



County of Santa Cruz

OFFICE OF THE COUNTY COUNSEL

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 95060-4068
(831) 454-2040 FAX: (831) 454-2115

DWIGHT L. HERR, COUNTY COUNSEL
CHIEF ASSISTANTS
Deborah Steen
Samuel Torres, Jr.

Assistants
Harry A. Oberhelman III
Marie Costa
Jane M. Scott
Rahn Garcia
Tamyra Rice
Pamela Fyfe
Ellen Aldridge
Kim Baskett
Lee Gulliver
Dana McRae

GOVERNMENT TORT CLAIM

RECOMMENDED ACTION

Agenda May 18, 1999

To: The Board of Supervisors

Re: Claim of Rhodes & Kesling, No. 899-121

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

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

- 1. Deny the claim of Rhodes & Kesling, No. 899-121 and refer to County Counsel.
- 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 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

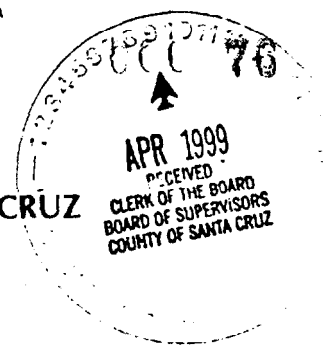
RISK MANAGEMENT

By Janet McKinley

COUNTY COUNSEL

By Ellen Aldridge

599-121



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

(Government Code Sections 905 and 910)

(1) Name and address of claimant:

(a) Claimant:

Rhodes & Kesling
2 190 Stokes Street, Suite 102
San Jose CA 95 1284512

(b) Persons to whom notices may be sent:

Mr. Mitch Rhodes
Rhodes & Kesling
2190 Stokes Street, Suite 102
San Jose CA 95 12845 12

with copies to:

A. Robert Rosin, Esq.
Simpson, Aherne & Garrity 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 (the "Owner"). The project was to construct certain improvements constituting the Live Oak Community Swim Center. The Project was awarded by the Owner to Claimant on or about August 28, 1996.

During construction, the County directed a large number of changes for which Rhodes & Kesling is owed payment and time extensions. In addition, numerous deficiencies in the plans and specifications were discovered, which resulted in additional costs and delays. These included deficiencies in the roof design and the window walls for the project. A number of differing site conditions also were encountered.

The County by its actions hindered, delayed, and disrupted work by Rhodes & Kesling and its subcontractors. The County rejected acceptable work and unreasonably refused to accept work and materials. The County failed to administer the project in a fair and reasonable manner, failed to provide complete and accurate approvals, information and responses in a timely manner, acted unreasonably in the manner that it demanded performance by the contractor and its subcontractors, and failed timely to accept the project. The County failed to make all payments owed for change orders, changed conditions, extra work, retention, and progress payments. The County also failed to provide all time extensions to which Rhodes & Kesling was entitled.

The actions of the County appear to have been deliberately designed to increase the cost and difficulty of the project, in order, to put pressure on Rhodes & Kesling to accept terms and conditions different from those to which Rhodes & Kesling was entitled under its contract.

The County's actions resulted in Rhodes & Kesling having to use an inordinate amount of financial and administrative resources **simply** to keep the project moving forward. Through the above actions, and through correspondence and communications, the County has interfered with and damaged Rhodes & Kesling' business relationships with its subcontractors, culminating in several lawsuits from subcontractors.

Rhodes & Kesling attempted to resolve these disputes with the County through the processes outlined in the parties' contract, including requests for change orders. Rhodes & Kesling also has sought informally to resolve these issues with the County. Although Rhodes & Kesling has been more than patient in seeking resolution of some or all of the issues in question, the County has not acted in good faith, and it is now futile and impracticable to continue to pursue resolution of these matters informally. There already is litigation pending between the parties, and subcontractors with claims arising out of the facts referred to above have filed and/or are threatening to file lawsuits of their own. Rhodes & Kesling will be subject to multiple proceedings and the risk of inconsistent results if it does not at this time proceed to litigation with the outstanding disputes with the County.

The number of disputed items is voluminous, as is the correspondence and documentation relating to this matter. It therefore is impracticable to provide specific, evidentiary detail concerning these matters in a claim under the Government Code; nor is such detail necessary under the law. The County is well aware of the issues between the parties and has sufficient information to conduct an investigation.

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

- Tom Burns
- G.C. Carlson
- Tri-B (William Crum)

(4) Amount of claim:

Jurisdiction of the claim will rest with the Superior Court under Section 910(f) of the Government Code. The amount of the claim exceeds \$10,000; thus, a statement of the amount of damages is not legally permitted.

(5) Signature:

RHODES & KESLING, INC.

By  _____

260392-1