

RESOLUTION NO. 12-96

A RESOLUTION APPROVING AN AGREEMENT FOR FIRST BANKER - ACH SOFTWARE SERVICES AND ACH AGREEMENT FOR AUTOMATED CLEARING HOUSE SERVICES TO BE PROVIDED BY/THROUGH FIRST NATIONAL BANK

RESOLVED, by the Board of Directors of the Sewer Authority Mid-Coastside, San Mateo County, California, as follows:

WHEREAS, there has been presented to this Board an Agreement for First Banker - ACH software services and to be provided by/through First National Bank;

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED AND ORDERD as follows:

1. The above recitals are true and correct.
2. The Agreements, set forth in Exhibit A, are hereby approved.

* * * * *

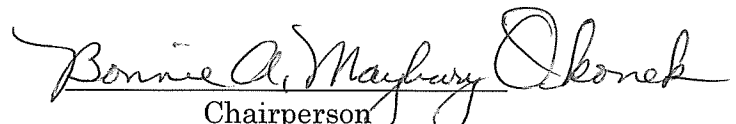
I hereby certify that the foregoing is a full, true and correct copy of the Resolution duly passed and adopted by the Board of Directors of the Sewer Authority Mid-Coastside, San Mateo County, California, at a regular meeting thereof held on the 22nd day of July, 1996, by the following vote of its members:

AYES, and in favor thereof, Members: *Prosser, Coleman, Donovan, Ptacek, Thollaug, Vogt.*

NOES, Members: *None.*

ABSENT, Members: *Okonek.*

ABSTAIN, Members: *None.*


Chairperson
Sewer Authority Mid-Coastside

COUNTERSIGNED:



Secretary
Sewer Authority Mid-Coastside

EXHIBIT A

FIRST NATIONAL BANK OF NORTHERN CALIFORNIA

ACH AGREEMENT

FOR AUTOMATED CLEARING HOUSE SERVICES

(PAYMENTS AND DEPOSITS)

THIS AGREEMENT is made on 7/22/96, between Sewer Authority Mid-Coastside (Company") whose address is 1000 N. Cabrillo Hwy., P.O. Box 3100, Half Moon Bay, CA 94019 and FIRST NATIONAL BANK OF NORTHERN CALIFORNIA, whose address is P.O. Box 9003, Daly City, CA 94017 ("Bank").

WHEREAS, Bank is a Participating Depository Financial Institution ("Participating Institution") of the CalWestern Automated Clearing House Association ("CACHA") and may initiate electronic fund transfer entries ("Entries") by means of the Automated Clearing House ("ACH").

WHEREAS, Company desires to initiate such Entries through the Bank for deposit ("Credit Entry") and payment ("Debit Entry") of funds to and from the accounts of Company's customers ("Customers") maintained at Bank and other Participating Institutions ("Accounts").

NOW THEREFORE, Bank and Company agree as follows:

1. **RULES.** Bank's and Company's responsibilities and obligations under this Agreement will be governed by the operating rules of the National Automated Clearing House Association, the Operating Rules of CACHA and the Bank's operating rules and procedures for Entries, as amended from time to time (collectively, the "Rules"). Company shall obtain a copy of the Rules, which Rules have otherwise been made available to Company by Bank. Any capitalized term used but not defined in the Agreement has the same meaning as in the Rules.

2. **DELIVERY OF ENTRIES TO BANK.**

2.1 **Delivery to Bank.** Company may deliver Entries to Bank by electronic transmission, by physical delivery of magnetic media to a location designated by Bank, or by any other means the Bank may designate in the future. From time to time, Bank will advise Company of the formatting and other requirements for Entries and delivery to Bank established by the Rules and all Entries delivered by Company shall comply with those requirements. Company agrees that it must comply with the Rules and with all Security Procedures that Bank and Company agree to use to verify the authenticity of and detect errors in Entries (the "Security Procedures") when delivering Entries to Bank and in the taking of any other action covered by the Security Procedures.

