Plumbing and Med Gas seismic in the Basement (-89) Drywall Corridors 4B (-88) Close up inspections @ rated corridor walls 3A (-88) Shaft 1 close up insp at levels 3 & 4 working down (-86)</p>
<p>REV 222 = May 2014 COR 614 / ACD 609 work / ACD 651 work (-83) ACD 651 & 563 dwgs / coordination (-81) ACD 563 re-mob and install (-71) COR 605 / Fab of Serp Soffit Frame (-47) Patient Lift Rail Install (-46) OH Elec Inspections / Crew Ties (-40) Finish Chase wall Plumb level 4 (-34) Shaft 8 pending EJ / submittal 0017-078420-0 (-31) ACD 330 Ductwork Fab (-30) ACD 330 Demo of Stainless Duct (-28) ASI 281 per RFI 5817 Chase Wall Plumb (e&f) (-19)</p>	<p>REV 243 = Oct 2014 Elec Rough Ins @ Hard Ceilings delayed by missing details (-140) MOP 031-R2 was rejected this month / Loop (-139) Fire Sprinkler Rough Ins @ Hard Ceilings (-134) Mock Up Room Bathroom tile (-133) warned it will get worse Shaft 18 close up impacted by FLSO (-125) Ongoing hard ceiling framing on level 5 (-124) Details missing for public bath steel level 1 (-120) Ongoing ductwork install in public bath level 1 (-117) Pressure Test Cast Iron 1B (-115) Shaft 1 close up impacted by FLSO (-115)</p>
<p>REV 227 = Jun 2014 Utility Loop Completion / LL (-168) ACD 609 work / ACD 651 work (-103) ACD 563 inspections (-85) ACD 710 approval / ACD 630 work on level 3 (-63) ACD 714 approval / Framing Hard Lids (-62) ACD 694 corner guard install / crew ties by area (-55) RFI 5779B req to finish chase wall plumb "e&f" (-54) Serp Soffit Fab (affected by ASI G 239) (-53) Rated Corridor Wall Close up Insp level 4 (-52) Patient Lift Rail Install level 5 (-52) RFI 5931 / flashing @ portal area (-51) RFI 5964 / sheathing N elev of Wwing (-48)</p>	<p>REV 247 = Nov 2014 Hard Ceiling Final Close up insp impacted by Elec Rough Ins (-156) Design efforts due to rejected MOP 031-R2 / Loop (-152) Elec Rough Ins @ Hard Ceilings delayed by missing details (-151) Fire Sprinkler Rough Ins @ Hard Ceilings (-146) Shaft 18 close up impacted by FLSO (-142) Shaft 1 close up impacted by FLSO (-132) Ongoing hard ceiling framing on level 4 (-131) ASI 309 approval (-130) HVAC Duct pressure testing Basement (-129) Utility Loop Phase 3.1 re-design (-128) Ongoing drywall level 1 (-128) New Design required for Hanging Shaft surrounding Shaft 1 (-126) Mech Piping Seismic Basement (-126) Level 1 public Bathroom (-125)</p>
<p>REV 232 = Jul 2014 Utility Loop Completion / LL (-103) COR 647 (Light Fixt. F59A change) / Mock up insp / Framing Hard Ceilings (-103) Mock Up Bathroom Punch list Elec Outlet issue (-101) ACD 630 added shaft wall process (-86) Phase 4 of Utility Loop (-83) RFI 5779B req to finish chase wall plumb "e&f" (-78) ACD 672 work / ACD 609 work / ACD 651 work (-77) Drywall patient Rm remaining walls 5B (-69) Corner Guard R/Is (-69) Med Gas Boom R/Is - Lvl 2 (-69) Shaft 1 Close Up (-66) Pressure test cast iron 4B (-63)</p>	<p>REV 251 = Dec 2014 Design efforts due to rejected MOP 031-R2 / Loop (-170) Hard Ceiling Final Close up insp 6A impacted by Elec Rough Ins (-167) Hard Ceiling Final Close up insp 6B impacted by Elec Rough Ins (-165) Shaft 18 close up impacted by FLSO (-165) Elec Rough Ins @ Hard Ceilings level 5 (-160) Fire Sprinkler Rough Ins @ Hard Ceilings level 5 (-160) Mock Up Room Bathroom tile (-157) warned it will get worse Shaft 1 close up impacted by FLSO (-155) Utility Loop Phase 3.2 Chilled Water (-152) HVAC Duct pressure testing Basement (-152) Utility Loop Phase 4B re-design and pending ASI (-151)</p>

<p>Drywall Corridors 5B (-63) Drywall Top Down for Ceiling Framing 4A (-62) Pressure Test Cast Iron 1B (-61) Chase Wall Plumbing R/Is 4A (-58)</p>	<p>Mech Piping Seismic Basement (-149) Fire Sprinkler Rough Ins @ Hard Ceilings level 4 (-148) Ongoing hard ceiling framing on level 4 (-145) Ongoing drywall level 1 (-144) Ongoing OH Elec inspections in basement (-142) Duct Fire Wrap issue per ASI 309 & Shaft 1 surrounding walls (-142) TIO discrepancies at the new fire line. Impacts demo of Tem Line and level 1 (-141)</p>
<p>REV 235 = Aug 2014 Utility Loop Completion / LL (-113) Frame Hard Ceilings and MEP Rough Ins in HardCeilings (-111) ASI D 36 affecting ACD 630 added shaft wall process (-95) Drywall patient Rm remaining walls (-89) ACD 609 SOFP Patching / Med Gas Boom R/Is (-84) Phase 4 of Utility Loop (-83) Corner Guard R/Is (-80) Wall close ups 5B holding up Drywall (-78) Pressure Test Cast Iron 1B (-76) Drwall Corridor Walls 4A (-74)</p>	<p>REV 255 = Jan 2015 Mock Up Room Bathroom tile, tile crew ties, flooring (-247) Ongoing Tape & Sand walls ceiling soffits - 6A (-227) Ongoing Drywall hard ceilings & Soffits, Tape & Sand walls ceiling soffits - 6B (-226) Ongoing Drywall hard ceilings & Soffits, Tape & Sand walls ceiling soffits - 5A (-219) Ongoing Tape & Sand walls ceiling soffits - 6B (-217) Ongoing close up inspections followed by Drywall hard ceilings & Soffits, Tape & Sand walls ceiling soffits - 5B (-214) Ongoing Tape & Sand non-patient rooms - 5A (-202) Ongoing Tape & Sand non-patient rooms - 5B (-196) Ongoing drywall of non-patient rooms - 5A (-195) Closeup shaft 18 / FLSO Fire Sprinkler Insp Issue (-194) Ongoing ACD 630 work at level 4 room 111 (-193) Ongoing drywall of non-patient rooms - 5B (-187) Ongoing ACD 630 work at level 3 room 111 (-187) Ongoing Fire sprinkler Drops at Hard Ceilings - 4B (-184) Ongoing Elec R/Is at Hard Ceilings - 4B (-180) Closeup shaft 01 / FLSO Fire Sprinkler Insp Issue (-179)</p>

EXHIBIT B



County of Santa Clara

Facilities and Fleet Department
Capital Programs Division

2310 North First Street, 2nd Floor, Suite 200
San Jose, California 95131-1011
(408) 993-4600 FAX (408) 993-4695

DC#BB1-15858

August 28, 2015

Turner Construction Company
950 S. Bascom Avenue,
Suite 3010, 3rd Floor
San Jose, CA 95128

Attention: John de Ruiters
Vice President

Subject: **Second Notice of Default under Contract Article 2.03B – Bed Building 1**

Dear John,

Nearly two years ago on September 3, 2013, the County and Turner reached a settlement of project issues that included a payment to Turner of \$9.25 Million, a new schedule and a promise by Turner to complete its work in 15 months. It is now August 28, 2015. Although nearly two years have passed, Turner's schedules show that Turner still needs more than 14 months to complete its work. It is obvious that something is seriously wrong.

For the past two years, the County has written letters, had meetings, made compromises, but nothing has worked. Turner and its subcontractors understaff the project and continue to understaff the project and the work of the Bed Building continues to languish.

On February 26, 2015, the Project was nearly a year behind schedule. Out of options, the County gave Turner formal notice of material breach under our Contract. The County's letter contained a great deal of information about Turner's lack of progress and is incorporated here. Yet Turner continued to understaff the project and continued to fall behind schedule. Further, Turner's response to the County's letter was not constructive, was not accurate, and was not sincere.

On May 15, 2015, the County gave Turner notice of default under our Contract. The County's letter contained an even greater amount of information about Turner's lack of progress, and to avoid repetition is incorporated here. Yet Turner continued to understaff the work; continued to fall behind schedule; and continued to assert positions that were not constructive, accurate or sincere. Turner's responses to the County's letters were similarly not constructive, not accurate, and not sincere.

Today, the Bed Building project site is idle in most locations. There is ongoing work in a few locations, but Turner is not making any kind of serious attempt to get staff on site and

Board of Supervisors: Mike Wasserman, Dave Cortese, Ken Yeager, Joe Simitian, Cindy Chavez
County Executive: Jeffrey V. Smith

Second Notice of Default under Contract Article 2.03B – Bed Building 1

workers on site and subcontractors on site, and the progress has stalled. County staff and executives walk the project and see floor after floor of patient rooms without workers and tradespersons to work. The County sees work that just sits idle day after day and week after week.

The County's disappointment and disheartenment is profound.

This Project's Importance to the Residents of Santa Clara County

The County's February 26, 2015 letter giving notice of material breach discussed the Bed Building's importance and the impact to patients from the delay in opening the building. Turner responded to the County's letter, in its first sentence, treating the Bed Building as a pawn in a larger chess game, stating that:

"Turner is pleased to hear that the County has an urgent need for this project."
(Turner's March 9, 2015 letter, first sentence.)

The Bed Building, however, is not a pawn and completing the Bed Building is not a game. Although Turner knows well the importance of the Bed Building to the Medical Center, the County restates some basic facts for the benefit of the Turner executives who may read this letter.

