



Request for City Council Committee Action From the Department of Public Works

Date: January 13, 2009

To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Referral to: Honorable Paul Ostrow, Chair Ways & Means/Budget Committee

Subject: **2700-2708 Lake St E (Coliseum Building) Areaway Abandonment Project**

Recommendation:

- Approve Change Order No. 1 increasing the amount attributable to City Contract No. C-24509 with LS Black Constructors, Inc. by \$13,823.46 for a new total of \$352,823.46.
- Adoption of a Committee Report receiving the final costs, directing the City Engineer to prepare a proposed Areaway Abandonment and Removal Assessment and directing the City Clerk to give notice of an Assessment Public Hearing to be held on March 10, 2009 before the Transportation and Public Works Committee for the benefited property at 2700-2708 Lake St E, PID 36-029-24-43-0077, in the amount of \$409,358.46.
- Approve the Settlement Agreement between the City and LS Black Constructors, Inc. and direct City staff to execute the same.

Previous Directives:

- February 24, 2006 Council Resolution 2006R-089 - Ordering the City Engineer to abandon and remove the areaways located in the public street r/w that are in conflict with the paving and streetscape project in the E Lake Street (Hiawatha Av S to W River Pkwy) area.
- April 13, 2007 Council Action – Accepting the low bid of LS Black Constructors, Inc. in the amount of \$339,000.00 to furnish all labor, materials, equipment and incidentals necessary to complete the areaway abandonment at 2700-2708 Lake St E.

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Don Elwood, P.E. Director, Transportation Planning & Engineering, 673-3622

Approved by:

Steven A. Kotke, P.E., City Engineer, Director of Public Works

Presenters: Jenifer Loritz, P.E., Project Manager, Transportation Planning & Engineering
Jim Moore, Assistant City Attorney, City Attorney's Office

Reviews:

Permanent Review Committee (PRC):	Not Applicable
Civil Rights Affirmative Action Plan:	Not Applicable
Policy review Group (PRG):	Not Applicable

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget (If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Business Plan: Action is within the plan. Action requires a change to plan.
- Other financial impact (Explain): if approved, the Settlement Agreement requires the City to forego its claim for \$237,586.62 spent to complete the areaway abandonment.
- Request provided to department’s Finance Dept. contact when provided to the Committee Coordinator

Community Impact

Neighborhood Notification: Not Applicable
 City Goals: Maintain the physical infrastructure to ensure a healthy, vital and safe city
 Comprehensive Plan: Not Applicable
 Zoning Code: Not Applicable

Background/Supporting Information

Hennepin County, in conjunction with the City of Minneapolis, reconstructed Lake Street between Hiawatha Ave and W River Pkwy between 2006 and 2008. On January 13, 2006, the City Council designated the location, streets and improvements proposed to be made in the E Lake Street area. A public hearing was held on February 16, 2006 that included the areaway abandonment and removal of any conflicting areaways within the E Lake Street area street reconstruction and streetscape project in accordance with Section 95.90 of the Minneapolis Code of Ordinances.

It was determined that an areaway existed at 2700-2708 Lake St E and that the areaway was in conflict with the roadway reconstruction project. The City contacted the property owner of 2700-2708 Lake Street E regarding the areaway. The property owner of record is 2700 East Lake Street LLC, c/o Frederick Lehmann, with a mailing address of W 6272 720th Ave, Belden Ville, WI 54003. The property is a commercial parcel. At the request of the property owner, staff began working with a structural engineering firm (HGA) to complete construction documents, put the project out for public bid and manage the construction contract in order to complete the areaway abandonment project. All costs will be assessed to the affected property at 2700-2708 Lake St E (Coliseum Building). The project was bid and a contract awarded to LS Black Constructors, Inc. in the amount of \$339,000.00. The property owner is aware of the original contract amount and approved the change order during the construction process.