2.2 **Time.** An Entry must be received by Bank no later than 12:00 noon on the second Business Day prior to the date on which the Company instructs Bank to debit or credit an Account (the "Effective Entry Date"). Bank's debiting or crediting of an Account will be referred to herein as "Execute or Execution". If any Entry is delivered late, Bank may Execute an Entry, when the Customer's Account is with Bank ("On-Us Entry") or deliver other Entries to the ACH, on the Effective Entry Date or on a Business Day after the Effective Entry Date. "Business Day" shall mean that part of any day that Bank is open to the public for carrying on substantially all of its business and the ACH is open for the transmission and processing of Entries.

2.3 Customer Authorization. Company will not deliver an Entry to Bank unless it has valid authorization for the Entry, which complies with the Rules, from the Customer holding the Customer's Account. Company will retain Customer authorizations for six years after they are terminated and any other documents related to Entries for a period of two years. Company will immediately furnish such authorizations and documents to Bank upon request.

2.4 Prenotification. At least ten (10) calendar days prior to the delivery of an Entry to Bank, Company will deliver a prenotification, in a format established by Bank and the Rules from time to time, to Bank to be transmitted to the Participating Institution which has the Customer's Account ("Receiving Bank"). If a Receiving Bank rejects a prenotification, Company will not initiate an Entry until another prenotification has been submitted to and accepted by the Receiving Bank.

2.5 Cancellation and Amendment of Entries. Company may not cancel or amend an Entry after it is delivered to Bank. Bank will use reasonable efforts to act on a request by Company for cancellation or amendment of an Entry prior to the time it is Executed, but Bank shall not be liable for interest or losses if such cancellation or amendment is not effected. Any request by Company for cancellation or amendment of an Entry must comply with the Security Procedures. Company shall reimburse Bank for any expenses, losses or damages Bank may incur in effecting Company's request to amend or cancel an Entry.

2.6 Customer's Right to Refund of Erroneous Debit Entry. Company acknowledges that, under the Rules, a Customer, in certain circumstances has the right to have funds transferred by an erroneous or unauthorized Debit Entry recredited to the Customer's Account. Company agrees that upon the Bank's receipt of notice of such recrediting, Bank may deduct the amount to be recredited from the Company's Account. In no event will Bank refund a Debit Entry one (1) year after the Debit Entry is Executed.

2.7 Company's Notice to Customers. If the amount of a preauthorized Debit Entry to a Customer's Account maintained at Bank varies in amount from the previous Debit Entry, Company shall, at least ten (10) days before the Effective Entry Date, send the Customer written notice of the Debit Entry amount and Effective Entry Date, unless Customer has previously been notified of Customer's right to receive such notice and Customer has elected to receive such notice only when the Debit Entry does not fall within a specified range or varies from the most recent Debit Entry by an agreed amount. If the Effective Entry Date for preauthorized Credit Entries to a Customer's Account occurs at least once every sixty (60) days, Company shall provide Customer with notice that each Credit Entry has been Executed.

3. EXECUTION OF ENTRIES.

3.1 General. Bank will Execute On-Us Entries and Entries delivered by Company which comply with this Agreement and the Rules. Absent specific instructions from Company to the contrary, Bank will execute Entries by the use of any ACH and/or Participating Institution.

3.2 Rejection of Entries. Bank may reject any Entry for any reason. Bank will send or cause the ACH to send notice of such rejection (either electronically, in writing or verbally) to Company no later than the Business Day after the Effective Entry Date. Bank shall not be liable to Company for the rejection of any Entry, for Company's non-receipt of a notice given to Company, or for the failure to give notice of rejection at an earlier time. Bank will not be required to pay Company interest on rejected Entries for the period from rejection of the Entry and Company's receipt of the notice of rejection. Entries rejected by Bank will be returned to Company electronically, by first class mail, hand delivery or any other method Bank and Company may agree to from time to time.

3.3 Notice of Return Entries. Bank will send notice to Company of the receipt of an Entry returned by the ACH no later than one (1) Business Day after the Bank's receipt of the returned Entry. Bank shall have no obligation to re-execute a returned Entry.

3.4 Provisional Payment. Credit Entries from an ACH are provisional until Bank receives final settlement for the Credit Entries. If Bank does not receive final settlement for a Credit Entry, Company agrees that Bank is entitled to a refund of the amount of the Credit Entry.

4. SECURITY PROCEDURES; UNAUTHORIZED AND INCONSISTENT ENTRIES.

4.1 Security Procedures. Bank and Company shall each comply with the Security Procedures in connection with Entries and any other communications or transactions covered by the Security Procedures.