First, the Medical Center is a tertiary level acute care hospital with 574 licensed beds and operates: (1) a Level 1 Trauma Center for Adults and a Level 2 Trauma Center for Pediatrics, (2) the Regional Burn Center, (3) a Rehabilitation Center for trauma, spinal cord, brain injury and stroke, (4) a Level 3 neonatal Intensive Care Unit, (5) a dedicated pediatric unit and pediatric Intensive Care Unit, and (6) a broad scope of other essential services ranging from cancer care, women's health, to emergency services and acute psychiatric services.

The Medical Center is a public safety-net health care system that provides care to one of four Santa Clara County residents.

Second, the Bed Building is essential to the Medical Center. When completed, the Bed Building will be a state-of-the art building that will replace all of the SCVMC's 64 Rehabilitation Center beds (trauma, spinal cord and brain injury), replace 32 Intensive Care beds, and 72 General Medical/Surgical Beds. It will allow for the care of patients in single occupancy, private rooms throughout the hospital, including rehabilitation, maternity, pediatrics, and general/surgical acute care. It will replace two and four person rooms currently in use at the Medical Center, including those located in the old main hospital built in 1960.

Third, the residents of Santa Clara County voted to raise their own taxes to make this project possible. This is a very important project to the County and its Residents.

Fourth, and finally, until the Bed Building is completed, the County and its residents will continue to face the exact shortfalls that they voted to raise their taxes to prevent. These include:

Limited Capacity: Without the new Bed Building the Medical Center is not able to maintain and increase patient demands, including rehabilitation, burn patient,

Second Notice of Default under Contract Article 2.03B – Bed Building 1

maternity, and core Medical/Surgical services.

Rehabilitation: The entire Medical Center Rehabilitation Unit is to be relocated to the new Bed Building. On a daily basis, patients are being turned away due to limited capacity (not enough rooms) or choosing other area hospitals that offer private rooms.

Medical/Surgical: Without the new Bed Building, the Medical Center's limited capacity results in patients having to choose other locations for medical and surgical services. This not only impacts patient accessibility but also the Medical Center's ability to accept transfers from other facilities.

Burn Center: Without the new Bed Building, the Medical Center cannot start its Burn Center expansion, which will increase capacity by 8 to 12 beds. This is a critical regional service delayed by Turner.

Maternity: Without the new Bed Building, the Medical Center cannot guarantee private rooms for our maternity patients and families. The County is planning a new Women and Children's Center that will provide the private rooms and state-of-the-art facilities our mothers-to-be seek. That new Center cannot start until the Bed Building is complete.

In short, the Bed Building is not a pawn in Turner's contractual chess game. It is essential to the residents of Santa Clara County and it is essential to the Medical Center's delivery of the highest quality patient care our residents.

Second Notice of Material Breach and Default Under General Conditions, Article 2.03.B

On May 15, 2015, the County determined that Turner was in material breach of our Contract under **General Conditions, Article 2.03.B** for the following reasons which the County reiterates here:

1. Turner has persistently and repeatedly refused to supply an adequate work force on the project with the required diligence to ensure completion within the contract time.
2. Turner has failed to provide the County with assurances it will correct its breaches of contract as demanded in the County's February 26, 2015 letter.
3. Turner has failed to perform and continues to fail to perform material terms of the Contract pertaining to the relationship of trust and confidence that Turner accepted in our Contract.

The County has been very patient and has made every effort to persuade Turner to perform. The County has carefully considered the positions taken by Turner in its letters, has carefully monitored the progress of the work, the schedule, the subcontractor staffing levels, continued to attend meetings with Turner, and reviewed correspondence to determine what – if any – steps Turner was taking to improve its performance and cure its material breach.

Second Notice of Default under Contract Article 2.03B – Bed Building 1

Turner has also allowed the Bed Building’s roof to suffer serious damage, contamination, resulting from the carelessness of Turner and its subcontractors. The seriousness of this problem has developed over the summer and is a further material breach of our Contract.

For the reasons discussed in this letter, the County has concluded that Turner’s work on the Bed Building has not improved, Turner has continued to under-staff the work and allow delay, and performance and progress has actually gotten worse.

Turner Continues to Refuse to Supply and Adequate Work Force on the Project or Move the Work Forward with the Required Diligence to Ensure Completion within the Contract Time.

Turner’s lack of progress is documented in the project record, Turner’s own schedules, and in the County’s letters to Turner dated May 27, 2015, June 4, 2015, June 5, 2015, and August 5, 2015. The County’s letters contain a great deal of information about Turner’s lack of progress to date, the County suggestions to Turner, Turner’s superficial excuses to not staff the work. The County incorporates those letters here.

The County provided a log of photographs attached to its May 15 Notice of Default and included a sample of that log in its letter. As shown below, the work in each of the rooms included in the body of the May 15 letter, has just not progressed since May 15th and there is no excuse.

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Second Notice of Default under Contract Article 2.03B – Bed Building 1

Third floor:




<p>Room 3A111 on February 24, 2015.</p>	<p>Room 3A111 ten weeks later on May 7, 2015. The drywall reveal panels were installed, about 2 hours' worth of work.</p>	<p>Room 3A111 on August 27, 2015. The soffit and walls have been taped and painted, about 4 hours' work. The T-grid ceiling frame is still not installed.</p>
		




<p>Room 3A131 on February 24, 2015.</p>	<p>Room 3A131 ten weeks later on May 7, 2015. Sheetrock was added on the right wall and the stub wall near the door, about 2 hours' worth of work.</p>	<p>Room 3A131 on August 27, 2015. The soffit and walls have been taped and painted, about 4 hours' work. T-grid ceiling frame is installed, about 4 hours' work.</p>
		




<p>Room 3A171 on February 24, 2015.</p>	<p>Room 3A171 ten weeks later on May 7, 2015. The drywall reveal panels were installed, about 2 hours' worth of work.</p>	<p>Room 3A171 on August 27, 2015. The soffit drywall has been installed, and the soffit and walls have been taped and painted. T-grid and a few ceiling tiles are in place. About a day or two of work.</p>
		

Second Notice of Default under Contract Article 2.03B – Bed Building 1

Fourth Floor

<p>Room 4A049 on March 4, 2015.</p>	<p>Room 4A049 nine weeks later on May 7, 2015. No apparent progress.</p>	<p>Room 4A049 on August 27, 2015. The walls have been taped and painted. T-grid and a few ceiling tiles are in place. About a day of work.</p>
		

<p>Room 4A055 on February 24, 2015.</p>	<p>Room 4A055 ten weeks later on May 7, 2015. Drywall installed on part of the ceiling, some drywall taping, about 1 day of work.</p>	<p>Room 4A055 on August 27, 2015. The soffit drywall has been installed, and the soffit and walls have been taped and painted. T-grid and a few ceiling tiles are in place. About a day or two of work.</p>
		

<p>Room 4A181 on March 4, 2015.</p>	<p>Room 4A181 nine weeks later on May 7, 2015. The drywall reveal panels were installed, about 2 hours' worth of work.</p>	<p>Room 4A181 on August 27, 2015. The soffit drywall has been installed, and the soffit and walls have been taped and painted. T-grid and a few ceiling tiles are in place. About a day or two of work.</p>
		

Second Notice of Default under Contract Article 2.03B – Bed Building 1

Fifth Floor



The slow progress in these patient rooms is typical of over 100 patient rooms that languish due to Turner's decision to understaff the work and prevent the project from making progress.

Turner has offered invalid explanations for its understaffing and lack of progress.

In Turner's Monthly Reports following the County's Notice of Default on May 15, 2015, Turner claimed that privacy curtains were holding up the work and delaying the project. For example, Turner's Monthly Report, dated June 2015, stated:

"The most critical path remains unchanged this period. The Curtain Track Re-Design Installation will have a significant impact on the patient room flooring installation. The patient room flooring activities are crew tied from top-down."

This is not accurate and is nonsense. The "Curtain Track" is for the patient room privacy curtains that hang below the ceiling and can be installed at any time prior to building commissioning. This does not hold up any work. The rendering below has a blue arrow pointing to the privacy curtains:

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Second Notice of Default under Contract Article 2.03B – Bed Building 1



In fact, this is exactly how Turner is working. The following photo is from the Turner mock-up room, which shows the curtain track hanging below the ceiling.



Even Turner's schedules show the curtain track as unnecessary to any work after the tracks are installed. Plain and simple, the truth is that the privacy curtain track "issue" is not holding up any work.

Second Notice of Default under Contract Article 2.03B – Bed Building 1

Further, the timing of the curtain track “argument” is very suspicious and makes the issue look contrived and tactical.¹ Regardless, the fact is that the privacy curtains are not holding up the work and are not the reason the project is understaffed, are not the reasons the subcontractors are not working for Turner and are not the reason the subcontractors are not providing supervision or staff.

The County uses the example of the privacy curtains because this was the only statement from the Turner Monthly reports about the critical path, called “the most critical path,” explaining why Turner was so late.

Turner has failed to staff the project and failed to explain the true reason for its lack of staffing

The project staffing remains minimal, the progress is stalled and continues to move backwards. There has been no appreciable manpower increase since May and no real attempt to expedite work. There have simply been no significant changes and no realistic solutions offered. The County has repeatedly requested that Turner provide the true reason for the lack of staffing, but Turner has not provided any real or truthful explanations. Through its words and actions, Turner has shown the County it does not intend to change its performance and remains in material breach of our contract.

On May 15th Turner’s project completion date was October 27, 2016. Turner’s most recent schedules show that date as November 22, 2016 and November 29, 2016. In other words, in the three months since the County’s Notice of Default, Turner has lost another month of time.

This is unacceptable.

Turner has failed to provide the County with assurances it will correct its breaches of contract as demanded in the County’s February 26, 2015 letter and its May 15, 2015 letter.

