COUNCIL AGENDA: 11/1/22

FILE: 22-1608 ITEM: 8.2



# Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Matt Cano

Jacky Morales-Ferrand

Jim Shannon

SUBJECT: SEE BELOW DATE: October 12, 2022

Approved Date

10/18/2022

**COUNCIL DISTRICT: 3** 

SUBJECT: CITY INITIATIVES ROADMAP – EMERGENCY HOUSING SYSTEM

EXPANSION: GUADALUPE EMERGENCY INTERIM HOUSING SITE LOCATED AT THE POLICE ADMINISTRATION BUILDING PARKING

E-LOT

## **RECOMMENDATION**

(a) Adopt a resolution adopting an Addendum to the Negative Declaration prepared for the Bridge Housing Communities project (Resolution no. 78926) analyzing the expansion of the Guadalupe Emergency Interim Housing Site in accordance with the California Environmental Quality Act, as amended.

#### (b) Adopt a resolution:

- (1) Awarding Devcon Construction Inc. a contract to construct the expansion of the Guadalupe Emergency Interim Housing at the Police Administration Building Parking E-Lot (Phase II) without a competitive procurement under the "idle act" exception in Section 1217(i)(6) of the City of San José Charter;
- (2) Authorizing the City Manager to negotiate and execute the First Amendment to the Construction Agreement with Devcon Construction, Inc. to increase the contract amount by \$2,300,000 for a new total not-to-exceed amount of \$8,300,000 to construct the original Project and the Phase II expansion of the Guadalupe Emergency Interim Housing community; and
- (3) Authorizing an increase to the construction contingency for the Project including Phase II by \$300,000 for a new total contingency amount not-to-exceed \$600,000, which is equal to seven percent of the total construction contract amount.

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(c) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Multi-Source Housing Fund:

- (1) Increase the estimate for Other Revenue by \$500,000; and
- (2) Establish the All Home Grant appropriation to the Housing Department in the amount of \$500,000.
- (d) Approve the Phase II expansion of the Guadalupe EIH as a "Committed Addition" to the 2023-2024 Base Budget, certifying that all operating and maintenance costs associated with the Project will be included in future Five-Year General Fund Forecasts, beginning with the 2024-2028 Forecast.
- (e) Approve the following staffing changes to the Public Works Department in 2022-2023 to support the maintenance of all City-owned sheltering facilities for people who are unhoused and other properties previously acquired for affordable housing purposes:
  - (1) Make permanent an existing 1.0 Division Manager position;
  - (2) Add 1.0 Building Management Administrator position;
  - (3) Add 2.0 Senior Construction Inspector positions; and
  - (4) Add 2.0 Senior Facility Repair Worker positions.
- (f) Adopt a resolution designating certain portions of Mission Street, between Guadalupe Parkway and San Pedro Street, as a restricted permit zone for use by the Police and Fire departments.

# **OUTCOME**

City Council's approval of the above recommendations will allow the City to proceed with expanding capacity of the emergency interim housing (EIH) at the Police Administration Building E-Lot site, prioritize future City resources as necessary to operate and maintain the expanded site, and permanently increase staffing levels in the Public Works Department to provide maintenance services at all City-owned sheltering facilities for people who are unhoused and other properties previously acquired for affordable housing purposes.

## **BACKGROUND**

On October 5, 2021, City Council approved a resolution that authorized the City Manager to negotiate and execute a construction agreement with Devcon Construction, Inc. (Devcon) to construct the Guadalupe Emergency Interim Housing Project (Project). The agreement with Devcon was executed on December 10, 2021 and construction began on February 1, 2022. The Project, as outlined in the agreement, consisted of the construction of emergency housing improvements on the Police Administration Building E-Lot site including placement of prefabricated emergency housing units for up to 76 individuals, parking for residents and staff,

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staffing offices, a security office, fencing, kitchen and laundry facilities, recreational community space, outdoor common areas, and miscellaneous site amenities. Construction is currently at 70% completion, with all residential units delivered and set on site. Originally targeted for completion in early October, recent delays with delivery of the modular built community units have pushed the completion to late December or early January 2023.

