

RESOLUTION NO. Two (2) - 85

A RESOLUTION APPROVING AND AUTHORIZING
EXECUTION OF SETTLEMENT AGREEMENT AND MUTUAL RELEASE

HEALY TIBBITS CONSTRUCTION COMPANY

RESOLVED, by the Board of Directors of the Sewer Authority Mid-Coastside, San Mateo County, California, that that certain document entitled "Settlement Agreement and Mutual Release" by and between this Authority and Healy Tibbits Construction Company, dated January 4, 1985, copies of which have heretofore been submitted to this Board for its review and consideration, be, and it is hereby, approved.

BE IT FURTHER RESOLVED that the Manager is hereby authorized to execute said Agreement on behalf of this Authority, and his actions in so doing are hereby ratified and confirmed.

* * * * *

I hereby certify that the foregoing is a full, true and correct copy of a resolution duly passed and adopted by the Board of Directors of the Sewer Authority Mid-Coastside at a regular meeting thereof held on the 28th day of January 1985, by the following vote:

AYES, and in favor thereof, Directors: *Schuetrum, Crawford, Eriksen, Bedesem, Leger and Shapira*

NOES, Directors: *None.*

ABSENT, Directors: *None.*

Susan Shapira
Chairman
Sewer Authority Mid-Coastside

COUNTERSIGNED:

Viola Schuetrum
Secretary
Sewer Authority Mid-Coastside

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

SEWER AUTHORITY
MID-COASTSIDE Settlement Agreement and Mutual Release

("Agreement") is entered into by HEALY TIBBITTS CONSTRUCTION COMPANY, a California corporation ("HEALY TIBBITTS"); SEWER AUTHORITY MID-COASTSIDE, a public agency ("SAM"); UNITED PACIFIC INSURANCE COMPANY, a corporation ("UNITED"); and MID-COASTSIDE AREA CONSULTANTS ("MAC").

RECITALS

A. On May 10, 1982, the Board of Directors of SAM awarded a contract to HEALY TIBBITTS for the work to be done and the improvements to be made for Project No. 4, as described and specified in the plans, specifications and contract documents, adopted by the Board on March 14, 1979, including any addenda thereto, as supplemented by that set of contract documents entitled "Supplemental Contract Documents and Specifications For: Completion of Partially Constructed San Mateo County Mid-Coastside Water Pollution Control Facilities - 1979" dated March 1982 and approved by the Board at its meeting on April 26, 1982.

B. The contract so awarded to HEALY TIBBITTS was for the completion of the construction of ocean outfall and pumping facilities in Half Moon Bay, the contract for which was originally awarded by SAM on August 13, 1979, to Glanville Construction Company ("Glanville"). UNITED furnished

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a faithful performance bond guaranteeing the performance of the work by GLANVILLE which was not completed by said company.

C. MAC prepared the contract documents and specifications for the project and supervised the construction of the ocean outfall and pumping facilities involved.

D. HEALY TIBBITTS has made various claims arising out of or connected with the completion of its work pursuant to its contract with SAM referred to above.

E. The parties hereto desire to resolve all aspects of the above-mentioned claims by HEALY TIBBITTS and in order to do so they agree to the full and timely performance of the following terms and conditions in the manner prescribed herein.

TERMS AND CONDITIONS

1. Benefit of Counsel. The advice of legal counsel has been obtained by each of the parties hereto prior to entering this agreement. Each of the parties hereto execute this agreement with full knowledge of its significance and with the express intention of effecting its legal consequences.

2. Payments to HEALY TIBBITTS. In consideration for the release by HEALY TIBBITTS set forth hereinafter, SAM shall pay HEALY TIBBITTS the sum of \$50,000.00 and UNITED shall pay HEALY TIBBITTS the sum of \$35,000.00.

3. Release by HEALY TIBBITTS. In consideration for the payments by SAM and UNITED provided for herein and the releases by SAM, UNITED, and MAC set forth herein, HEALY TIBBITTS hereby releases and forever discharges each other party to this Agreement and each of their predecessors; successors; heirs; past, present, and future executors, administrators, trustees, beneficiaries, partners, affiliated and related entities, officers, directors, assigns, agents, employees and representatives, including without limitation their insurers and attorneys, who were, are or may ever become liable to it, of and from any and all claims, demands, causes of action, obligations, liens, damages, losses, liabilities, attorneys' fees, costs and expenses of every kind or nature whatsoever, fixed or contingent, which are now known, suspected to exist, or which reasonably should be known now, which it may now or hereafter have against any of them by reason of any matter, cause, or claim arising out of or connected with its contract for the completion of the ocean outfall and pumping facilities above referred to, except that HEALY TIBBITTS reserves the right to assert any such claims as defenses or counter-claims in any action that may be brought against it by any party to this Agreement.