The County’s February 26, 2015 letter specifically listed Turner’s breaches of contract obligations and demanded assurances of performance that were not forthcoming and have not been provided to this date. Instead, Turner has continued to breach the Contract and the specific contract obligations discussed in the letter on its page 2 regarding an adequate workforce, meeting schedule milestones and performing the Work timely; completing the Work in the most expeditious, economical and thorough manner consistent with the interest of the County; providing the County with contemporaneous information and analysis regarding any claims or delays, and requesting time extension if justified using our agreed contract method; and prosecuting the Work diligently and meeting all requirements of the

¹ Turner’s own January 2015 schedule showed that Turner was going to lay out **and install** the privacy curtain track in the 3rd floor mock-up room on January, 27, 2015, resulting in the identification of any production construction issues then. However, Turner reports that it did not act to even lay out the mock-up curtain track until mid-May of 2015, and only then “discovered” the door swing issue. This seems questionable. Nonetheless, our Contract with Turner is quite clear in its requirement for out-of-sequence mock-up rooms; yet, to-date Turner has never completed the mock-up rooms. Turner should have finished the mock-up patient rooms years ago and would have identified any construction issues including the track and doors and solved them years ago.

Second Notice of Default under Contract Article 2.03B – Bed Building 1

Contract.

Turner never provided the County with the demanded assurances or improved its work.

Throughout the County's February 26 letter the County discusses Turner's inaccurate schedules with "illogical sequences of construction tasks," which Turner has not improved. Turner's schedules continue to change, the dates change every week, and continue to reflect logic, dates, sequences and float that are unreliable and inaccurate. The schedules serve little purpose as a planning tool and the County cannot rely on them to schedule the substantial work and resources that will be required if the project ever approaches completion and the County plans to staff and stock and achieve licensing of the Bed Building.

Regarding the May 15, 2015 Notice of Default, Turner provided two letters in response to the County's Notice of Default. Neither letter provided any suggestion that Turner would change any aspect of its conduct in response.

Turner's first response, sent on May 20, 2015, was wholly unapologetic. Turner pointed fingers at others for the project delays, denied any breach of contract, conceded it was pacing (i.e., intentionally slowing) the work, and suggested the County was acting in bad faith. That letter contained no serious evaluation of the County's statements, no assurances, and no offers to address any of the County's grounds for material breach.

Turner's second, and lengthier response, was sent on June 19, 2015. This letter simply expanded on the first response, offering only further argument. Once again, Turner made no attempt whatsoever to provide any assurance to the County that it would increase staffing, attempt to recover the project schedule, meet the contract date or even any date, or otherwise advance the work.

Meanwhile the project is stalled. Turner and its subcontractors continue to understaff the Project; substantial work remains idle week after week. Based on Turner's performance and its current forecast, the County has no confidence that Turner will be able to complete the work by 2017. Turner will not be able to complete the project until 2017 or even later. This is not acceptable, and not what the County contracted for when it hired Turner.

In short, Turner has continued its material breach of Contract and has failed to provide any assurances it will cure its material breaches of the Contract.

Turner has failed to perform and continues to fail to perform material terms of the Contract pertaining to the relationship of trust and confidence that Turner accepted in our Contract. Turner has given inaccurate reasons for delay even in the face of its own expert's report.

Turner's continuing action of delaying the work, providing inaccurate information, and failing to provide the County with explanations for its low staffing levels is a continuing material breach of our Contract and continues to have a substantial negative effect on the work.

Turner's conduct to understaff the work and its gamesmanship in its contrived and inaccurate justifications, are also a breach of this duty. Turner knows full well the losses, inconveniences, limits on service and damages to the County and its residents of the County

Second Notice of Default under Contract Article 2.03B – Bed Building 1

caused by the continued delays and understaffing and idle work, yet Turner persists. This is a breach of its duty of trust and confidence.

Turner's continued presentation of inaccurate and invalid explanations for its lack of performance is also a breach of this Contract requirement. A primary example of this is Turner's repeated claim that the permitting process and regulatory oversight of its construction work has been too cumbersome.

To evaluate the merits of that concern, Turner insisted that the County hire its hand-picked, third-party expert, Stahl Companies, to conduct an evaluation of the permitting process, regulatory oversight and quality control mechanisms in use at the worksite.

Stahl Companies has demonstrated expertise with local, state and federal permitting regulations for hospital construction. Its founder, Walt Stahl, was the Chief Compliance Officer for OSHPD. Stahl Companies conducted a thorough and complete evaluation of Turner's complaint's about the project inspection process, and concluded that:

- Turner was not meeting the "Quality Control" provisions of its contract with the County.
- The Project's Inspector of Record was providing the required Quality Control on the jobsite even though this was Turner's job.
- The Inspector of Record was providing a benefit to the contractor and had gone out of his way to institute processes that would expedite the permitting process.
- The work could be completed faster and schedule improved if Turner met its contract provisions and provided a Quality Control team addressing quality issues before inspections.

The analysis provided by the report prepared by the Stahl Companies is perhaps best summed up with the following statement,

"With adequate QC (Quality Control) responsibility by the contractor[,] the time frames the schedule reflects for inspection, could possibly be met."²

Stahl Companies observations are well supported in our Contract, which Turner continues to disregard. For example, Section 01 83 00 of our Contract requires a three-step inspection process. The first step in that process is for Turner's "CQC Manager [to] inspect the Work to verify compliance with the Contract Documents." Stahl Companies determined that Turner had failed to perform this necessary step and that this was the actual cause of Turner's problems passing inspections.

Even without the Stahl Companies report, Turner was already well aware of these facts. Further, Turner has done nothing in response to this report. No acceptance of the recommendations. No additional Quality Control. No advancement of the schedule. Nothing but more excuses as to why Turner bares no responsibility for its habitual schedule lapses.

This is one of several instances where Turner denied and avoided discussion of the true cause of the project delay.

² Stahl Companies letter to Santa Clara County, February 20, 2015.

Second Notice of Default under Contract Article 2.03B – Bed Building 1

Because of Turner's actions, the County has lost confidence in Turner's ability to complete the project.

The Best Solution.

When the Turner executives read this letter, the County asks these executives to keep in mind that when the County selected Turner for this job, the County had materials from Turner and industry knowledge of Turner's reputation as a world-class builder with hospital expertise. In fact, the County knows that Turner is one of the largest contractors in the world. The County also knows that when properly focused, that Turner possesses the resources and talent to construct the most complex projects in the industry.

There is no doubt that because of those qualifications, Turner was selected to build Levi's Stadium in Santa Clara. The world watched while Turner completed a fantastic facility in record time. During this same time, we at the County also watched while our project languished and suffered through Turner error after error that forced the County to focus on remedying potential defects, safety issues and budget overruns.

If there was a cause and effect relationship between Levi's stadium and this project, we do not know, but the contrast of where Turner placed its resources and expertise between the two projects is remarkable. The County is left with the strong impression that football took precedence over patients. Turner has one last opportunity to correct this problem.

The best solution here and the best interest of the County and Turner is for Turner to take steps immediately to remedy its defaults, to provide the County assurances of performance, to provide the County assurances that Turner will perform its Contract, and for Turner to bring to bear the immense resources it possesses. Turner has the ability; it only needs the will.

Conclusion

As the County stated recently, what is most astounding, disappointing and disheartening is that we are now approaching the two year anniversary of Change Order 406-an agreement that was supposed to put our problems behind us so we could build the project and open the Bed Building to the residents of this County. In this Agreement, Turner gave its firm commitment to finish the Work of the project in 15 months, by December 2014.

More than two years later, the Project is not only incomplete, but Turner's schedules show Turner finishing its work in the same 15 months, but now late 2016 or even in 2017. That is, Turner has apparently achieved nearly zero progress in the last two years. This is with the breathing room given by the pharmacy change order which now is clear did not assist the project at all.

Turner has provided no assurances of improved performance. Turner has not corrected its breaches. The County now considers that Turner's default constitutes sufficient basis for termination of Turner's control of the work and therefore provides this Notice under General Conditions, Article 2.03.B.2 for the reasons previously provided to Turner in the County's May 15, 2015 Notice, and for the additional reasons stated in this Notice.

Turner's track record of breaking promises has had a profound impact on our public health system, taxpayers, jobsite safety and the public's trust. The County is fully justified in now

Second Notice of Default under Contract Article 2.03B – Bed Building 1

considering whether it can afford to keep Turner as its construction partner. Under our Contract, Turner has an additional 7 days following this notice to remedy its defaults. If Turner does not do so, the County will pursue its available remedies under the Contract.

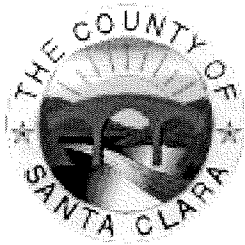
Sincerely,

A handwritten signature in blue ink that reads "Ken Rado". The signature is fluid and cursive, with a large initial "K" and a stylized "R".

Ken Rado

Owner's Authorized Representative

EXHIBIT C



County of Santa Clara

Facilities and Fleet Department
Capital Programs Division

2310 North First Street, 2nd Floor, Suite 200
San Jose, California 95131-1011
(408) 993-4600 FAX (408) 993-4695

DC#BB1-15853

August 28, 2015

Turner Construction Company
950 S. Bascom Avenue,
Suite 3010, 3rd Floor
San Jose, CA 95128

Attention: John de Ruiter
Vice President

Subject: **Notice of Default under Contract Article 2.03B – North Utility Loop**

Dear John,

There was an extremely serious, nearly fatal steam accident on the North Utility Loop on September 3, 2014, almost a year ago. Turner was starting up a newly installed steam line it had designed and built in an underground vault. There were loud popping noises coming from the new piping. Joel Ferreria, one of the subcontractor's employees, reacted to these sounds and escaped in the nick of time, climbing up a ladder towards safety. When he was halfway out of the vault, the line exploded and released high-pressure steam into the vault. His colleagues pulled him from the vault as the steam started to surge. Mr. Ferreria was lucky to be alive and unburned.

