

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

September 26, 2023

FROM

DON DAY, Director, Project and Facilities Management Department

VICTOR TORDESILLAS, Director, Department of Risk Management

SUBJECT

Continuation of Emergency Related to Recovery from Fire at 172 W. 3rd Street in San Bernardino

RECOMMENDATION(S)

Continue the finding, first made by the Board of Supervisors on June 28, 2022, that there is substantial evidence that the fire at 172 W. 3rd Street on June 19, 2022, created an emergency pursuant to Public Contract Code section 22050 requiring immediate action to prevent or mitigate the loss or impairment of life, health, property and essential public services, necessitating fire remediation activities at 172 W. 3rd Street and remodel/renovations of portions of 268 W. Hospitality Lane, San Bernardino, to allow staff to provide services, and will not permit the delay resulting from a formal competitive solicitation of bids to procure remediation and construction services, and delegate authority, originally by Resolution on June 28, 2022, amended on September 13, 2022 and on July 25, 2023, to the Chief Executive Officer to direct the Purchasing Agent to issue purchase orders and/or execute contracts, in a total amount not-to-exceed \$10,123,681, for any remediation, construction, and modifications of internal and external structures related to the fire, finding that the issuance of these purchase orders and/or contracts is necessary to respond to this emergency pursuant to Public Contract Code sections 22035 and 22050 (Four votes required).

(Presenter: Don Day, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). It is recommended that the project costs of \$10,123,681 be funded with insurance proceeds. In the event that the estimated fire remediation expenses exceed the approved insurance proceeds, a recommendation for Discretionary General Funding will be presented for Board of Supervisors (Board) consideration at a future meeting.

The Project and Facilities Management Department (PFMD) will continue to closely monitor and evaluate construction costs associated with the accommodation of employees displaced by the fire, which occurred on June 19, 2022, at 172 W. 3rd Street (Premises). The costs associated with addressing or preventing the effects of the fire will be applied to the Capital Improvement Program (CIP) Project for 268 W. Hospitality Lane renovations (WBSE 10.10.1290), as well as to the 172 W. 3rd Street Fire Damage CIP Project (WBSE 10.10.1312) established to track

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remediation costs. No budget adjustments are requested at this time but will be presented to the Board for consideration at a future date, if necessary.

BACKGROUND INFORMATION

On June 19, 2022, the County experienced severe property loss from a major fire that swept through the Premises in San Bernardino. This building is County-owned, which provided workspace for various County departments, including Land Use Services - Code Enforcement (Code Enforcement). Code Enforcement occupied space on the 4th floor of the building where the fire inflicted the most damage. The County requires office space for Code Enforcement employees to safely work and continue to provide essential public services.

On June 28, 2022 (Item No. 63), the Board found that there was substantial evidence that the fire at the Premises on June 19, 2022, created an emergency pursuant to Public Contract Code section 22050, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property and essential public services, necessitating fire remediation activities at the Premises, and remodel/renovations of portions of 268 W. Hospitality Lane in San Bernardino, to allow for the relocation of staff from Code Enforcement to continue to provide services. The Board found that the emergency must not be further delayed by a formal competitive solicitation of bids to procure remediation and construction services. The Board also approved Resolution No. 2022-131 authorizing the Chief Executive Officer (CEO) to direct the Purchasing Agent to issue purchase orders and/or execute contracts, in a total amount not-to-exceed \$5,000,000, for any remediation, construction, and modifications related to the fire. As long as the issuance of these purchase orders and/or contracts is necessary to respond to this emergency pursuant to Public Contract Code sections 22035 and 22050, the Director of PFMD is authorized to accept the work when 100% complete and execute and file the Notice of Completion.

On September 13, 2022 (Item No. 44), the Board approved Resolution No. 2022-180 to increase the not-to-exceed original project budget from \$5,000,000 to \$8,000,000 for any remediation, construction, and modifications related to the fire.

On January 10, 2023 (Item No. 31), the Board approved a modified recommendation to continue the emergency, removing the delegation language authorizing the CEO and Purchasing Agent to approve new contracts, in order to allow the Board additional time to evaluate the status of the emergency and action taken to date.

On January 24, 2023 (Item No. 37), the Board approved a recommendation to continue the emergency and reinstated the delegation language authorizing the CEO and Purchasing Agent to issue purchase orders and/or execute contracts, in a total amount not-to-exceed \$8,000,000, for any remediation, construction, and modifications related to the fire.

