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DEPARTMENT OF
PUBLIC WORKS

CITY OF SACRAMENTO
CALIFORNIA

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PROJECT DELIVERY
DIVISION

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May 14, 2002

City Council
Sacramento, California



Honorable Members in Session:

SUBJECT: 7th STREET EXTENSION PROJECT (PN: TH26) – CONTRACT AWARD TO F.C.I. CONSTRUCTION IN THE AMOUNT OF \$14,797,383; FUND TRANSFER OF \$479,596.00; APPROVAL OF PROGRAM SUPPLEMENT; AND APPROPRIATION OF FUNDS FOR THE 7th STREET EXTENSION PROJECT (PN: TH26)

LOCATION AND COUNCIL DISTRICT:

7th Street Extension from D Street to North B Street, Council District 1.

RECOMMENDATION:

This report recommends that the City Council adopt the attached resolution which:

- Waives a minor bid irregularity and awards the construction contract for the 7th Street Extension Project to F.C.I. Construction in the amount of \$14,797,383;
- Authorizes the City Manager to execute the contract with F.C.I. Construction, conditional upon the contractor furnishing all required bonds and proof of insurance;
- Transfers \$479,596 from the Department of Utilities into the 7th Street Extension Project (PN: TH26);
- Authorizes the City Manager to execute the Program Supplement for State and federal funding; and,
- Appropriates \$9,382,000 in state and federal funds to the 7th Street Extension Project (PN: TH26).

CONTACT PERSON:

Nader Kamal, Senior Engineer, 264-7035
Nicholas Theocharides, Principal Engineer 264-5065

FOR COUNCIL MEETING OF: May 28, 2002

SUMMARY:

This report recommends that the City Council award the construction contract to F.C.I. Construction, approve the Program Supplement to receive state and federal funds in the amount of \$9,382,000, and transfer \$479,596 from the Utilities Department into the 7th Street Extension Project.

As indicated in previous Council reports, there are potential groundwater, archeological, and soil contamination construction issues which cannot be reasonably predetermined and which may affect the construction schedule and cost of the project. The project budget includes approximately \$1 million (7% of construction amount) for all project contingencies, but it is difficult to assess at this time whether this amount will be sufficient.

COMMITTEE/COMMISSION ACTION:

None.

BACKGROUND INFORMATION:

This project was advertised and bids were received on April 17, 2002. The results are summarized below:

Contractor	Bid Amount	DBE Participation Goal 25%
F.C.I Construction	\$14,797,383	8.08%
Shimmick Construction	\$16,506,340	9.80%
Syblon Reid	\$16,784,039	6.54%
Condon Johnson	\$17,226,507	*
Teichert Construction	\$19,094,863	*
Viking Construction	\$19,709,418	*

*Not received / evaluated

The engineer's estimated construction cost was \$15,000,000.

The low bidder for the 7th Street Extension was F.C.I. Construction with a bid of \$14,797,383, followed by Shimmick Construction with a bid amount of \$16,506,340, a difference of approximately \$ 1.7 million. F.C.I. Construction submitted the only bid below the engineer's estimated construction cost.

Waiver of Minor Bid Irregularity

F.C.I. Construction's bid included a lump sum bid amount for mobilization in the amount of \$1,450,000, which is approximately 9.8% of the bid amount. This amount exceeds the

maximum 5% amount specified for this item in the bid specifications. F.C.I. Construction informed City staff of its intention to do this shortly before submitting its bid, based on F.C.I. Construction's judgment that a state Standard Specification incorporated in the City's bid specifications permitted mobilization costs of up to 10% of the total bid amount.

City staff has determined that F.C.I. Construction's judgment was incorrect, and that the applicable state Standard Specification does not affect the 5% maximum specified in the City's bid specifications for the mobilization costs. However, even though F.C.I. Construction's bid does not comply with this 5% maximum, staff recommends that the City Council waive this variance as a minor bid irregularity pursuant to Section 3.60.140 of the Sacramento City Code, and Section 2-7 of the City's Standard Specifications for Public Works Construction, and award the construction contract to F.C.I. Construction. A detailed discussion in support of this recommendation is contained in Attachment 1 of this report.

Awarding the contract will allow the City to keep its current project schedule and meet the State's requirement to award \$8.7 million in State Transportation Improvement Program (STIP) funds by January 2003, which is the deadline for using or losing the funds.

Project Background

The project will extend 7th Street from Downtown Sacramento north through the Union Pacific Railyards to North B Street in the Richards Boulevard area. The extension will include construction of a two-lane roadway with street lighting, bike lanes, curb, gutter, sidewalks, and a landscaped planter. The project will also reconstruct North 7th Street between North B Street and Richards Boulevard.

The 7th Street Extension Project is the City's No.1 priority transportation project. The project will spur economic revitalization and generate new tax increment money in the Richards Boulevard Redevelopment Area as well as provide additional access routes to and from the Central City.

On March 30, 1999, the City Council adopted Resolution No. 99-155, which certified the Environmental Impact Report (EIR) and adopted the mitigation monitoring plan for this project. The Notice of Determination was filed on April 6, 1999, with the County of Sacramento. Approval of the EIR followed extensive public outreach efforts, which included two public workshops and a public information meeting. The EIR analysis identified no new significant unavoidable impacts that would result beyond those identified in the Richards/Railyards EIR.

The Federal Highway Administration (FHWA) approved a Categorical Exclusion for this project in compliance with the National Environmental Policy Act (NEPA) on November 15, 2001. This analysis concluded that there are no significant impacts associated with the project under NEPA.

The environmental clearance and project scope do not include an expanded Union Pacific underpass for light rail transit for the Downtown Natomas Airport (DNA) line. The DNA line was not a funded project in 1998 when the 7th Street environmental document was scoped, and the construction timetable for the DNA line had not been determined. Over the last year and a half, as planning for the DNA line got under way, City staff looked at options

during project design on how LRT may be accommodated in the two-lane project. Staff concluded that modifications to the design of the underpass to include LRT would require a new environmental review under both CEQA and NEPA, which would delay the delivery of the project significantly. The project has been designed, however, to not preclude adding an LRT crossing and widening to 4-lanes in the future. City staff is continuing to work with Regional Transit to develop alternatives for the DNA line along the 7th Street corridor. Concerns have also been raised by the Alkali Flat Project Area Committee (PAC) that:

- The PAC did not have sufficient time to comment on the project during the CEQA EIR and was not given an opportunity to comment during the federal NEPA process.
- The project does not support neighborhood preservation and will increase traffic in the neighborhood.
- The location of the railroad underpass cuts off neighborhood access to 7th Street and the Railyards.

Construction Issues

Currently, the plans and specifications, right of way and environmental documents have been approved and cleared for this project. Construction and Maintenance Agreements with Union Pacific Railroad have been approved. All required utility relocations are in process and anticipated to be completed prior to the start of construction, which is expected in the summer of 2002. Construction should continue through 2003.

As staff has indicated in previous Council reports, there are several significant construction issues associated with the project that cannot be reasonably predetermined, and which can significantly increase the project schedule and cost. Staff wishes to inform the City Council of these risks which include groundwater elevation, contaminated soil, and potential archaeological discoveries. A discussion of the issues and their potential cost and construction schedule implications are contained in Attachment 2 of the report. The project budget includes approximately \$1 million (7% of construction amount) for all project contingencies, but it is difficult to assess at this time whether this amount will be sufficient.

FINANCIAL CONSIDERATIONS:

The 7th Street Extension Project has a current budget of \$14,009,000. The unobligated balance is \$6,408,917. The approval of the additional funding listed below will increase the total budget to \$23,870,596 and the unobligated balance to \$16,270,513, which is sufficient to award the contract in the amount of \$14,797,383.

- \$654,000 from Federal Demonstration
- \$8,728,000 from State Transportation Improvement Program (STIP)
- \$64,075 from XM44-UCD Med Center Relief Sewer
- \$415,521 from ZH16- West Natomas Storage Tank

In October 2002, the city will receive an additional \$286,000 in Federal Demonstration Funds increasing the total project budget to \$24,156,596, which is detailed below:

City Council
7th Street Extension Project (PN: TH26)
May 14, 2002

Transportation Sales Tax (Measure A) (TH26 and TH27)	\$10,275,625
2000 State Transportation Improvement Program (STIP)	\$ 5,428,000
2002 State Transportation Improvement Program (STIP)	\$ 3,300,000
Federal Demonstration	\$ 1,500,000
Railyards/Richards Boulevard Impact Fee	\$ 2,340,000
SMUD	\$ 833,375
Utility Department	\$ 479,596
TOTAL	\$24,156,596

ENVIRONMENTAL CONSIDERATIONS:

On March 30, 1999, City Council adopted Resolution No. 99-155, which certified the Environmental Impact Report (EIR) and adopted the mitigation-monitoring plan for this project. The Notice of Determination was filed on April 6, 1999, with the County of Sacramento. A Categorical Exclusion was approved by FHWA on November 15, 2001, in compliance with the National Environmental Policy Act (NEPA).

POLICY CONSIDERATIONS:

The action requested herein is consistent with Sacramento City Code, Title 3.

ESBD CONSIDERATIONS:

There are no ESBD considerations for this agreement due to the federal Disadvantaged Business Enterprise (DBE) requirements. FCI has 8.08% DBE, but has met the Good Faith Effort.

Respectfully submitted,



Francesca Lee Halbakken
Project Delivery Manager



RECOMMENDATION APPROVED:

ROBERT P. THOMAS
City Manager



Approved:

Michael Kashiwagi
Director of Public Works

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Waiver of Minor Bid Irregularity

F.C.I. Construction's bid included a lump sum bid amount for mobilization in the amount of \$1,450,000, which is approximately 9.8% of the bid amount. This amount exceeds the maximum 5% amount specified for this item in the bid specifications. F.C.I. Construction informed City staff of its intention to do this shortly before submitting its bid, based on F.C.I. Construction's judgment that a state Standard Specification incorporated in the City's bid specifications permitted mobilization costs of up to 10% of the total bid amount.

City staff has determined that F.C.I. Construction's judgment was incorrect, and that the applicable state Standard Specification does not affect the 5% maximum specified in the City's bid specifications for the mobilization costs. However, even though F.C.I. Construction's bid does not comply with this 5% maximum, staff recommends that the City Council waive this variance as a minor bid irregularity and award the construction contract to F.C.I. Construction.

Pursuant to Section 3.60.140 of the Sacramento City Code, and Section 2-7 of the City's Standard Specifications for Public Works Construction, the City Council is allowed to waive "minor" irregularities in a bid. On the other hand, the City Council may not waive a "material" deviation from the bidding requirements, because doing so can provide the deviating bidder an unfair advantage over other bidders.

Court decisions have found deviations from bidding requirements to be material and non-waivable if: (i) The variance would allow the bidder to withdraw its bid after the bids are opened without penalty, under Public Contract Code Section 5103; or (ii) The variance could have resulted in a bid that was lower than it would have been if the bidder had strictly complied with all bidding requirements. In the latter case, other bidders can rightfully claim that waiving this variance would give the bidder an unfair advantage, since their bids might also have been lower if they were allowed to deviate from the bid requirements.

In this case, F.C.I. Construction's bid variance does not meet either of these standards for a material non-waivable deviation because:

- (i) The failure to comply with the 5% cap is not an inadvertent typographic error for which a bid may be withdrawn without penalty. Section 5103 of the Public Contract Code only allows for bid withdrawal when a bid error makes a bid materially different than the bidder intended it to be, and does not permit a bid to be withdrawn due to a bidder's error in judgment or carelessness in reading the plans or specifications; and
- (ii) This variance did not have the potential to lower F.C.I. Construction's bid amount. If it had complied with the 5% cap on the amount of its bid for mobilization, its bid for this item would have been over \$700,000 lower. Therefore, if it affected its bid amount at all, this variance from the bid specifications could only have made its bid higher than it would have been if F.C.I. Construction had complied with this requirement.

For these reasons, City staff has determined that F.C.I. Construction's failure to comply with the 5% cap on the mobilization bid amount did not give it an unfair advantage over other bidders, and recommends that the City Council waive this as a minor irregularity and award the contract to F.C.I. Construction. The City would incur no benefit from strictly enforcing this requirement and rejecting F.C.I. Construction's bid because its bid is so much lower than the second bidder – the difference between the two bids is more than the total amount that F.C.I. Construction bid for mobilization costs.

Construction Issues

Groundwater

Groundwater within the Railyards potentially contains volatile organic compounds (VOCs) and other chemical contaminants. An excavation to 30 or 35 feet below existing ground will be required to construct the underpass, which is likely to encounter groundwater (20 to 30 feet below ground surface). The actual groundwater elevation will depend on the time of construction, surface water elevation in the Sacramento and American Rivers, and seasonal variation in groundwater. Observed groundwater levels over the past twenty years have varied from a maximum elevation of 18.7 feet to a minimum elevation of less than one foot. During that period, measurements at monitoring wells near the underpass reached above elevation 10 feet in nine of the twenty years. The most recent measurement in April 2001 showed the groundwater at elevation 6.5 feet. To minimize the amount of groundwater to be removed, the project utilizes special slurry wall construction to seal the sides of the underpass and soil jet grouting or tremie concrete below the excavated area to seal the bottom. Groundwater that remains "trapped" within the excavation area will be removed and discharged into the combined sewer system.

The actual groundwater level at the time of construction will determine the thickness of soil jet grouting or tremie concrete required to balance the buoyancy effect of the groundwater. The design of the underpass reflects a range of thickness corresponding to groundwater elevations between 5 feet and 10 feet. The contractor bids are based on an assumed groundwater elevation of 10 feet. This was considered an appropriate elevation on which to bid the project, and is the basis for the project's budget. However, the actual groundwater elevation at the start of construction will determine the actual thickness of soil jet grouting or tremie concrete to be placed. Payment to the contractor will be based on the quantities required for the actual groundwater elevation.

The project has been budgeted based on groundwater elevation of 10 feet. If the actual groundwater elevation is found to be lower, the project will have savings at the time of construction. If the groundwater elevation is higher, then additional costs will be incurred.

Contaminated Soil

Surface and subsurface soils within the Railyards are known to contain various hazardous and toxic materials. During the summer of 2000, consistent with the DTSC-approved Remedial Design and Implementation Plan, UP remediated the soil within the 7th Street right-of-way across the Railyards. This remediation was approved by DTSC's issuance of a Clean Parcel Letter for the right-of-way on August 2, 2001.

Although designated as remediated, there remains a good possibility that additional contaminated soil may be encountered during excavation of the 7th Street underpass. All construction within the 7th Street corridor across the Railyards must be done in accordance with the City of Sacramento Downtown Railyards Environmental Oversight Program (EOP). The EOP was approved by City Council Resolution No. 2000-578 on October 3, 2000.

The EOP documents the process to be followed to protect the public, including construction workers, from exposure to chemicals that could be encountered during the course of development. This process includes the sampling and testing of soils for apparent contamination, and the rules by which such soils are to be handled. Implementation of the EOP is the responsibility of the Environmental Oversight Authority (EOA), who has been hired by the City for the 7th Street Extension Project.

Any contaminated soils that are found within the Railyards portion of the 7th Street corridor are the responsibility of UP. If contaminated soils are found within the City right-of-way outside the Railyards, then it remains the City's responsibility (and cost) to remove, haul and dispose of such soils at a certified hazardous materials site. The southern portion of the 7th Street underpass excavation takes place in the City's right-of-way outside the Railyards. Any additional contaminated material encountered would lead to extra costs.

Archaeological

A Historic Property Survey Report and Finding of Effect were prepared for the 7th Street Extension Project. This report outlined the requirements for monitoring, evaluating and preparing a treatment plan for archaeological and historic resources. Archeological features will be evaluated and treated, prior to construction and as they are uncovered during construction.

In compliance with the National Environmental Policy Act (NEPA), the City is in the process of hiring a consultant to provide pre-construction excavation survey and monitoring services during construction.

Archaeologically Sensitive Areas have been defined and some archaeological excavation will be conducted prior to any construction work. There is a possibility that additional historical artifacts will be discovered during construction requiring additional monitoring and treatment that may lead to delays to construction activities and lead to additional unbudgeted costs.

Although surveys and remediation has been conducted to make the best estimates possible, increases in assumed groundwater elevation or discoveries of additional contaminated materials or cultural resources will lead to additional costs that cannot be covered with the project contingency.



RESOLUTION NO. 2002-315

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

RESOLUTION APPROVING AWARDING THE CONTRACT TO F.C.I. CONSTRUCTION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$14,797,383 AND PROGRAM SUPPLEMENT M053 REV 1, AND TRANSFERRING AND APPROPRIATING FUNDS FOR THE 7TH STREET EXTENSION PROJECT (PN: TH26).

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

- 1. The Mobilization bid item in the low bid submitted for this contract by F.C.I. Construction is waived as a minor irregularity, and the contract is awarded to F.C.I. Construction for its bid amount of \$14,797,383.
2. The City Manager is hereby authorized and directed to execute a contract with F.C.I. in the amount of \$14,797,383, conditional upon the contractor furnishing all required bonds and proof of insurance.
3. The City Manager and City Clerk are authorized to execute Program Supplement No. M053 Rev. 1.
4. The Capital Grant Revenue and Expenditure Budget for the 7th Street Extension Project (PN: TH26) be increased in the amount of \$9,382,000 to reflect state and federal funding received for the construction phase of the project in accordance with Program Supplement M053 Rev. 1.
5. The FY2001/2002 Capital Improvement Program budget is amended by transferring \$479,596 from the Department of Utilities to the 7th Street Extension Project (PN: TH26).

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

6. The budgets be adjusted to reflect the above as follows:

FUND	AGENCY	ORG	OBJECT	CURRENT BUDGET	REVISED BUDGET	INCREASE (DECREASE)	ACCOUNTING REFERENCE
425	500	XM44	4820	\$4,713,750	\$4,665,694	(\$48,056)	A
414	500	XM44	4820	\$1,571,250	\$1,555,231	(\$16,019)	B
413	500	ZH16	4820	\$3,750,000	\$3,334,479	(\$415,521)	C
511	500	TH26	3511	\$560,000	\$1,214,000	\$654,000	D
512	500	TH26	3513	\$0	\$8,728,000	\$8,728,000	F
			RB TOTAL	\$10,595,000	\$19,497,404	\$8,902,404	
425	500	TH26	4820	\$0	\$48,056	\$48,056	A
414	500	TH26	4820	\$0	\$16,019	\$16,019	B
413	500	TH26	4820	\$0	\$415,521	\$415,521	C
511	500	TH26	4820	\$560,000	\$1,214,000	\$654,000	E
512	500	TH26	4820	\$0	\$8,728,000	\$8,728,000	G
			EB TOTAL	\$560,000	\$10,421,596	\$9,861,596	

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

BRANDT-HAWLEY LAW GROUP

*Environmental and Preservation Law*Susan Brandt-Hawley
Anne CottrellChauvet House PO Box 1659
Glen Ellen, California 95442Legal Assistants
Sara Hews
Rachel Howlett
Shannen Jones

May 28, 2002

Samuel Jackson, Esq.
Deputy City Attorney
City of Sacramento
980 Ninth Street, Tenth Floor
Sacramento, CA 95814
by fax: 916-264-7455Re: 7th Street Extension Project

Dear Mr. Jackson,

I have been retained by the Alkali Flat Project Area Committee regarding the lack of adequate CEQA review for this project. By way of introduction, my law practice focuses on historic preservation issues throughout California and has included the handling of CEQA cases such as *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165; *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373; *Sierra Club v. San Joaquin LAFCO* (1999) 21 Cal.4th 489; *Galante Vineyards v. Monterey Peninsula County Water Management District* (1997) 60 Cal.App.4th 1109; *League for Protection of Oakland's Architectural and Historical Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307.

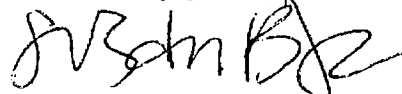
The environmental review for the 7th Street Extension project considered alignment through the Union Pacific property. Nothing in the EIR process depicted an alignment through Alkali Flats nor discussed the potential impacts of such an alignment or feasible alternatives. It was not until February of this year that Alkali Flats residents learned that the city now intends for the alignment of the railway bridge crossing and underpass to extend into their historic neighborhood. While the residents have been told by city staff that they should have known of this alignment earlier, we have not been able to find any documents

that reflect such intrusion into Alkali Flats, and are completely unaware of any environmental review that has addressed this crucial point. If the city contends otherwise, I respectfully request to see the relevant documents.

Therefore, prior to considering the award of a construction contract for the 7th Street Extension, the construction-related and traffic impacts of the decision to align the extension into Alkali Flats must first be fully considered in a supplemental EIR as required by Public Resources Code section 21166. Please postpone any action committing the city to this project until CEQA's mandatory protections are fully satisfied.

Please feel free to contact me to discuss this matter. Thank you.

Sincerely yours,



Susan Brandt-Hawley

cc: State Office of Historic Preservation