

RESOLUTION NO. 68-2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA APPROVING EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN THE CITY OF PACIFICA AND SIERRA MOUNTAIN CONSTRUCTION, INC., WALTER C. SMITH COMPANY, BLOCKA CONSTRUCTION, INC., TRAVELERS PROPERTY CASUALTY COMPANY, SCOTTSDALE INSURANCE COMPANY, HARTFORD FIRE INSURANCE COMPANY, AND FIRST SPECIALTY INSURANCE CORPORATION

WHEREAS, the City undertook the construction of the Wet Weather Equalization Basin Project (“Project”), CIP # C030, beginning in 2017 with Sierra Mountain Construction, Inc., (“SMCI”) as the prime contractor. Over the course of the Project work, disputes arose between the City of Pacifica and SMCI regarding the cost of construction, delays to Project completion, and claims for damages (collectively “Disputes”); and

WHEREAS, The Project was completed on Dec. 6, 2019, and the City of Pacifica and SMCI agreed to mediate the Project Disputes prior to the filing of any formal court action regarding the Disputes; and

WHEREAS, the mediation between the City of Pacifica and SMCI also included certain subcontractors of SMCI, Walter C. Smith Company, Inc. (“W.C. Smith”), Blocka Construction, Inc. (“Blocka”), and insurance carriers, Travelers Property Casualty Company of America (“Travelers”), Scottsdale Insurance Company (“Scottsdale”), Hartford Fire Insurance Company (“Hartford”), and First Specialty Insurance Corporation (“First Specialty”), collectively referred to as the Parties; and

WHEREAS, the Parties mediated in good faith beginning in 2020 and over the course of multiple mediation session reached a mutual agreement for a settlement in principle on March 28, 2022. Thereafter, the Parties, through their counsel, negotiated a Settlement Agreement reflecting the terms of the mediation settlement; and

WHEREAS, the Settlement Agreement (effective date of agreement March 21, 2022) provides for the payment into a settlement fund by the City of Pacifica, the insurance carriers for SMCI, Blocka and W.C. Smith and the disbursement of those settlement funds to SMCI, Blocka and W.C. Smith; and

WHEREAS, the Parties desire to enter into the Settlement Agreement attached hereto as Exhibit A to completely and finally resolve the Disputes arising out of the Project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pacifica hereby approves the Settlement Agreement attached hereto as Exhibit A and authorizes the City Manager to execute the Settlement Agreement in the form attached hereto as Exhibit A.

• • • •

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 11th day of October, 2022, by the following vote:

AYES, Councilmembers: Beckmeyer, Bier, Bigstyck, O'Neill, Vaterlaus.

NOES, Councilmembers: n/a.

ABSENT, Councilmembers: n/a.

ABSTAIN, Councilmembers: n/a


Mary Bier (Oct 10, 2022 16:22 PDT)

Mary Bier, Mayor

ATTEST:



Sarah Coffey, City Clerk

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney

EXHIBIT A

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

The parties to this Mutual Release and Settlement Agreement (“Agreement”) are The City of Pacifica, (the “City”), Sierra Mountain Construction, Inc. (“SMCI”), Walter C. Smith Company, Inc. (“W.C. Smith”), Blocka Construction, Inc. (“Blocka”), Travelers Property Casualty Company of America (“Travelers”), Scottsdale Insurance Company (“Scottsdale”), Hartford Fire Insurance Company (“Hartford”), and First Specialty Insurance Corporation (“First Specialty”) which are collectively referred to as the “Parties” and individually as a “Party.” This Agreement is entered into by and between the Parties as of March 21, 2022 (the “Effective Date”).

A. SMCI supplied and furnished certain labor, equipment and materials to and performed certain work for the City in connection with a work of improvement known as the Wet Weather Equalization Basin project located in Pacifica, CA (the “Project”) pursuant to a written contract between SMCI and the City (the “Contract”). The City was the owner of the Project. SMCI was the direct contractor for the Project.

B. SMCI subcontracted certain portions of the work for the Project to W.C. Smith. Specifically, and without limitation, W.C. Smith installed a pipeline from the EQ Basin to Arguello Blvd. at the Project and conducted certain boring operations pursuant to a written agreement or agreements (“W.C. Smith Subcontract”).