On July 25, 2023 (Item No. 39), the Board approved Resolution No. 2023-144 to increase the not-to-exceed budget by \$2,123,681, from \$8,000,000 to \$10,123,681, for any remediation, construction, and modifications related to the fire. To reach 100% building remediation, Belfor USA Group Inc. (Belfor) has been directed to proceed with necessary additional abatement work that was discovered at the conclusion of work associated with the scope of services under Amendment No. 2 of Belfor's contract. Following PFMD and the Department of Risk Management's review of the additional abatement work, the total costs will be calculated based on the insurance claim rate sheet and environmental report findings. Any additional costs owed to Belfor for work completed or additional remaining work necessary will be provided in an upcoming amendment to Belfor's contract, if needed.

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On August 31, 2023, the scope of work for construction Contract No. CAE-074 with Belfor was completed, along with the environmental monitoring services from Pacific EH&S Services, Inc. (Pacific). The Notice of Completion will be filed after all of the contractual items are completed.

While the property at the Premises undergoes remediation, PFMD continues to evaluate the property loss and options for providing workspace for displaced County departments and is working with the Department of Risk Management on insurance issues. Continuation of the emergency is recommended as immediate action. The continuation of the emergency action is required to provide a safe working environment for Code Enforcement employees in order to provide essential public services. Continuation of the delegation to the CEO and Purchasing Agent to approve contracts is recommended so that urgently required work may continue and the need for additional scopes of work can be addressed if necessary.

Emergencies related to Public Contract Code Section 22050, once ordered, must be re-affirmed at each subsequent meeting until the emergency is terminated. The action in the Recommendation will meet this requirement.

PROCUREMENT

To facilitate the remodel/renovations of portions of 268 W. Hospitality Lane in San Bernardino and allow for the relocation of staff from Code Enforcement, PFMD contacted Angeles Contractor Inc. (Angeles) and requested a scope of work, overview of construction, pricing, and schedule (Proposal). On July 14, 2022, Angeles submitted the requested Proposal to PFMD. PFMD reviewed the Proposal, and recommended proceeding. On July 21, 2022, PFMD submitted the Proposal and construction contract to the CEO for approval and authorization for the Purchasing Department (Purchasing) to execute the contract and issue a purchase order. PFMD received the executed Interoffice Memo and Delegated Authority approving the scope of work by the CEO on July 26, 2022. The Interim Director of Purchasing executed Contract No. CAE-071 in the amount of \$1,182,000, for the term of 60 calendar days on July 27, 2022. The remodeling project located at 268 W. Hospitality Lane is not part of the \$10,123,681 insurance claim proceeds fund; however, the cost to accelerate overtime pay will be paid from the final insurance claim settlement.

On August 24, 2022, the Interim Director of Purchasing, under the direction of the CEO, approved a contract with SafeworkCM to provide consultant services for the remediation of the Premises in the amount of \$126,300. SafeworkCM was approved to collect, organize, and file all relevant project files for historical record as well as participate in daily coordination meetings with the various contractors and internal stakeholders. SafeworkCM also manages the compilation of contract documents and supports the County in its execution of various additional contracts. The original contract with SafeworkCM expired, however, there was a need for continued consulting services while work is still in process for this project. Accordingly on April 4, 2023, the Interim Director of Purchasing executed a subsequent contract with SafeworkCM, in the amount of \$72,150 for the period March 1, 2023, through August 31, 2023, as permitted by County Code Sections 14.0102 and 14.0109 where the annual aggregate cost per scope of services does not exceed the amount authorized by Government Code section 25502.5, as amended, set at \$200,000 effective January 1, 2019.

On November 2, 2022, the Interim Director of Purchasing, under the direction of the CEO, approved a contract with Belfor to provide remediation, abatement, clean up and demolition services at the Premises in the amount not-to-exceed \$4,126,860. Belfor is shoring the existing concrete structure, performing demolition work associated with the abatement and remediation

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scope, cleaning, storing, and returning all fire-damaged contents, office equipment and cataloging salvageable assets.

On November 23, 2022, the Interim Director of Purchasing approved a contract with Degenkolb, under Purchasing's authority to approve contracts under \$200,000, for design services to provide a scope narrative to restore the Premises to its pre-loss event condition, in an amount not-to-exceed \$89,280.

On December 6, 2022, the Interim Director of Purchasing approved a contract with Pacific, under Purchasing's authority to approve contracts under \$200,000, in the amount of \$125,000, to provide environmental monitoring services for the removal of hazardous materials.

