



APPROVED  
BY THE CITY COUNCIL

DEC 9 1986

OFFICE OF THE  
CITY CLERK

36

DEPARTMENT OF  
PUBLIC WORKS

ENGINEERING DIVISION

CITY OF SACRAMENTO  
CALIFORNIA

CITY HALL  
ROOM 300  
915 I STREET  
SACRAMENTO, CA  
95814-2608

916-449-5307

THOMAS M. FINLEY  
ENGINEERING DIVISION  
MANAGER

December 9, 1986

City Council  
Sacramento, California

Honorable Members in Session:

SUBJECT: Morrison Creek Assessment District (JN:01AD) - Approval of Balancing  
Change Order and Contract Completion Litigation

SUMMARY

Dyn Construction Corporation of Martinez was given the Notice to Proceed for the Morrison Creek Assessment District Project, City Contract 85314 on May 6, 1985 and the project was completed October 31, 1986. Bid cost of the project was \$4,741,106.02 and the final cost recognized by the City is \$5,175,670.90. It is requested the Council approve the Balancing Change Order in the amount of \$146,877.05, accept the project as complete, authorize filing the Notice of Completion, and authorize final payment in thirty-five (35) days pursuant to law.

BACKGROUND

Dyn Construction Corporation was awarded the subject project and given the Notice to Proceed on May 6, 1985. The work consisted of constructing major improvements to 11,000 feet of Morrison Creek Channel in the vicinity of the Sacramento Army Depot, sewer lines, a sewage lift station, storm drain lines, a storm drainage lift station, water lines and a bridge into the Sacramento Army Depot.

Change Order 7 is a Balancing Change Order and consists of six parts:

1. Balancing of the 78 contract bid items = \$66,612.13
2. Change Order 5 (Rev.) - Twelve extra work items on the channel, sewer, storm drains, and pump station = \$83,436.43
3. Change Order 6 - Six extra work items on the sewer and storm drain systems = \$28,679.43

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- 4. Extra work on changes to the sewer lift station, access ramps, pump station and pavement cutting = \$63,754.82
- 5. Credit to City for reduced haul of contaminated materials, savings for allowing full closure of Elder Creek Road, quality control costs for cost in place pipe, and emergency work by City forces =(\$105,325.96)
- 6. Materials on hand (fencing) = \$9,720.00
- Total = \$146,877.05

The Contractor has refused to sign Change Order 5 (Rev.) and 6, which are included in and are part of Change Order 7, along with Change Order 7 unless language was added which would allow the Contractor an opportunity to come back and renegotiate the price. The City Attorney's office agrees Change Order 7 should be processed without the Contractor's signature and recommends the normal process be followed for acceptance and final payment.

The contractor finished within the time allocated. However, the City is currently being sued by Dyn Construction for a \$2,316,655.82 construction claim.

FINANCIAL

There are sufficient funds available for the Balancing Change Order and to make final payment as herein presented to Council. It is unknown at this time, due to the pending litigation, if sufficient funds will be available to close out the project. Council shall be kept advised on future related developments.

RECOMMENDATION

It is recommended the City Council:

- 1. Approve the Balancing Change Order for Morrison Creek Assessment District in the amount of \$146,877.05.
- 2. Accept the Morrison Creek Assessment District construction contract work as complete.

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- 3. Authorize the filing of the Notice of Completion.
- 4. Authorize the final construction contract payment pursuant to law thirty-five (35) days following acceptance of the work.

Respectfully submitted,

*John Muddalbrook for*  
 THOMAS M. FINLEY  
 Engineering Division Manager

Recommendation Approved:

*Walter J. Slipe*  
 WALTER J. SLIPE  
 City Manager

JM:mw  
JM1-44  
12.0186

Approved:

*Melvin H. Johnson*  
 MELVIN H. JOHNSON  
 Director of Public Works

December 9, 1986  
District No. 6

Attachment

January 13, 1987

JUL 15 10 22 AM '86

# STOP NOTICE

## NOTICE TO WITHHOLD TO HOLDER OF FUNDS

TO: City of Sacramento  
(Name of owner, construction lender or public officer)  
915 "I" St., Sacramento, Calif. 95813  
(Address of owner or construction lender), HOLDER OF FUNDS.