The change order includes additional costs of \$13,823.46 for work required by unforeseen conditions and plan revisions not covered by the scope of work in the original contract. A brief description of the change order is as follows:

Change Order #1

Extension of a stoop footing:

Cost = \$2,136.75

Masonry repair and waterproofing of east foundation wall:
Cost = \$1,619.11

Construction of new CMU wall on north side of utility vaults:
Cost = \$2,619.60

Leveling of footing beneath west wall of southerly utility vault:
Cost = \$888.00

Lowering of the top elevation of the utility vaults by 4 – 5 inches:
Cost = \$6,560.00

Total cost for Change Order #1 = \$13,823.46

Public Works is requesting that the proper City Officials be authorized to execute Change Order No. 1 to Contract No. C-24509 with LS Black Constructors, Inc.; increasing the amount attributable to the original contract by \$13,823.46 for a revised amount of \$352,823.46. No additional appropriation is required, the funding is provided through special assessment to the affected property.

The total assessment comprises the original contract amount, the change order, a 5% City administrative fee, the design fee and the construction administration fee.

The assessment public hearing procedure is in accordance with Section 95.90 of the Minneapolis Code of Ordinances which provides the authority for the City Engineer to abandon and remove an areaway in conflict with a capital improvement project in the City's right-of-way and a public hearing for the assessment of the cost of removal to be held at a later date.

During the course of the construction phase of the abandonment project, a dispute related to performance under the contract ensued between the City and the Contractor. The arguments the City had against the Contractor were in relation to the Contractor's inability to complete the contract work according to the approved schedule and specifications. The City had a claim in the amount of \$237,586.62 which included costs incurred by the City due to the dispute between the parties. The Contractor had a claim in the amount of \$145,469.86.

The underlying dispute between the City and the Contractor has been the subject of extensive negotiation between the parties. Ultimately, a settlement was negotiated which includes a mutual waiver of claims. Potential claims and actions alleged by the Contractor include, breach of contract, lost profits, damages, defamation and foreclosure of a mechanic's lien. Potential claims and actions alleged by the City include breach of contract, damages, and pursuit of Contractor's performance bond. Finally, the proposed settlement requires both parties to walk away from alleged outstanding indebtedness to the other. Acceptance of the negotiated settlement agreement is being recommended.

CC: Council Member Gary Schiff, Ward 9
Council Member Sandy Colvin Roy, Ward 12
David Ybarra
Ann Mathews

T&PW – Your Committee recommends Approval of Change Order No. 1 for the Coliseum Building Areaway Abandonment Project increasing the amount attributable to City Contract No. C-24509 by \$13,823.46 to a new total of \$352,823.46.

T&PW – Your committee recommends adoption and summary publication of the accompanying Committee Report, receiving a final cost for areaway abandonment and removal and giving notice of an Assessment Public Hearing for the property at:

2700-2708 Lake St E, PID No. 36-029-24-43-0077, final cost of \$409,358.46.

in conjunction with the Lake St E (Hiawatha Ave S to W River Pkwy) Street Reconstruction and Streetscape Project, Special Improvement of Existing Street No. 6709.

T&PW – Your Committee having received final costs in the amount of \$409,358.46 for the Areaway Abandonment and Removal at the following property:

2700-2708 Lake St E, PID No. 36-029-24-43-0077, legally described as: Lots 13 through 15 inclusive, except that part taken for street, Block 24, “South Side Addition” to the City of Minneapolis.

in accordance with the Lake St E (Hiawatha Ave S to W River Pkwy) Street Reconstruction and Streetscape Project, Improvement of Existing Street No 6709, as ordered by Resolution 2006R-089, now recommends that the City Engineer be directed to prepare an Areaway Abandonment and Removal Assessment against the benefited property(ies).

Your Committee further recommends that the City Clerk be directed to give notice of a public hearing to be held by the Transportation and Public Works Committee on March 10, 2009 in accordance with Chapter 8, Sections 12 and 13, of the Minneapolis City Charter, to consider the amount proposed to be assessed to the benefited property.