On September 29, 2021 the Rules and Open Government Committee approved the *Bold Housing Solutions* memorandum from Mayor Sam Liccardo and Councilmembers Raul Peralez, Sergio Jimenez, Pam Foley, and Matt Mahan and subsequently received a green light by Administration. The memorandum directed the Administration to pursue several initiatives aimed at increasing EIH capacity, expanding needed services for unhoused residents in collaboration with the County of Santa Clara, and exploring ways to identify additional funding and controlling costs to support these initiatives on an on-going basis. City staff from the City Manager's Office and the Public Works and Housing Departments developed a workplan to identify milestones and tasks required to accomplish the directives and goals outlined in the memorandum. The direction was to focus the search to sites on the pre-existing lists previously developed for potential bridge housing communities (BHC) and EIH development, and evaluate potential expansion of existing EIH communities.

# **Guadalupe EIH Expansion**

On June 21, 2022, staff returned to City Council as directed, to provide site recommendations for four new sites to develop EIH communities and two sites recommended for expansion of existing EIH communities, including the Guadalupe EIH. The expansion of the Project (Phase II) would convert an approximately 0.5-acre portion of E-Lot to EIH, adjacent to the existing Project, adding four modular buildings to house 20 individuals and expanding Guadalupe EIH from 76 to 96 individual sleeping units. The site expansion recommendations also included a commitment to analyze the expansion's impact on parking for the Police Administration Building and develop a plan to reduce the parking impacts or accordingly expand parking capacity.

Upon City Council's approval of the June 21, 2022 recommendations, Administration began implementing the City Council direction, including:

- Initiating alternative site searches for Districts 4 and 10;
- Securing design and engineering consultants though the City's master agreements;
- Coordinating lease agreements with partner agencies such as Caltrans;
- Preparing design-build Request for Qualification;
- Conducting a parking study around the Police Administration Building;
- Negotiating contract amendment with Devcon for the Guadalupe Expansion

The City has entered into a service order with ELS Architecture and Urban Design to design Phase II of the Guadalupe Expansion, finalized and approved the design documents, and engaged Devcon to initiate Phase II work with minimal delay.

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#### Committed Addition

On June 14, 2022, City Council approved the Mayor's June Budget Message for Fiscal Year 2022-2023 that included Manager's Budget Addendum (MBA) #3, *Fiscal Sustainability of Interim Housing Operations and Maintenance Costs*. Approval of MBA #3 ensures that the costs to operate and maintain the existing and future inventory of BHC and EIH communities. Converted hotels and motels to shelter unhoused community members in San José are also included as Committed Additions to future Five-Year General Fund Forecasts. The designation of a new or expanded site as a Committed Addition occurs with City Council approval of a contract to develop, convert, construct, or expand a new site.

# Ongoing Housing Facilities Maintenance

The City has an existing inventory of 23 housing-related properties consisting of BHC and EIH sites, safe parking lots, and vacant properties. As this inventory has grown in recent years, the Housing and Public Works Departments have been triaging property maintenance activities primarily through an ad-hoc combination of already-stretched existing staffing and contractual services. To oversee and proactively manage repair work and keep these facilities safe and operational, the Public Works Facilities Management Division requires an ongoing budget for additional staffing resources, as well as materials, equipment, and contractual services.

## Parking Study

Prior to the June 21, 2022 City Council approval of the recommended EIH Expansion Plan, a small design team from Public Works and the City Manager's Office met with key members of the San José Police Department and Fire Department communications staff to discuss the possible Guadalupe EIH expansion. The design team solicited input on several expansion concepts and collected feedback on the expansion. While Police and Fire staff provided feedback on the concepts and the impact of the overall project, the emphasis of the discussion was their concerns on the already limited parking capacity for the Police Administration building staff and the potential impact that the expansion would have on parking in the area. In response, the Administration committed to developing a parallel plan to reduce the parking impacts of the expansion and/or expand parking capacity accordingly.