4. Release by SAM, UNITED, and MAC. In consideration for the release by HEALY TIBBITTS as set forth herein, SAM,

UNITED and MAC hereby release and forever discharge HEALY TIBBITTS, its successors, and its past, present, and future executors, administrators, trustees, beneficiaries, partners, affiliated and related entities, officers, directors, assigns, agents, employees and representatives, including without limitation their insurers and attorneys, who were, are, or may ever become liable to SAM, UNITED, or MAC, of and from any and all claims, demands, causes of action, obligations, liens, damages, losses, liabilities, attorney's fees, costs and expenses of every kind or nature whatsoever, fixed or contingent, which are now known, suspected to exist, or reasonably should be known now, which each or any of them may now or hereafter have against HEALY TIBBITTS by reason of any matter, cause, or claim arising out of or connected with the contract for the completion of the ocean outfall and pumping facilities referred to above.

5. Limited Releases. The mutual releases set forth in paragraphs 3 and 4 above are limited as described therein and do not constitute general releases as that term is used in Section 1542 of the Civil Code of the State of California.

6. Warranty of Non-Assignment. Each party hereto hereby represents and warrants that it has not sold, transferred, conveyed, assigned or hypothecated any of its rights, claims or causes of action released herein.

7. Compromise. This Agreement is the result of a compromise and shall never at any time for any purpose be considered an admission of liability or responsibility on the part of any of the parties hereto, nor shall the payment of any sum of money for the execution of this Agreement constitute or be construed as an admission of any liability whatsoever by any of the parties, all of whom continue to deny any such liability and to disclaim any such responsibility.

8. Attorneys' Fees. The parties hereto acknowledge and agree that each of them are to bear their own costs, expenses and attorneys' fees in connection with the negotiation, drafting and execution of this Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees.

9. Governing Law. This Agreement shall be interpreted in accordance with and governed in all respects by California law.

10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective relatives, heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, partners, affiliated and

related entities, officers, directors, stockholders, agents, servants, employees, representatives, attorneys and insurers.

11. Severability. If any provision, or any part of any provision, of this Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby.

12. Effective Date. The parties hereto deem this Agreement to be signed as of the latest day, month and year on which a party executes this Agreement.

13. Integration. This Agreement contains the entire understanding between the parties with regard to the matters set forth herein. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

Dated: December 4, 1984

HEALY TIBBITS CONSTRUCTION
COMPANY

By 

Approved as to Form:

COOLEY, GODWARD, CASTRO,
HUDDLESON & TATUM

By Frederick D. Bacon

Attorneys for HEALY TIBBITTS
CONSTRUCTION COMPANY

Dated: Jan. 4, 1985

SEWER AUTHORITY MID-COASTSIDE

By [Signature]

Approved as to Form:

WILSON, MORTON, ASSAF &
McCELLIGOTT

By Thomas B. Adams
Thomas B. Adams

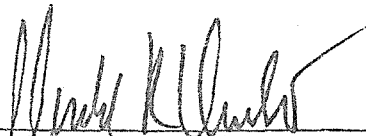
Attorneys for SEWER AUTHORITY
MID-COASTSIDE

Dated: Nov 15, 1984

UNITED PACIFIC INSURANCE
COMPANY

By [Signature]

Approved as to Form:

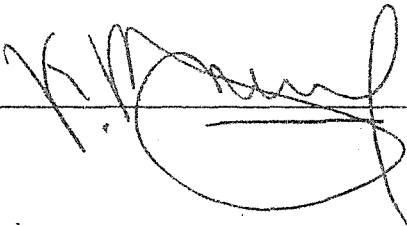


Gerald R. Knecht

Attorney for UNITED PACIFIC
INSURANCE COMPANY


Dated: 1/2/85

MID-COASTSIDE AREA CONSULTANTS

By 

Approved as to Form:

SEVERSON, WERSON, BERKE &
MELCHIOR

By 

Ernest Y. Sevier

Attorneys for MID-COASTSIDE
AREA CONSULTANTS