Following this very serious incident, the County and its construction manager raised many concerns about the safety of Turner's start-up procedures, the overall safety of the design and construction of the vault where the accident occurred, and the entire North Utility Loop. The County requested Turner to provide a safety report, a report identifying the cause of the explosion, and a plan and timeline for the inspection, repair, and approval of the vault. The County has requested this basic information many, many times since the incident but Turner has not provided the information.

The County's requests started with requests for safety procedures and explanations, and when Turner did not comply, the County took stronger steps. Most recently, on July 1, 2015, the County requested a formal audit of Turner's records regarding the North Utility Loop that would include engineering studies and reports on the cause of the incident and the apparent redesign Turner is undertaking. Turner has not responded to the County's request.

Notice of Default under Contract Article 2.03B – North Utility Loop

Turner has admitted there were errors in its design, both for the exploding vault, but also for many other portions of the North Utility Loop. Turner has reported, and now insurers investigating the loss have reported, that Turner is redesigning other portions of the North Utility Loop. Even with this background, Turner has not been adequately forthcoming with its re-design efforts and has not fully advised the County what changes it is making to the North Utility Loop to make it fully functional and to correct the many problems with Turner's original design, or why the changes are required.

In March 2015, Turner told the County it had hired an independent engineering firm, Fenney Engineering, to analyze a computer model of the North Utility Loop's steam system and determine if other errors exist. Turner told the County this analysis would be done by the end of May, and would be shared with the County. It is now August 28, 2015, and this report has not been provided to the County, nor has Turner provided the County with information from the report on the totality of design errors remaining to correct. This is unacceptable.

The County requires full information on the prior, existing, and in progress engineering of the North Utility Loop. When completed, the North Utility Loop will provide the Bed Building, the Valley Specialty Center, the RSC, and the new Main Hospital with steam, chilled water, or other fundamentally necessary utilities. If any part of the Loop were to fail, the Bed Building, the Valley Specialty Center, the RSC, and the new Main Hospital could be left without steam, chilled water, or other fundamentally necessary utilities, and these buildings could be completely shut down.

The County also requires that Turner perform the work of the North Utility Loop, which is now seriously behind schedule. In Turner's September 4, 2014 schedule (Rev. 239p), a day after the vault explosion, Turner showed activation of the North Utility Loop on December 9, 2014. Now, in Turner's most recent August 12, 2015 schedule (Rev. 282), Turner shows the activation date as February 9, 2016, and even this date is suspect. This means that, since the vault explosion occurred 357 days ago, Turner has fallen 427 days behind schedule on the Loop. Turner has now informed the County that its re-design work for the North Utility Loop will take another six months. Turner has provided no reasonable explanation for this extensive delay. Turner has offered no solution to advance the work and recover any of this lost time. Meanwhile, the North Utility Loop project largely sits idle.

The County has been very patient with Turner on these issues, has attended meetings and jobsite walks, and sent many follow-up letters requesting information about the accident, the re-design work, and the extensive schedule impact. Turner's responses have not been adequate.

The County cannot allow this conduct to continue.

Finding of Material Breach and Default

The County has carefully reviewed the documents, letters, emails, and meeting notes during the year since the vault explosion. Based on this careful review, the County has determined that Turner is in material breach of our Contract. The County is making this determination under **General Conditions, Article 2.03.B**. Turner has not conducted the work safely, has persistently and repeatedly refused to supply an adequate work force on the North Utility Loop, has failed to supply adequate design resources, has disregarded the County's directions, and failed to act with the required diligence to ensure completion of the North

Notice of Default under Contract Article 2.03B – North Utility Loop

Utility Loop within the contract time. Turner has failed to act within the relationship of trust and confidence by failing to conduct the work safely and by failing to respond to the County's requests for information about worker safety and the safety of the design changes to the North Utility Loop.

The Contract still allows Turner an additional seven-day time period to take action to remedy its defaults before the County has rights to supplement the work or take additional action with regard to the project. The County reviews the basic facts of Turner's material breach and default below.

Turner's Obligations Under Our Contract

Under Turner's contract with the County (the "Contract"), Turner is responsible for providing "all design and construction services for a complete system including engineering and design, construction documents, submittals, shop drawings, calculations, labor, materials, tools, equipment, transportation, temporary construction, and special services to obtain a permit as required for furnishing and installing the site utilities."

Under our Contract, Turner is responsible for ensuring jobsite safety, and for the design and construction of the Loop. Turner must ensure it has sufficient work forces to address design issues that arise during every construction project, including changes and questions from the field during construction. Turner's design team has been unable to timely respond to these issues.

Our Contract also requires Turner "perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the work described in and reasonably inferable from the Request for Proposal (RFP) Documents (the "Work"). The DBC accepts the relationship of trust and confidence established between it and the COUNTY by this Agreement. The DBC agrees to furnish the services set forth in the RFP Documents and to use its best efforts to complete the Work in the most expeditious, economical and thorough manner consistent with the interest of the COUNTY."

Turner has materially breached these and other related Contract provisions. Per Article 2.03.B, the County identifies the following material breaches and defaults.

1. The design, construction and startup procedures used on September 3, 2014, were a default and material breach under our Contract.
2. The failure to provide the County straightforward information regarding the September 3, 2014 incident and initial conduct downplaying or outright denying problems with the design, construction and start-up procedures, is a material breach and default.
3. The existence of other, unknown or vaguely referenced design defects were and are a material breach and default.
4. The failure to provide full information regarding the cause of the September 3, 2014 incident and investigations following, including engineering studies in 2014 and 2015, and to this date identifying additional design issues, is a material breach and default.

Notice of Default under Contract Article 2.03B – North Utility Loop

5. The failure to comply with County directions regarding full information of the design and engineering investigations, causes of the September 3, 2014 incident, provide design information, comply with the County's request for Audit of July 1, 2015, is a material breach and default.
6. Finally, the failure to apply the necessary resources to correct the design and advance the work over the past year, resulting in a stalled project, is a material breach and a default.

Communications Following the Steam Vault Explosion

Since the vault explosion occurred, the County reviews below the attempts to secure information from Turner about that incident and efforts Turner would take to ensure it did not happen again, and Turner's failure to comply with these requests.

On October 3, 2014, the County's construction manager sent Turner a written request for detailed information about the September 3, 2014 steam vault explosion, including basic information about the incident and steps being taken to avoid future incidents. This letter followed several email and verbal requests for the information.

On October 27, 2014, the County sent Turner a letter restating its concerns and included an article on the dangers of steam explosions in confined spaces. The County requested that Turner place the highest priority on gathering the facts regarding the explosion and finding solutions so another accident would not occur. The County's letter is attached and incorporated.

Turner did not provide the requested information. In November of 2014, Turner simply told the County it had followed proper safety procedures and had adequately responded to the steam explosion. Turner's claim was contradicted by the incident report, witness statements, and its own deficient start-up procedures for the vault.

The County responded, and told Turner this response was not acceptable. The County requested that Turner review the incident report, witness statements, and vault start-up procedures to re-assess its position.

In December, 2014, Turner then advised the County there were errors in the original VC-01 design as well as errors on other portions of the North Utility Loop. Turner did not tell the County what these errors were, where they were located, or what specifically was being done to address them. Turner did not tell the County when the re-design effort would be complete, the scope of the task, or how the re-design would impact the project schedule.

On February 3, 2015, the County wrote Turner and again asked for information about the vault explosion, Turner's re-design, and the continuing project delays. That letter is attached and incorporated into this Notice. The County posed several straightforward questions to Turner about these issues. Turner responded, but again did not provide any of the information the County requested, did not provide any explanation of the re-design work, or any date for completion of the re-design.

The County noted the design team had already spent over four months preparing a re-design just for the exploding VC-01 vault. When the re-design was submitted to OSHPD, there were extensive comments. These comments required further changes, and the vault re-design

Notice of Default under Contract Article 2.03B – North Utility Loop

was not approved by OSHPD until May 11, 2015. Then there were more re-designs required and it was only in the last two weeks that ACD 33 was approved for added steel supports, valves and drains.

In a February 20, 2015 letter, the County advised Turner very clearly that if Turner did not correct existing safety hazards and provide information and engineering reports demonstrating the required levels of safety, the County would not hesitate to exercise its remedies under General Conditions, Article 2.03.B. That letter is attached to and incorporated into this Notice.

The County reiterated the importance of this issue in letters and emails that followed over the months, but Turner has not met the County's requirements to demonstrate safety. In Jeff Draper's March 25, 2015 email to Turner's senior executive John de Ruiters, the County was very clear that it needed more than assurances – it needed the answers and information it had requested, and that Turner had committed to provide this information. Still, as of this date, Turner has not provided the engineering information it has promised repeatedly.

On March 5, 2015, over six months after the steam vault explosion, Turner finally advised the County it had hired a third party firm, Fenny Engineering, to analyze a computer model of the steam system and determine if other errors exist. Turner told the County Fenny Engineering's analysis would be complete by May 29, 2015 and would be shared with the County. Turner has not provided the County with a copy of the report.

On May 8, 2015, after further correspondence, Turner assured the County's Luke Leung, that Turner was diligently working on its engineering reports and would deliver to the County the report of Fenny Engineering by May 31, 2015. The May 31, 2015 date came and went, and the promised report has not been provided.

On July 1, 2015, the County send a demand for audit of Turner's records to obtain the information it had been requesting for months. The audit clause in our Contract requires Turner to make the requested records available within 24 hours of the request. Almost two months have passed since the County's demand, and Turner has not responded.

On July 30, 2015, a project insurer wrote the County, advising of communications from Turner that the entire NUL system is being evaluated for potential design issues and a consultant is inspecting the system and will issue a report. On August 3, 2015, Turner stated it would provide the Fenny Report for only the exploding vault, but the remaining report would take another six months.

Turner's failure to share requested information about the steam explosion and re-design do not comport with the requirements of our Contract and is a material breach and a default.

