

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Aaron Peskin, Chair
Government Audit and Oversight Committee

FROM: Erica Major, Assistant Clerk, Government Audit and Oversight Committee

DATE: December 5, 2016

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, December 6, 2016

The following file should be presented as a **COMMITTEE REPORT** at the Board meeting, Tuesday, December 6, 2016. This item was acted upon at the Government Audit and Oversight Committee Meeting on December 1, 2016 at 9:30 a.m., by the votes indicated.

Item No. 41 File No. 161238

Ordinance authorizing final settlement of Claim No. 16-02314 filed by Ronald and Patricia Martell against the City and County of San Francisco by payment of \$4,469,637.02 establishing a third-party escrow account in the amount of \$537,763.29 as a Landslide Contingency Fund, for a total potential payment of \$5,007,400.31 and holding claimants harmless from third party claims for a limited period; the claim was filed on February 25, 2016; the claim involves alleged property damage arising from the January 25, 2016, landslide on Casitas Avenue; appropriating \$4,000,000 from the Water Enterprise fund balance for such purpose; and waiving Administrative Code contract requirements except for Administrative Code, Section 12B.1(a) (nondiscrimination) and Section 6.22(e) (prevailing wage), for San Francisco Public Utilities Commission (SFPUC) contracts to implement landslide stabilization measures at 256 Casitas Avenue prior to April 1, 2017, or to undertake landslide repairs on 266 Casitas Avenue, with an engineer or construction contractor, subject to approval by the applicable property owner at 256 Casitas Avenue and/or 266 Casitas Avenue, if the SFPUC's Commission President and General Manager determine such contract is necessary to protect public facilities or minimize or avoid City liability, not to exceed \$500,000 in total for any such contracts.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Aaron Peskin - Aye
Supervisor London Breed - Aye
Supervisor Norman Yee - Aye

cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy Director
Jon Givner, Deputy City Attorney

File No. 161238 Committee Item No. 7
Board Item No. 41

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date December 1, 2016
Board of Supervisors Meeting Date December 6, 2016
Cmte Board

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OTHER (Use back side if additional space is needed)

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Completed by: Erica Major Date November 23, 2016
Completed by: [Signature] Date 12/1/2016

1 [Settlement of Claims - Ronald and Patricia Martell - \$5,007,400.31 and Hold Harmless;
2 Appropriating \$4,000,000 from the Water Enterprise Fund Balance - Waiver of Contract
Requirements for Landslide Repair on Private Property Not to Exceed \$500,000]

3
4 **Ordinance authorizing final settlement of Claim No. 16-02314 filed by Ronald and**
5 **Patricia Martell against the City and County of San Francisco by payment of**
6 **\$4,469,637.02 establishing a third-party escrow account in the amount of \$537,763.29**
7 **as a Landslide Contingency Fund, for a total potential payment of \$5,007,400.31 and**
8 **holding claimants harmless from third party claims for a limited period; the claim was**
9 **filed on February 25, 2016; the claim involves alleged property damage arising from the**
10 **January 25, 2016, landslide on Casitas Avenue; appropriating \$4,000,000 from the**
11 **Water Enterprise fund balance for such purpose; and waiving Administrative Code**
12 **contract requirements except for Administrative Code, Section 12B.1(a)**
13 **(nondiscrimination) and Section 6.22(e) (prevailing wage), for San Francisco Public**
14 **Utilities Commission (SFPUC) contracts to implement landslide stabilization measures**
15 **at 256 Casitas Avenue prior to April 1, 2017, or to undertake landslide repairs on 266**
16 **Casitas Avenue, with an engineer or construction contractor, subject to approval by**
17 **the applicable property owner at 256 Casitas Avenue and/or 266 Casitas Avenue, if the**
18 **SFPUC's Commission President and General Manager determine such contract is**
19 **necessary to protect public facilities or minimize or avoid City liability, not to exceed**
20 **\$500,000 in total for any such contracts.**

21
22 Be it ordained by the People of the City and County of San Francisco:

23 Section 1. Pursuant to Charter Section 6.102(5), the Board of Supervisors hereby
24 authorizes the City Attorney to settle Claim No. 16-02314 filed by Ronald and Patricia Martell,
25 owners of 256 Casitas Avenue, San Francisco ("Claimants") according to the terms of the

1 Settlement Agreement on file with the Clerk of the Board, in File No. 161238. The claim
2 involves alleged property damage and related expenses from the landslide on Casitas Avenue
3 on January 25, 2016 in San Francisco ("Casitas Landslide"). The Settlement Agreement
4 provides that Claimants will repair the landslide on 256 Casitas Avenue and replace the
5 house, which work will also protect Casitas Avenue at the top of the lot, and a sewer main that
6 serves the neighborhood located on the property within a public service easement that
7 crosses the rear of the lot, in exchange for a final settlement payment of \$4,469,637.02 (Four
8 Million, Four Hundred Sixty-Nine Thousand, Six Hundred Thirty-Seven Dollars and Two
9 Cents), and paying into an escrow account the amount of \$537,763.29 (Five Hundred Thirty-
10 Seven Thousand, Seven Hundred Sixty-Three Dollars and Twenty-Nine Cents) (the
11 "Landslide Repair Contingency Fund"), to be disbursed if necessary, all according to the terms
12 of the Settlement Agreement on file with the Clerk of the Board, in File No. 161238. These
13 amounts are in addition to a prior settlement payment to Ronald and Patricia Martell, in the
14 amount of \$974,859.05 ("Partial Settlement Payment") in exchange for a full and final release
15 as to certain specific claimed losses, approved by the San Francisco Public Utilities
16 Commission ("SFPUC") on November 8, 2016, pursuant to the authority granted by this Board
17 in Ordinance 114-16.