4.2 Unauthorized Entries. An Entry or other communication delivered to Bank in accordance with the Rules and, if applicable, Security Procedures shall be effective and binding upon Company even if the Entry or communication was not in fact authorized by Company, provided Bank has accepted the Entry in compliance with the Security Procedures and acted in good faith.

4.3 Modification. No course of dealing between Bank and Company or usage of trade will constitute a modification of this Agreement, the Rules or the Security Procedures or constitute an agreement between Bank and Company regardless of whatever practices or procedures Bank or Company may use.

4.4 Notice to Bank and Customers. If Company discovers an erroneous or unauthorized Entry, Company will immediately notify Bank and the affected Customer(s). Upon receiving such notice, Bank will use reasonable efforts on behalf of the Company to correct the Entry in a manner consistent with the Rules. If Company fails to notify Bank or Customer of an erroneous Entry, Company will be liable for any losses Bank may incur.

4.5 Inconsistent Entries. Company agrees that an Entry will be Executed on the basis of the information stated in the Entry. Company will be responsible for the Entry even if the Customer's Account number is of a person different from the Customer named in the Entry, or if the Receiving Bank's or any Intermediary Bank's identification number is of a bank different from the bank named in the Entry.

5. **COMPANY ACCOUNT**. Company shall, upon execution, pay Bank the amount of each Credit Entry Executed by Bank pursuant to this Agreement. Company shall at all times maintain sufficient collected funds in a deposit account Company shall maintain at Bank (the "Company Account") to pay all Credit Entries, fees and other expenses which Company is obligated to pay Bank under this Agreement. If Bank has a reasonable basis to be unsure as to whether adequate funds will be available in the Company Account to cover a Credit Entry, Bank may delay execution of the Credit Entry until it has received adequate assurance from Company acceptable to Bank that such funds will be available. Except as otherwise provided in any separate agreement between Bank and Company, Bank may, without prior notice, deduct any amount due it under this Agreement from the Company Account. If there are insufficient funds available in the Company Account to pay amounts Company owes Bank under this Agreement, Company shall pay any amounts due immediately upon demand and Bank may set off the amounts due from any other account maintained by Company with Bank.

6. **COMPANY'S REPRESENTATIONS AND WARRANTIES**. Company represents and warrants that for each Entry Company delivers to Bank that: (a) the Entry complies with the terms of this Agreement and the Rules; (b) Company has not breached any warranty of an Originating Company and/or Originating Bank under the Rules; (c) Company has not breached any warranty contained in this Agreement or the Rules; and (d) the Entry complies with all State and Federal regulations, including but not limited to, the Electronic Fund Transfer Act and Regulation E.

7. NOTICES AND STATEMENTS. In accordance with the Rules, Bank is not required to and will not provide Company or Customers with notice of receipt or Execution of individual Entries. Entries and other debits and credits to the Company Account will only be reflected on the monthly periodic statement for the Company's Account. Company will notify Bank of any unauthorized or erroneous Entries or any other discrepancy or error on the periodic statement within fourteen (14) calendar days of receipt of the periodic statement, after which the statement will be conclusively presumed to be correct. Bank shall not be liable for any interest or losses resulting from Company's failure to give such notice, provided that the Bank accepted the Entry in compliance with the Security Procedures.

8. LIABILITY OF BANK.

8.1 Performance of Bank. Bank shall be responsible only for performing the services it expressly agrees to perform in this Agreement and shall be liable to Company or a Customer only for direct damages caused by its negligence in performing those services. Bank shall not be responsible for any acts or omissions of Company, including without limitation, the amount, accuracy, timeliness of delivery or Customer authorization of any Entry received from Company, or act or omission of any other person, including without limitation, CACHA, any Federal Reserve Bank, any transmission or communications facility, any Customer or any Receiving Bank. No such person shall be deemed Bank's agent.

8.2 Limit on Damages. In no event shall Bank be liable for any consequential, special, punitive, or indirect loss or damages, including without limitation, loss or damage from subsequent wrongful dishonor resulting from Bank's acts or omission in performing its services under this Agreement.