C. SMCI subcontracted the electrical work for the Project to Blocka pursuant to a written agreement or agreements (“Blocka Subcontract”).

D. Disputes arose during the Project concerning, among other things, the plans and specifications for pipeline work, delays, claims by SCMI and some of its subcontractors for extra work and costs, and conformity of the construction work performed by SMCI and its subcontractors, including W.C. Smith and Blocka, to the plans and specifications. Additionally, certain equipment that was furnished and installed as part of the Project suffered damage in December 2019 after water entered conduits; that damage was repaired by SMCI.

E. Additionally, disputes arose with the City and certain property owners regarding claims that the construction work had caused damage to existing property and improvements, principally along or adjacent to Balboa Way. The City issued a demand in connection with this alleged damage as well as certain aspects of the construction work that the City asserted was nonconforming.

F. The City awarded a contract to have another contractor replace certain infrastructure (which had not been within the scope of the Project) and to perform work to address or remedy the items it had asserted were nonconformities in the construction work in connection with the Project as well as conditions or damage for which the City asserted SMCI and some of its subcontractors were responsible.

G. One owner of a property filed a lawsuit claiming damage arising out of the Project, *Susan Lee, Trustee of the Godsoe Family Trust v. City of Pacifica, et al.*, San Mateo County Superior Court Case No. 20-CIV-01739 (the “Lee Lawsuit”). That lawsuit was settled by insurance carriers providing a defense to SMCI.

H. W.C. Smith commenced a legal action relating to the Project known as *Walter C. Smith Company, Inc. v. Sierra Mountain Construction, Inc., et al.*, pending as Case No. 20-CIV-02356 in San Mateo County Superior Court (the “W.C. Smith Action”). SMCI filed a cross-complaint and answer in the W.C. Smith Action; among other things, SMCI alleged that W.C. Smith was responsible for some of the claims being asserted by the City and that SMCI was entitled to a defense from W.C. Smith; among other things, W. C. Smith alleged that SMCI breached the W. C. Smith Subcontract and made a claim on the SMCI Payment Bond filed with the City pursuant to the Contract. For purposes of this Agreement, the “W.C. Smith Action” includes all causes of action and claims asserted therein, including SMCI’s cross-complaint; the parties to the W.C. Smith Action each deny the allegations asserted against them in that proceeding.

I. Blocka commenced a legal action relating to the Project known as *Blocka Construction, Inc. v. Sierra Mountain Construction, Inc., et al.*, pending as Case No. 21-CIV-00083 in San Mateo County Superior Court (the “Blocka Action”). SMCI filed a cross-complaint and answer in the Blocka Action; among other things, in its cross-complaint, SMCI alleged that Blocka was responsible for some of the claims being asserted by the City and that SMCI was entitled to a defense from Blocka. For purposes of this Agreement, the “Blocka Action” includes all causes of action and claims asserted therein, including SMCI’s cross-complaint; the parties to the Blocka Action each deny the allegations asserted against them in that proceeding.

J. SMCI tendered the claims asserted by the City to liability insurance carriers, including its own primary liability insurance carriers, Travelers and First Specialty, and as an additional insured, to the insurers of W.C. Smith and Blocka.

K. SMCI submitted a claim to the builder’s risk carrier for the Project, XL Specialty Insurance Company (“XL Catlin”), which has not yet been resolved.

L. Travelers commenced a lawsuit against First Specialty and SMCI regarding coverage issues relating to the Project, *Travelers Property Casualty Company of America v. First Specialty Insurance Company, et al.*, U.S. District Court, Northern District of California, Case No. 4:21-cv-08350-YGR (the “Travelers Action”).

M. Since February 2020, the City and SMCI have been engaged in private mediation in connection with Project; over time, the mediation process also came to include Travelers, First Specialty, W.C. Smith and Blocka. Any claims or disputes between the City, on the one hand, and SMCI and Hartford, on the other, were resolved informally and by mutual agreement in accordance with the provisions of the Contract.

N. SMCI and Malcolm Drilling Company, Inc. (“Malcolm Drilling”) have entered into separate settlement agreements relating to certain claims in connection with the Project and Malcolm Drilling’s action relating to the Project known as *Malcolm Drilling Company, Inc. v. Sierra Mountain Construction, Inc.*, Civil Action No. 20-CIV-05344 in San Mateo County Superior Court, and related cross-claims (the “Malcolm Action”).