18 Section 2. Claim No. 16-02314 was filed on February 25, 2016, by Ronald and Patricia
19 Martell, the owners of 256 Casitas Avenue, San Francisco.

20 Section 3. The Board herein appropriates four million dollars (\$4,000,000) from the
21 Water Enterprise fund balance for use by the San Francisco Public Utilities Commission
22 ("SFPUC") for purposes of settling the litigation, the balance to be paid from a prior
23 appropriation for Casitas Properties, Project CUW697.

24 Section 4. The Settlement Agreement provides that Claimants will grant the City and
25 the owners of the adjacent property at 266 Casitas Avenue, a limited right of access across

1 the 256 Casitas Avenue property to the adjacent property, to accomplish landslide repairs on
2 266 Casitas Avenue and protect the sewer main that also crosses that property in a public
3 service easement at the rear of the lot. To avoid additional risk and related costs of
4 undertaking landslide repair during wet weather, the Claimants agree to defer work on their
5 property, and the City agrees to hold Claimants harmless from third party claims arising from
6 the Casitas Landslide until landslide repair work commences, but no later than April 1, 2017,
7 as provided in the Settlement Agreement.

8 Section 5. In the event that the SFPUC has to implement landslide stabilization
9 measures at 256 Casitas Avenue prior to April 1, 2017, or to undertake landslide repairs on
10 266 Casitas Avenue to protect the sewer main located on that property, the Board hereby
11 waives Administrative Code contract requirements, except for Administrative Code Section
12 12B.1(a) (nondiscrimination) and Section 6.22(e) (prevailing wage), for SFPUC to negotiate
13 and execute contracts for that work with an engineer or construction contractor, subject to
14 approval by the applicable property owner at 256 Casitas Avenue and/or 266 Casitas Avenue,
15 if the SFPUC's Commission President and General Manager determine such contract is
16 necessary to protect public facilities or minimize or avoid City liability, not to exceed \$500,000
17 in total for any such contracts. The SFPUC shall notify the Controller immediately of the work
18 involved, the contract(s) entered into and the estimated cost thereof, and notify the Board of
19 Supervisors within 30 days of the SFPUC's Commission President and General Manager's
20 determination of necessity of such contract.

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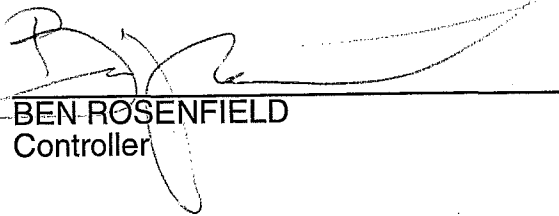
APPROVED AS TO FORM AND
RECOMMENDED:

DENNIS J. HERRERA
City Attorney



Noreen Ambrose
Utilities General Counsel

FUNDS AVAILABLE:



BEN ROSENFELD
Controller

RECOMMENDED:

PUBLIC UTILITIES COMMISSION



HARLAN L. KELLY
General Manager

APPROVED:



DONNA HOOD
Secretary, Public Utilities Commission

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CLAIMANTS: Ronald A. Martell and Patricia Martell
Government Code Claim Number: 16-02314

CLAIMANT: ~~United States Automobile Association~~ ^{USA CASUALTY INSURANCE COMPANY}
Government Code Claim Number: 16-03535

FULL AND FINAL RELEASE

This Full and Final Release ("Agreement"), dated November 8, 2016 for convenience, is entered into by and between Ronald A. Martell and Patricia Martell, individually and collectively (referred to herein as the "Claimants"); ~~United States Automobile Association~~ ^{USA CASUALTY INSURANCE COMPANY} ("USAA"), and the City and County of San Francisco, a municipal corporation ("City"), acting through its Public Utilities Commission ("SFPUC") (collectively "Parties" or individually "Party"). This Agreement shall not be effective until approved by the City as set forth in Paragraph 1 below.

RECITALS

WHEREAS, on or about on or about January 25, 2016, a landslide occurred in and around the 200 block of Casitas Avenue and the 100 block of Miraloma Drive (the "Casitas Incident"), affecting properties including, but not limited to, 256 Casitas Avenue, San Francisco, California (the "Property") and 266 Casitas Avenue, San Francisco, California (the "Adjacent Property");

WHEREAS, the Claimants own the Property as community property with right of survivorship (*see* Grant Deed attached).

WHEREAS, at the time of the Casitas Incident, Claimants were insured under USAA Insurance Policy No. CIC005206215/93A (the "Policy"), that afforded certain insurance coverage for the Property, under which USAA has paid Claimants the total amount of \$102,345.00 (One Hundred Two Thousand, Three Hundred Forty-Five Dollars and No Cents) for damages arising from the Casitas Incident, under Claim Number 5206215;

WHEREAS, on June 28, 2016, USAA filed Government Code Claim No. 16-03535 with the City, claiming damages arising from the Casitas Incident, including but, not limited to, amounts paid to Claimants under the Policy (the "USAA Claim");

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WHEREAS, on February 25, 2016, Claimants filed Government Code Claim No. 16-02314 with the City, claiming damages arising from the Casitas Incident, including, but not limited to, damages of any type to and/or associated with real and/or personal property located at the Property;

WHEREAS, City owns a 10-foot wide public service easement at the western edge of the Property and the Neighboring Property, as shown on sheet 3 of the recorded four-sheet July, 1930 survey map titled "Map of Subdivision No. 1 Sherwood Forest San Francisco Cal.," prepared by Punnett, Perez and Hutchison Engineers, recorded in Book M of Maps at page 32, Official Records of the City and County of San Francisco, within which SFPUC maintains and operates subsurface sewer infrastructure ("City's Existing Public Service Easement");

WHEREAS, Claimants and USAA allege that SFPUC's maintenance of the City's water pipes and sewer systems caused or contributed to the Casitas Incident;

WHEREAS, Claimants, USAA, and the City each now wish to settle this dispute on the terms and conditions set forth herein;

NOW, THEREFORE, for value received and in consideration of the promises, covenants and conditions set forth below, Claimants, USAA, and the City agree as follows:

AGREEMENT

1. Board Approval:

a. Pursuant to Ordinance No. 114-16 of the San Francisco Board of Supervisors, the City has authority to enter into a partial settlement in the amount of **\$974,859.05** (Nine Hundred Seventy-Four Thousand, Eight Hundred Fifty-Nine Dollars and Five Cents) (the "Partial Settlement Payment"), in accordance with paragraph 3.a.i, below, subject only to the prior approval of the San Francisco City Attorney and SFPUC, each acting in its sole discretion.

b. The City and Claimants each understands and agrees that all additional settlement payments, and all terms of this Agreement other than the payment of the Partial Settlement Payment and the release for such Partial Settlement Payment, are contingent upon the

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formal adoption of an ordinance authorizing the settlement, approved by the San Francisco Board of Supervisors and the Mayor, each acting in its sole discretion.

2. Repair of the Property: Claimants agree to utilize the settlement payments set forth in Paragraph 3 of this Agreement, to repair the landslide at the Property. Claimants have retained the geotechnical engineering firm of Stevens, Ferrone & Bailey (“SFB”) as Claimants’ geotechnical consultants. SFB conducted a geotechnical investigation of the Property and produced a July 6, 2016 Geotechnical Report (the “SFB Report”) containing recommendations to repair the landslide at the Property, prepare the Property for the reconstruction of Claimants’ residence, and stabilize the City’s sewer line on the Property by the installation of stitch piers. Claimants agree to undertake this work including the installation of the stitch piers (“Landslide Repairs”).

a. Material Inducement: Claimants agree to diligently pursue and complete repair of the landslide and replacement of the residence at the Property subject to reasonable weather and construction delays upon receipt of the settlement payments as set forth herein. This commitment by Claimants is a material inducement for City to enter into this Agreement.

b. Indemnity: The Parties expressly understand and acknowledge that Claimants shall commence the Landslide Repair at the Property on April 1, 2017, or before if weather conditions allow for an earlier start. The Parties further understand and the City expressly agrees that the City shall defend, indemnify, and hold Claimants harmless (“Indemnity Obligation”) until April 1, 2017, or commencement of the Landslide Repair (“2016-2017 Winter”), whichever is earlier, for the limited purpose of any and all third-party claims arising from the Casitas Incident during the 2016-2017 Winter. On April 1, 2017, or such earlier construction start date, if any, Claimants shall resume full care, custody, and control of the Property, and the City’s Indemnity Obligation shall be extinguished in its entirety, with the sole exception of any continuing obligations for 2016-2017 Winter third-party damages claims.

c. 2016-2017 Winter Emergency Landslide Repairs: The Parties understand and the City expressly agrees that should the City determine, acting in its sole discretion, that

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emergency repairs are needed during the 2016-2017 Winter, the City shall be responsible for the costs and the completion of such emergency repairs. In addition, the City agrees to require that the City's emergency construction contractor name Claimants as additional insureds on such contractor's commercial general liability insurance policy.

d. 2016-2017 Winter Geotechnical Observation: The City further agrees to include \$20,000 in the Final Settlement Payment, as defined in Paragraph 3.a.ii below, to be expended by Claimants for the sole purpose of Geotechnical Observation by SFB during the 2016-2017 Winter (not to exceed five site inspections). The SFPUC, in its sole discretion will request, and fund, any additional inclinometer readings, as appropriate, before April 1, 2017.

3. Settlement:

a. Total Settlement Amount: Subject to obtaining the required approvals as provided in Paragraph 1 above, and the provisions in Paragraph 3.a.iii., below which establishes a contingency fund for the Landslide Repair at the Property, and as may otherwise be set forth in this Agreement, Claimants agree to accept payment from the City in the total amount of **\$5,444,496.07** (Five Million, Four Hundred Forty-Four Thousand, Four Hundred Ninety Six Dollars and Seven Cents) ("Total Settlement Amount") in full and final settlement of all costs, damages, and claims, of every kind, arising from the Casitas Incident. Claimants each further agree to fully and finally reimburse USAA **\$102,345.00** (One Hundred Two Thousand, Three Hundred Forty-Five Dollars and No Cents), paid under the Policy for damages arising from the Casitas Incident ("Reimbursement"). Claimants shall make such Reimbursement within 10 business days of receipt of the Partial Settlement Payment.

i. Partial Settlement Payment and Release: Subject to Paragraph 1.a. above, including, but not limited to, the prior approval of the San Francisco City Attorney and SFPUC each acting in its sole discretion, and in accordance with the SFPUC's regularly scheduled calendar, the City shall make the Partial Settlement Payment to Claimants, in the amount of **\$974,859.05** (Nine Hundred Seventy Four Thousand, Eight Hundred Fifty-Nine Dollars and Five Cents) by check made payable jointly to Claimants, if and once the requisite

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approvals of the Partial Settlement Payment are obtained and Claimants and the City executes the Full and Final Release and Partial Settlement attached as Exhibit A hereto, which is incorporated herein by reference. Once the City has made the Partial Settlement Payment to Claimants, the release set forth in paragraph 8.b. as to the USAA Claim, shall be effective. Once the City has made the Partial Settlement Payment, the release set forth in Paragraph 8.a. shall be effective as to the following items of Claimants' damages only.

ITEMS FULLY AND FINALLY RELEASED BY CLAIMANTS	Partial Settlement Payment
A. Emergency Repairs	
1. Demo of home	\$82,845.00
2. Installation of Well	\$17,500.00
3. Sidewalk Repair	\$2,000.00
4. Frank Rollo Jr.	\$5,940.00
5. Forensic Analysis/well	\$6,418.26
B. Living Costs	
1. Rent	\$273,000.00
2. Mortgage	\$60,804.00
3. Renter's Insurance	\$3,402.00
C. Landslide Repairs	
1. Inclinometers	\$60,000.00
2. Partial Foundation Removal	\$40,000.00
3. Design of slope stability	\$30,594.15
4. Construction Insurance	\$22,400.00
D. Rebuild Home	
1. Architect	\$259,855.64
3. Design of house superstructure	\$45,100.00
4. Structural Engineer - Admin	\$18,000.00
5. Landscaping	\$20,000.00
6. Fencing	\$25,000.00
7. Permits and other	\$2,000.00
TOTAL BREAKDOWN	\$974,859.05

ii. Settlement Payment and Release: Subject to Paragraph 1 above, and the provisions of Paragraph 3.a.iii., below which establishes the contingency fund for the Landslide Repair at the Property, the City shall make a further settlement payment to Claimants

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in the total amount of **\$4,469,637.02** (Four Million, Four Hundred Sixty-Nine Thousand, Six Hundred Thirty-Seven Dollars and Two Cents) (the "Settlement Payment"), by check made payable jointly to Claimants, if and once the requisite approvals are obtained for the Settlement Payment. Once the City has made this Settlement Payment, the release set forth in Paragraph 8.a. and the waiver of Civil Code Section 1542 set forth in Paragraph 9 shall be effective with the exception of any claim to the Landslide Repair Contingency Fund established by paragraph 3.a.iii below. The release set forth in Paragraph 8.a and the waiver of Civil Code Section 1542 shall be effective as to the Landslide Repair Contingency Fund upon the completion of the Landslide Repair. Claimants acknowledge that this Settlement Payment is based on the estimated repair and/or replacement costs for improvements to the Property. Claimants agree to accept all risk for any and all amounts that exceed the Total Settlement Amount (Partial Settlement Payment plus Settlement Payment), except as set forth in paragraph 3.a.iii., below for use of the Landslide Repair Contingency Fund. The items covered by this Final Settlement Payment, and the releases therefore contained herein, include, but are not limited to, the following:

ITEMS FULLY AND FINALLY RELEASED BY THE UNDERSIGNED	Final Settlement Payment
1. Deferred Construction Start	\$63,000.00
B. Landslide Repairs	
1. Geotechnical Consulting	\$123,216.17
2.a Observation	\$150,000.00
2.b Winter Monitoring	\$20,000.00
3. Actual Landslide Repair	\$1,807,000.00
4. Additional Stitch Piers	\$93,000.00
5. Structural Construction Admin.	\$154,884.85
6. Civil/Surveyor	\$60,000.00
B. Rebuild Home	
Construction Cost	\$1,823,536.00
C. Other	
Legal Fees	\$175,000.00
FINAL SETTLEMENT PAYMENT	\$4,469,637.02

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iii. **Landslide Repair Contingency:** Subject to Paragraph 1, above, the City shall maintain a landslide repair contingency fund, in a third-party escrow account (the "Escrow"), to be used solely for reasonable and necessary costs to repair the landslide at the Property, in a total not-to-exceed amount of \$537,763.29 (Five Hundred Thirty-Seven, Seven Hundred Sixty-Three Dollars and Twenty-Nine Cents) (the "Landslide Repair Contingency Fund"). Neither the Landslide Repair Contingency, nor this Agreement, creates any third-party beneficiary rights in any third party, including but not limited to Claimants' contractor(s) or consultant(s). The Landslide Repair Contingency Fund will be billed by Claimants as the costs are incurred and/or billed for the purposes identified within the Landslide Repair Contingency Fund as described below. Funds will be released from the Landslide Repair Contingency Fund upon the written approval of the General Manager of the SFPUC acting in his or her reasonable discretion except as set forth in this Agreement (*see* Section 3.iv. below regarding dispute resolution). Such discretion and written approval shall not be unreasonably withheld. All costs from the Landslide Repair Contingency Fund shall be approved by the City for payment from the Escrow within ten (10) days of Claimants submitting the request for payment to the General Manager of the SFPUC except if the dispute resolution procedures set forth in Section 3.iv. below are triggered. For example, if Claimants incur additional geotechnical consulting fees because it is necessary for Claimants' geotechnical engineer to be onsite longer than anticipated, it is not necessary for Claimants to obtain the approval of the General Manager of the SFPUC before authorizing the additional site observations. Claimants would submit the geotechnical engineer's invoice for the additional site visits to the SFPUC for payment from the Landslide Repair Contingency. The General Manager of the SFPUC will either authorize the Escrow agent to make the payment for the cost from the Landslide Repair Contingency Fund within ten (10) days of submission or trigger the dispute resolution procedures set forth in Section 3.iv. below. Except as set forth in this Agreement, Claimants expressly understand and agree that Claimants bear the risks of costs for the landslide repair exceeding the Total Settlement Payment and the Landslide Repair Contingency Fund. The Landslide Contingency Fund shall expire upon

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completion of the Landslide Repair and any remaining funds in the Escrow shall be returned to the City. The items covered by this Landslide Contingency Fund, include any and all costs and expenses related to the landslide repair which are not otherwise contained in the Total Settlement Amount, including the following:

A. Landslide Repairs	Contingency
1. Geotechnical Consulting	\$52,763.29
2. Observation	\$60,000.00
3. Actual Landslide Repair	\$400,000.00
6. Civil/Surveyor	\$25,000.00
Not-to-Exceed Contingency	\$537,763.29

iv. **Dispute Resolution:** If Claimants and the City dispute whether a cost or expense for the Landslide Repair should be paid from the Landslide Repair Contingency, Claimants and the City agree to submit the dispute to Ken Ferrone and/or Stephen Harris (individually "Engineer") for resolution. The City agrees to defer to the dispute resolution determination made by the Engineer acting in his capacity as design engineer for the Landslide Repairs on the Property.

