

RESOLUTION NUMBER R-288458

ADOPTED ON MAR 18 1997

WHEREAS, in Closed Session on March 18, 1997, the City Council, by the following vote: Yeas, Districts 1, 2, 3, 5, 6, 7, 8, and Mayor Susan Golding; Nays, None; Not Present, District 4; approved the following; NOW, THEREFORE,

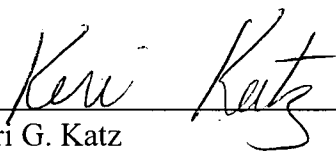
BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to accept the total sum of \$205,000.00 in cash payment and \$95,000.00 in engineering services from Rick Engineering Company in the form of the attached Exhibit A, City Clerk Document No. RR-288458 for the settlement of each and every claim against Rick Engineering Company, its agents and employees, by The City of San Diego as more fully set forth in City of San Diego v. Rick Engineering Company, San Diego Superior Court Case No. 693806.

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to waive Council Policy No. 300-7 in order to accept engineering services as partial settlement of this lawsuit.

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to amend The City of San Diego's Settlement Agreement And Mutual Release Of Claims with Hunter Corporation to place a \$30,000.00 maximum amount paid to Hunter Corporation out of the \$300,000.00 settlement amount received from Rick Engineering Company. This will change the original Hunter Corporation settlement

agreement, page 3, number 1, paragraph (b), as described in Resolution Number 285701, which states that twenty percent of the "net" recovered amount from Rick Engineering to The City of San Diego will be paid to Hunter Corporation. The new amount paid to Hunter Corporation will not exceed \$30,000.00 as satisfaction of this portion of our original agreement.

APPROVED: CASEY GWINN, City Attorney

By 
Keri G. Katz
Deputy City Attorney

KGK:kjk:Civ.
3/26/97
Or.Dept:Eng.
R-97-959
Form=r.claim1

SETTLEMENT AND RELEASE AGREEMENT

RECITALS

- A. This Settlement and Release Agreement ("Agreement") is entered into by and among the City of San Diego, a municipal corporation ("Plaintiff" or "City"), Rick Engineering Company, a California corporation ("Rick"), Pacific Soils Engineering, Inc., a California corporation, ("Pacific Soils") and Dudek & Associates, Inc., a California corporation ("Dudek"), hereinafter collectively referred as the "Parties." The purpose of this Agreement is to effectuate a settlement of all disputes between the Parties arising out of and/or related to San Diego County Superior Court Case No. 693806 ("Action").
- B. The Parties wish to resolve and settle all present and past controversies, claims, causes of action or purported causes of action, differences or disputes, whether real or potential, arising between the Parties as a result of the Action. However, nothing in this Agreement shall be construed as admission of any kind by any Party for any purpose whatsoever.

AGREEMENT

1. As a full and complete settlement of this Action, the Parties agree as follows:
- A. Rick shall provide Plaintiff with the sum of \$300,000, \$95,000 of which will be in the form of a credit to Plaintiff on future work as described in Paragraph 2E to this Agreement, and \$205,000 of which shall be paid in cash on or before the 90th day after approval by the City Council for Plaintiff of this Agreement;
 - B. In exchange for payment as set forth in Sub-paragraph A above, Plaintiff shall dismiss its complaint with prejudice;
 - C. Dudek shall pay to Rick the sum of \$50,000;
 - D. Pacific Soils shall pay to Rick the sum of \$10,000;
 - E. In exchange for the payments set forth in Sub-paragraphs C and D above, Rick shall dismiss its cross-complaint against Pacific Soils and Dudek with prejudice.
2. In order to effectuate the settlement, the Parties agree as follows:
- A. At or before 5:00 p.m., on or before the 80th day after approval as stated in Paragraph 1.A., Pacific Soils shall deliver to the offices of Rick's attorneys a [cashiers] check or [checks] totaling \$10,000.

FORM OF:

DOCUMENT NO. RR-288458 1

FILED MAR 18 1997

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

R. 288458

EXHIBIT A

- B. At or before 5:00 p.m., on or before the 80th day after approval as stated in Paragraph 1.A., Dudek shall deliver to the offices of Rick's attorneys a [cashiers] check or [checks] totaling \$50,000.
- C. At or before 5:00 p.m., on or before the 90th day after approval as stated in Paragraph 1.A., Rick shall deliver to the offices of the City Attorney a [cashiers] check [or checks] totaling \$205,000.
- D. The City Attorney shall hold the check [checks] described above in trust, and the check [or checks] shall not be negotiated nor shall the monies be distributed, until Plaintiff and Plaintiff's attorneys have:
- (1) fully executed this Agreement and have faxed a copy of the fully executed Agreement to the attorneys for each of the above Parties, and;
 - (2) have prepared and filed a Request for Dismissal dismissing the complaint with prejudice, and have faxed a conformed copy of the filed Request for Dismissal to attorneys for each of the other Parties.
- E. The remaining \$95,000 set forth in Paragraph 1.A. shall be in the form of a credit to Plaintiff on future work by Rick on matters proscribed by the City of San Diego and apply only to services performed by Rick in its normal course of business. All such work shall be billed to Plaintiff at Rick's billing rates in existence at the time of the request for services by Plaintiff, shall be based upon a scope(s) of work to be agreed upon prior to the start of any work, and shall be for projects with a minimum contractual value of \$5,000. From each of the invoices directed to Plaintiff for work identified to be performed pursuant to this Agreement, the City will be entitled to deduct thirty-five (35) percent of the costs of the services performed by Rick until the full amount of the \$95,000 has been utilized. The credit deduction shall not be applied to costs incurred by Rick to third parties or for services performed by others under contract to Rick in support of any services Rick is providing to the City pursuant to this subparagraph. Work subject to this credit must be commenced within three (3) years, and completed within four (4) years of the execution of this Agreement.
3. Each of the Parties shall bear their own costs and attorneys fees.
4. Plaintiff discharges and releases Rick, Dudek and Pacific Soils, and each of their respective agents, employees, representatives, attorneys, principals, predecessors, successors, subsidiaries, affiliates, children, beneficiaries, assigns and each of them from any and all obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, actions, and causes of action of every nature, character or description, which any of them may now have or might hereinafter have, whether known or unknown, suspected or unsuspected,

concealed or hidden, by reasons of any matter or thing arising out of or in any way related to the Action.