O. With the assistance of the mediator, the Parties have reached a settlement of their disputes, which they wish to memorialize herein.

Terms of Agreement

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

1. ***Incorporation of Recitals.*** The Recitals set forth above are expressly incorporated into the Agreement as if fully set forth herein.
2. ***Payments.*** In consideration for the full and timely performance of each of the terms and conditions of this Agreement, payment in the amount of Three Million Eight Hundred Fifty Thousand and 00/100 Dollars (\$3,850,000.00) shall be funded as follows:
 - a. *City of Pacifica:* Two Million Dollars and No Cents (\$2,000,000.00);
 - b. *SMCI:* One Million Dollars and No Cents (\$1,000,000.00), to be funded equally by Travelers and First Specialty;
 - c. *Blocka:* One Hundred Thousand Dollars and No Cents (\$100,000.00), to be funded by its insurance carrier, Hartford; and
 - d. *W.C. Smith:* Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00), to be funded by its insurance carrier, Scottsdale.

Each Party's obligation to make the payments listed in this Paragraph 2 is several and not joint. Each Party shall be responsible to pay only their contribution to the settlement as set forth in this Agreement and shall not be responsible for any other Party's settlement contribution. The payments listed above for the City (\$2,000,000.00) shall be made by the City itself and not by and through its insurance carriers.

All payments shall be made within thirty (30) days of execution of this Agreement by the Parties. Payments shall be made by check, with a reference identifying the Party on whose behalf each payment is made, payable to "Kahana & Feld LLP Client Trust Account," Tax I.D. No. 82-1481763, and sent to SMCI's counsel, Alexander R. Moore, Kahana & Feld LLP, 2603 Main Street, Suite 350, Irvine, CA 92614.

3. ***Settlement Recipients:*** Upon receipt by counsel for SMCI of all the payments referenced in Paragraph 2 of this Agreement, counsel for SMCI shall distribute such funds within ten (10) days to the following Parties, as follows:
 - a. *SMCI:* Two Million Nine Hundred Eighty Thousand Dollars and No Cents (\$2,980,000.00). From this amount, SMCI is responsible for a \$436,882.50 settlement payment to Malcolm Drilling per a separate settlement agreement);
 - b. *Blocka:* Three Hundred Thousand Dollars and No Cents (\$300,000.00); and
 - c. *W.C. Smith:* Five Hundred Seventy Thousand Dollars and No Cents (\$570,000.00).

SMCI, Blocka, and W.C. Smith shall be collectively referred to as "Payees."

4. ***Conditions to Payment of Settlement Funds.*** The payment of the settlement funds to the Payees are subject to the following express conditions precedent, which include the performance of all obligations expressed elsewhere in this Agreement:

- a. Execution of this Agreement by all Parties;
- b. Approval of the terms of this settlement by the City's governing body; and
- c. The Travelers Action being dismissed with prejudice, with each party to bear its own fees and costs.

5. ***Extension of Time to Completion and Waiver of Liquidated Damages.*** The City agrees that the time for completion is extended through the actual completion of the Contract, and that no liquidated damages are owed by SMCI on the Contract. Accordingly, based on the City's determination of the nature of the delays in completion of the Contract and the Parties' agreement with regard to the same, to the extent that the City may previously have asserted that liquidated damages or other damages for delays were owed or have withheld amounts on that basis, the City withdraws and waives nunc pro tunc those assertions as well as any claims for liquidated damages or delay damages. SMCI likewise withdraws and waives any claims for costs or losses associated with delay.