4. Landslide Repair:

a. **Access and Cooperation:** As set forth in Paragraph 2 above, Claimants have agreed to the Landslide Repair on the Property. The SFB Report contains factual data including, but not limited to, boring logs, laboratory test results, soil stability characteristics, and design parameters (collectively "Ferrone Factual Data") for the Landslide Repair at the Property. Claimants have released the Ferrone Factual Data, but not the SFB Report, to the owner and the experts of the Adjacent Property, and understand that the Ferrone Factual Data may be used for all design-build stitch pier installation within City's Existing Public Service Easement on both the Property and Adjacent Property ("Sewer Alignment Stitch Piers"). The City understands that SFB did not investigate the Adjacent Property and that Claimants and/or SFB have no responsibility for the design or installation of the Sewer Alignment Stitch Piers on the Adjacent Property. The owners of the Adjacent Property shall conduct their own investigation of the

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Adjacent Property. Claimants agree to cooperate in good faith with City and owners of the Adjacent Property including providing reasonable access across the Property to the rear of Adjacent Property for investigation and repair work related to the Landslide Repair, in coordination with the investigation and repair work undertaken on the Property. Claimants agree to provide such access across the Property provided the owners of the Adjacent Property give the Claimants 48 hours written advance notice before access to the Property except in emergency situations. The notice shall include the identity of the person or persons who will be accessing the Property. In addition, the person or persons accessing the Property on behalf of the owners of the Adjacent Property agree that their access to the Property shall be at their risk only. Claimants are only required to grant access to the Property pursuant to this paragraph provided that the owners of the Adjacent Property will require that their consultants and/or their contractor name Claimants as additional insureds on their respective commercial general liability insurance policy. The Parties, in conjunction with the owners of the Adjacent Property, shall coordinate such access with Claimants' contractor so that such access will not result in interference or delay to the Landslide Repair or home repairs on the Property.

b. **City Observation:** Claimants further understand and expressly agree that the SFPUC shall have the right to observe installation of the Sewer Alignment Stitch Piers at its own cost and for the City's benefit only. Claimants will cause their contractor to coordinate with SFPUC to facilitate observations. However, except in case of an emergency, the SFPUC shall provide 48 hours written notice to the Claimants that the SFPUC will be coming to the Property to observe the installation of the Sewer Alignment Stitch Piers, except when SFPUC's observation coincides with the Department of Building Inspection visits to the Property. Any such observation by the SFPUC of the Sewer Alignment Stitch Piers will be at the City's risk only. Installation of the Sewer Alignment Stitch Piers shall be subject to approval of the SFPUC acting in its sole discretion. However, in no event shall the SFPUC request any change to the Sewer Alignment Stitch Pier design approved by the San Francisco Planning Department and/or Department of Building Inspection.

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5. City Review of Design Documents:

a. **Authority:** Claimants acknowledge that the City, including the SFPUC, is entering into this Agreement in its proprietary capacity, and cannot commit to exercise its regulatory authority through this Agreement. Claimants are subject to all lawful regulatory authority of the City with respect to the Property and activities that are the subject of this Agreement.

b. **Approval of Plans:** Claimants shall obtain approval of the San Francisco Planning Department and the San Francisco Department of Building Inspection ("Regulatory Authorities") of all construction documents for the Property, including, but not limited to, the Sewer Alignment Stitch Pier Plans and Specifications ("Sewer Alignment Stitch Pier Plans and Specifications"), as required. If the Regulatory Authorities require any modifications to the Stitch Pier Plans and Specifications, any related cost increases may be paid out of the Landslide Repair Contingency Fund, if available, in accordance with Paragraph 3.a.iii, above. The Sewer Alignment Stitch Pier Plans and Specifications shall also be submitted to and approved by the SFPUC, acting in its sole discretion, in advance of installation of the Sewer Alignment Stitch Piers, as set forth in Paragraph 5.c. below.

Notice: All notices and correspondence, including delivery of the Sewer Alignment Stitch Pier Plans and Specifications, under this Agreement shall be in writing, directed to the SFPUC and Claimants as follows:

To CITY: Harlan Kelly, Jr.
Office of the General Manager
San Francisco Public Utilities Commission
San Francisco, California 94102
415-554-0738

With a Copy to: Louise S. Simpson, Deputy City Attorney
San Francisco City Attorney's Office
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
415-554-4705

Execution Copy

To the CLAIMANTS: **Ronald A. Martell**
 40 San Andreas Way
 San Francisco, CA 94127
 415-692-4133

