

**ACTION SUMMARY MINUTES**  
**MINUTES OF THE REGULAR MEETING OF**  
**THE BOARD OF DIRECTORS OF THE**  
**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**  
**HELD WEDNESDAY, AUGUST 11, 2010**

Pursuant to notice, the Regular Meeting of the Board of Directors of the Fresno Metropolitan Flood Control District was held Wednesday, August 11, 2010 at 6:00 p.m. in the Board Chambers of the Fresno Metropolitan Flood Control District at 5469 East Olive Avenue; Fresno, California.

**DIRECTORS PRESENT:** Kendall Groom, Chairman  
Roy Spina, Vice-Chairman  
Richard Welton  
Frank Franco  
George Marcus  
Mike Rastegar

**DIRECTORS ABSENT:** Jennette Williams

**STAFF, CONSULTANTS,  
OTHERS PRESENT:**

Bob Van Wyk, General Manager-Secretary  
Jerry Lakeman, District Engineer  
Alan Hofmann, Assistant District Engineer/Design  
Peter Sanchez, Operations Engineer  
David Pomaville, Administrative Services Manager  
Brandy Swisher, Program Assistant  
Kurt Hupp, Rural Program Manager  
Verlyn Neufeld, Construction Manager  
Dan Gilbert, Senior Engineering Technician  
John Santos, Engineer  
Kristine Johnson, Staff Analyst  
Esther Schwandt, Clerk to the Board

Doug Jensen, General Counsel  
John Smith, Assistant General Counsel  
Ken Price, Assistant General Counsel

Larry Willey  
Terry Tuell, Terry Tuell Concrete  
Jonathan Tuell, Terry Tuell Concrete  
Lori Ramirez, Arc Fresno  
Brice Nieman, Program Director, Arc Fresno  
Tommy Maez, Program Manager, Arc Fresno  
Julio Perez, Crew Member, Arc Fresno

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Bernardo & Wife, Crew Member, Arc Fresno  
Donnie, Crew Member Arc Fresno  
Ricky, Crew Member Arc Fresno  
Russell Cook, representing Floyd Johnston Construction  
Steve Little, representing Floyd Johnston Construction  
Robert Serna, Serna Construction, Inc.

**PRESIDING:** Director Groom, presiding as Chairman, called the meeting to order at 6:00. p.m. and Director Welton led the Pledge of Allegiance.

**2. REPORT OF THE GENERAL MANAGER**

Mr. Van Wyk reported on the following: (1) we will be presenting the framed Resolutions to the PARC program sponsors this evening, Mr. Van Wyk then explained the PARC program which was the brainchild of Larry Willey; Chairman Groom then presented the Resolutions to Larry Willey, and Terry & Jonathan Tuell; Mr. Willey then addressed the Board, introducing his wife Jan, and stated he was thrilled with those businesses who stepped up to participate in this program, and thanked the Board Members for their services to the community and in particular this program; Mr. Tuell addressed the Board with respect to their pleasure in having sponsored this program, and noted the amount raised and the benefits this program has provided; Ms. Lori Ramirez representing Arc Fresno then addressed the Board and participants expressing their thanks, and presented the participants with plaques to thank them for their service. She then introduced representatives of Arc Fresno who were in the audience; Director Franco thanked Mr. Willey for his service to the community; (2) the District's General Manager and Engineer will be attending NAFSMA in San Diego the week of August 23<sup>rd</sup> – August 27<sup>th</sup> which will cause them to miss the August 25<sup>th</sup> Board Meeting, however Mr. Hofmann would cover that meeting; (3) he distributed a copy of a letter from Keith Forbes of JPIA regarding Worker's Compensation Program Risk Assessment, in which Mr. Forbes spoke very favorably about the District; (4) "One Voice" will be having their "kick-off" meeting on September 8<sup>th</sup> at COG, he stated the Chairman and staff will be attending the meeting; (5) the City Manager of the City of Clovis, Kathy Millison, has resigned and a Farewell Reception has been scheduled in her honor; staff will be bringing a recommendation to the Board to adopt a Resolution of Appreciation for her at an upcoming Board Meeting; and (6) he had Mr. Lakeman explain the status of SB 1071 (the Tulare Lake Boundary legislation); Mr. Lakeman stated it had been approved by the Assembly and the Senate, and was now on its way to the Governor for signature.