6. ***Warranties; Balboa-related Claims and EQ Basin Conditions.*** Except as provided herein, any warranty periods are deemed to have commenced on December 5, 2019. The City represents and warrants it is not currently aware of any warranty items. Additionally, the City waives any all claims, liabilities, demands, losses, expenses, causes of action, damages, interest, attorney's fees, expert or other litigation expenses, costs, and/or penalties (whether known or unknown, existing or not yet existing, accrued or unaccrued, legal or equitable, actual or potential, and hereinafter referred to as "Claims") directly or indirectly relating to or arising from (a) work performed at or under Balboa Way related to the Project and/or performed by the City's separate contractor and its subcontractors, including, without limitation, warranty claims, indemnity claims, unknown claims, future claims, and/or latent deficiencies ("Balboa-related Claims.") and/or (b) water intrusion into the EQ Basin, which condition is the subject of a separate settlement involving Malcolm Drilling (hereinafter, "EQ Basin Water Intrusion Conditions.") Further, the City agrees to defend, indemnify, and hold SMCI and its subcontractors, including W.C. Smith and Block harmless from third party claims directly or indirectly relating to or arising from work performed at or under Balboa Way related to the Project and/or performed by the City's separate contractor and its subcontractors. In furtherance of this Paragraph, there shall be no warranty obligations owed by SMCI, Blocka, or W.C. Smith to the City with regard to work performed by or to the extent altered by any third-party contractors hired by the City and/or such contractor's subcontractors and/or vendors, of any tier; and the City shall have no causes of action against SMCI, Blocka, or W.C. Smith, and any of their sureties, and insurers with regard to work performed by or to the extent altered by any third-party contractors hired by the City and/or such contractor's subcontractors and/or vendors, of any tier.

7. **Releases.**

- a. **Release by the City.** Except as expressly provided in Paragraph 8, City, on behalf of itself, its heirs, executors, administrators and assigns, hereby releases and forever discharges SMCI, and SMCI's sureties (including Hartford Fire Insurance Company), W.C. Smith, Blocka, and each of their respective past, present and future employees, attorneys, insurers, sureties, agents, representatives, partners, officers, directors, members, managers, and stockholders, from any and all Claims, whether known or unknown, asserted or unasserted, suspected or unsuspected, arising out of, in any way connected with or resulting from the Project or the Contract. For avoidance of doubt, the releases by the City do not release the matters specifically reserved in Paragraph 8, such as unknown latent deficiencies other than those expressly released in Paragraph 6.
- b. **Release by SMCI.** Except as provided in Paragraph 8, SMCI on behalf of itself and its sureties (including Hartford Fire Insurance Company), hereby releases and forever discharges the City, Blocka, and W.C. Smith and their respective past, present and future employees, attorneys, insurers, sureties, agents, representatives, partners, officers, directors, members, managers, and stockholders, from any and all Claims, whether known or unknown, asserted or unasserted, suspected or unsuspected, arising out of, in any way connected with or resulting from the Project, the Contract, the W.C. Smith Subcontract, and/or the Blocka Subcontract.
- c. **Release by Blocka.** Except as provided in Paragraph 8, Blocka on behalf of itself and its subcontractors and suppliers of every tier hereby releases and forever discharges the City, SMCI, and W.C. Smith and their respective past, present and future employees, attorneys, insurers, sureties, agents, representatives, partners, officers, directors, members, managers, and stockholders, from any and all Claims, whether known or unknown, asserted or unasserted, suspected or unsuspected, arising out of, in any way connected with or resulting from the Project, the Contract, the W.C. Smith Subcontract, and/or the Blocka Subcontract.
- d. **Release by W.C. Smith.** Except as provided in Paragraph 8, W.C. Smith on behalf of itself and its subcontractors and suppliers of every tier hereby releases and forever discharges the City, SMCI, and Blocka, and their respective past, present and future employees, attorneys, insurers, sureties, agents, representatives, partners, officers, directors, members, managers, and stockholders, from any and all Claims, whether known or unknown, asserted or unasserted, suspected or unsuspected, arising out of, in any way connected with or resulting from the Project, the W.C. Smith Subcontract, and/or the Blocka Subcontract.

- e. ***Specific Release of Carriers by Parties.*** Except as provided in Paragraph 8, the City, SMCI, Blocka and W.C. Smith agree to waive and release any claims demands, causes of action, obligations, damages, liabilities fees, costs, and expenses of any kind or nature, whether known or unknown, whether fixed or contingent, whether based in contract, tort, equity, contribution, equitable contribution, subrogation, equitable subrogation, negligence, bad faith, insurance coverage, claim handling, or any statutory, contractual, extra-contractual, or common law cause of action of any sort, or other legal or equitable theory of recovery against Scottsdale, Travelers, First Specialty, and Hartford which in any way arise out of or relate to in any manner whatsoever including, but not limited to, claims of failure to defend and indemnify, the claims or matters released herein, the Lee Lawsuit, the W.C. Smith Action, the Blocka Action, and the Malcolm Action-
- f. ***Full and Final Releases.*** Subject to Paragraph 8, the releases set forth in this Paragraph 7 are full and final releases applying to all losses, including but not limited to liabilities, damages, costs, expenses, and attorneys' fees, incurred by the Parties, arising out of or in any way connected with the above-described matters.

