

**SETTLEMENT AGREEMENT AND  
GENERAL RELEASE OF ALL CLAIMS**

**1. PARTIES: The Parties to this Settlement Agreement and General Release of all Claims (hereinafter the "Agreement") are:**

1.1 COUNTY OF EL DORADO ("COUNTY");

1.2 ANOVA ARCHITECTS, INC. ("ANOVA")

All parties listed above are sometimes collectively referred to as the "Parties."

**2. RECITALS: The Agreement is made with reference to the following facts:**

2.1 In and around November 2002, the COUNTY entered into an agreement with Murray & Downs AIA Architects, Inc. ("Murray & Downs") wherein Murray & Downs was retained by COUNTY to provide certain architectural and other design services relative to the El Dorado Hills Library ("Library"). As part of its services, Murray & Downs provided plans and specifications for the Library, including the flooring and carpeting systems.

2.2 In and around August 2007, Murray & Downs merged with Oshima & Yee, forming the firm Anova Architects, Inc. ("ANOVA").

2.3 On or about June 8, 2009, COUNTY was served with a complaint and summons in the action entitled M&H Builders, Inc. v RDCO, Inc., El Dorado County Superior Court Case No. PC20070019 (the "Action"). In the Action, the Plaintiff alleged three causes of action (breach of contract, breach of implied warrant, and negligence) against COUNTY, in which the allegations implicated the design of the Library, namely the flooring, carpet, and related systems. ANOVA was not named as a party in the Action or any of the related cross-complaints or consolidated lawsuits.

2.4 Based on the terms and conditions of the November 2002 agreement between the Parties, COUNTY tendered its defense in the Action to ANOVA and ANOVA accepted said tender.

2.5 During the course of litigating the Action, COUNTY obtained a bid from Capital Commercial Flooring, Inc. for the performance of certain repair work to the carpet and flooring systems at the Library. The bid from Capital Commercial Flooring, Inc. totaled \$148,600.

2.6 In and around September 2011, the Action was settled globally wherein COUNTY agreed to pay the Plaintiff in the Action \$166,900 and the Plaintiff permitted COUNTY to retain \$140,000 from amounts previously withheld by COUNTY. Although not a party to the Action, ANOVA agreed to contribute \$8,600 to COUNTY which represented the difference between the settlement dollars obtained by COUNTY from the Plaintiff in the Action, and the final bid

amount provided by Capital Commercial Flooring, Inc. ANOVA further agreed to oversee the repair work to be performed by Capital Commercial Flooring, Inc. at the Library, and guaranteed to compensate COUNTY for any cost overruns in the repair work to be performed by Capital Commercial Flooring, Inc., not to exceed 5% of the \$148,600 bid amount.

2.7 It is the intention of the Parties to settle and dispose of, fully and completely, any and all claims, demands and causes of action arising out of the Action as it may relate to the November 2002 agreement between COUNTY and ANOVA.

2.8 Neither the Agreement nor the negotiations or proceedings leading up to the Agreement, nor the payment of any consideration in the Agreement, shall be taken to be an admission of any kind by any of the Parties hereto concerning the allegations.

**3. CONSIDERATION: In consideration of a full general release between the Parties to the Agreement, as well as other consideration stated herein, the Parties agree that:**

3.1 The COUNTY will release ANOVA with respect to any and all claims arising out of the Action;

3.2 Monetary payment will be made by ANOVA to COUNTY in the total amount of \$8,600;

3.3 ANOVA will oversee the repair work to be performed by Capital Commercial Flooring, Inc. at the Library at no cost to the COUNTY, said oversight to be performed in accordance with the Scope of Services attached hereto as Exhibit A and incorporated herein by this reference;

3.4 ANOVA will compensate COUNTY for any cost overruns related to the work performed by Capital Commercial Flooring, Inc., not to exceed 5% of the original bid amount of \$148,600, i.e. \$7,430.