On January 5, 2023, the CEO directed the Interim Director of Purchasing to execute Amendment No. 1 with Belfor in the amount of \$2,988,000, from \$4,126,860 to a total revised contract amount of \$7,114,860, to provide additional remediation services. The Interim Director of Purchasing executed Amendment No. 1 with Belfor on January 11, 2023.

On February 16, 2023, the Interim Director of Purchasing approved Amendment No. 1 with Pacific, in the amount of \$159,960, from \$125,000 to a total revised contract amount of \$284,960, for additional environmental monitoring services required to ensure precautions for health and safety, as well as compliance with air quality regulations are met in conjunction with additional remediation services currently in process. Approval was made pursuant to San Bernardino County Code Section 14.0106 and County Policy 11-04 as action was immediately necessary for the preservation of life or property. On April 25, 2023 (Item No. 46), the Board ratified the Director of Purchasing's approval of Amendment No. 1 with Pacific pursuant to County Code Section 14.0106, as the consulting contract was signed on an emergency basis and the amount exceeds the amount authorized by Government Code Section 25502.5 (currently set at \$200,000). Pacific completed these environmental monitoring services as of August 31, 2023.

On April 6, 2023, the CEO directed the Interim Director of Purchasing to execute Amendment No. 2 with Belfor, with no change in the contract amount of \$7,114,860, and an increase in the contract duration from 247 calendar days to 360 calendar days to complete additional remediation services. The Interim Director of Purchasing executed Amendment No. 2 with Belfor on April 18, 2023.

On May 4, 2023, the Interim Director of Purchasing, under the direction of the CEO, approved Amendment No. 1 to Contract No. CAE-071 with Angeles in the amount of \$45,625, from \$1,182,000 to a total of \$1,227,625. The amendment included an extension to the contract term from 60 calendar days to 298 calendar days and approved a Change Order in the amount of \$61,006, from \$1,227,625 to a total of \$1,288,631, for the additional scope of work. Due to unforeseen conditions specific to the flooring, electrical and plumbing of the building, additional work with Angeles was necessary. Contract No. CAE-071 and Amendment No. 1 with Angeles are not part of the \$10,123,681 insurance claim proceeds fund; however, the cost to accelerate overtime pay will be paid from the final insurance claim settlement.

On May 19, 2023, the scope of work for construction Contract No. CAE-071 with Angeles was completed, and the Notice of Completion was filed with the San Bernardino County Assessor-Recorder-County Clerk on May 24, 2023. Once the accelerated overtime is calculated by Angeles, the total amount will be billed towards the insurance claim.

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On July 5, 2023, the CEO directed the Interim Director of Purchasing to execute Amendment No. 3 with Belfor, with no change in the total contract amount of \$7,114,860, increasing the contract duration from 360 calendar days to 420 calendar days to complete additional abatement work as discovered at the conclusion of work associated with Amendment No. 2. The Interim Director of Purchasing executed Amendment No. 3 with Belfor on July 25, 2023. Belfor completed the scope of work as of August 31, 2023.

On August 16, 2023, the Interim Director of Purchasing approved an additional noncompetitive contract with Degenkolb, under Purchasing's authority to approve contracts not exceeding \$200,000, for additional design services and a scope of narrative to restore the Premises to its pre-loss event condition in an amount not-to-exceed \$25,000. The combined total of both contracts awarded to Degenkolb is \$114,280.

For any additional projects necessary to address the effects of the emergency, PFMD will prepare a scope of work, quote and/or contract to be approved by the CEO and then signed by the contractor. A purchase order will then be requested and finalized by Purchasing to engage the architect, engineer and/or contractor to provide the required construction services. Applicable provisions of the Government Code and Public Contract Code shall not apply.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Administrative County Counsel, 387-5455) on August 31, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on August 31, 2023; Purchasing (Leo Gomez, Purchasing Manager, 387-2063) on August 31, 2023; Project and Facilities Management (Robert Gilliam, Chief of Project Management, 387-5000) on August 31, 2023; Finance (Yael Verduzco, Principal Administrative Analyst, 387-5285) on September 6, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) September 11, 2023.

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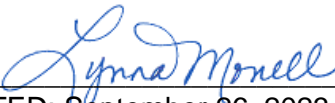
Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Jesse Armendarez

Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 26, 2023



cc: File - Emergency/Fires/172 W. 3rd Street Fire
CCM 10/10/2023