8. ***Exceptions to Releases.*** Notwithstanding any provisions of this Agreement, including Paragraph 7, the following Claims, rights, and obligations are in no way released, waived, impaired, compromised or otherwise are affected by this Agreement:

- a. Claims, rights or obligations in connection with and/or otherwise preserved under this Agreement, including without limitation, the payment obligations under this Agreement by the City, Travelers, First Specialty, Hartford in its capacity as a liability insurer, and Scottsdale.
- b. Any unexpired written warranty obligations, subject to any waivers or limitations set forth herein, including those set forth in Paragraph 6.
- c. Right and claims for indemnity, contribution, negligence, or breach of contract or warranty with respect to any Claim by a third party to the extent and provided that the third party asserts or seeks relief consisting of or based upon:
 - i. Personal or bodily injuries in any way related to the Project; provided however, that Balboa-related Claims and EQ Basin Conditions shall be subject to the provisions, waivers, and limitations of Paragraph 6.
 - ii. Property damage in any way related to the Project; provided however, that Balboa-related Claims and EQ Basin Conditions shall be subject to the provisions, waivers, and limitations of Paragraph 6.
 - iii. Claims asserted by workers, trust funds, apprenticeship programs or governmental agencies (whether correctly or incorrectly) seeking penalties, wages, benefit or apprenticeship payments, trust fund contributions, damages, forfeitures, injunctive or other relief.

- iv. Claims by any lower tier subcontractors, workers, trust funds, unions, apprenticeship programs, vendors, or taxing authorities seeking to recover for amounts that SMCI, W.C. Smith, Blocka, or any of their respective lower tier subcontractors or vendors did not pay.
- d. Claims, rights, and obligations in connection with latent deficiencies in any work, labor, equipment, or materials furnished by or through SMCI, W.C. Smith, or Blocka, not known and/or which reasonably could not have been discovered prior to the execution of this Agreement, where latent deficiency has the same meaning as in Section 337.15 of the Code of Civil Procedure, except for those areas of Balboa Ave. subject to Paragraph 6.
- e. Claims against Travelers, First Specialty, Hartford in its capacity as a liability insurer, and Scottsdale, for defense and indemnification in connection with matters and claims not released herein.
- f. Claims against XL Catlin in connection with the Project.
- g. Claims, rights, and obligations arising out a different construction project.

The exceptions set forth above shall not constitute evidence that any Claims or matters within the scope of the exceptions actually exist.

9. **Section 1542 Waiver.** As to those matters that are expressly released herein, but subject to the exceptions in Paragraph 8, the Parties hereby waive all rights under California Civil Code Section 1542 and any similar right under any similar federal, state or local statute, rule or regulation. Section 1542 provides as follows:

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

The Parties to this Agreement expressly consent that, notwithstanding section 1542 of the California Civil Code, this Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those related to unknown and unsuspected claims, demands, and causes of action. The Parties acknowledge and agree that this waiver is an essential and material term of this Agreement, and without such waiver, they would not have entered into this Agreement.

10. **Covenant Not to Sue.** Each Party covenants not to sue on any Claim released by this Agreement. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for, any injunction against any action, suit or other proceeding that may be instituted or prosecuted in breach of this Agreement.

11. **Further Actions.** Upon payment of the Settlement Funds to the Payees, SMCI, W.C. Smith, and Blocka shall promptly cause the W.C. Smith Action and the Blocka Action to be dismissed with prejudice, with each Party to bear its own costs and fees. SMCI, W.C. Smith, and Blocka also agree, upon request, to furnish California Civil Code statutory conditional and

unconditional waivers and releases upon final payment and/or releases of stop payment notices (as applicable). SMCI will also promptly cause the Malcolm Action to be dismissed with prejudice, with each Party to bear its own costs and fees.

12. ***Dismissal of Travelers Action.*** Upon execution of this Agreement, Travelers, First Specialty, and SCMI shall take reasonable actions to cause the Travelers' Action to be dismissed with prejudice, with each party to bear its own costs and fees.

13. ***Liability Insurer Obligations and Releases.*** Upon execution of this Agreement and payment of the settlement sums, Travelers, First Specialty, Hartford as a liability carrier, and Scottsdale's obligations in connection with the matters settled herein shall cease.

Travelers, First Specialty, Hartford as a liability carrier, Scottsdale, and SMIC agree to waive and release any claims demands, causes of action, obligations, damages, liabilities fees, costs, and expenses of any kind or nature, whether known or unknown, whether fixed or contingent, whether based in contract, tort, statute, or other legal or equitable theory of recovery which in any way arise out of or relate to the following: 1) fees, costs, expense and monies incurred for the defense and settlement of the claims released herein (including without limitation, under *Buss v. Superior Court*, 16 Cal. 4th 35 (1997), *Blue Ridge Ins. Co. v. Jacobson*, 25 Cal. 4th 489 (2001), and/or *Hartford Cas. Ins. Co. v. J.R. Marketing, L.L.C.*, 61 Cal. 4th 988 (2015) and/or other applicable caselaw) 2) claims for breach of the implied covenant of good faith and fair dealing that relate to the SMCI's claim for coverage for the claims released herein, including any claim for recovery of punitive damages as well as recovery of attorney's fees and costs incurred in prosecuting such a claim under *Brandt v. Superior Court* (1985) 37 Cal.3d 813; and 3) any and all claims, counterclaims, demands, or causes of action in law or equity that were asserted, or could have been asserted, by the parties, arising out of, connected with or are incidental to, or relating in any manner whatsoever to the claims released herein or in the Travelers Action. The releases contained in this Paragraph do not apply to deductible reimbursement, claims related to handling of deductibles or Self-Insured Retentions, or reinsurance claims of Travelers, First Specialty, Hartford as a liability carrier, and Scottsdale.

Travelers, First Specialty, Hartford as a liability carrier, and Scottsdale further agree to waive any subrogation, contribution, and/or indemnity rights they may have against each other arising out of or relating to the defense and settlement of the matters released herein. Notwithstanding the foregoing, Hartford specifically reserves and retains its contribution and subrogation rights against XL Catlin to the extent such rights exist.

14. ***No Admission of Liability.*** Liability for the matters included in this Agreement is disputed and this Agreement shall not be construed as an admission thereof. The Parties stipulate that this Agreement and settlement have been entered into in good faith, at arm's length, without collusion, and are the product of the negotiation. This Agreement involves the settlement and compromise of disputed claims and does not constitute an admission of liability, fault, negligence, or breach of obligations by the Parties.

15. ***XL Catlin.*** XL Catlin is not an intended beneficiary and is not released by this Agreement.

16. **Binding Agreement.** This Agreement is binding upon all of the Parties, as well as their past and present subsidiaries, parents, divisions, affiliates, partners, successors, assigns, officers, directors, agents, servants, employees, attorneys, representatives, and beneficiaries.

17. **Attorney's Fees.** Each party to this Agreement is to bear its own costs and attorney's fees in connection with the matters that are the subject of this Agreement.

18. **Authority.** Each Party warrants that it has authority to enter into this Agreement. Each person executing this Agreement on behalf of a Party represents and warrants that he or she has authority to do so.

19. **Interpretation and Authorship.** The Parties agree that this Agreement reflects the joint drafting efforts of all Parties. In the event any dispute, disagreement or controversy arises regarding this Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship. The Parties also acknowledge and agree that they were fully informed as to the meaning and intent of this Agreement and had the opportunity to seek advice of counsel in that regard. Additionally, the Parties hereby waive the provisions of California Civil Code section 1654, which provides:

In cases of uncertainty not removed by the preceding rules, the language of a contract shall be interpreted most strongly against the party who caused the uncertainty to exist.

20. **Applicable Law.** This Agreement is governed by the laws of the State of California, without regard to choice of law principles, statutes, or laws.

21. **Enforcement.** This Agreement is enforceable pursuant to California Code of Civil Procedure Section 664.6 or any other means available under applicable law. The Parties agree that the San Mateo County Superior Court shall retain jurisdiction, notwithstanding that a dismissal may have been filed, to enforce the terms of this Agreement against each or every Party to this Agreement. The Parties agree to submit a stipulation and proposed order to the Court to retain jurisdiction in accordance with California Code of Civil Procedure section 664.6. The Parties agree that this Agreement is admissible and may be disclosed in connection with motions or applications to the Court pursuant to California Code of Civil Procedure Section 664.6 or any other procedure to enforce the terms of this Agreement, notwithstanding any mediation privilege, including the privilege under Section 1119 et seq. of the Evidence Code.

22. **Time is of the Essence.** Time is of the essence with respect to each provision of this Agreement.

23. **Modification.** This Agreement may be modified only by a contract in writing executed by all Parties.

24. **Savings.** In the event that any portion of the final settlement agreement, when signed, shall be found void or voidable by a court of competent jurisdiction, such portion shall be stricken and the Agreement reformed to approximate, as closely as the law permits, the intent of the stricken portion or portions.

25. **Final Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and is intended as a final expression of the Parties' agreement with respect to such matters.

26. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one document. A copy of the Agreement signed by a Party, and transmitted by facsimile, email, or other electronic means, shall be deemed enforceable as an original.

WHEREFORE the Parties enter into this Agreement as of the Effective Date.

Dated: July __, 2022

CITY OF PACIFICA

By _____

Its: _____

Dated: July __, 2022

SIERRA MOUNTAIN CONSTRUCTION, INC.

By _____

Its: _____

Dated: July __, 2022

WALTER C. SMITH COMPANY, INC.

By _____

Its: _____

Dated: July 25, 2022

HARTFORD FIRE INSURANCE COMPANY

By *Sheena Williams*

Its: 7/25/2022

Dated: July __, 2022

SCOTTSDALE INSURANCE COMPANY

By _____

Its: _____

By _____

Its: _____

Dated: July ___, 2022


BLOCKA CONSTRUCTION, INC.

By _____

Its: _____

Dated: July 14, 2022

TRAVELERS PROPERTY CASUALTY COMPANY

By  _____

Its: AVP Construction Claim _____

Dated: July ___, 2022

FIRST SPECIALTY INSURANCE CORPORATION

By _____

Its: _____

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WHEREFORE the Parties enter into this Agreement as of the Effective Date.

Dated: July __, 2022

CITY OF PACIFICA

By _____

Its: _____

Dated: July 15, 2022

SIERRA MOUNTAIN CONSTRUCTION, INC.

By  _____

Its: President _____

Dated: July __, 2022

WALTER C. SMITH COMPANY, INC.

By _____

Its: _____

Dated: July ___, 2022

BLOCKA CONSTRUCTION, INC.

By _____

Its: _____

Dated: July ___, 2022

TRAVELERS PROPERTY CASUALTY COMPANY

By _____

Its: _____

Dated: July 14, 2022

FIRST SPECIALTY INSURANCE CORPORATION

By Maissa Helmi

Its: Claims Expert, V.P.

By Kevin F. Curry

Its: Claims Expert, V.P.

Dated: July ___, 2022

HARTFORD FIRE INSURANCE COMPANY

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Dated: July __, 2022

CITY OF PACIFICA

By _____

Its: _____

Dated: July __, 2022


SIERRA MOUNTAIN CONSTRUCTION, INC.

By _____

Its: _____


Dated: July 15, 2022

WALTER C. SMITH COMPANY, INC.

By  _____
Its: President _____

Dated: July 21, 2022

BLOCKA CONSTRUCTION, INC.

By 
Its: President.

Dated: July __, 2022

TRAVELERS PROPERTY CASUALTY COMPANY

By _____
Its: _____

Dated: July __, 2022

FIRST SPECIALTY INSURANCE CORPORATION

By _____
Its: _____

By _____
Its: _____

Dated: July __, 2022

HARTFORD FIRE INSURANCE COMPANY

By _____

Its: _____

Dated: July ____, 2022

SCOTTSDALE INSURANCE COMPANY

BOLINT

Digitally signed by: BOLINT
DN: CN = BOLINT OU =
Accounts, NSC Managed,
Scottsdale
Date: 2022.07.19 13:22:38 -
07'00'

By _____

Its: _____










For Signature: ResolutionNo68-2022-Settlement Agreement re EQ Basin Project-Approved

Final Audit Report

2022-10-20

Created:	2022-10-20
By:	Sarah Coffey (scoffey@pacifica.gov)
Status:	Signed
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