5. Rick, Dudek and Pacific Soils discharge and release Plaintiff, and each other, and each of the Parties' respective agents, employees, representatives, attorneys, principals, predecessors, successors, subsidiaries, affiliates, children, beneficiaries, assigns and each of them from any and all obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, actions, and causes of action of every nature, character or description, which any of them may now have or might hereinafter have, whether known or unknown, suspected or unsuspected, concealed or hidden, by reasons of any matter or thing arising out of or in any way related to the action.

6. The Parties, individually and on behalf of their agents, employees and representatives, agree and covenant not to institute any lawsuit which is based on any claims resolved or released by this Agreement, or is in derogation of this Agreement.

7. With regard to the issues set forth in the Action, the Parties expressly waive the rights afforded under Civil Code §1542 which provides that:

"A general release does not extend to claims that a 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 effected his settlement with the debtor."

The releases set forth in this Agreement, including but not limited to this paragraph, shall not effect any future claims concerning any warrantees that may exist, latent design defects or other matters unrelated to the specific claims set forth in the Action. Further, this Agreement does not create any warrantees that do not otherwise exist from the contracts previously entered into by and among the Parties with regard to the project over which this Action was commenced and does not create any new rights other than those specifically set forth in this Agreement as to the settlement of the Action.

8. Parties hereby agree to indemnify and save and hold one another harmless from and against all "damage" which term shall mean actual cash expenditures arising out of, resulting from, or relating to damage, liability, loss, costs or deficiency, including but not limited to, reasonable attorneys fees and other costs and expenses incident to proceedings or investigations for the defense of any claim incurred by any Party arising out of, resulting from, or relating to: (a) any inaccuracies and any representation made by any Party or the breach of any warranty by any Party under this Agreement; and (b) any failure by a Party to duly perform and observe any term, provision or covenant to be performed by a Party pursuant to this Agreement.

9. The Parties represent and warrant, except as otherwise stated in this Agreement, that they have not assigned or transferred, or purported to assign or transfer, and shall not hereinafter

assign or transfer, any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, actions and causes of actions released pursuant to the Agreement. The Parties also agree to indemnify and hold one another harmless against any obligation, liability, demand, expense, claim, cost, expense (including but not limited to attorneys fees incurred), debt, controversy, damage or cause of action based on, arising out of or a connection with any such transfer or assignment or purported transfer or assignment.

10. The Parties, and each of them, acknowledge that they have read this Agreement; that they have had the Agreement explained to them by counsel of their choice; they are aware of the content and legal effect of the Agreement; they are acting on the advice of the counsel of their choice; and they are not relying on any representations by any other Party or any of the employees, agents, representatives or attorneys of any other Party, or any of them, except as expressly set forth in this Agreement.
11. This Agreement shall be effective immediately upon execution by all Parties. This Agreement may be executed in counter-parts and in duplicate originals. If executed in counter-parts, then upon proof of execution of at least one copy, the Agreement shall be effective from the date of the last signature. If executed in duplicate, each duplicate copy shall be valid as an original copy.
12. Parties agree to execute and deliver any other instrument or document convenient or necessary to carry out the terms of this Agreement.
13. This Agreement constitutes the entire Agreement between the Parties. No modification of this Agreement shall be valid unless in writing and signed by the Parties. The Parties shall not be bound by any representation, warrantee, promise, statement or information, unless it is specifically set forth in this Agreement.
14. The failure of any Party to insist upon strict observance of or compliance with, all the terms of this Agreement in one or more instances shall not be deemed a waiver of a Party's right to insist upon such observance or compliance with the other terms of this Agreement.
15. This Agreement shall bind and inure to the benefits of the heirs, executors, administrators, successors and assigns of the Parties.
16. This Agreement shall be construed under the laws of the State of California.
17. This Agreement shall be construed as having been authored by each of the Parties and should any dispute arise with regard to the interpretation of this Agreement, this Agreement shall not be construed against any Party, but shall be construed pursuant to the laws of contract interpretation in the State of California as if authored by each of the Parties.

18. Should an action be brought to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys fees and costs incurred in prosecuting this action. Such cost shall include costs of deposition transcripts and associated costs, experts and employee compensation.
19. In the event that this Agreement fails to become effective, nothing in this Agreement shall constitute, deem to be or be used by any Parties as an admission of any kind for any purpose whatsoever.

DATE: _____

CITY OF SAN DIEGO

By: _____
Frank Belock

DATE: _____

RICK ENGINEERING COMPANY

By: _____
Lyle F. Gabrielson, President

By: _____
Houshmand Aftahi, Secretary

DATE: _____

DUDEK & ASSOCIATES

DATE: _____

PACIFIC SOILS ENGINEERING, INC.

APPROVED AS TO FORM:

DATE: _____

Keri Katz, Attorney for City of San Diego

DATE: _____

Dennis J. Stryker, Attorney for
Rick Engineering Company

DATE: _____

Hal G. Block, Attorney for Dudek & Associates

DATE: _____

Michael Barmasee, Attorney for
Pacific Soils Engineering, Inc.