3.5 COUNTY will not pursue any further legal claims against ANOVA , including any and all joint ventures, partners and partnerships, owners, officers, directors, co-venturers, corporations, companies, business entities, agents, employees, attorneys, assignors, assignees, licensees, licensors, parents companies or corporations, predecessors, successors, heirs, and all affiliates, for any claim or controversy arising out of or relating to the Action.

3.6 All of these claims and acts of forbearance in consideration for the settlement are material terms of the Agreement. The failure of any of the Parties to the Agreement to provide the consideration identified in the Agreement shall provide the other Party to the Agreement the right to rescind the Agreement in its entirety, or, at their sole discretion, they may enforce the remainder of the Agreement and seek damages for a partial or full breach of the Agreement. In the

event of any dispute or controversy arising from the Agreement, the Parties agree they will first attempt to resolve said dispute or controversy via mediation; the mediation fees being split equally between the Parties.

**4. GENERAL RELEASE:**

4.1 COUNTY, on behalf of itself, and its successors, assigns, agents and trustees, and all other persons or entities claiming by or through them, hereby release ANOVA, along with its affiliates, parents, subsidiaries, dba's, successors, assigns, officers, employees, agents, partners, members, shareholders, directors, lawyers, consultants, and agents who might be claimed to be liable from any claims whatsoever, known or unknown, arising from, or in any way connected with the Action.

4.2 ANOVA, on behalf of itself, and its successors, assigns, agents and trustees, and all other persons or entities claiming by or through them, hereby release COUNTY, along with its affiliates, parents, subsidiaries, dba's, successors, assigns, officers, employees, agents, partners, members, shareholders, directors, lawyers, consultants, and agents who might be claimed to be liable from any claims whatsoever, known or unknown, arising from, or in any way connected with the Action.

4.3 As to the Action, each Party to the Agreement specifically waives the benefit of the provisions of section 1542 of the Civil Code of the State of California, which provides as follows:

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

4.4 The Parties expressly agree that the Agreement shall extend and apply to all unknown, unsuspected, and unanticipated claims, demands, injuries or damages stemming from or related to aforementioned damages alleged by the Parties arising from the Action.

**5. REPRESENTATIONS AND WARRANTIES: Each of the Parties to the Agreement represent to, and agree with, each other Party, as follows:**

5.1 Each Party has been advised to seek independent legal advice from its own attorneys with respect to the advisability of making the settlement provided for herein and has sought such advice or knowingly declined to seek such counsel on its own accord. Aside from the advice to seek independent counsel, neither Party's attorneys have rendered any legal advice to the other Parties regarding the execution of the Agreement.

5.2 No Party (nor any officer, agent, partner, employee, representative, insurer, or attorney of or for any Party) has made any statement or representation to any other Party regarding any fact relied upon in entering into the Agreement, and no Party relies upon any statement, representation or promise of any other Party (or of any officer, agent, partner, employee, representative, insurer, or attorney for any other Party), in executing the Agreement, or in making the settlement provided for herein, except as expressly stated in the Agreement.

5.3 Each Party to the Agreement has made such investigation of the facts pertaining to this settlement and to the Agreement, and of all the matters pertaining thereto, as it deems necessary.

5.4 Each Party or responsible officer or partner thereof has read the Agreement and fully understands the contents hereof.

5.5 Each Party hereto represents and warrants that the Parties have not heretofore assigned, transferred, or hypothecated or purported to have assigned, transferred, or hypothecated, or will in the future assign, transfer, or hypothecate to anyone any debt, judgment, claim, liability, demand, Claim, cause of action, or any interest herein, based upon, or arising out of, or pertaining to, concerning, or connected with, any matters, facts, events, circumstances or things released herein.

5.6 Each term of the Agreement is contractual and not merely a recital.

5.7 Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of the Parties to fully, finally and forever settle and generally release all such matters, and all claims relative thereto, which do now exist, may exist, or did exist between them relating to the Action. In furtherance of such intention, the general releases given herein shall be and remain in effect as full and complete mutual general releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative to the issues or allegations previously in dispute between the Parties.

5.8 Each party agrees to cooperate fully and execute any and all supplementary documents that may reasonably be required to complete this settlement agreement.

**6. SETTLEMENT: The Agreement effects the settlement of claims that are heretofore denied and contested between the Parties. Nothing contained herein shall be construed as an admission by any Party of any wrongdoing or any liability of any kind to any other Party. Each of the Parties denies any liability in connection with any claims and intends only to avoid the expenses associated with litigation and to buy its peace.**

**7. MISCELLANEOUS:**

7.1 The Agreement shall be deemed to have been executed and delivered within the State of California, County of El Dorado, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California, without regard to choice of law rules.

7.2 The Agreement is the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. The Agreement may be amended only in writing signed by all Parties.

7.3 Each Party has cooperated in the drafting and preparation of the Agreement. Hence, in any construction to be made of the Agreement, the same shall not be construed against any Party.

7.4 In the event of mediation, litigation or arbitration relating to the Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, expert fees and litigation costs.

7.5 The Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. A signed copy of the Agreement transmitted by facsimile machine or email will have the same force and effect as an original signature. It is further understood and agreed that a true, accurate and complete photocopy of this document is deemed a duplicate original, each of them to have the full force and legal effect, as such and may be signed, if necessary in counterpart.

7.6 The Agreement is and shall be binding upon and shall inure to the benefit of the predecessors, subsidiaries, successors, assigns, parties, agents, officers, employees, associates, legal representatives, heirs, executives, and/or administrators of all parties. This Agreement is enforceable under California Code of Civil Procedure section 664.6 and the parties stipulate that the Court will have jurisdiction over this Agreement for the purposes of enforcement and the prevailing party shall be awarded reasonable attorney fees and costs. The releasing parties specifically exempt and exclude from the releases set forth herein only those claims arising from the contractual obligations arising from this Agreement, which obligations shall survive the releases set forth in this Agreement.

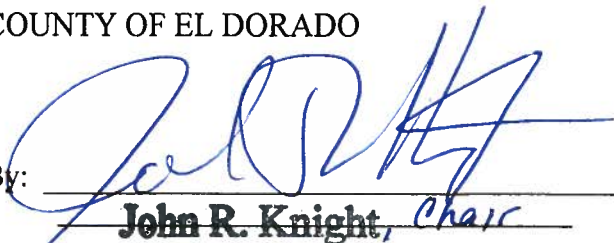
COUNTY OF EL DORADO

DATED: January 31, 2012

**ATTEST: SUZANNE ALLEN de SANCHEZ,  
Clerk of the Board of Supervisors**

By:   
**DEPUTY**

DATED: January \_\_, 2012

By:   
**John R. Knight, Chair**

ANOVA ARCHITECTS, INC.

By: \_\_\_\_\_  
\_\_\_\_\_

COUNTY OF EL DORADO

DATED: January \_\_, 2012

By: \_\_\_\_\_

ANOVA ARCHITECTS, INC.

DATED: January 30, 2012

By: David Jones

**EXHIBIT A - SCOPE OF SERVICES  
TO SETTLEMENT AGREEMENT AND  
GENERAL RELEASE OF ALL CLAIMS BETWEEN  
EL DORADO COUNTY AND ANOVA ARCHITECTS, INC.**

ANOVA ARCHITECTS, INC.'S scope of services for the repair work to be performed at the Library by CAPITAL COMMERCIAL FLOORING, INC. (CAPITAL) is to include:

- 1) Review and approval of material submittals submitted by CAPITAL,
- 2) Review and approval of project schedule submitted by CAPITAL,
- 3) On-site walk through with vapor barrier consultant prior to application of vapor barrier product,
- 4) Site visits as needed and/or at the specific request of CAPITAL or COUNTY,
- 5) Observe work performed by CAPITAL and verification that work performed completely,
- 6) Prepare punch-list of remaining close-out items (if needed),
- 7) Conduct final walk through with CAPITAL and COUNTY,
- 8) Review payment application and authorize payment to CAPITAL, and
- 9) Any additional project oversight services reasonably necessary to complete the project.

**END**