With a Copy to: **Elizabeth A. England, Esq.**
 Thomas W. Chaffee, Esq.
 Morris, Polich & Purdy, LLP
 One Embarcadero Center, Suite 400
 San Francisco, CA 94111
 415-984-8503

c. **SFPUC Review:** SFPUC agrees to fund the installation of Sewer Alignment Stitch Piers on the Property. On or before January 5, 2017, Claimants shall submit the Sewer Alignment Stitch Pier Plans and Specifications to the SFPUC for review and approval, which approval shall not be unreasonably withheld. In addition, Claimants will provide SFPUC with the proposed terms and conditions of the construction contract for SFPUC comment, but not approval. The SFPUC shall have 15 calendar days from the receipt of the Stitch Pier Plans and Specifications to perform its review and provide its written approval or disapproval of the Stitch Pier Plans and Specifications ("Initial Review Document"). If the SFPUC disapproves the Stitch Pier Plans and Specifications in whole or in part, the SFPUC shall provide comments sufficient to enable Claimants' contractor to make revisions to address all SFPUC's concerns. All revisions, if any are required by the SFPUC, shall be resubmitted to the SFPUC for its further review and approval within 10 calendar days of Ronald A. Martell's receipt of Initial Review Document. The SFPUC shall then have 15 calendar days to perform its re-review and provide its further written comments and/or approval of all such design revisions ("Further Review Document"). This design review process shall continue until the SFPUC provides its full and final approval of the Stitch Pier Plans and Specifications. The SFPUC agrees that as part of its review it will not increase the number of Sewer Alignment Stitch Piers included in the Sewer Alignment Plans and Specifications.

6. Assignment of Rights and Dedication of Sewer Alignment Stitch Piers:

Following final approval by the SFPUC of the Sewer Alignment Stitch Pier installation, and the

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City's issuance of a written Certification of Completion, Claimants shall assign to the City all as-built drawings of the Sewer Alignment Stitch Pier installation and any other continuing obligations of Claimants' contractor related to that work, including all express and implied warranties under the contract, and contractor's responsibility for latent defects. Concurrently with that assignment, Claimants shall provide an irrevocable offer of dedication to the City of the Sewer Alignment Stitch Piers, and City staff shall undertake the process for the City to accept the dedication, which is subject to Board of Supervisors approval, acting in its sole discretion.

7. Easements: Claimants acknowledge the City's Existing Public Service Easement for the operation, inspection, maintenance, repair, modification and replacement, as necessary, of the sewer, and consent to the modification of the Existing Easement by installation of the Sewer Alignment Stitch Piers. Once the Sewer Alignment Stitch Piers have been installed, accepted by the SFPUC, and the City has issued a written certificate of completion, Claimants and the City agree to create a new easement for the City on the Property (the "Stitch Pier Easement"). The Stitch Pier Easement is comprised of the Existing Public Service Easement across the rear of the Property, and Sewer Alignment Stitch Piers installed within the Existing Public Service Easement. The City shall be responsible for preparing the easement deed and legal description, and recording the easement deed following approval of the terms and description of the easement by Claimants, which shall not be unreasonably withheld or delayed.

8. Full and Final Releases:

a. Release of the City by Claimants: For good and valuable consideration, Claimants each hereby fully and finally releases the City, and each of the City's past, present and future departments, agencies, boards, commissions, officials, employees, representatives, agents, consultants and attorneys, from any and all claims, demands, actions, causes of action, rights, remedies, obligations, penalties, costs, expenses, damages, interest, attorneys' fees, losses and liabilities, of any kind or nature, whenever or however derived, foreseen or unforeseen, suspected or unsuspected, past, present or future, constituting, arising from or in any way related to the Casitas Incident.

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b. Release by USAA as to City: For good and valuable consideration, USAA hereby fully and finally releases the City, and each of the City's past, present and future departments, agencies, boards, commissions, officials, employees, representatives, agents, consultants and attorneys, from any and all claims, demands, actions, causes of action, rights, remedies, obligations, penalties, costs, expenses, damages, interest, attorneys' fees, losses and liabilities, of any kind or nature, whenever or however derived, foreseen or unforeseen, suspected or unsuspected, past, present or future, constituting, arising from or in any way related payments made under the Policy arising from damages related to the Casitas Incident.

9. Waiver of Civil Code Section 1542: Claimants and USAA each certifies that it has read Section 1542 of the California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his settlement with the debtor.

Claimants and USAA each specifically waives any benefit or right under Section 1542 and assumes all risks of claims, known or unknown, heretofore or hereafter, arising from this waiver.

10. Consequence of Waiver of Section 1542: Claimants and USAA each understands and agrees that, as a consequence of this waiver of Section 1542, even if Claimants and/or USAA should eventually suffer additional or further loss, damages, or injury arising out of or in any way related to the Casitas Incident, neither Claimants nor USAA will be permitted to make any further claims against the City to recover for such loss, damages, or injury of any kind.

Claimants and USAA each understands and agrees that it intends these consequences even as to claims for personal injury or property damage that may exist as of the date of this Agreement, but which neither Claimants nor USAA know exist, and which, if known, would materially affect their decision to execute this Agreement, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

11. Insurance: Claimants understand and agree that they shall require their contractor for the installation of the Sewer Alignment Stitch Piers to name the City and County of San

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Francisco as an additional insured on the contractor's commercial general liability insurance policy and that such policy shall have limits of not less than \$2,000,000 (Two Million Dollars) per occurrence combined single limit for bodily injury and property damage, including coverage for contractual liability, and completed operations. If, in order to obtain the \$2,000,000 (Two Million Dollars) per occurrence limit for completed operations it is necessary to name the City and County of San Francisco on the Claimants' contractor's umbrella and/or excess insurance policy as well, Claimants will require their contractor for the installation of the Sewer Alignment Stitch Piers to do so.

12. Entire Agreement: This Agreement supersedes any and all prior agreements and understandings between the Parties and constitutes the entire understanding between and among them with regard to the matters herein set forth. There are no representations, warranties, agreements or undertakings, written or oral, between or among Claimants, USAA, and the City, relating to the subject matter of this Agreement, which are not fully expressed herein.