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**3. APPROVAL OF MINUTES: Minutes of July 14, 2010**

**Approved as Recommended**

**Motion by: Spina                      Second by: Franco**  
**Ayes: Groom, Spina, Franco, Marcus, Welton, Rastegar**  
**Noes: None**  
**Abstentions: None**  
**Absentees: Williams**

**4. BUSINESS AND PRESENTATIONS FROM THE FLOOR:**

Director Franco announced the Clovis Odyssey Soccer Team won the National League Soccer Tournament in Virginia Beach, Virginia, and noted his Grandson played on the team.

**5. ADDITIONS TO THE AGENDA:**

There were no Additions to the Agenda.

**6. POTENTIAL CONFLICTS OF INTEREST:**

There were no Conflicts of Interest.

**7. PUBLIC HEARING:**

There were no Public Hearings scheduled.

**8. CONSENT CALENDAR:**

- a. Engineer's Report of Projects, July 2010
- b. Engineer's Report of Construction, July 2010
- c. Ratification of Expenditures, July 2010
- d. Report of Public Concerns, July 2010

**Approved as Recommended**

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**Motion by: Spina                      Second by: Franco**  
**Ayes:                      Groom, Spina, Franco, Marcus, Welton, Rastegar**  
**Noes:                      None**  
**Abstentions:                      None**  
**Absentees:                      Williams**

**17.    CLOSED SESSION**

The Board then convened in Closed Session at 6:19 pm to consider the following litigation:

**c.        Contract "FCC-10"**

The Board then reconvened in regular session at 6:26 pm. Mr. Jensen stated no reportable action was taken in Closed Session.

**9.        Consideration of Contract "FCC-10", Fancher Creek Relocation at McKinley:**

**a.        Hearing of Protest of Bid**

Recommend the Board of Directors deny the protest as presented by Floyd Johnston Construction Company, Inc. and waive the irregularities of omitting the addendum with the original bid proposal.

District staff and Legal Counsel addressed the Board with respect to their recommendation that the protest be denied as outlined in the Board Memorandum.

Mr. Russell Cook and Mr. Steve Little, representing Floyd Johnston, addressed the Board with respect to their Formal Bid Protest of Construction of Culvert and Storm Drainage Facilities for Fancher Creek, Contract "FCC-10" as outlined in their letters attached to the Board Memorandum.

**Approved as Recommended**

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**Motion by: Franco      Second by: Spina**  
**Ayes:            Groom, Spina, Franco, Marcus, Welton, Rastegar**  
**Noes:            None**  
**Abstentions:    None**  
**Absentees:      Williams**

**b.      Determination of Responsible Bidder**

Recommend the Board of Directors find Serna Construction, Inc. not a responsible bidder for Contract "FCC-10".

District staff addressed the Board with respect to their recommendation that the Board find Serna Construction, Inc. not a responsible bidder for Contract "FCC-10" as outlined in the Board Memorandum.

Director Franco left the dais at 6:44 pm and returned to the dais at 6:47 pm.

Mr. Robert Serna, Serna Construction, addressed the Board expressing his thanks to the Board for the opportunity to understand this process, and stated while it would be a financial hardship and he has never done this type of project before, he believed that he would be able to manage the contract and would be able to find enough workers to complete the project. He also distributed material to add to the previous information he had provided to staff; material is attached to the Board Packet.

Mr. Smith recommended should the Board find Serna Construction, Inc. not a responsible bidder for Contract "FCC-10", that the findings specifically include that Serna Construction, Inc. has not demonstrated the experience, capacity and fitness to successfully perform Contract "FCC-10" in accordance with all its terms.

**Approved as Recommended by Staff and Legal Counsel**

**Motion by: Spina      Second by: Welton**  
**Ayes:            Groom, Spina, Franco, Marcus, Welton, Rastegar**  
**Noes:            None**  
**Abstentions:    None**  
**Absentees:      Williams**

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**c. Award of Contract**

Recommend the Board of Directors award Contract "FCC-10" to the lowest responsible bidder in the amount bid.

Mr. Lakeman stated in light of the action taken in the previous item, the lowest responsible bidder would be Floyd Johnston Construction, Inc. in the amount of \$428,591.50.

Approved as Recommended, awarding Contract "FCC-10" to Floyd Johnston Construction, Inc. in the amount of \$428,591.50.

