

FEB 20 10 36 AM 1981

GEORGE W. BROWN, AUDITOR
CITY OF PORTLAND, ORE.

EXHIBIT "A"

A C C E P T A N C E

BY EE

The undersigned, by and through its duly authorized representatives, hereby acknowledge that they have read the terms and conditions of Ordinance No. **151073** an Ordinance providing for the reduction of the amount of retainage withheld from monthly progress payments for construction of the N. Albina Relieving Sewer and do hereby agree, each for the other, that such amendment to the contract will not be used or construed to have waived any rights or constitute a defense to any claim or right of either the City or the undersigned and provided further that the execution of this acceptance does not constitute an admission by the undersigned of any statement or allegation contained in said Ordinance.

Steve Smith Contracting, Inc.

By

(Title)

Fireman's Fund Insurance Company
(Surety Company)

By

Gail Custer, Attorney-in-fact(Title)

APPROVED AS TO FORM

Christopher P. Thomas
CITY ATTORNEY

FIREMAN'S FUND INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That FIREMAN'S FUND INSURANCE COMPANY, a Corporation duly organized and existing under the laws of the State of California, and having its principal office in the City and County of San Francisco, in said State, has made, constituted and appointed, and does by these presents make, constitute and appoint

-----GAIL CUSTER-----

151073

PORTLAND, OR

its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, seal, acknowledge and deliver any and all bonds, undertakings, recognizances or other written obligations in the nature thereof-----

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises.

This power of attorney is granted pursuant to Article VIII, Section 30 and 31 of By-laws of FIREMAN'S FUND INSURANCE COMPANY now in full force and effect.

"Article VIII, Appointment and Authority Assistant secretaries, and Attorney-in-Fact and Agents to accept Legal Process and Make Appearances.

Section 30, Appointment. The Chairman of the Board of Directors, the President, any Vice-President or any other person authorized by the Board of Directors, the Chairman of the Board of Directors, the President or any Vice-President, may, from time to time, appoint Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Corporation and Agents to accept legal process and make appearances for and on behalf of the Corporation.

Section 31, Authority. The Authority of such Resident Assistant Secretaries, Attorneys-in-Fact, and Agents shall be as prescribed in the instrument evidencing their appointment, and any such appointment and all authority granted thereby may be revoked at any time by the Board of Directors or by any person empowered to make such appointment."

This power of attorney is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of FIREMAN'S FUND INSURANCE COMPANY at a meeting duly called and held on the 15th day of July, 1966, and said Resolution has not been amended or repealed:

"RESOLVED, that the signature of any Vice-President, Assistant Secretary, and Resident Assistant Secretary of this Corporation, and the seal of this Corporation may be affixed or printed on any power of attorney, on any revocation of any power of attorney, or of any certificate relating thereto, by facsimile, and any power of attorney, any revocation of any power of attorney, or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Corporation."

IN WITNESS WHEREOF, FIREMAN'S FUND INSURANCE COMPANY has caused these presents to be signed by its Vice-President,

and its corporate seal to be hereunto affixed this 18th day of August, 19 80.



FIREMAN'S FUND INSURANCE COMPANY

By William W. Lauber
Vice-President

STATE OF CALIFORNIA,

CITY AND COUNTY OF SAN FRANCISCO

ss.

On this 18th day of August, 19 80, before me personally came William W. Lauber, to me known, who, being by me duly sworn, did depose and say: that he is Vice-President of FIREMAN'S FUND INSURANCE COMPANY, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year herein first above written.



Susie K. Gilbert
Notary Public

CERTIFICATE

STATE OF CALIFORNIA,

CITY AND COUNTY OF SAN FRANCISCO

ss.

I, the undersigned, Resident Assistant Secretary of FIREMAN'S FUND INSURANCE COMPANY, a CALIFORNIA Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore that Article VIII, Sections 30 and 31 of the By-laws of the Corporation, and the Resolution of the Board of Directors, set forth in the Power of Attorney, are now in force.

Signed and sealed at the City and County of San Francisco. Dated the 19th day of February, 19 80.