8.3 Force Majeure. Bank shall not be responsible for the consequences of any interruption of transmission or communication facilities, equipment failure, war, emergency conditions, or other circumstances beyond Bank's reasonable control. Bank shall not be obligated to Execute an Entry if doing so would result in Bank's non-compliance with any applicable law or regulation.

8.4 Interest. Any liability which Bank may have for loss of interest under the Rules for an error or delay in performing its services hereunder shall be governed by this Agreement, the Rules, and applicable law and shall be calculated by using a rate equal to the average Federal Funds Rate of the Federal Reserve Bank of New York for the period involved, less any applicable reserve requirements.

9. INDEMNIFICATION. Company shall defend, indemnify and hold harmless Bank, and its officers, directors, agents and employees, from and against any and all actions, costs, claims, losses, damages or expenses, including attorney's fees, resulting from or arising out of any breach of any of the agreements, representations or warranties of Company contained in this Agreement, or for any act or omission of Company or any other person acting on Company's behalf.

10. PAYMENT FOR BANK SERVICES. Company shall pay Bank fees for the services provided by Bank under this Agreement in accordance with rate schedules published by Bank from time to time. Fee schedules may be changed by Bank upon thirty (30) calendar day's prior notice to Company.

11. **TERMINATION.** Bank may terminate this Agreement immediately by notice to Company, or without notice if Company breaches any of its obligations under this Agreement or the Rules. Company may terminate this Agreement at any time upon ten (10) Business Days prior notice to Bank. Termination shall not affect any of Bank's or Company's rights or obligations under Section 8 above or related to Entries Executed prior to such termination.

12. **FIRST NATIONAL BANK PC-ACH SERVICE.** If Company has agreed to use the First National Bank PC-ACH Service (the "Service") in connection with the transactions contemplated by this Agreement, Bank grants and Company accepts a non-transferable and non-exclusive license to use the Service. Bank will support Company's employees in using the Service at location(s) agreed to by Bank and Company. Company shall be responsible for installing and maintaining the Service in accordance with the specifications provided by Bank from time to time. Company will reimburse Bank for reasonable expenses incurred by Bank for Service maintenance resulting from Company's failure to properly install or maintain the Service as specified by Bank. The Service shall at all times remain the personal property of Bank and Company shall not copy or in any other way reproduce the Service. Upon termination of this Agreement or the Service, Company shall promptly return the Service and any related documentation to Bank.

13. **CONFIDENTIALITY.** Company acknowledges that it will have access to certain confidential information regarding Bank's Execution of Entries, the Security Procedures and the Service. Company shall not disclose any confidential information of Bank and shall use such confidential information only in connection with the transactions contemplated by this Agreement.

14. **TAXES AND RECORDS.** All magnetic tapes, Entries, Security Procedures and records used by Bank for transactions contemplated by this Agreement shall remain the property of Bank. Bank may, in its sole discretion, make available such information upon Company's request. Any expenses incurred by Bank in making any such information available to Company will be paid by Company.

15. GENERAL PROVISIONS.

15.1 **Entire Agreement.** This Agreement constitutes the entire agreement between Bank and Company and supersedes all prior agreements.

15.2 **Amendment.** Bank may amend this Agreement from time to time by notice to Company.

15.3 **Notices.** Except as otherwise provided in the Security Procedures or this Agreement, any notice under this Agreement must be in writing and delivered, faxed or sent by United States postage prepaid mail. Notices must comply with any applicable Security Procedures. Any notice shall be deemed given when received.

15.4 **Assignment.** Company may not assign its interest or rights under this Agreement without the prior written consent of Bank.

15.5 **Successor and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns.

15.6 **Headings.** Headings used in this Agreement are for convenience only and do not limit the scope, extent or intent of this Agreement.

15.7 **Governing Law.** This Agreement is governed by California law including Division 4A of the California Uniform Commercial Code.

15.8 **Counterparts.** This Agreement may be signed in counterparts, all of which shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have Executed this Agreement as of the date first above set forth.

SEWER AUTHORITY MID-COASTSIDE

By: *David R. Ditch*

Its *Manager*

SEWER AUTHORITY MID-COASTSIDE

By *Barbara Prosser*

Its *Chairperson*

"COMPANY"

FIRST NATIONAL BANK OF NORTHERN CALIFORNIA

By _____

Its _____

"BANK"

FIRST BANKER-ACH AGREEMENT

THIS AGREEMENT is for software services provided by First National Bank of Northern California, ("Financial Institution") to Sewer Authority Mid-Coastside ("Customer"). Both parties agree that the services described and provided by Financial Institution will be subject to the terms and conditions set forth below:

1. General. The ACH services to be provided by Financial Institution to Customer, is a software program that permits Customer to generate electronic funds transfers for clearing and settlement through the automated clearing house (ACH) network. STERLING SOFTWARE, Inc. ("STERLING SOFTWARE") is the sole owner and licensor of the computer software program and has granted the Financial Institution the right to sublicense the software program ("Program") to customers. By signing this Agreement Customer agrees that transfers originated by Customer hereunder are subject to the rules and regulations of the ACH network and customer acknowledges that it has been provided with a copy of the governing ACH rules and regulations.

2. License. Financial Institution hereby grants to the Customer a sublicense for use of the Program on a single computer, subject to the terms and conditions set forth in the Agreement. Customer acknowledges and agrees that the Program and related documentation are valuable, confidential, and proprietary property and agrees not to transfer, distribute, copy, reverse compile, modify or alter the Program or the Program documentation.

3. Term. This Agreement is effective from the date Program is received by Customer and shall remain in force until termination. The Agreement shall be terminated (i) upon thirty (30) days prior written notice by either party to the other, (ii) upon the termination of the relationship between the parties, (iii) if the Customer fails to comply with the terms and conditions of this Agreement, or (iv) upon termination of the software license agreement between Financial Institution and STERLING SOFTWARE. The Customer agrees to return the Program and all written and electronic documentation associated with Program to the Financial Institution, upon termination. The Customer shall retain no copies in any form. The provisions of this Agreement that protect the proprietary rights of STERLING SOFTWARE and the Financial Institution will continue in force after termination.

4. Disclaimer of Warranty. No warranties with respect to the Program are made by said Financial Institution nor does it warrant that the Program will meet specific requirements of the Company. Neither Financial Institution nor STERLING SOFTWARE makes any warranty of any kind, either express or implied, with respect to the use of the Program. Financial Institution and STERLING SOFTWARE disclaim any and all implied warranties of merchantability and fitness for a particular purpose.

5. Limitation of Liability.

- a. In no event shall Financial Institution or STERLING SOFTWARE be liable to Customer for any damages, including lost profits, lost savings or other direct, indirect, incidental, special or consequential damages arising out of the use or inability to use the Program and documentation, or for any claim by another party.

b. The Customer shall be solely responsible for protecting against unauthorized access to Program through the use of physical security, passwords and other security procedures. The Financial Institution will be held harmless for processing any request received by Customer.

6. Fees. Fees payable by Customer for access to and use of the Program shall be at a rate specified by the ACH Fee Schedule attached to this Agreement. Financial Institution may change fees upon thirty (30) days prior written notice.

7. Miscellaneous.

a. This Agreement with other written agreements and applicable Financial Institution rules and regulations represents the entire understanding of the parties. If any portion of this Agreement is found to be unenforceable, all remaining portions shall remain in full force and effect.

b. Customer agrees not to sublicense, assign, or transfer this license for the Program, except as expressly provided in this Agreement.

c. This Agreement is governed by the laws of the State of California (except Federal law governs the copyrights and trademarks of STERLING SOFTWARE and its successors it assigns). It may not be amended or modified except by a written instrument signed by both the Customer and the Financial Institution.

8. Signatures. By signing this Agreement, the undersigned acknowledge that they have read and accepted the terms and conditions of this Agreement, and agree to be bound by its terms.

Accepted By Customer:

Accepted By Bank:

Name: Sewer Authority Mid-Coastside

First National Bank of Northern California

By: David N. Dick

By: _____

Title: Manager

Title: _____

Date: 6/24/96

Date: _____

By: Barbara Papp

Title: Chairperson

Date: 7/22/96

ACH FEE SCHEDULE

Monthly Maintenance Fee	\$ 10.00
Per Transaction Fee	\$ 0.05
Return Item Fee	\$ 4.25
Setup and Installation	\$ 125.00
On-Site Support	\$ 50.00 per hour