As of August 28, 2015 the Circumstances Have Not Changed

As of the date of this Notice, other portions of the North Utility Loop are apparently still being re-designed. Turner has recently told the County the remaining design changes will require another six months to complete. Turner has not provided reasonable explanations for this ongoing delay.

Notice of Default under Contract Article 2.03B – North Utility Loop

The North Utility Loop has fallen very far behind schedule. In Turner’s most recent August 12, 2015 schedule (Rev. 282), Turner shows the activation date as February 9, 2016. Turner has made no effort to make necessary design corrections in a timely manner or sufficiently augmented its staff to accelerate efforts to complete the re-design and begin construction.

The North Utility Loop work has stalled.

Summary and Conclusion

The North Utility Loop is critical to the continued and safe operation of the Valley Medical Center during and after a seismic event. The County’s voters passed a bond measure in November, 2008 to pay for seismic upgrades and the Medical Center is expected (by the voters and by OSHPD) to withstand a major earthquake and continue to provide trauma care.

The County therefore has a fundamental need to know every aspect of the design, engineering and studies conducted and underway, on the North Utility Loop. The County also has a fundamental need to ensure jobsite safety, and to ensure that there are no deaths or serious accidents during construction. Yet, Turner has yet to explain to the County what happened to cause the steam vault explosion, why it occurred, what similar or other problems exist in the steam system, and what has been done and will be done to ensure that it will not happen a second time. This is a material breach of our Contract.

Turner admits there were defects in the original design for the VC-01 vault and other parts of the North Utility Loop. These admissions are contained in many letters and emails including Turner’s December 19, 2014 letter, Turner’s letters enclosing reports of its own engineer, Turner’s May 6, 2015 letter, and emails from senior Turner executives such as John de Ruiten. Turner has told the County repeatedly it is performing a re-design of both the exploding vault and many areas of the North Utility Loop. Yet Turner has never told the County what was wrong with the original design, what is being done to correct the mistakes, and why the corrections will ensure the safe operation of the North Utility Loop. This is also a material breach of our Contract.

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Notice of Default under Contract Article 2.03B – North Utility Loop

The project simply stands still. Turner has not advanced the work. The failure to advance the work and perform material terms is a material breach and a default. The failures that resulted in the September 3, 2014 incident, as well as Turner's response to this incident and its failure to demonstrate required levels of reliability of the system and safety to this date, is also a material breach and a default.

For these reasons, Turner is in material breach of the contract.

Sincerely



Ken Rado
Owner's Authorized Representative

Attachments: October 27, 2014 County letter to Turner
 February 3, 2015 County letter to Turner
 February 20, 2015 County letter to Turner
 April 3, 2015 Turner e-mail to County
 May 8, 2015 Turner letter to County
 July 1, 2015 Demand for Audit
 August 3, 2015 Turner e-mail to County



County of Santa Clara, Facilities & Fleet Department, 2310 North First Street, Suite 200, San Jose California 95131-1011

October 27, 2014

Turner Construction Company
343 Sansome Street, Suite 500
San Francisco, California 94104
Attn: Michael E. O'Brian, Senior Vice President

Subject: County of Santa Clara Bed Building 1

Michael:

I am enclosing Ken's and my cumulative notes of our site meeting of October 17, 2014. I would appreciate your review and any revisions or additions you think are necessary. I would also like to follow up on the VC-1 incident where I think we have significant work still to do, the problem of Turner storing materials on the roof, and Turner's request to change the contract disputes process.

VC-1 Incident

The most important topic on my mind is the accident that occurred when Turner was energizing the new steam lines at Vault VC-1 on September 3, 2014. This is a serious issue that should have never occurred and could have resulted in serious injuries or worse, a fatality. The County is determined to take steps to prevent this type of incident in the future and has requested information from Turner that has not been provided. I am disappointed in Turner's handling of this issue and am asking your direct assistance on this very important topic.

Attached are letters and emails where the County has requested from Turner an analysis of the cause of this incident, a copy of Turner's Safety report, and any lessons learned that Turner can offer to prevent this from happening again. Turner has made no commitment on the lessons learned request and has either delayed or provided off-subject information in response to the other two requests.

I will acknowledge that Turner did provide the County with a document titled "Turner Incident Investigation Report" with a date of "09 / 03 / 2014". Turner gave this Report to the County on September 24, 2014, three weeks after the incident, and not the "09 / 03 / 2014" date on the report. Not only was this Report late, but it does not cover Turner's safety procedures and supervision the day of the incident, and the information it does have indicates significant flaws. I attached a copy of this Report for your convenience and I request you discuss with me the following subjects:

1. Job Hazard Analysis - The Report makes no mention of a job hazard analysis or even a safety talk prior to the introducing steam into the system and the startup procedure. Was it done?

The Report not only omits a reference to a job hazard analysis or safety talk, but then goes on to describe the exact type of situation the process of a job hazard analysis is supposed to try to prevent. I ask that you read the Incident Description section the Report where it seems to suggest that both the pipefitter inside the vault and the Lescure crew outside at street level *never understood* the true significance of the "loud popping noises" they were hearing and only "felt something was wrong" when it got louder and more frequent as it built up to the catastrophic failure. I will just quote the Report here because it says everything -

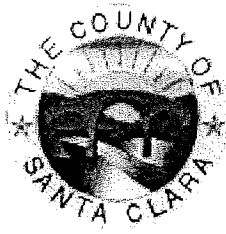
"As the noise started to get louder and occur more frequently, Joel and crew felt something was wrong and Joel proceeded to shut down the open valve. After the valve was closed, Joel started to exit the vault. At the same time, crews above the vault had the same concern and started to direct Joel out of the VC-1 vault.

As Joel was climbing up the extension ladder out of the vault, his body was halfway out the vault opening, when the Metra flex connection failed between the pipe flanges (see photos)."

I do not understand this Report or what occurred. My experience from the Navy is that enclosed spaces, steam pipes, loud noises and popping sounds spell trouble. Why didn't the Lescure crews know this instantly? Why did the pipefitter narrowly escape? The operation should have stopped the first time he heard a problem.

This Report is a problem and is not a substitute for a Safety Report that outlines the safety programs in place on September 3 and if they worked or not and why.

2. Supervision -- I cannot tell from the report where was the Lescure superintendent, or the Turner superintendent, or any supervision, during this critical work. I do not know the training or position of Mr. Bruce Garret who was apparently supervising this operation. I am not making a judgment about supervision, I am only saying I do not have enough information. I believe this is something we should find out and I am requesting this information.
3. Turner Management Responsiveness - Finally, reading the first page of the Report, first box, I see another more troubling set of facts. Under notifications, it shows that Mr. Guerro was unable to reach either EJ Saucier or Abhi Gupta by telephone regarding this incident and instead left each of them voicemails. Why? What was so important that EJ and Abhi could not take a phone call about this incident?



County of Santa Clara

Facilities and Fleet Department
Capital Programs Division

2310 North First Street, 2nd Floor, Suite 200
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(408) 993-4600 FAX (408) 993-4695

DC#BB1-15079

February 3, 2015

Turner Construction Company
950 S. Bascom Avenue,
Suite 3010, 3rd Floor
San Jose, CA 95128

Attention: Abhi Gupta
Senior Contracts Manager

Subject: **Continued Project Delays and NUL Vault VC-1**

Dear Abhi,

The OSHPD e-mail at Attachment (1) regarding their review of the remedial design of VC-1 represents more of a continued absence of effort on the part of Turner to perform Quality Control of their design and construction efforts, both on the BB-1 Work and NUL Work.

Most disturbing to me are the events that led up to the OSHPD Sacramento review of the VC-1 design. In my opinion these events show that Turner was willing to sacrifice life-safety design considerations in pursuit of their blame-the-County Claim Agenda.

The Work on VC-1 is well behind schedule and the County is unable to use the new RSC building until the NUL work is complete. Turner's handling of the vault VC-1 explosion and subsequent incomplete re-design has adversely affected the County's confidence in Turner's ability to perform this Work.

What is even more concerning to me are the implications for the other vaults and if they have been designed in a similar way. Turner has previously informed the County that it is reviewing the design of the other vaults. However, Turner has not kept the County abreast of the status or conclusions of this design review.

The County's lack of confidence is based on the following sequence of events related to this vault. In this letter, I pose several questions regarding these issues and request a response to each from Turner.

VC-1

The Vault Explosion

To recap, when Turner first introduced steam into the piping in vault VC-1 on September 3, 2014, there was a catastrophic failure of piping components that nearly caused the severe injury of a workman in the vault, who managed to barely escape the vault before the explosion occurred. The Turner Incident Report for this event stated that both the worker in the vault and the crew above the vault heard loud popping noises from the new piping when the valve was cracked open, but only became concerned and “felt something was wrong” when “the noise started to get louder and occur more frequently.”

The County has expressed concerns about this event on several occasions and has requested that Turner provide its Job Hazard Analysis for the work and a detailed analysis of the incident so that future incidents would be avoided. The County expressed these concerns in detail in its letter of October 27, 2014. Turner’s response was to forward its start-up procedures that only raised more questions (the procedures indicate that hearing “pops” is acceptable). For your reference, I have attached County correspondence regarding this issue at Attachment (2) and Turner’s Response at Attachment (3).

Turner has never fully responded to the County’s request, leaving the County to question whether Turner has adequately addressed the safety issues arising out of this incident.

So that the County is clear here – the County is reiterating its request for a full and complete Turner description of this event, how it occurred, the lessons learned, and how Turner is taking steps to prevent this type of event from occurring again.

Also, what steps is Turner taking to prepare a Job Hazard Analysis or revise its existing Job Hazard Analysis for this work? What steps is Turner taking to revise its start-up procedures? and why?

The Extended Re-Design of the Exploded Vault

Following the vault explosion the County repeatedly asked Turner to provide an in-depth explanation of the cause of this catastrophic failure so that any redesign would incorporate appropriate “fixes.” See the documents at Attachment (4). In my opinion the County never received a satisfactory response. Instead, Turner just referred us to a report prepared by an Insurance company.