R. J. Snyder
Resident Assistant Secretary

EXHIBIT "A"

A C C E P T A N C E

The undersigned, by and through its duly authorized representatives, hereby acknowledge that they have read the terms and conditions of Ordinance No. ¹⁵¹⁰⁷³ an Ordinance providing for the reduction of the amount of retainage withheld from monthly progress payments for construction of the N. Albina Relieving Sewer and do hereby agree, each for the other, that such amendment to the contract will not be used or construed to have waived any rights or constitute a defense to any claim or right of either the City or the undersigned and provided further that the execution of this acceptance does not constitute an admission by the undersigned of any statement or allegation contained in said Ordinance.

Steve Smith Contracting, Inc.

By _____

_____(Title)

(Surety Company)

By _____

_____(Title)

ORDINANCE No. 151073

An Ordinance amending the contract between the City of Portland and Steve Smith Contracting, Inc. so as to provide for the payment of progress payment retainage, subject to certain terms and conditions, providing for acceptance, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

- (1) Contract No. 18723 between the City of Portland and Steve Smith Contracting, Inc. for the construction of the N. Albina Relieving Sewer is complete except for the remaining work of installing liners inside the sewer pipe to seal wide joints between sections of the pipe. This work is estimated to cost \$14,000.00. Additional time will be needed to complete this work. The City has retained \$33,912.40 from the monthly progress payments. The City Engineer and the Commissioner of Public Works recommend that 200% of the value of the remaining work amounting to \$28,000 be retained until the work is completed and final payment is made. It is recommended that the sum of \$5,912.40 be paid to the Contractor.
- (2) The City of Portland "Standard Construction Specifications" do not provide for payment of withheld retainage until the final payment.
- (3) The City Attorney's Office has recommended that Council authorization for payment of retainage before the final payment take the form of an ordinance with provision for acceptance by the Contractor and his surety.

NOW, THEREFORE, the Council directs:

- (a) The contract between the City of Portland and Steve Smith Contracting, Inc. for the construction of the N. Albina Relieving Sewer project is hereby amended by providing that progress payment retainage be paid Steve Smith Contracting, Inc. prior to the final progress payment.
- (b) This Ordinance shall have no force and effect until the acceptance by Steve Smith Contracting, Inc. and his surety has been filed with the Auditor of the City, in the form of acceptance to be substantially in accordance with the terms and conditions of the form of acceptance which is attached to the original only hereof, marked Exhibit "A", and by reference made part hereof.
- (c) The Mayor and Auditor hereby are authorized to draw and deliver a warrant for retainage in the amount of \$5,912.00 to Steve Smith Contracting, Inc. as requested by the City Engineer and the Commissioner in Charge.

ORDINANCE No.

Section 2. The Council declares:

That an emergency exists because payment is necessary to ensure payment for labor and materials expended by Steve Smith Contracting, Inc. is timely made to enable the corporation to meet its commitments to its suppliers and subcontractors under the contract; therefore, subject to acceptance of this ordinance by contractor and his surety, in form approved by the City Attorney, this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, FEB 12 1981

Commissioner Mike Lindberg
W. A. Korsak:es
January 26, 1981

Attest:

Serge Fehrich
Auditor of the City of Portland

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Jordan	/	
Lindberg	/	
Schwab	/	
Ivancie	/	

FOUR-FIFTHS CALENDAR	
Jordan	
Lindberg	
Schwab	
Ivancie	

395
Calendar No. ~~287~~

ORDINANCE No. 151073

Title

An Ordinance amending the contract between the City of Portland and Steve Smith Contracting, Inc. so as to provide for the payment of progress payment retainage, subject to certain terms and conditions, providing for acceptance, and declaring an emergency.

FEB 4 1981

CONTINUED TO FEB 5 1981
FEB 5 1981

CONTINUED TO FEB 12 1981

Filed JAN 29 1981

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By

Deputy

INTRODUCED BY
Commissioner Mike Lindberg

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities
Works Public Works <i>ML/MS</i>

BUREAU APPROVAL
Bureau: Sanitary Engineering
Prepared By: W. A. Korsak Date: 1/26/81
Budget Impact Review: <input type="checkbox"/> Completed <input checked="" type="checkbox"/> Not required
Bureau Head: <i>For Richard</i> J. P. Niehuser

CALENDAR
Consent <input checked="" type="checkbox"/> Regular <input checked="" type="checkbox"/>

NOTED BY
City Attorney
City Auditor
City Engineer John M. Lang
<i>John Lang</i>