YOU ARE HEREBY NOTIFIED THAT the undersigned claimant,  
Walter C. Smith Co., Inc., P.O. Box 1047, Clovis, Calif. 93613  
(Name and address)  
has furnished or has agreed to furnish Bore and jack 42" R.C.P. Furnish and bore 48"  
(labor, services, equipment, materials)  
of the following kind and 18" casing  
(general description of labor, services, equipment or materials)  
to or for Dyn Construction  
(name of person to or for whom furnished), for the work improvement, located at, or known as:  
Morrison Creek Assessment District C.C. 8599-vicinity Florin-Perkin  
(address, legal description, description of site or project identification)  
Road and Elder Creek Road.

The amount in value of the whole agreed to be done or furnished by claimant is \$ 34,327.46  
The amount in value of that already done or furnished by claimant is \$ 34,327.46  
Claimant has been paid the sum of \$ 30,222.00 and there remains due and unpaid the sum of \$ 4,105.46  
plus interest thereon at the rate of 18 per cent per annum from October 6, 1985

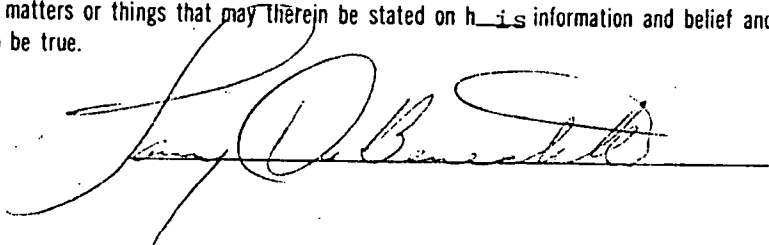
YOU ARE HEREBY NOTIFIED TO WITHHOLD SUFFICIENT FUNDS TO SATISFY THIS CLAIM WITH INTEREST.

Dated: July 2, 1986

Walter C. Smith Co., Inc.  
Name of Claimant  
P.O. Box 1047, Clovis, Calif.  
Address of Claimant

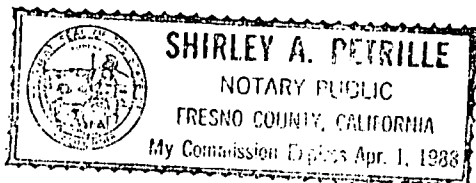
STATE OF CALIFORNIA }  
COUNTY OF Fresno } ss.

Anthony DeBenedetto, being duly sworn, deposes and says: That he is the person(s) who signed the foregoing Stop Notice; that he has read the same and knows the contents thereof to be true of his own knowledge, except as to any matters or things that may therein be stated on his information and belief and as to those matters and things he believes them to be true.



Subscribed and sworn to before me

this 8th day of July 1986  
Shirley A. Petrille  
Notary Public and in and for said State



**AMWEST SURETY INSURANCE COMPANY**

LOS ANGELES, CALIFORNIA



Bond No. 1105282

Premium: \$103.00

BOND TO SUPPORT STOP NOTICE UNDER SECTION 3083 OF CALIFORNIA CIVIL CODE

KNOW ALL MEN BY THESE PRESENTS, that WALTER C. SMITH CO., INC. as PRINCIPAL and AMWEST SURETY INSURANCE COMPANY, a corporation created, organized and existing under and by virtue of the laws of the State of California, and duly licensed to transact a general surety business in the State of California, as Surety, are held and firmly bound to

CITY OF SACRAMENTO of 915 I STREET, SACRAMENTO, CA 95813

as OBLIGEE, in the sum of \*FIVE THOUSAND ONE HUNDRED THIRTY-ONE AND 83/100\* DOLLARS (\$5,131.83\* ), lawful money of the United States of America, to be paid to the said OBLIGEE for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of the above obligation is such that whereas the PRINCIPAL has furnished labor and/or materials to DYN CONSTRUCTION, hereinafter called DEFENDANT, in connection with the construction of certain building improvements located at MORRISON CREEK ASSESSMENT DISTRICT C.C. 8599-VICINITY FLORIN-PERKIN ROAD AND ELDER CREEK ROAD

WHEREAS, the said PRINCIPAL has filed, or is about to file, or is filing concurrently with this bond a verified claim covering said labor and/or materials and pursuant to Section 3083 of the California Civil Code, and has requested, or is by said verified claim about to request, the OBLIGEE, who is holding building funds, to withhold said funds, and in connection with said Section, said PRINCIPAL is required to file

a bond in the sum of \*FIVE THOUSAND ONE HUNDRED THIRTY-ONE AND 83/100\* DOLLARS (\$5,131.83\* ), being and and one-quarter (1/4) times the amount of the claim.