13. Non-assignment: Claimants represent and warrant they are the sole owners of the Property and all claims asserted with respect to the matters referenced herein, that neither has sold, assigned or transferred, or agreed to assign or transfer, or attempted to assign or transfer, to any third party or entity (including without limitation any insurer) any interest in any claim, demand, obligation, damage or liability released herein.

14. Successors and Assigns: This Agreement governs the rights of, and binds, and inures to the benefit of Claimants, USAA, and each of their heirs, legatees, devisees, executors, successors, administrators and assigns.

15. Authority to Execute and Bind: The Parties each represents and warrants that they have full and complete legal authority to execute this Agreement.

16. No Admission of Liability: This Agreement pertains to disputed claims and does not constitute an admission of liability by any of the Parties hereto.

17. Voluntary Agreement: The terms of this Agreement are contractual in nature and not a mere recital. Claimants and USAA each affirm and acknowledge that they have read and

Execution Copy

fully appreciate and understand the terms of this Agreement, are fully and entirely satisfied with the same, have had the opportunity to confer with legal counsel before executing this Agreement, and have executed this Agreement voluntarily and of their own free will and act.

18. Severability: In case any part, term, portion or provision of this Agreement is or shall be invalid, illegal or unenforceable, the remaining parts, terms, portions and provisions shall be deemed severable and the validity, legality and enforceability of the remaining parts, terms, portions and provisions shall not be affected or impaired.

19. Headings: The headings in this Agreement are for convenience only and do not limit or alter the described paragraphs in any manner.

20. Amendment of Agreement: This Agreement may be amended only by written agreement.

21. Governing Law: This Agreement shall be construed in accordance with the laws of the State of California.

22. Legal Fees: Claimants and USAA each understands and agrees that this Agreement includes all demands for costs, expenses, consultant fees and attorneys' fees incurred in, arising out of, or related in any way to the claims asserted with respect to the matters referenced herein.

23. Days: All references to days in this Agreement shall refer to calendar days unless specifically defined as business days.

24. Counterparts. This Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed an original and all of which together shall constitute one and the same instrument. Facsimile or electronic copies of signatures shall have the same effect as original signatures.

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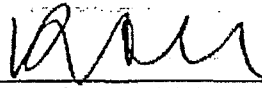
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Execution Copy

IN WITNESS WHEREOF, each of the Parties has executed this Full and Final Release
on the date and year set forth below:

DATE: November 8, 2016

Ronald A. Martell



RONALD A. MARTELL
Property Owner of 256 Casitas Avenue

Dated: November 8, 2016

Patricia Martell



PATRICIA MARTELL
Property Owner of 256 Casitas Avenue

DATE: _____

CITY AND COUNTY OF SAN FRANCISCO

By: _____

HARLAN L. KELLY, JR.
General Manager
San Francisco Public Utilities Commission

Dated: _____

United States Automobile Association

By: _____

SCOTT GORMAN
Senior Litigation Manager

APPROVED AS TO FORM:

Dated: 11/8/2016

DENNIS J. HERRERA
City Attorney *House Simpson*
FOR

By: _____

MATTHEW J. ROTHSCHILD
Chief Claims Division
Attorneys for City and County of San Francisco

Dated: November 8, 2016

Morris Polich & Purdy

By: 

ELIZABETH A. ENGLAND
Attorneys for Ronald A. Martell and Patricia
Martell

Execution Copy

IN WITNESS WHEREOF, each of the Parties has executed this Full and Final Release on the date and year set forth below:

DATE: November 8, 2016

Ronald A. Martell



RONALD A. MARTELL
Property Owner of 256 Casitas Avenue

Dated: November 8, 2016

Patricia Martell



PATRICIA MARTELL
Property Owner of 256 Casitas Avenue

DATE: _____

CITY AND COUNTY OF SAN FRANCISCO

By: _____

HARLAN L. KELLY, JR.
General Manager
San Francisco Public Utilities Commission

Dated: Nov. 8th, 2016

^{pl} United States Automobile Association [#] *USAA CASUALTY INSURANCE COMPANY*

By: _____


SCOTT GORMAN
Senior Litigation Manager

APPROVED AS TO FORM:

Dated: _____

DENNIS J. HERRERA
City Attorney

By: _____

MATTHEW J. ROTHSCHILD
Chief Claims Division
Attorneys for City and County of San Francisco

Dated: November 8, 2016

Morris Polich & Purdy

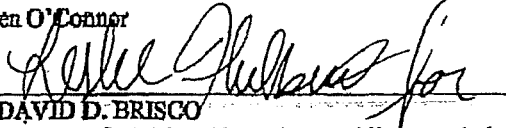


ELIZABETH A. ENGLAND
Attorneys for Ronald A. Martell and Patricia Martell

Execution Copy

Dated: 11/8/14

Cozen O'Connor

By: 
DAVID D. BRISCO
Attorneys for United States Automobile Association ^{cc}
^{AK} USAAA CASUALTY INSURANCE Company

END OF DOCUMENT

Execution Copy

EXHIBIT A

FULL AND FINAL RELEASE AND PARTIAL SETTLEMENT

CLAIM #: 16-02314

\$ 974,859.05
~~999,859.05~~

*WAL
LSB*

CLAIMANTS: Ronald A. Martell and Patricia Martell ("Claimants")

DEPARTMENT: WROCLAIM Water Retail Only Claims

This is a Full and Final Release and Partial Settlement (the "Agreement") for specific claims resulting from a landslide occurring on or about January 27, 2016 at or near the 200 block of Casitas Avenue and the 100 block of Miraloma Drive, San Francisco, California (the "Casitas Incident") affecting properties including 256 Casitas Avenue, San Francisco, California (the "Property"). Claimants are the owners of the Property.