#### **ANALYSIS**

#### **Construction Contract with Devcon**

Staff recommends authorizing the City Manager or her designee to negotiate and execute the first amendment to the construction agreement with Devcon to include the Phase II scope of work. Devcon has worked responsibly and favorably on the Project thus far and is considered by staff to be a reputable contractor with the qualifications needed to construct the Phase II portion of

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work within budget and on schedule. As with the original Project, Devcon will continue to provide some of the construction services either pro-bono or at a discounted rate and has committed to working with the City and private donors to secure unit donations.

Approving and executing the amendment will allow staff to continue the construction of the original Project and Phase II as seamlessly and quickly as possible.

## a) Project Description

Phase II of the Project, as outlined in the first amendment to the construction agreement, consists of the construction of emergency housing improvements on the project site including placement of four prefabricated modular buildings designed for use as emergency housing units for 20 residents, additional site demolition, grading, utilities, and paving. Devcon will be provided with fully developed construction documents, plans, specifications, and associated supplemental documents prepared and approved by the City.

# b) Compensation

Per the first amendment to the construction agreement, the City will pay Devcon a lump-sum amount up to \$2,300,000 to construct Phase II in accordance with the City's design documents. Devcon has provided the City with a Rough Order of Magnitude proposal for the Guadalupe expansion based on the current design documents and sub-contractor proposals. As the design documents are finalized and subcontractor proposals are refined, the lump sum contract amount will also be refined and adjusted to reflect actual costs. The final lump-sum amount also reflects Devcon constructing Phase II for a reduction in its normal profit margin in addition to the cost of the four new modular buildings. An additional \$300,000 will be allocated and maintained in a separate City-controlled construction contingency along with the remaining contingency balance of approximately \$106,069 from the original Project amount, to pay for any unanticipated changes during construction. The City and Devcon are currently working with a private donor to secure funding for some or all of the modular sleeping units. If this occurs, the lump-sum price will be reduced by the amount of donation that Devcon receives.

Consistent with other construction contracts and the current Project, Devcon will continue to submit an application for progress payment as well as applicable certified payroll records each month to the City for review and approval. The City will withhold from each progress payment five percent as retention, to be released not later than 30 calendar days after final acceptance.

#### c) Idle Act Exception to Bidding.

San José City Charter generally requires the City to competitively procure construction contracts. However, the City Charter also sets forth several exceptions to this general requirement. One exception is Section 1217(i)(6) of the City Charter, which provides an exception if the solicitation of bids would be an "idle act." San José Municipal Code Section 27.46.020 states

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that "idle act" "means that soliciting bids would not provide any significant value or benefit to the City considered in the context of the purpose and goals of Public Bidding."

For the original Project, City staff concluded that soliciting bids for the Project would not have provided any significant value or benefit to the City. Soliciting bids would not have resulted in the City being able to construct the Project for less than the amount it is paying Devcon.

As discussed above, the City's current engineer's estimate for constructing Phase II is \$2,250,000. However, because Devcon is already mobilized on-site and will be reducing its profit margin, it is unreasonable to conclude that soliciting bids would lead to the City obtaining a lower price for constructing Phase II.

This application of the "idle act" exception is consistent with the City's past practice regarding the exception.

For the above reasons, staff recommends the City Council determine that the City can award Phase II of the construction contract to Devcon under the "idle act" exception.

#### d) Other Material Terms and Conditions of Contract

In addition to the provisions mentioned above, the first amendment would require Devcon to increase the existing payment and performance bonds, as is required in other construction contracts. It would also require Devcon to verify renewed standard insurance (including builder's at-risk insurance), licensing, as well as site security and superintendence during construction.

Consistent with the original construction agreement, Devcon's indemnity obligation for the Phase II work would be limited "to the extent" of Devcon's negligent or intentional act. This means that an "indemnity" situation could result in the City and Devcon having a dispute over comparative fault. This is a relatively modest limit on indemnity to which the City does not typically agree. However, staff believes the unique circumstances of this project justify agreeing to the limit. Accordingly, staff recommends moving forward with a construction agreement containing this limit on indemnity.

Also consistent with the original agreement, each party would waive its right to seek consequential damages against the other party in any cause of action arising out of work related to Phase II. Although this is not a limit on damages to which the City typically agrees, staff recommends accepting the limit given the circumstances of this project.

Similar to other public construction projects, changes to the project will need to be approved by the City and contractor and an agreed upon cost will need to be finalized prior to commencing the work.

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#### **Expanded Guadalupe EIH as a Committed Addition**

City Council's approval of the Mayor's June Budget Message for Fiscal Year 2022-2023 included approval of MBA #3, which ensures that the ongoing operations and maintenance cost of all existing EIH communities will be included in future General Fund Five-Year Forecasts, beginning with the 2024-2028 Forecast scheduled for release at the end of February 2023. Further, any new or expanded sites would be certified by City Council as Committed Additions to future Forecasts when City Council approves a contract to move forward with that site's development. While staff continues to refine cost estimates, the operating agreement for the Guadalupe EIH (the original and expanded footprint) is estimated at \$2.8 million annually. This estimated cost, and any subsequent refinements, will be used by the Administration to determine the overall level of ongoing General Fund allocation needed over the next five years after first considering all other eligible funding sources, including Federal and State funding.

## **Public Works Facilities Management Staffing**

Like many of the City's thinly staffed departments, the Facilities Management Division in the Public Works Department has historically been undersized to appropriately maintain the City's existing building inventory, consisting of over 400 structures and over five million square feet of space. While transitioning the full responsibility of all property maintenance to the Public Works Department best serves the long-term interests of the City and building residents, the addition of the current volume of 23 housing-related facilities and sites cannot be accommodated with current staffing levels without severely impacting already backlogged and growing maintenance needs of the City's aging public safety facilities, cultural facilities, libraries, community centers and parks buildings, and corporation yards.

As a starting point to assemble an appropriate staffing level, this memorandum includes a recommendation to permanently add six positions to the Public Works Department in the current fiscal year:

• 1.0 Division Manager will provide critical management capacity to the Facilities Management Division, a group of approximately 90 positions currently overseen by a Deputy Director and two Building Management Administrators (BMA). City Council, at its meeting on November 30, 2021, authorized a Division Manager time-limited position through June 30, 2023 to help oversee the development of new EIH communities. Administration recommends making this position permanent and changing its scope. The time-limited Division Manager position was never filled, as the Administration instead opted for a temporary BMA assigned to the Capital Improvement Program to focus on the direction to significantly increase EIH community development – work that is expected to continue for several years. The recommended, re-purposed Division Manager will now report to the Facilities Management Deputy Director, and will oversee all non-City Hall facilities, including the supervision of one of the existing BMA positions and a new BMA position whose initial focus will be on the new Housing properties maintenance program. The

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remaining existing BMA overseeing City Hall facilities will continue to report directly to the Deputy Director. This re-purposed Division Manager not only provides focused management to maintain City facilities, it provides capacity to the Deputy Director whose time is currently spread too thin addressing the wide array of critical and time-sensitive maintenance issues across all City facilities.

- 1.0 BMA will initially be focused on standing up the new Housing properties maintenance program and supervising the assigned staff identified below. Once the new team and regular maintenance rhythm is developed, the Public Works Department will determine if the distribution of workload among BMAs should be reallocated to optimize overall performance.
- **2.0 Senior Construction Inspectors** will be responsible for coordinating and inspecting the work of a wide range of contractual services electrical, plumbing, HVAC, etc. that is necessary to address a backlog of repairs and address new issues as they arise.
- **2.0 Senior Facility Repair Workers** will provide direct in-house maintenance and repairs where appropriate within and around the Housing properties.

At an estimated annual cost of \$1.1 million, these positions will be funded through the various Measure E expenditure appropriations and Housing funds. This will likely include allocations for contractual services costs and additional staffing increases in future years. The Public Works Department, Housing Department, and City Manager's Budget Office are refining the City's approach to budgeting for the long-term operations and maintenance of EIH communities. Staff anticipates bringing forward additional recommendations during the 2023-2024 budget development process, including further staffing resources and a formal budget for contractual services – which is currently utilized on an ad-hoc basis through existing Housing Department funding streams – once the current authorized staffing is filled and the Public Works Department can better assess the ongoing overall need. Additional resources will also be required as the number of EIH communities continues to expand.

#### **Permit Parking Study**

To mitigate the potential impacts of the Guadalupe EIH Expansion on the Police Administration building staff, the Administration implemented a two-step plan:

- a) Evaluate reasonable reductions in parking for the Guadalupe EIH staff and residents; and
- b) Complete a Parking Study of the area to 1) determine current parking utilization and 2) identify potential dedicated street parking for Police Administration building staff.

When the design staff originally presented potential concept designs to Police and Fire Communication staff, the proposed designs included expansion of the four new buildings and 14

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additional parking spaces for the EIH community. This proposal would have reduced parking in the Police Administration E-Lot by 32 spaces. Given the proximity to numerous public transit options, and after consultation with the Housing Department and site operator, the expansion design was modified to reduce the expansion footprint by reducing the number of proposed parking spaces in the EIH community and shifting the expansion designs. This modified expansion design resulted in a 20-space reduction in Lot-E rather than 32 spaces originally proposed.

Led by the Transportation Department, in consultation with Public Works and the City Manager's Office, the staff conducted a parking study of the area surrounding the interim housing site. This study sought to determine if the establishment of a restricted permit zone on portions of Mission Street for the Police and Fire departments will "not adversely affect parking conditions for residents and merchants in the area", per the provisions of California Vehicle Code Sec 22507.

In order to assess any adverse impact on parking conditions for residents and business owners, staff conducted on-street parking counts in the study area on August 23, 2022 from 1:30-2:30 pm and on August 24, 2022 from 10:30 to 11:00 am. Overall, on both days, parking occupancy was less than 50%; resulting in about 100 spaces open in the study area.

Concurrent with efforts to analyze parking impacts with a potential restricted permit zone, the Transportation Department analyzed opportunities to increase the on-street parking supply. On Mission Street, between Guadalupe Parkway and San Pedro Street, an additional 13 spaces can be provided through use of currently available curb space and a redesign of the mid-block crosswalk.

To mitigate the loss of parking on E-Lot with the emergency housing expansion, staff recommends designating the following areas as a restricted permit parking zone for use by the Police and Fire departments:

- Mission Street (both sides), from Guadalupe Parkway to the existing mid-block crosswalk
- Mission Street (south side), from the mid-block crosswalk to San Pedro Street

The proposed restricted zone will provide up to 46 on-street parking spaces of which at least 20 would represent new restricted parking spaces (see Attachment). Establishing the restricted area would include the removal of 33 metered public parking spaces on Mission Street. As noted above, the parking study demonstrated ample parking in the area to accommodate a decrease in publicly available parking on Mission Street. In the adjacent area approximately 100 parking spaces were vacant over the two study days. This does not create an "adverse impact to the public" as there is ample parking in the area.

The cost to implement the striping changes and associated Americans with Disabilities ActDA and other required accessibility work is \$7,000. The estimated revenue impact to the General

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Purpose Parking Fund with the permanent removal of 33 parking spaces could be between \$20,000 - \$25,000, annually. However, due to the large number of vacant parking spaces observed during the study, impacts to the General Purpose Parking Fund is anticipated to be minimal based on current parking demand. Users will likely shift to other available parking spaces in the area.

#### **CONCLUSION**

Approving the first amendment to the construction agreement will allow staff to move seamlessly into construction of the Phase II improvements as quickly as possible, capitalizing on current construction progress on the original portion of work and Devcon's construction services. Staff finds the terms of the amendment between Devcon and the City to be reasonable and similar to construction contracts used on typical capital projects. The cost to operate and maintain the E-Lot expansion will be incorporated into the 2024-2028 Forecast. Approving the additional Facilities Management staffing will allow Public Works to effectively maintain the 23 Housing properties currently in the City's inventory to ensure safe and efficient operations.

# **EVALUATION AND FOLLOW-UP**

As a condition of receiving the private grant funds, the City is required to provide annual reports to the donor regarding types of services, expenditures, and demographics of those served over a five-year period.

#### **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

#### **PUBLIC OUTREACH**

General community outreach in Districts 4 and 10 was conducted in July and August. Significant outreach was conducted in Council District 3 in conjunction with the initial project approval. Outreach for this expansion was not conducted.

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## **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and Transportation Department.

## COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

## **COST SUMMARY/IMPLICATIONS**

The cost summary implications of the construction amendment for Phase II is provided below.

## 1. COST OF PHASE II PROJECT:

<b>Total Project Costs</b>	\$3,000,000
Contingency (not to exceed)	\$300,000
Construction (not to exceed)	\$2,300,000
Project Delivery	\$400,000

#### 2. COST ELEMENTS OF AGREEMENT/CONTRACT:

The cost elements of the first amendment to the construction agreement, as outlined in the analysis of this memorandum, include mobilization, site preparation, demolition, grading and draining, paving, fencing, electrical, planting and irrigation, and four prefabricated modular/factory built structures to house up to 20 residents.

#### 3. SOURCE OF FUNDING:

This amendment is funded by the Emergency Housing – Emergency Housing Construction and Operation appropriation in the American Rescue Plan Fund (\$2.5 million) and by a grant from All Home, a non-profit agency dedicated to the mission of ending homelessness. While this grant was initially recognized and appropriated in 2021-2022 as part of the Approval of Various Actions for Fiscal Year 2021-2022 approved by the City Council on June 21, 2022, subsequent actions were not taken to rebudget the funding into 2022-2023. The recommended budget adjustment in this memorandum formally recognizes this critical funding source to be applied to the Phase II in 2022-2023.

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## 4. FISCAL IMPACT:

The estimated annual operating costs for the facility are estimated at \$2.8 million, the first year of which will be paid using the State's Permanent Local Housing Allocation (or Senate Bill 2) funds as budgeted within the Building Homes and Jobs Act Fund. Ongoing operations for Phase II in the outyears will be funded through a variety of Housing Department funding sources, the Measure E – Homeless Support Programs allocation in the General Fund, and/or supplemental contributions from the General Fund, as needed. The ongoing costs and funding sources will be reevaluated on an annual basis with the development of future Five-Year General Fund Forecasts.

## **BUDGET REFERENCE**

The table below identifies the funds and appropriations to fund the contract amendment recommended as part of this memorandum, including project delivery, construction, and contingency costs.

Fund #	Appn #	Appn Name	Current Total Appn	Rec. Budget Action	Amt for Contract	2022-2023 Proposed Operating Budget Page*	Last Budget Action (Date, Ord. No.)
402	217P	Emergency Housing –	\$20,000,000	N/A	\$2,500,000	839	06/21/22 Ord No.
		Emergency					30790
		Housing					
		Construction and					
		Operation					
448	R130	Other Revenue	\$0	\$500,000	N/A	N/A	N/A
448	222M	All Home Grant	\$0	\$500,000	\$500,000	N/A	N/A

<sup>\*</sup>The 2022-2023 Adopted Operating Budget was approved on June 14, 2022 and adopted on June 21, 2022 by the City Council.

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# **CEQA**

Addendum to the Bridge Housing Communities Project Negative Declaration (Resolution No. 78926), (File No. ER22-198).

/s/ MATT CANO Director, Public Works Department /s/ JACKY MORALES-FERRAND Director, Housing Department

JIM SHANNON Budget Director

I hereby certify that there will be available for appropriation in the Multi-Source Housing Fund in the Fiscal Year 2022-2023 monies in excess of those heretofore appropriated wherefrom, said excess being at least \$500,000.

JIM SHANNON Budget Director

For questions, please contact Matt Cano, Director, at matt.cano@sanjoseca.gov.

Attachment: Mission Street, Guadalupe Parkway to Seventh Street Stripping and Signing Plan