NOW THEREFORE, the condition of the above obligation is such that if the DEFENDANT recovers judgement in an action brought on said verified claim or on the lien filed by the PRINCIPAL, the PRINCIPAL will pay costs as provided in said Section and all damages that said OBLIGEE or person holding such funds may sustain by reason of the equitable garnishment effected by the claim or by reason of the withholding of said funds by the OBLIGEE, not exceeding the sum specified in this undertaking, then this obligation shall be null and void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the seal and signature of the said PRINCIPAL is hereto affixed and the corporate seal and name of the said SURETY is hereto affixed and attested by its duly authorized Attorney in fact

at FRESNO, CA this 9TH day of JULY, 1986

WALTER C. SMITH CO., INC.  
PRINCIPAL

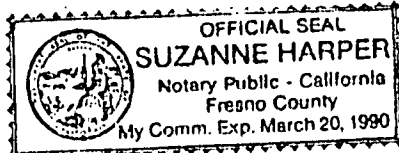
AMWEST SURETY INSURANCE COMPANY  
SURETY

[Signature]  
SIGNATURE

[Signature]  
SIGNATURE ATTORNEY IN FACT DYANNE FANKHAUSER

STATE OF CALIFORNIA, COUNTY OF FRESNO ss.

On JULY 9, 1986, before me a Notary Public, within and for said County and State, personally appeared DYANNE FANKHAUSER, known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney in Fact of and for the AMWEST SURETY INSURANCE COMPANY, and acknowledged to me that he subscribed the name of the AMWEST SURETY INSURANCE COMPANY thereto as Surety, and his own name as Attorney in Fact.



[Signature]

AMWEST SURETY INSURANCE CO.

P.O. Box 4500

Woodland Hills, CA 91365

(818) 704-1111

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That AMWEST SURETY INSURANCE COMPANY, A CALIFORNIA CORPORATION does hereby make, constitute and appoint

Dyanne Fankhauser

its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto if a seal is required, bonds, undertakings, recognizances or other written obligations in the nature thereof, as follows:

and to bind AMWEST SURETY INSURANCE COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are hereby ratified and confirmed. This appointment is made under and by authority of the following provisions of the By-Laws of the company, which are now in full force and effect:

Article III, Section 7 of the By-Laws of AMWEST SURETY INSURANCE COMPANY

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of AMWEST SURETY INSURANCE COMPANY at a meeting duly held on December 15, 1975.

RESOLVED that the president or any vice-president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any power of attorney previously granted to such person.

RESOLVED FURTHER that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the company

- (i) when signed by the president or any vice-president and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
(ii) when signed by the president or any vice-president or secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent; or
(iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the power of attorney issued by the company to such person or persons.

RESOLVED FURTHER that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company; and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, AMWEST SURETY INSURANCE COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be hereunto affixed this 1st day of April 19 85

AMWEST SURETY INSURANCE COMPANY



Gary R. Peterson

Gary R. Peterson, President

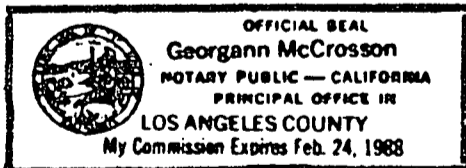
Karen G. Cohen

Karen G. Cohen, Secretary

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES — ss

On this 1st day of April A.D., 19 85, personally came before me Gary R. Peterson

and Karen G. Cohen to me known to be the individuals and officers of AMWEST SURETY INSURANCE COMPANY, CALIFORNIA who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.



(SEAL)

Georgann McCrosson

Notary Public

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES — ss

CERTIFICATE

I, the undersigned, secretary of the AMWEST SURETY 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 the provisions of the By-Laws of the company and the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

Signed and sealed at FRESNO, CA this 9TH day of JULY 19 86



Karen G. Cohen

Karen G. Cohen, Secretary