

DEPARTMENT: County Counsel BY: Jeffrey G. Green PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No X)

Pass and adopt this Resolution accepting the settlement offer of \$15,000 submitted by Larsen, Ohlinger, and Holmes (LOH) for inadequacies in the project design of the Mariposa Roadside Rest Facility. Further authorize County Counsel to execute the Settlement Agreement and Release with LOH on behalf of Mariposa County.

During the course of construction of the Roadside Rest Area, inadequacies, errors, and omissions in LOH's project design, plans, and specifications were discovered which caused additional unbudgeted monies to be expended. A significant amount of cost was incurred by the County due to extra staff time in dealing with these deficiencies. A claim was filed with LOH's insurer in the amount of \$28,999 and subsequent discussion and correspondence ensued with staff at Public Works, Counsel and the insurer relative to negotiating a settlement. LOH ultimately agreed to a \$15,000 settlement to avoid litigation.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None on this action.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- Approve Resolution as drafted.
- Do not approve this Resolution. Institute court action to recover the damages sustained, however, an amount over and above the agreed upon settlement could be expended for attorney and court costs.

COSTS: (X) Not Applicable

A. Budgeted current FY \$ _____

B. Total anticipated costs \$ _____

C. Required additional funding \$ _____

D. Internal transfers \$ _____

SOURCE: () 4/5ths Vote Required

A. Unanticipated revenues \$ _____

B. Reserve for contingencies \$ _____

C. Source description: _____

Balance in Reserve for Contingencies, if approved: \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

Settlement Agreement and Release.

CLERK'S USE ONLY: Res. No.: 95-82 Ord. No. _____

Vote - Ayes: 5 Noes: _____

Absent: _____ Abstained: _____

() Approved () Denied

() Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____

ATTEST: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: _____
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: _____

A.O. Initials: aw

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into between the County of Mariposa and Daniel Holmes and Larsen, Ohlinger & Holmes, Inc.

WHEREAS, there is pending between the County of Mariposa and Larsen, Ohlinger & Holmes, Inc. and Daniel Holmes a dispute regarding the professional services provided by Larsen, Ohlinger & Holmes, Inc. for the Mariposa Roadside Rest Facility, County of Mariposa Job Number 91-07 wherein the County alleges inadequacies and errors and omissions in the project design and plans and specifications.

WHEREAS, the parties have agreed to settle all of the dispute and to prevent the filing of any litigation regarding this dispute.

WHEREAS, the parties now intend to put the Settlement Agreement in final form and to conclude the settlement.

FOR VALUABLE CONSIDERATION, the County of Mariposa agrees as follows:

1. Authority To Execute The Settlement Agreement.

The undersigned, Jeffrey Green, is the County Counsel for the County of Mariposa and is duly empowered and authorized to execute this Settlement Agreement and Release on behalf of the County of Mariposa, and has been authorized by the Board of Supervisors or the appropriate county agency or governing body to execute

this document on behalf of the County.

The undersigned, Jeffrey Green, further states that the settlement of this matter has been approved by the Board of Supervisors or another county agency or governing body required by law to approve the settlement.

2. Subject Matter Of The Agreement.

This agreement arises from the claims made by the County of Mariposa arising out of the design work and other professional services provided by Daniel Holmes and Larsen, Ohlinger & Holmes related to the Mariposa Roadside Rest Facility, Project Number 91-07. The County of Mariposa has alleged and claimed that the design work was inadequate, that there was errors and omissions in the design of the plans and specifications and that as a result the County of Mariposa is entitled to monetary damages from Daniel Holmes and Larsen, Ohlinger & Holmes, Inc. This Agreement is specifically intended to resolve any and all claims, known and unknown, latent or patent, arising out of the services provided by Larsen, Ohlinger & Holmes, Inc. and Daniel Holmes to the County of Mariposa for the Mariposa Roadside Rest Facility.

3. Release of All Claims.

In consideration of the payment on behalf of Larsen, Ohlinger & Holmes in the amount of \$15,000.00, the County of Mariposa, on behalf of its employees, agents, representatives, elected officials, administrators, subsidiaries and assigns and each of them hereby releases and forever discharges Daniel Holmes and Larsen, Ohlinger & Holmes, Inc., and its members, agents, representatives, administrators, employees,

successors, predecessors, shareholders, directors, officers, affiliates, subsidiaries and/or assigns and all other persons, firms and/or corporations of and from any and all claims, obligations, actions, causes of actions, demands, rights, damages, costs, expenses, compensation and/or liability of whatever kind or nature, fixed or contingent, latent or patent, whether based on a tort, contract or other theory of recovery, which the County of Mariposa now has, or which may hereafter accrue or otherwise be acquired on account of or may in any way grow out of the claims made by the County of Mariposa relating to the work performed by Daniel Holmes and Larsen, Ohlinger & Holmes, Inc. for the Mariposa Roadside Rest Facility.