Following the vault explosion, Turner’s design team spent almost four months preparing a re-design of the vault. Given the critical stage of the work, this was an extraordinary amount of time to spend on this task. The County does not believe this was a reasonable amount of time. Does Turner believe this was a reasonable amount of time? If so, why?

Finally, in January 2015, Turner produced an ACD for a redesign of the vault piping. Turner then demanded that it be reviewed by the local OSHPD rep, Kirit Shaw. When Kirit refused to review the ACD Turner contended the County is responsible for delays. See the e-mail of Attachment (5). Never mind that Turner took four months to produce this ACD.

I understand that Turner’s mechanical engineer of record for the NUL project (Camus Associates) is a sole practitioner based in Oregon. Does Turner believe this is adequate staff for the design work on the NUL? If not, what is Turner’s plan to augment its design staff to recover the schedule?

VC-1

This issue is of great concern because we understand that Turner is also reviewing the designs of other vaults. Will this design review take a proportionate amount of time, and if so, what is Turner's plan to minimize the schedule impact from an extended internal review process?

Turner's Re-Design Needs Extensive Re-work and Will Result in Further Delays

As you know, on January 22, 2015, OSHPD responded to the ACD for the vault re-design, and requested numerous additional documents and calculations that were apparently omitted from the submission, and which OSHPD needs for a "meaningful review" of Turner's re-design. On January 28, 2015, OSHPD sent Turner an additional list of comments that required Turner's action as part of the review process. The email communications from OSHPD are included at Attachment (1) to this letter.

I understand that OSHPD may request additional information and clarification on review submissions. However, considering the amount of time this ACD took to prepare and the critical stage of the work it is extremely discouraging that Turner and its team did not use more care and thought to avoid these issues.

Under Section 3.01.E.2 of the Summary of Work in the Contract, Turner "is responsible for the technical quality of all Documents prepared by Design Build Contractor and the Design Build Contractor's SubDesign Build Team." In addition, Turner is required to perform quality control review of its designs for technical accuracy and coordination. Did that process occur with the VC-1 ACD? If so, please provide me with documentation demonstrating Turner followed a quality control process. If not, then why?

Please also provide me with an accurate time estimate of the time Turner will take to respond to OSHPD's requests and the new anticipated date of approval of the VC-1 ACD.

Turner's Inappropriate Request for Field Review of the Vault Re-Design

You recall that Turner originally demanded that the vault re-design be reviewed by the local OSHPD DSE, Kirit Shaw. As you know, field review of changes is typically limited to minor changes that can be reviewed quickly, as the DSE is only on-site a few times a month, has multiple projects to supervise, and has other tasks to perform when he is at our project.

Mr. Shaw declined to review the vault re-design ACD because of the complexity of the changes and the amount of time a review would require. As you know, OSHPD maintains an office staff that is focused specifically on review of most project changes. Turner, of course, wanted to short circuit the office review process because it would take more time.

After Mr. Shaw declined to perform a field review of the ACD, Turner claimed that the County would be responsible for the delay resulting from OSHPD office review. [See Attachment (5)]. Why Turner would make such a baseless claim is beyond me. The County has no control over OSHPD, as they are State employees, and it appears that OSHPD handled this situation appropriately and professionally, considering their primary charge is to safeguard the public and the hospital users.

Turner then pressured the County to have the OSHPD Regional Compliance Officer, Duane Borba, overrule Mr. Shaw, and force him to review the ACD on site. Turner contended the

VC-1

ACD was "straightforward" and should only take 30 minutes to review. Clearly, based on the extensive list of questions and comments from the OSHPD office review staff, the ACD was not straightforward and review in the field would not have been possible nor would it have been appropriate.

Given the OSHPD comments at Attachment (1), it is now quite clear that this ACD was not well-designed, was far more complex than Turner contended when it pressured the County to have it reviewed locally. Even more concerning to me is that implementation of this flawed ACD would have potentially jeopardized functionality of the vault and compromised safety of County and Turner personnel.

Yet Turner was all too ready to blame the County for the time to review this ACD.

Turner's misunderstanding of the scope of the changes and the impossibility of field review this late in the project is very troubling. Turner's threats of charging the County with project delays associated with a design for which it is solely responsible is equally troubling.

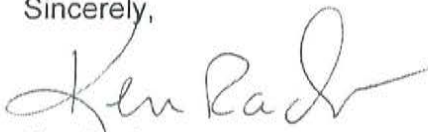
Unfortunately, this type of correspondence from Turner is simply a continuation of Turner efforts to blame the County for any adverse situations that occur on the project.

Turner Duties

Turner accepted a relationship of trust and confidence with the County on this Project. For the NUL Work Turner has complete responsibility for design and construction. Turner's actions with respect to this issue have not been in line with those obligations. If Turner disagrees with this, please explain why.

Once again, please provide responses to the questions in this letter as soon as possible.

Sincerely,



Ken Rado
Owner's Authorized Representative

- Attachment: (1) OSHPD e-mail of January 28, 2015
(2) Jeff Draper Letter of October 27, 2014
(3) Turner Construction letter of November 18, 2014
(4) URS Letter of October 3, 2014, County Letter of October 27, 2014, County e-mail of November 4, 2014
(5) Turner e-mail of January 7, 2015



County of Santa Clara, Facilities & Fleet Department, 2310 North First Street, Suite 200, San Jose California 95131-1011

February 20, 2015

Turner Construction Company
950 S Bascom Avenue #3010
San Jose, CA 95128
Attn: John DeRuiter, Vice President and Operations Manager

Subject: County of Santa Clara Bed Building 1; Steam Loop/VC-1 Incident

John:

As I mentioned again in our meeting today, I am very concerned about the VC-1 start-up incident. This incident was nearly fatal and I have specific concerns about Turner's progress in making the necessary corrections. I have discussed with Turner before that I served as a naval officer for 20 years and I have knowledge and experience working around pressurized steam systems. I understand the heightened risks of accidents during the startup of these systems – accidents that can result in extensive second and third degree burns and fatalities to the workers and seamen involved.

It is my intention here to address my concerns and see substantive and verifiable steps toward the successful and safe delivery and activation of the steam system, and towards safety improvement in general.

THE SEPTEMBER 3, 2014 VC-1 START UP INCIDENT.

I enclose with this letter relevant Turner documents I have received regarding the incident. Reading them portrays a very troubling sequence of events:

1. I can see nothing in the supplied documents that indicates that Mr. Ferreira, the pipefitter in the vault, received any training in recognizing the risk of water hammer or steps to reduce the risk of water hammer.
2. Mr. Ferreira appears to have taken no steps to clear the steam line of any residual water or drain condensate that might form as the line warmed up, and nothing in the Turner startup procedures told him to do that.
3. Both Mr. Ferreira and his supervisor report that that they heard popping sounds but believed they were normal based on the Turner startup procedures. I have told you previously that I do not believe that popping sounds are normal.
4. Both Mr. Ferreira and his supervisor report seeing water escaping from the steam vent. While some sputtering could probably have been expected, a constant stream of water

would signal the possibility of a water hammer and worse the possibility of a rupture and explosion.

5. Mr. Ferreira was only partially out the manhole when the explosion occurred. Fortunately for Mr. Ferreira, there was a support crew waiting for him at the street level and they pulled him from the manhole before the escaping steam burned him.

Plain and simple: Mr. Ferreira is a very lucky man as he was squarely in the path of danger once the steam valves were opened. He was following the Turner supplied startup procedures.

COUNTY DIRECTION

Turner still does not have a completed design acceptable to OSHPD and I have not received from Turner an acceptable analysis of the VC-1 incident. I also disagree that Turner's safety and startup procedures or staffing were adequate or safe. Given this, the following are required:

1. Answers to the questions posed in Ken Rado's letter titled "Continuing Project Delays and NUL Vault VC-1" about VC-1 safety problems and corrections to the VC-1 redesign. While Turner has responded to the letter, Ken's questions were either not answered or inadequately answered, and I found the responses off-subject and argumentative.
2. Prior to any further startup, the County requires Turner submit the following:
 - a. An engineer's report from an experienced, reputable engineer with experience in the design and startup of similar systems, regarding the system redesign, its safety, the safety of the startup procedures proposed by Turner and specific training to the personnel to recognize the risks of water hammer. I understand that Turner is working with the design firm GHD who may suffice for this requirement depending on their submitted qualifications.
 - b. Evidence the subcontractor and the personnel assigned to the startup have a demonstrated working knowledge of steam systems and prior experience with startup of new systems similar to the installations here at the County. Standing alone, a specialty subcontractor C-4 specialty license will be considered to be insufficient.
 - c. Evidence that Turner has coordinated the startup with SCVHHS Facilities Department and that Turner has addressed all questions of interface.

If Turner believes these measures are outside its contract then Turner is directed to follow the claims procedure in the contract. If Turner believes that further steps are necessary and appropriate then Turner shall so advise the County. I intend these steps to constitute minimum steps based on the County's current information and may revise and add to these steps if the information changes.

I am also providing Turner with notice that if Turner does not meet the required levels of safety, the County will not hesitate to exercise contract remedies under Section 2.03(B) of the General Conditions as may be necessary to have the startup performed by qualified contractors.

Sincerely:

A handwritten signature in black ink, appearing to read 'J. Draper', with a long horizontal flourish extending to the right.

Jeffrey D. Draper
Director, Facilities and Fleet Department
County of Santa Clara

Enclosure(s):

- Turner's incident report for the September 3 incident
- The handwritten witness statement from the pipefitter inside the vault (Joel Ferreira)
- The typewritten witness statement of Mr. Ferreira's supervisor
- Turner's startup procedures for the VC-1 vault
- Turner's mechanical subcontractor's (Lescure) "Safety Task Assignment" form that Turner has identified as its Job Hazard Analysis

From: deRuiter, John - (BayArea) [<mailto:JdeRuiter@tcco.com>]
Sent: Friday, April 03, 2015 11:52 AM
To: Draper, Jeff
Subject: FW: Safety Concerns

Hello Jeff, I hope your Hawaiian vacation is all you thought it would be. As promised I am writing this to address concerns you've brought up in recent correspondences regarding the North Utility Loop and general project safety. I have inserted comments in the email below in an effort to answer your questions.