For and in consideration of the agreement by the City and County of San Francisco (hereinafter "the City") to pay the sum of \$974,859.05 (Nine Hundred Seventy Four Thousand Eight Hundred Fifty-Nine Dollars and Five Cents) (the "Settlement Amount"), as full compensation for only the items listed below arising out of the Casitas Incident, Claimants, and each of them, hereby fully and finally release and discharge the City and County of San Francisco, all boards, agents, employees, departments, commissioners, and officers thereof ("City"), of and from claims, known or unknown, of any nature whatsoever for the following items of damage only arising out of the Casitas Incident:

ITEMS FULLY AND FINALLY RELEASED BY CLAIMANTS	Partial Settlement Payment
A. Emergency Repairs	
1. Demo of home	\$82,845.00
2. Installation of Well	\$17,500.00
3. Sidewalk Repair	\$2,000.00
4. Frank Rollo Jr.	\$5,940.00
5. Forensic Analysis/well	\$6,418.26

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B. Living Costs	
1. Rent	\$273,000.00
2. Mortgage	\$60,804.00
3. Renter's Insurance	\$3,402.00
C. Landslide Repairs	
1. Inclinometers	\$60,000.00
2. Partial Foundation Removal	\$40,000.00
3. Design of slope stability	\$30,594.15
4. Construction Insurance	\$22,400.00
D. Rebuild Home	
1. Architect	\$259,855.64
3. Design of house superstructure	\$45,100.00
4. Structural Engineer - Admin	\$18,000.00
5. Landscaping	\$20,000.00
6. Fencing	\$25,000.00
7. Permits and other	\$2,000.00
TOTAL BREAKDOWN	\$974,859.05

It is further understood that this Agreement pertains to disputed claims and does not constitute an admission of liability by the City.

This Agreement is part of a broader multi-phased settlement between the Claimants and the City with respect to the Casitas Incident as set forth in the November 8, 2016 Full and Final Release between the City and Claimants the terms of which are expressly incorporated herein.

IN WITNESS WHEREOF, each of the Parties has executed this Full and Final Release and Partial Settlement on the date and year set forth below:

Dated: November 8, 2016

Ronald A. Martell



RONALD A. MARTELL
Property Owner of 256 Casitas Avenue

Execution Copy

Dated: November 8, 2016

Patricia Martell

Patricia Martell
PATRICIA MARTELL
Property Owner of 256 Casitas Avenue

DATE: _____

CITY AND COUNTY OF SAN FRANCISCO

By: *Harlan L. Kelly, Jr.*
HARLAN L. KELLY, Jr.
General Manager
San Francisco Public Utilities Commission

APPROVED AS TO FORM:

Dated: 11/8/2016

DENNIS J. HERRERA
City Attorney *Louise S. Simpson*
FOR

By: *[Signature]*
MATTHEW J. ROTHSCHILD
Chief of Claims Division
Attorneys for City and County of San Francisco

Dated: November 8, 2016

Morris Polich & Purdy, LLP

By: *[Signature]*
ELIZABETH A. ENGLAND
Attorneys for Ronald A. Martell and Patricia
Martell

END OF DOCUMENT

Member, Board of Supervisors
District 3



City and County of San Francisco

AARON PESKIN

MEMORANDUM

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2016 DEC - 1 AM 9:28
BY: *ew*

DATE: December 1, 2016

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Aaron Peskin *AP*
Chairperson

RE: Government Audit and Oversight Committee
COMMITTEE REPORT

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on December 6, 2016, as a Committee Report:

161238 Settlement of Claims - Ronald and Patricia Martell - \$5,007,400.31 and Hold Harmless; Appropriating \$4,000,000 from the Water Enterprise Fund Balance - Waiver of Contract Requirements for Landslide Repair on Private Property Not to Exceed \$500,000

Ordinance authorizing final settlement of Claim No. 16-02314 filed by Ronald and Patricia Martell against the City and County of San Francisco by payment of \$4,469,637.02 establishing a third-party escrow account in the amount of \$537,763.29 as a Landslide Contingency Fund, for a total potential payment of \$5,007,400.31 and holding claimants harmless from third party claims for a limited period; the claim was filed on February 25, 2016; the claim involves alleged property damage arising from the January 25, 2016, landslide on Casitas Avenue; appropriating \$4,000,000 from the Water Enterprise fund balance for such purpose; and waiving Administrative Code contract requirements except for Administrative Code, Section 12B.1(a) (nondiscrimination) and Section 6.22(e) (prevailing wage), for San Francisco Public Utilities Commission (SFPUC) contracts to implement landslide stabilization measures at 256 Casitas Avenue prior to April 1, 2017, or to undertake landslide repairs on 266 Casitas Avenue, with an engineer or construction contractor, subject to approval by the applicable property owner at 256 Casitas Avenue and/or 266 Casitas Avenue, if the SFPUC's Commission President and General Manager determine such contract is necessary to protect public facilities or minimize or avoid City liability, not to exceed \$500,000 in total for any such contracts.

This matter will be heard in the Government Audit and Oversight Committee on December 1, 2016, at 9:30 a.m.

Print Form

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

Introduction Form

By a Member of the Board of Supervisors or the Mayor

2010 NOV 14 PM 4:28

BY JHB Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission Youth Commission Ethics Commission
- Planning Commission Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Norman Yee

Subject:

Settlement of Claims--Ronald and Patricia Martell

The text is listed below or attached:

Attached

Signature of Sponsoring Supervisor: Norman Yee

For Clerk's Use Only: