

SETTLEMENT AGREEMENT AND COVENANT NOT TO SUE

THIS SETTLEMENT AGREEMENT AND COVENANT NOT TO SUE (“Agreement”) is made this 12th day of August, 2009, by and between Commonwealth of Kentucky, Administrative Office of the Courts (“AOC”) and Codell Construction Company (“Codell”) (hereinafter collectively the “Parties”).

WHEREAS, Codell is a Kentucky corporation that has its principal office in Winchester Kentucky;

WHEREAS, AOC is the administrative and fiscal agency of the Kentucky Court of Justice;

WHEREAS, AOC is charged with the responsibility of providing facilities for the Court of Justice in each county in the Commonwealth of Kentucky;

WHEREAS, AOC establishes a Project Development Board (“PDB”) to serve as agent for the Court of Justice and each county during the development of a new judicial center;

WHEREAS, Codell is currently under contract with either the PDB, Fiscal Court and/or other County entity (“County” or “Counties”) for each of the counties identified in Attachment A to this Agreement to provide construction management services for the judicial center projects (the “Projects”) in those counties;

WHEREAS, as used herein “Phase A-C bonds” refers to Performance and Payment Bonds for Phases A, B & C with a penal sum of seven percent (7%) of Codell’s Budgeted Fee;

WHEREAS, as used herein “Phase D bonds” refers to Performance and Payment Bonds for Phase D with a penal sum of one hundred percent (100%) of the Guaranteed Maximum Price (“GMP”) for each Project;

WHEREAS, disputes arose between AOC and Codell relating to requirements for providing Performance and Payment Bonds for Phases A-C and Phase D of the Projects; and,

WHEREAS, AOC and Codell participated in a mediation on June 23, 2009 and the Parties have reached an agreement regarding the disputes relating to the bonding requirements for the Projects specifically identified in this Agreement;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

1. **Incorporation:** The recital paragraphs above are incorporated by reference.
2. **Assurances from Codell:** Codell represents to the AOC that Codell believes in good faith that it will be able to obtain the Phase D Bonds for the projects currently in Phases A-C as those Phase D Bonds are needed when Phase D commences.

3. **Closing:** A closing will be conducted at the offices of the AOC in Frankfort, Kentucky on August 17, 2009 at 1:00 p.m., at which each of the steps set forth in Paragraphs 4, 5, 6, and 7 hereof will be implemented.

4. **Default Notices Withdrawn:** AOC will direct the Counties that sent notices of default to Codell for Projects in Phases A-C to send faxes or e-mails to Codell and Travelers Casualty and Surety Company of America (“Travelers”) to withdraw and cancel all notices of default on those Projects.

5. **Franklin County Bonds:** Codell, through surety acceptable to AOC, will provide Phase A-C Bonds for the Franklin County Project.

6. **Amendment No. 1 for Carlisle, Hancock, Mercer & Whitley County Projects:** AOC will provide Codell with executed copies of Amendment No. 1 for the following Projects: (1) Carlisle County; (2) Hancock County; (3) Mercer County; and (4) Whitley County.

7. **Phase D Bonds for Carlisle, Hancock, Mercer & Whitley County Projects:** Codell, through surety acceptable to AOC, will provide Performance and Payment Bonds for one hundred percent (100%) of the Guaranteed Maximum Price for each the following Projects: (1) Carlisle County (in the penal sum of \$9,193,171.26); (2) Hancock County (in the penal sum of \$9,185,511.16); (3) Mercer County (in the penal sum of \$8,780,623.25); and (4) Whitley County (in the penal sum of \$12,429,007.00). If a different GMP is ultimately established for any or all of these four projects, the AOC and Codell will consider whether any increase or decrease in the amount of the Phase D Bonds is necessary or appropriate.

8. **Projects in Other Counties:** For the Projects in Allen, Breckinridge, Campbell, Franklin, Owen, Pike, Todd, and Wolfe Counties, Codell will furnish Performance and Payment Bonds equivalent to 100% of the Guaranteed Maximum Price at the time that each County and Codell execute Amendment No. 1 on each such Project.

9. **Good Faith Letters From Travelers:** In regard to the Projects referenced in Paragraph 8, until the commencement of Phase D and in lieu of requiring the immediate provision of Phase D Bonds, AOC will accept the previously issued Phase A-C Bonds and the previously issued good faith letters from Travelers sent to the Counties with Phase A-C Projects.

10. **Increasing Phase A-C Bonds:** If Codell enters into a subcontract or subcontracts on any Project prior to the execution of Amendment No. 1 for that Project, Codell will cause the Phase A-C Bonds to be increased from a penal sum of seven percent (7%) of Codell’s Budgeted Fee to a penal sum equal to seven percent (7%) of Codell’s Budgeted Fee plus the total amount of any such subcontract(s); or Codell itself will obtain a separate Performance and Payment Bond to cover the total amount of any such subcontract(s).

11. **Failure to Bond:** If Codell fails or refuses to furnish timely and sufficient Performance and Payment Bonds for any Project described in Paragraph 7 and/or 8 above within the time stated, Codell agrees that the Counties may take the following actions without the necessity of sending a notice of default to Codell: (a) the County may terminate for convenience the contract with

Codell for the Project for which Codell has failed to furnish the required Performance and Payment Bonds; and (b) the Counties for any of the other Projects identified in Paragraphs 7 and/or 8 may also terminate for convenience the Codell contract(s) for any and all other Projects identified in Paragraphs 7 and/or 8 for which sufficient Phase D Bonds have not yet been furnished at that time. Codell also agrees that, if Codell fails or refuses to furnish timely and sufficient Performance and Payment Bonds for any Project identified in Paragraphs 7 and/or 8 within the stated time period, Codell will not seek any further AOC Judicial Center Projects for at least six (6) months thereafter. If Codell is terminated from any Project or Projects pursuant to this Paragraph 11, Codell will reimburse the AOC and the respective Counties for the reasonable actual costs incurred to retain another construction manager to replace Codell on each such Project.

12. No Codell Claims for Termination: In the event that the contract of Codell for any Project or Projects is terminated pursuant to the terms of this Agreement as a result of Codell's or its agent's acts or omissions, Codell agrees not to challenge that termination and covenants not to sue or to seek any damages from the AOC or any County relating to Codell's failure to furnish the Phase D Bonds.

13. Payment: Within thirty (30) days after the execution of this Agreement, AOC, through certain Counties, will deposit One Hundred Fifty Thousand Dollars (\$150,000.00) into an interest bearing escrow account with a mutually agreeable third party or entity, which will be held in accordance with Paragraph No. 14.

14. Escrow Terms: The funds in the escrow will be released to the following recipients in the following priority:

(A) If Codell fails to provide timely and sufficient Phase D Bonds in regard to any Project described in this Agreement, upon demand the County for that Project may obtain reimbursement for the reasonable actual costs incurred to retain another construction manager to replace Codell for that Project from the escrow funds;

(B) If Codell is terminated from any Projects in the manner described in Paragraph 11 hereof, the Counties for those Projects upon demand may obtain reimbursement for the reasonable actual costs incurred to retain another construction manager to replace Codell for those respective Projects from the escrow funds;

(C) Any escrow funds remaining as of June 30, 2010 will, upon demand, be released to Codell.

15. AOC Covenant Not to Sue: AOC covenants not to sue Codell for Codell's alleged delay in furnishing or failure to furnish any of the bonds described in this Agreement and will cause the Counties to enter into a similar covenant; provided, however, that nothing in this Paragraph is intended to apply to any of the obligations of Codell pursuant to the terms of this Agreement itself. AOC will also covenant not to sue Codell for Codell's alleged delay in furnishing or failure to furnish appropriate Performance and Payment Bonds in connection with any other Kentucky courthouse projects in which Codell has served as a Construction Manager prior to the date of this Agreement. AOC will cause the Counties to enter into the same covenants. AOC and the Counties reserve all other rights against Codell and its surety.

16. **Codell Covenant Not to Sue:** Codell covenants not to sue the AOC or any of the Counties for any claim relating to the bonding requirements for any of the Projects identified in Attachment A to this Agreement, including but not limited to any claim that (i) Codell is not required to furnish the Bonds or (ii) Codell should receive further compensation in exchange for or in recognition of furnishing the Bonds beyond that contemplated in this Agreement. Codell reserves all other rights against AOC and the Counties.

17. **Attorney's Fees and Expenses:** The Parties agree that they will pay their own attorney's fees and expenses arising from or relating to the disputes described in this Agreement.

18. **Acknowledgement of Fair Consideration:** The Parties acknowledge that the consideration received in connection with this Agreement is fair, just and adequate, and constitutes lawful consideration supporting the execution and legally binding effect of this Agreement. It is understood and agreed, however, that the consideration referred to in this Agreement was made in settlement and compromise of disputed claims and it is not to be construed as an admission of fault by any of the Parties.

19. **No Assignment of Rights:** Each of the Parties represent and warrant that no part of any alleged rights or claims referenced herein have been assigned to another entity, person, firm or corporation.

20. **Settlement Authority:** Each of the Parties to this Agreement represents and warrants that they have requisite power and authority to execute this Agreement.

21. **Terms Read and Understood:** Each of the Parties to this Agreement agree that they have read all of the provisions of this Agreement in full, understand them and voluntarily agree to be bound by them and warrant that no promise, inducement, or agreement not expressed in this Agreement has been made to either of the Parties.

22. **Representation by Counsel:** Each of the Parties to this Agreement acknowledge and agree that they have had the opportunity to consult with legal counsel and that they are entering into this Agreement based solely and exclusively upon their own and/or their counsel's own analysis of the facts and/or information of which their and/or their counsel are independently aware and not based upon or in reliance upon any statements and/or representations of any of the Parties signing or otherwise referenced in this Agreement.

23. **Governing Law:** This Agreement is governed by the laws of the Commonwealth of Kentucky.

24. **Captions and Headings:** All captions and headings are for convenience only and shall not affect the interpretation of this Agreement.

25. **Invalid or Unenforceable Terms:** If any term or provision or any part of this Agreement shall be invalid or unenforceable, the remainder of this Agreement (or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or

unenforceable) shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

26. Execution in Counterparts: This Agreement may be executed in counterparts, each of which shall be considered an original. If no single counterpart is executed by all of the Parties, but each of the Parties execute one or more counterparts of an identical version of this Agreement, the original will consist of the collective agreement bearing partial groups of signatures.

27. Execution of Additional Documents: The Parties shall execute such additional documents as shall be necessary to implement or affect the provisions contained in this Agreement.

28. Entire Agreement: This Agreement contains the entire agreement between and among the Parties with respect to the subject matter of this Agreement and any agreement hereafter made shall be ineffective to change, modify, or discharge this Agreement unless such subsequent agreement is in writing and signed by each of the Parties to be charged therewith.

29. Free and Voluntary Execution: The undersigned have read this document, and execute it freely, voluntarily, and with full knowledge of its significance and legal effect.

**COMMONWEALTH OF KENTUCKY,
ADMINISTRATIVE OFFICE OF THE COURTS**

By: Jamie Woodson

Its: Director

Date: August 12, 2009

CODELL CONSTRUCTION COMPANY

By: James C. Codell

Its: President

Date: August 12, 2009

ATTACHMENT A

Phase D Projects:

1. Grant Co.
2. Green Co.
3. Jackson Co.
4. Laurel Co.
5. Logan Co.
6. Marion Co.
6. Pendleton Co.
7. Shelby Co.
8. Trigg Co.

Phase A, B, C Projects:

1. Allen Co.
2. Breckinridge Co.
3. Campbell Co.
4. Carlisle Co.
5. Franklin Co.
6. Hancock Co.
7. Mercer Co.
8. Owen Co.
9. Pike Co.
10. Todd Co.
11. Whitley Co.
12. Wolfe Co.