The County of Mariposa expressly waives and assumes the risk of any and all aforementioned claims for damages which existed as of the date of execution of this agreement, but of which the parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise and which, if known would materially affect the parties decision to enter into the agreement. The parties further assume the risk that the facts or law may be other than the parties' belief.

4. Waiver.

It is further understood and agreed that this Release shall apply to any and all claims for unknown, unforeseen, unsuspect or unanticipated damages, losses or claims and/or results from damages, losses or claims which might be asserted by the County of Mariposa. It is further understood and agreed that all the rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the

United States are hereby expressly waived. Said section, which has been fully explained by counsel for the County of Mariposa reads as follows:

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

The undersigned for and on behalf of the County of Mariposa, hereby acknowledges and represents that the damages sustained are or may be permanent and progressive and that correction thereof or recovery therefrom is uncertain and indefinite and in making this Release it is understood and agreed that the County of Mariposa relies wholly upon its own judgment, belief and knowledge of the nature, extent, effect and duration of said damages and liability therefor and that this Release is made without reliance upon any statement or representation of any of the parties hereby released or their representatives or by any person, entity or expert employed by them.

5. No Admission Of Liability.

The undersigned for and on behalf of the County of Mariposa further acknowledges that this settlement is the compromise of a doubtful and disputed claim; that this compromise of a doubtful and disputed claim is not and is not to be construed as an admission of liability, fault or responsibility by the aforementioned persons, entities, firms and/or corporations released or discharged herein or by anyone.

6. Confidentiality.

The parties to this AGREEMENT agree that the terms of this agreement are intended by the parties hereto to be confidential, except as maybe limited by law. No term or provision of the Release and Settlement Agreement shall be disclosed to any third party, except as required by law, without the written consent or permission of Daniel Holmes and Larsen, Ohlinger & Holmes, Inc.

7. Delivery Of Documents.

Without further consideration the parties agree to execute and deliver any and all documents necessary to carry out the terms and provisions of this Agreement and/or necessary to accomplish the full and final resolution of this matter referred to in the Agreement.

8. No Assignment Of The Causes Of Action.

The parties represent and warrant that none of the claims released herein have been transferred or assigned to any other person, firm, corporation or entity, public or private.

9. Severability.

Should any provision of the Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be part of this Release.

10. Construction of the Agreement.

This Agreement is drafted by counsel for Daniel Holmes and Larsen, Ohlinger & Holmes, Inc. as an accommodation to the parties, and is the product of deliberation between counsel. In the event of any dispute surrounding the interpretation of this Agreement, the parties do not intend that it be construed against the drafter.

11. Authorization To Deliver The Check.

It is hereby authorized and directed that payment of the sum of Fifteen Thousand Dollars (\$15,000.00) be made by check or draft payable to the County of Mariposa and that said check or draft be delivered to the County Counsel, Jeffrey Green.

12. Representation by Legal Counsel.

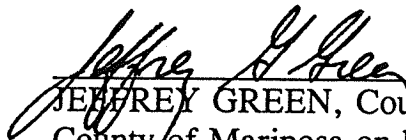
The County of Mariposa acknowledges that it has been represented by legal counsel and has freely asserted to the terms and conditions of this AGREEMENT, which does not involve coercion, under influence or economic pressure.

13. Entire Agreement.

This AGREEMENT contains the entire agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital. This Agreement supersedes any prior or contemporaneous oral or written agreement covering the subject matter hereof and shall not be modifiable except by a written agreement.

The undersigned acknowledges that he has read this Release of All Claims and voluntarily executes the same; that the Release of All Claims has been explained to the County of Mariposa by its County Counsel, Jeffrey Green, that he understands each of the terms of the compromise hereby concluded, including the scope and effect of each provision contained herein; and that he has not been influenced in any way by any representations made by any person, firm or corporation released and discharged herein, or any agent, or representative or other person acting for or on behalf of any person, firm or corporation released or discharged herein.

DATED: 3-9-95



JEFFREY GREEN, County Counsel for the
County of Mariposa on behalf of the County
of Mariposa

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

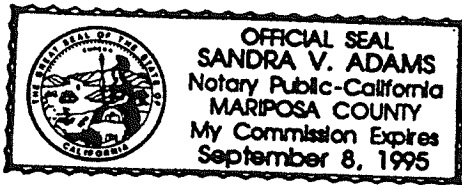
State of California

County of Mariposa

On March 9, 1995 before me, Sandra V. Adams, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Jeffrey G. Green
Name(s) of Signer(s)

personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sandra V. Adams
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Settlement Agreement and Release (Larsen, Ohlinger & Holmes)

Document Date: March 9, 1995 Number of Pages: 7

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Jeffrey G. Green

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing:

County of Mariposa

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: