



COUNCIL AGENDA: 06-28-05

ITEM: 5.2

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen
Sara L. Hensley

**SUBJECT: LEFEVRE RESIDENCE AND
BARN RENOVATION PROJECT**

DATE: 06-23-05

Approved 

Date 6/24/05

Council District: 5

REASON FOR ADDENDUM

To expedite completion of remaining construction work, thereby permitting use of the facility by the public.

RECOMMENDATION

- a) Accept this report on the status of the project, acknowledging contractor performance issues and failure to complete the LeFevre Residence and Barn Renovation Project per contract requirements.
- b) Adoption of a resolution authorizing the City Manager to negotiate and execute agreements with the surety, Travelers Casualty & Surety Company, and any construction contractor to complete the project so that the total cost of constructing the project does not exceed \$1,174,012 and including the authority to negotiate liquidated damages.
- c) In the event an agreement is not reached with the surety, approval to complete remaining project work using a combination of minor contracts and City staff labor at a cost not to exceed \$140,000.

CEQA: Exempt. PP02-04-091.

BACKGROUND

The LeFevre Residence and Barn is located at Emma Prusch Memorial Park, which is located at the intersection of King and Story Road (map attached). Both structures, which are listed on the "Santa Clara County Historical Heritage Resource Inventory" by the County Historical Heritage Commission, were moved to their current location from the City of Campbell in 1988 as part of the mitigation measures resulting from the construction of Highway 85.

In May 2003, Council awarded a construction contract to Tinney Construction Corporation for the LeFevre Residence and Barn Project. A notice to proceed with construction was issued on July 2, 2003 and construction began. The contract was terminated in November 2004 due to non-performance of the contractor. The project is approximately 96 percent complete.

ANALYSIS

1. Termination of Contractor

Construction of the LeFevre Residence and Barn Project began in May 2003 and generally proceeded without issue until the project was about 60 percent complete in February 2004. This coincided with the completion of the general contractor's direct scope of work under the contract and the start of the subcontractor's work. At that point, progress slowed drastically and continued in starts and stops as subcontractors began to file stop notices for non-payment by the general contractor. The City intervened to assist in resolving four outstanding stop notices and work resumed. However, the contractor failed to complete the project by the contractual deadline of March 9, 2004.

From March 2004 to August 2004, progress was painstakingly slow. Tinney continuously made representations about when it would complete the project. However, Tinney failed to complete the project within any of its self-imposed deadlines or those deadlines imposed by the City. On August 11, 2004, the City sent the contractor a notice to cure, and the contractor responded with a letter committing to a completion date of September 5, 2004. Again the contractor failed to complete the work by this date.

Given the contractor's continued lack of progress to complete of the project, the City sent a final notice to cure letter dated September 22, 2004. For the next six weeks the contractor continued to promise that progress would be made on the project, but no work of substance took place. On November 3, 2004, the City terminated the contractor's performance of the contract.

2. Current Project Status

Although the project was near completion when the contract was terminated, access and use of the facility depends on completing the remaining work. The remaining work includes installation of the walkway to and around the buildings, along with the site lighting. In addition there are numerous miscellaneous punch list items within the house and barn. Staff estimates that \$140,000 will be needed to complete these items and cover continued staff support to complete the project. This funding was added to this project budget as part of the 2004-2005 Clean-Up memo approved by the City Council on June 21, 2005.

The amount of the original construction contract that remains *unexpended and unearned* is \$31,994. The City is withholding the following amounts from funds *earned* by Tinney: (1) a ten-percent "retention" of the contract funds, in the amount of \$103,026.19, (2) approximately

\$66,735 for liquidated damages accruing at the contractual rate of \$2,500 a day, and (3) approximately \$62,020 for stop notices filed on the project. There are currently 13 outstanding stop notices on the project totaling approximately \$189,607.

3. Authority To Enter Into Agreement With Travelers.

The performance bond for the project obligates Travelers to complete the project. When a public works contract is terminated because of lack of performance and the completion of the project is tendered to the surety, the project may be completed without further competitive bidding. Staff is in discussions with the contractor's surety regarding completion of the contract work and the status of contract funds. On May 11, 2005, the City met with Travelers to discuss the work that needs to be completed.

Travelers can meet its obligations under the performance bond in two basic ways. Under one approach, Travelers would tender money to the City for the City to hire a new contractor to complete the Project. This approach necessitates the City entering into an agreement or agreements with Travelers and a new general contractor to complete the project.

Alternatively, Travelers can directly contract with the new completion contractor. This approach would only necessitate the City entering into an agreement with Travelers. At the end of the May 11, 2005 meeting at the project site, Travelers indicated that it would make a proposal for completing the work. As of the date of this memorandum, Travelers has not provided the City with such a proposal.

Staff is requesting the City Council to authorize the City Manager to negotiate and execute one or more agreements with Travelers, and with any new general contractor, as necessary for completion of the project. The terms of any such agreements would address such issues as a completion schedule, the payment of moneys from the City to Travelers, or *vice versa*, for construction work, the conditions under which the City would release withheld funds, the City's payment of change orders requested by City, and how to handle and pay for construction defects. The totality of any agreements negotiated and executed by the City Manager could not require the City to pay more than \$1,174,012 for completion of the project, which is the amount of the original construction agreement with Tinney plus the approved contingency.

The payment of liquidated damages will also need to be addressed in any agreement with Travelers given that the project is so far behind schedule. The City has incurred significant additional costs as a result of the project not yet being completed. The delegation of authority being requested would include the authority of the City Manager to negotiate the liquidated damages if appropriate in the furtherance of completing the project.

4. City's Completion of Project

At this point, it is still unclear if the City will reach a final resolution with Travelers or how long any such final resolution may take to reach. Accordingly, to best ensure that the facility can be available for its intended use at the earliest possible time, staff recommended appropriating additional funding from the Parks and Recreation Bond Projects Contingency Reserve as part of the 2004-2005 Clean-Up memo. This will ensure adequate funding to complete the project, regardless of the resolution with Travelers. The remaining work would be accomplished by a combination of minor contracts and City staff labor. In the event the City completes the project with its own funds, it would seek to compel Travelers to reimburse the cost of completing the project, and if successful, will then reimburse the Contingency Reserve. \$64,000 is being requested for potential additional construction costs and this budget should be appropriated to PRNS in case City staff encounters unforeseen conditions or issues in the performance of the remaining work on site.

OUTCOME

Appropriation of the funding will allow completion of the construction project, permitting use of the facilities by the public.

PUBLIC OUTREACH

Not applicable.

COORDINATION

This item has been coordinated with the Departments of Planning, Building and Code Enforcement, City Attorney's Office, City Manager's Budget Office and Council District 5.

COST IMPLICATIONS

1. AMOUNT OF RECOMMENDATION: 0

2. COST OF PROJECT*:

Project Delivery	\$587,000
Construction	1,020,880
Potential Additional Construction Costs	64,000
Contingency	153,132
TOTAL PROJECT COSTS	\$1,825,012
Prior Years Expenditures	\$1,684,666
REMAINING PROJECT	\$140,346

*The cost of project includes \$140,000 which may be reimbursed subject to the outcome of negotiations settling with the Surety on the outstanding contract issues.

3. SOURCE OF FUNDING: 471-Parks and Recreation Bond Projects Fund

4. FISCAL IMPACT: This project is consistent with the general principals and economic recovery sections of the Council-approved Budget Strategy in that it will stimulate local economic growth and recovery. The projected operations and maintenance costs associated with this project (approximately \$29,000 per year) represents building maintenance, utilities and non-personal operational needs. Funding for the necessary maintenance costs of this facility totaling \$16,000 were included in the 2005-2009 Five-Year Forecast and Revenue Projections, released by the Office of the City Manager in February 2004.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. For Contract	2004-2005 Adopted Budget (Page)	Last Budget Action (Date, Ord. No.)
Remaining Project Costs			\$ 140,346			
Current Funding Available						
471	6821	Emma Prusch-Le Fevre House	\$1,000*		V-927	10-12-04, Ordinance 27267
Total Current Funding Available			\$1,000	\$0		

*Additional funding of \$140,000 is recommended to be added to this project budget as part of the 2004-2005 Clean-up memo, which was reviewed by the City Council on June 21, 2005. This increase will ensure adequate funding to complete this project.

HONORABLE MAYOR AND CITY COUNCIL

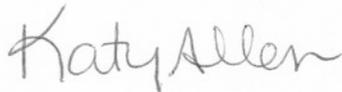
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Subject: LeFevre Residence and Barn Renovation Project

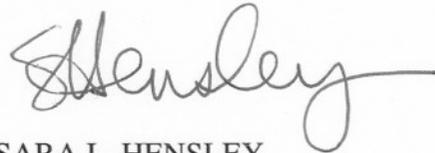
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CEQA

Exempt, PP02-04-091.

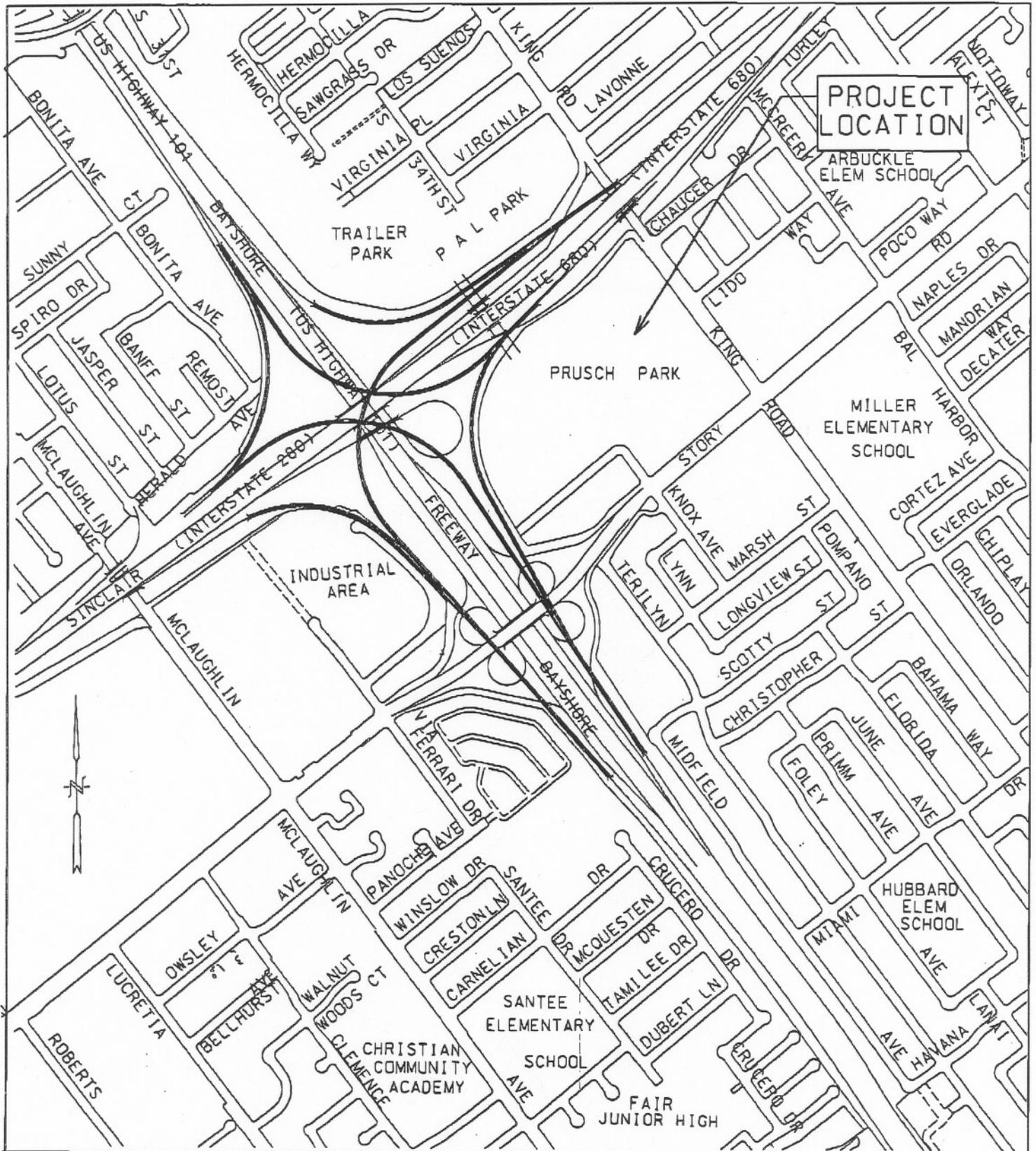


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Neighborhood Services

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PRUSCH PARK - LeFEVRE HOUSE & BARN
 LOCATION MAP
 NO SCALE