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COUNTY OF SANTA CRUZ

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GOVERNMENT TORT CLAIM
RECOMMENDED ACTION

Agenda June 16, 1998

To: Board of Directors, County of Santa Cruz Redevelopment Agency

Re: Claim of Rhodes & Kesling, No. 798-134 Amended

Original Document and associated materials are on file at the Clerk to the Board of Supervisors.

In regard to the above-referenced claim, his is to recommend that the Board take the following action:

- 1. Deny the claim of Rhodes & Kesling, No. 798-134 and refer to County Counsel. Amended
- 2. Deny the application to file a late claim on behalf of _____ and refer to County Counsel.
- 3. Grant the application to file a late claim on behalf of _____ and refer to County Counsel.
- 4. Approve the claim of _____ in the amount of _____ and reject it as to the balance, if any, and refer to County Counsel.
- 5. Reject the claim of _____ as insufficiently filed and refer to County Counsel.

CC: Tom Burns, Administrator
Redevelopment Agency

RISK MANAGEMENT

By Janet McKinley

COUNTY COUNSEL

By Ed Lewis

LTR9.WPT

PER 5107 Rev.4/97

79 8-134
AMENDED



**CLAIM OF RHODES & KESLING, INC.
TO COUNTY OF SANTA CRUZ AND
REDEVELOPMENT AGENCY FOR THE COUNTY OF SANTA CRUZ
AND THEIR EMPLOYEES AND AGENTS**

Government Code Sections 905 and 910)

(1) Name and address of claimant:

(a) Claimant:

Rhodes & Kesling
2775 Park Avenue, Suite B
Santa Clara CA 95050

(b) Persons to whom notices may be sent:

Mr. Mitch Rhodes
Rhodes & Kesling
2775 Park Avenue, Suite B
Santa Clara CA 95050

with copies to:

A. Robert Rosin, Esq.
Simpson, Aherne & Carrity Professional Corporation
1900 So. Norfolk, Suite 260
San Mateo, CA 94403

Attorneys for Claimant

(2) Date, place and circumstances of claim; general description of damages and losses as known at this time:

This claim arises from a public works construction project (the "Project") for the County of Santa Cruz/Santa Cruz County Redevelopment Agency (the "Owner"). The project was to construct certain improvements constituting the Live Oak Community Swim Center. The contract for the project was awarded in August of 1996.

The Owner's plans and specifications for the structural steel and related portions of the work for the project were grossly defective and incomplete. The Owner and its representatives compounded the problems created by the defective plans and specifications by failing to acknowledge problems with the plans and specifications, by

failing promptly to correct design errors, by providing incomplete and inaccurate responses to requests for information, by failing to respond fully and timely to requests for information, by acting to obstruct efforts to resolve problems created by the defective design, and by conducting themselves in an arbitrary and unreasonable manner.

As a consequence, the project has been delayed and disrupted, and the cost to complete the project has been significantly increased. The Owner and/or its representatives have also made untrue and misleading statements to third parties concerning Rhodes & Kesling's performance on the project, which has resulted in damages. These third parties include a local newspaper and Claimant's surety. Claimant is entitled to recover the costs it has incurred because of these matters, including but not limited to the economic costs incurred because completion of the work and payments have been delayed.

The problems with the structural steel design had impacts from late 1996 to present. Claimant gave appropriate notices under its contract, and in October of 1997, submitted a substantial written claim documenting the costs and impacts as known at that time. From the Fall of 1997 to present, Claimant attempted to meet and confer with the Owner, in accordance with the terms of the contract documents. Claimant's claim accrued when it became apparent that Owner would not attempt to resolve the claim separately from other jobsite issues. This occurred in the first quarter of 1998.

The statements by the Owner to Rhodes & Kesling's surety referred to in this claim occurred from one year prior to this claim, up to the present time; a letter was written to the surety by the Owner on or about April 10, 1998. Statements attributed to the RDA were included in an April 14, 1998 edition of the Mid-County Post.

Claimant has actually and/or substantially complied with and satisfied any contractual or statutory requirements that may be a prerequisite to filing this claim, except for those which are futile, have been waived, or which otherwise have been excused.

Because Rhodes & Kesling has not completed its investigation of its claims and has not yet had access to all information and documents in the possession of the Owner, Rhodes & Kesling reserves the right to amend, supplement or modify this claim.

(3) Names of County employees with knowledge of claim:

Based upon the information currently available to it, Claimant does not know all of the persons employed by Owner who were responsible for the matters alleged herein. However, the following persons are believed to have knowledge regarding the matters in question:

ELS/Elbasani

James Stone

Tom Burns

William Crum

(4) Amount of claim:

Jurisdiction of the claim will rest with the Superior Court. The amount of the claim exceeds \$10,000; thus, under Section 91 0(f) of the Government Code, a statement of the dollar amount of damages is not legally permitted.

(5) Signature:

RHODES & KESLINC, INC.

By 

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