From: Draper, Jeff [<mailto:Jeff.Draper@faf.sccgov.org>]
Sent: Wednesday, March 25, 2015 9:09 AM
To: deRuiter, John - (BayArea)
Subject: Safety Concerns

John:

Thanks for accompanying me and Abhi on Friday, March 13, for a tour of the steam loop and in particular the VC-1 vault. It was informative and I hope you all follow through in addressing our concerns about the design and the start-up efforts. I assure you I will take action if you all do not.

While the tour was good, my concerns regarding safety have not been assuaged by Turner thus far. I have still not received any written explanation from Turner about the design delays, the peer review consultant's qualifications and calculations, and the start-up expert's qualifications or exactly who Turner will use for the start up. I have asked about this in letters and emails and meetings. I tried to be very clear about this in my February 20, 2015 letter. Would you please respond to me either in email or writing if Turner is going to provide this information and/or provide a firm date when it will do so. **After the steam startup incident on September 3, 2014 Turner through its legal team hired Shadpour Engineering and Exponent Consultants to perform a peer review of the NUL design. They did not do an in depth engineering review but rather a "10,000 ft." look at the general design of the Steam and Condensate line. They developed their opinions and suggested they had areas of concern but those were based solely on their professional opinion and without the benefit of performing an in depth study of the original model or engineering done by Gary Underhill (the MEOR). Subsequently, Turner hired Fenny Engineering (resumes attached) to perform the detailed review that we deemed necessary. Fenny is experienced with underground steam systems and runs the same modelling software (AutoPipe) that Gary Underhill utilizes. They are an East Coast Company that specializes in Pipe Stress Analysis and Support Design. If you go to www.fennyengineering.com they have a long list of projects and clients they have done work for. We then provided Fenny Engineering with the design documents and the as-built data of the north loop scope of work. They are currently rebuilding and testing the model to determine if in fact any design deficiencies exist. We have also hired GHD Engineering to supplement the**

MEOR. We are anticipating that a full engineering analysis of the system will be available for review by the end of May.

We have hired William Bailey (resume attached), a local steam expert, to help review, comment and make any required adjustments to the startup procedures. Bill will be available on an as needed basis until the system is deemed operational. Per your request I would be happy for you to meet with Bill, just let me know when it's convenient.

We have also solicited Luis Ramos-Jurado, Turner's Regional MEP Manager to assist. We will review our start-up plan with our MEOR and transmit a copy to the County prior to start-up activities. Turner will schedule a pre-startup meeting before commissioning of VC-1 to address Facilities/County concerns. We will have Luis and Bill present along with Jon Hanses, Superintendent Greg Geier and Lescure's project startup team.

You've asked about VC-1, what follows is a timeline of events and activities,

VC-1 Design Progress:

- Incident at VC-1 Occurred in September 2014
- From October 2014 – November 2014 Turner and Engineers were investigating the possible contributing factors that lead to the incident at VC-1
- From December 2014 – January 2015 Turner/Engineers were re-designing VC-1
- January 16, 2015 VC-1 ACD-0026 was submitted to OSHPD
- January 22, 2015 we received 5 Comments from Kris Ganapathi the OSHPD Reviewer
- January 28, 2015 we received an additional 9 Comments from Kris Ganapathi (these 9 comments came from the IOR Roger Lenz's concerns that he sent to OSHPD)
- February 5, 2015 Turner MEOR, SEOR, and Structural Consultant Bill Dasher and Kris Ganapathi met in Sacramento to review VC1 ACD 026 February 2015 – March 2015 we were responding to these comments and adding additional information to our drawings as requested by OSHPD – This effort involved our MEOR, 2 Mechanical Engineers at GHD, and 2 Structural Engineers at Buehler and Buehler
- March 30, 2015 VC-1 response package was transmitted to OSHPD

VC-1 is currently being reviewed by OSHPD. It is an expedited review. Depending on the outcome of the review, work on VC-1 could start by 04/13/2015 and will take approximately 2 months to complete, again depending on OSHPD's/IOR's willingness to expedite the process.

I also just learned that Turner may not have had a Safety Manager on site since January, 2015. As you know, our contract requires Turner to keep a Safety Manager approved by the County on site at all times or the work must immediately stop. Based on information I've received, Turner's Safety Manager retired in January, but no one at Turner told the County, and only on Monday did we receive qualifications for the proposed replacement. I have also

received information that Turner has worked without a Safety Manager. If this true, it is completely unacceptable and violates our contract. This is the response from an earlier email; Jeff, this is a quick response with a more detailed response to follow. As we discussed this morning we have been and continue to be committed to the safety on the project and all of the adjacent areas. We have had a Safety Manager on site continuously so I am not sure where you've gotten information to the contrary. It is true that our previous manager retired and left the project at the end of February. Our regional manager Carlos Orozco along with another safety manager Rick Needham have also been on the project. We have introduced and forwarded our new Safety Manager's information to Ken. His name is Raul Ruiz and he started on site March 16. There has been no lapse in coverage. Thanks JdR

I am at a loss to understand the how or why Turner worked without a Safety Manager and did not advise the County immediately of the issue, and I am expecting that Turner will answer Ken's questions about this. While I understand that Turner has reviewed the new Safety Manager's resume with Ken, it's my opinion that Turner actions clearly demonstrate a lack of commitment to safety and shows that Turner is ignoring its obligations in regards to and is not compliant with the safety requirements in our contract. Jeff I can assure you that we are committed to safety and it is not being "ignored." To that point I have included some random reports from the County's own safety team and Turner reports that supports my position. From inception we have had only 26 recordable and 1 lost time injury with over 1.9 million hours worked. I agree we will do a better job keeping you informed should a change in safety management occur. We have provided Ken with the resume of our Safety Manager, Raul (also attached) and he is on board with him and appreciated the level of experience Raul brings.

I am more than unhappy with Turner's actions at BB1 and lack of response to my concerns on the steam loop and VC-1 issues. I have walked the jobsite regularly over the past couple of weeks. I've personally seen a number of housekeeping issues that are safety hazards. You and I even observed the lack of safety barriers next to relatively deep vault sites that workers were transiting past in performing their job duties. I expect Turner to empower and direct the new safety manager to take care of these safety issues and that he will do so immediately. Jeff I hope that you would also acknowledge that when walking through BB1 the corridors are clean, the rooms are clean, the walkways are clear and in general the project is in good shape. The workers are all wearing their PPE and are trained to safely perform their daily tasks. We constantly work to keep up with the housekeeping and all of our staff are empowered to take care of safety issues immediately, including the Safety Manager. With that said construction is a dynamic process and there will be times when workers in an area create a debris pile that gets cleaned up on a regular basis.

At this point, I am frustrated and I am preparing to take action unless I get responses and see an immediate turn around when it comes to worksite safety.

Regards, Jeff

Jeff please let me know if I've sufficiently answered the concerns you've shared with me. I am looking forward to our continued effort to collaborate effectively and complete this project as quickly as possible. Enjoy the rest of your vacation, JdR

Turner Construction Company
950 S. Bascom Avenue
Suite # 3010
San Jose, CA 95128
Phone: 408-648-4110

May 8, 2015

Mr. Luke Leung
County of Santa Clara
Employee Services Agency
County Government Center, West Wing
70 West Hedding Street 8th Floor
San Jose, Ca. 95110

Re: SCVMC BB1 – Safety Related Incident North Loop

Mr. Leung;

Please see the attached correspondence between Turner and the County (Jeff Draper and Ken Rado (enclosed on disc) in the past 6 months related to North loop Project at VMC. The project team has communicated on a weekly basis if not daily to update the County where we stand with various pending issues at the loop. I am attaching correspondence that relates to the questions you have posed in your letter. In addition, I am sharing many more email correspondences with Jeff and Ken related to the loop progress and safety concerns.

In specific;

1. Your question 'Has Turner determined what caused the explosion in the steam vault?..... Our response; See attached letter dated December 3rd, 2014 from our MEOR outlining the causation of the event. Our MEOR and Desmond Feher were on the same page as to the cause that led to the failure.
2. Your question 'If a cause has been determined, what specific steps has Turner taken to fix the problem?.....Our response; We are in process of getting ACD-0026 BC-1 approved from OSHPD, which documents all necessary design changes that have been made in VC1. A preview copy of the ACD was uploaded to the AECOM FTP site on 4/7/2015. Once ACD-0026BC1 is Approved a hard copy along with an electronic copy will be provided to AECOM the County's Construction Manager.

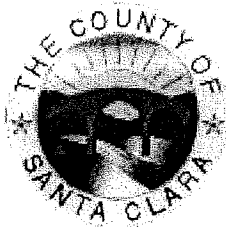
3. Your question 'Has Turner completed a peer review of the VC1 steam design?.....Our response; Turner is in the process of completing the Peer Review with Fenny Engineering. This report will be completed by May 29, 2015 for the Steam and Condensate systems. Jack Fenny's and Norm Strong's Resumes were shared with Jeff Draper and that correspondence is attached to this email.
4. Your question 'Has Turner reviewed the startup procedures for the vault, and have any changes been made?.....Our response; Turner has hired Bill Bailey and we are having our Regional MEP Coordinator Rick Lowell develop a step by step start-up procedure for VC-1. This procedure is dependent on an Approved OSHPD design which was conveyed to Ken Rado and Dave Wilson at the meeting and both of them agreed to it. Bill Bailey's resume was shared with Jeff Draper and that correspondence is attached to this email. Another correspondence with Jeff Draper that is attached to this email dated 3/26 which explicitly notes that we will not commission/start up the NUL without your full awareness.
5. Your question 'Has Turner performed any evaluations of other portions of the steam system at the NUL to determine if there are safety issues with the design?.....Our response; Fenny Engineering has done a complete peer review of the entire Steam and Condensate System from which they have made suggestions and verified stresses. When the report is complete on May 29, 2015 Turner will evaluate recommendations and incorporate the changes into our OSHPD drawings through the ASI/ACD process.