**Motion by: Spina                      Second by: Welton**  
**Ayes:                      Groom, Spina, Franco, Marcus, Welton, Rastegar**  
**Noes:                      None**  
**Abstentions:                      None**  
**Absentees:                      Williams**

**17. CLOSED SESSION**

The Board then convened in Closed Session at 7:10 pm to consider the following litigation:

**a. Consideration of Claim, Wajih Ajib, Drainage "CL"**

The Board then reconvened in regular session at 7:21 pm. Mr. Jensen stated no reportable action was taken in Closed Session.

**10. Consideration of Claim, Wajih Ajib, Drainage Area "CL"**

Recommend the Board of Directors reject the subject claim and refer it to the District's Insurance carrier for further action.

Mr. Wajih Ajib addressed the Board with respect to his claim as addressed in his letters attached to the Board Memorandum.

Mr. Van Wyk stated in the future, staff will provide notice to Mr. Ajib prior to the District's contractor apply chemicals on the easement.

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Mr. Ken Price addressed the Board noting Legal Counsel had provided all the records they have in response to Mr. Ajib's request.

**Approved as Recommended**

**Motion by: Rastegar      Second by: Spina  
Ayes:            Groom, Spina, Franco, Marcus, Welton, Rastegar  
Noes:            None  
Abstentions:    None  
Absentees:      Williams**

**11.    Authorization to Develop and Distribute Request for Proposals for Other Post Employment Benefits (OPEB) Liability**

**Authorize staff to prepare and distribute a Request for Proposals to establish, administer, and provide investment oversight of a Retiree Health Trust Fund.**

Director Welton requested the Board be provided with the documentation as to the establishment of the District's Retiree Health Care Program. Director Rastegar requested the Board also be provided with the background information of the Board's discussions up to this point along with the report from the Consultant which was hired to make recommendations as to the District moving forward in compliance with the OPEB regulations.

**Approved as Recommended, with the Board to be Provided the Documentation as to the Establishment of the District's Retiree Health Care Program, background information of the Board's discussions, and the Consultant's report at a subsequent Board Meeting.**

**Motion by: Welton            Second by: Spina  
Ayes:            Groom, Spina, Franco, Marcus, Welton, Rastegar  
Noes:            None  
Abstentions:    None  
Absentees:      Williams**

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**12. Authorization to Execute Agreement for Golden State Boulevard Improvements Phase II, Contract "AH-47", Redevelopment Agency of the City of Fresno**

Recommend the Board of Directors authorize staff to enter into an agreement with the Redevelopment Agency of the City of Fresno with provisions for reimbursement as identified herein for construction of Master Plan facilities for Phase II of the Golden State Boulevard Improvements as shown on Exhibit No. 1.

**Approved as Recommended**

**Motion by: Welton            Second by: Franco**  
**Ayes:            Groom, Spina, Franco, Marcus, Welton, Rastegar**  
**Noes:            None**  
**Abstentions:    None**  
**Absentees:       Williams**

**13. Authorization to Execute Common Use Agreement with the Fresno Irrigation District, Storm Drain Crossing of Central Canal, Drainage Area "HH" (Chestnut & Jensen)**

Mr. Lakeman requested this item be pulled.

**As this Item was Pulled no further action was taken.**

**14. Report on Completion of ATF Assessment**

Report submitted for informational purposes only, no action is required by the Board unless specific direction is to be given to staff.

**As the report was submitted for informational purposes only, no further action was taken.**

**15. Board Reports, Workshops, Correspondence and Requests for Future Agenda Items:**

No items were submitted



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**16. REPORT OF GENERAL COUNSEL**

No items were reported.

**17. CLOSED SESSION**

The Board then recessed at 7:44 pm and reconvened in Closed Session at 7:48 pm to consider the following litigation:

**b. CSA-51-Water Group, et. al. vs. County of Fresno, et. al.**

The Board then convened in regular session at 7:51 pm. Mr. Jensen stated General Counsel was given instruction by the Board of Directors to request a dismissal as Doe No. 1 in the above-mentioned litigation.

**ADJOURNMENT**

**Adjourned Board Meeting at 7:52 pm.**

**Motion by: Welton      Second by: Spina**  
**Ayes: Groom, Spina, Franco, Marcus, Welton, Rastegar**  
**Noes: None**  
**Abstentions: None**  
**Absentees: Williams**

  
\_\_\_\_\_  
BOB VAN WYK  
GENERAL MANAGER/SECRETARY

  
\_\_\_\_\_  
DATE