Luke, we invite you to sit down with us so we can show you in detail what steps Turner has taken to mitigate any future incidents. I am also attaching safety reports from OCIP ESIS, Safety performance charts, and more to convey how seriously we take safety on our projects. I understand this amount of information can be overwhelmingly, so I request that you and I meet and I can go over each attachment with you.

Very Truly Yours,
TURNER CONSTRUCTION COMPANY

John de Ruiter
Vice President and Operations Manager

Enclosures



County of Santa Clara

Facilities and Fleet Department
Capital Programs Division

2310 North First Street, 2nd Floor, Suite 200
San Jose, California 95131-1011
(408) 993-4600 FAX (408) 993-4695

DC#BB1-15642

July 1, 2015

Turner Construction Company
950 S. Bascom Avenue,
Suite 3010, 3rd Floor
San Jose, CA 95128

Attention: E.J. Saucier
Project Executive

Subject: **Audit Demand, North Utility Loop**

Dear E.J.,

I am writing in follow up to your letter of January 15, 2015, Attachment (1), on the subject of the County's request for documents under Contract's Audit clause.

In previous correspondence Turner had stated that the County's demand for records would be met by a similar Turner demand for the County's records. Although the County is prepared to engage in this type of large scale document exchange at this time, the County's immediate concern at this time is the work of the North Utility Loop. This includes specific concerns about the quality and the payment status of the work; the promised report from Fenny Engineering and the continuing delays and design changes; payments to date, true completion status of the work and if the County is now in a position of having overpaid for the work. And, as stated previously, the County also has concerns about safety.

Therefore, please accept this letter as the County's demand under Section 2.08 of the General Conditions for access to all of Turner's books, summary reports, records, accounts, estimates, documents, detailed financial information, certified payroll records related to the North Utility Loop.

The County understands the Turner positions about large scale document exchanges, however, the County is in a position where it needs full information regarding the North Utility Loop, both financial information and engineering and design information. If Turner elects to respond to this Audit demand with a large scale demand on the County, then the County will similarly expand this request to encompass the entire project. For now, the County is proposing to limit its request to the North Utility Loop.

Audit Demand, NUL

The County is requesting these records on two levels: between Turner and the County, and also between Turner and its design and engineering consultants, sub-consultants and consultant/sub-contractor/sub-consultants. This includes Fenny Engineering and all other firms performing design work on the North Utility Loop.

The requested records should include, but not be limited to, the following:

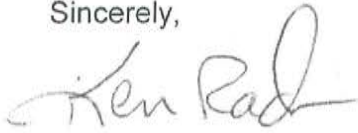
1. Bid documents, staffing plans, estimates and proposals, and original budget work papers and bid cut sheets
2. Contract and consulting agreements, attachments, specifications, general requirements
3. Monthly project organization structure
4. Work Breakdown Structure or chart of accounts
5. Consultant/subcontractor/sub-consultant contract agreements
6. Design consultant agreements
7. Monthly payment requests, purchase orders, invoices, cancelled checks
8. Monthly subcontractor payment requests, purchase orders, invoices, cancelled checks
9. Monthly design payment requests from consultants and sub-consultants, purchase orders, invoices, cancelled checks
10. Monthly job cost reports
11. Job cost transaction details (in electronic format, preferably Microsoft Excel)
12. Monthly current budget reports
13. Monthly Estimate at Completion (EAC) Reports
14. Monthly status reports to the County
15. Monthly Executive Management Reports
16. Labor distribution reports for hourly employees
17. Labor distribution reports of salaried employees
18. Daily reports
19. Daily time cards
20. Productivity reports
21. Monthly schedule updates and narratives (in electronic format)
22. Weekly equipment usage reports
23. Back-charges to consultants/subcontractors/sub-consultants and suppliers
24. Contractor Claims/Request for Equitable Adjustments (REA) to Owner
25. Consultants/subcontractors/sub-consultants Claims/REA to Contractor
26. Contractor Change Order Log (Approved and Pending)
27. Approved change orders between Contractor and Owner
28. Pending change order requests from Contractor to Owner
29. Approved change orders between consultants/subcontractors/sub-consultants and Contractor
30. Pending change order requests from consultants/subcontractors/sub-consultants to Contractor
31. Approved change orders between consultants or sub-consultants and Contractor
32. Pending change order requests from consultants or sub-consultants to Contractor
33. Entire consultant/subcontractor/sub-consultant files, including (but not limited to) email and written communications and payment applications.
34. Communications with consultants or sub-consultants, OSHPD, and any others involved in the design of the North Utility Loop.

Audit Demand, NUL

Please make sure to provide access to email communications as part of this request. The County requests Turner make the records available for inspection and copying. We understand the records may be located at more than one location and will work with Turner to coordinate the inspection and copying accordingly.

Thank you for your assistance. I am available to discuss this at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Ken Rado".

Ken Rado
Owner's Authorized Representative

Attachment: (1) Turner letter of January 15, 2015

From: Hanses, Jonathan R - (BayArea) [<mailto:jhanses@tcco.com>]
Sent: Monday, August 03, 2015 10:30 AM
To: Rado, Ken
Subject: RE: Fenney Engineering Report

I believe that John deRuiter is giving it to Jeff Draper this week sometime. It is only for VC-1 at this point so we can start up that vault and get MOP-060 Approved. The Complete report for Steam and Chilled Water cannot be completed until all of the design is complete and Approved by OSHPD which should be in the next 6 months.

Jonathan R Hanses | Sr. Project Engineer
Turner Construction Company | 950 S. Bascom Avenue, Suite 3010 | San Jose, CA 95128
direct 408.648.4126 | mobile 408.334.3138 | jhanses@tcco.com
[website](#) | [linkedin](#) | [facebook](#) | [twitter](#) | [youtube](#) | [pinterest](#)

From: Rado, Ken [<mailto:Ken.Rado@faf.sccgov.org>]
Sent: Monday, August 03, 2015 10:27 AM
To: Hanses, Jonathan R - (BayArea)
Subject: Fenney Engineering Report

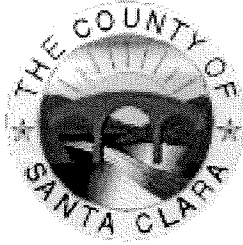
At last week's scheduling meeting I was told I would have the report last Friday.

I am still waiting for it.

Ken

Deputy Director Facilities and Fleet Department
Owner's Authorized Representative
County of Santa Clara
408-497-0499

EXHIBIT D



County of Santa Clara

Facilities and Fleet Department
Capital Programs Division

2310 North First Street, 2nd Floor, Suite 200
San Jose, California 95131-1011
(408) 993-4600 FAX (408) 993-4695

DC#BB1-15871

September 8, 2015

Turner Construction Company
950 S. Bascom Avenue,
Suite 3010, 3rd Floor
San Jose, CA 95128

Attention: John de Ruiter
Vice President

Subject: **Second Notice of Default under Contract Article 2.03B – North Utility Loop**

Dear John,

After the County issued its August 28, 2015 Notice of Default under Article 2.03.B for Turner's work on the North Utility Loop, the County received a video of the nearly fatal September 3, 2014 steam accident on the North Utility Loop. The video was shocking and provided visual evidence that Turner's lack of training, oversight and management of the work the day of the vault explosion, was much worse than previously understood and as documented in Turner's post-accident records and correspondence.

The full video can be seen at the following internet link:

<https://www.youtube.com/watch?v=YCUHqlskfhs>

The dramatic nature of this video shows the failures and deficiencies in Turner's start-up procedures and safety procedures. In the video, there are repeated loud banging sounds for over a minute while the workers at street level comment about the sounds, about why it torqued the bolts, how "you couldn't pay me enough" to be in the vault, before finally deciding to ask the worker in the vault to come out. The workers' words and demeanor show they understood something was wrong, but did not know what, and were not prepared for the sudden explosion that occurred.

This is unacceptable in every way. The operation should have been terminated upon hearing the noises. If they had been prepared, Mr. Ferreria would not have been in the vault when the steam line blew up.

Turner's reports and correspondence since that incident have been misleading and have downplayed the seriousness of the event. Turner has not provided any report or analysis

Second Notice of Default under Contract Article 2.03B – North Utility Loop

explaining why the explosion occurred or what Turner is doing to ensure another explosion will not occur.

Over one year has passed since this incident occurred, and Turner has apparently completed only piecemeal analyses of the North Utility Loop design, and has only begun what appears to be a series of major design changes. A full review of the North Utility Loop design is not complete and Turner has offered no reasonable estimates of the time for completion of all of this work.

The County restates its August 28, 2015 letter here which the County issued under **General Conditions, Article 2.03.B** of our Contract. Turner has also provided no response to the County's August 28, 2015 letter. Turner was and remains in default.

In addition to the August 28, 2015 letter, the County reiterates the shocking facts shown in the video and the inaccurate information and responses from Turner regarding the facts of the incident that are contradicted in the video. The County also points out that the County has no information that Turner has held any member of its staff responsible for the incident or implemented any disciplinary procedures.

The County now issues this Notice under **General Conditions, Article 2.03.B.2**, which provides that "if the County considers that the default(s) constitute sufficient basis for such action, provide the DBC and the DBC's Sureties with an additional 7 Days written notice, that if the defaults are not remedied, the DBC's control of the Work or designated portion of the Work will be terminated."

The County has determined that Turner remains in material breach of our Contract for the reasons stated in its August 28, 2015 Notice, and because of the video of the vault explosion which demonstrated Turner's misleading and incomplete explanations to the County.

Pursuant to our Contract, Turner now has seven (7) days to cure its defaults or the County may terminate Turner's right to proceed under our Contract.

Sincerely



Ken Rado
Owner's Authorized Representative

CC: All relevant Surety companies