

File No. 230811

Committee Item No. 8

Board Item No. 10

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date September 6, 2023

Board of Supervisors Meeting

Date September 12, 2023

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Public Works Order No. 208106 - Emergency Declaration 5/15/2023</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>PW Presentation 9/6/2023</u>  |
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Completed by: Brent Jalipa Date August 31, 2023

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Emergency Declaration - Repairs at Laguna Honda Hospital - 375 Laguna Honda Boulevard -  
2 Estimated Cost Not to Exceed \$28,400,000]

3 **Resolution approving the Director of Public Works’ declaration of emergency under**  
4 **Administrative Code, Section 6.60 for repair work at Laguna Honda Hospital and**  
5 **Rehabilitation Center, located at 375 Laguna Honda Boulevard, estimated to cost in**  
6 **excess of \$250,000, but not to exceed \$28,400,000.**

7  
8 WHEREAS, Laguna Honda Hospital and Rehabilitation Center (LHH) is located at 375  
9 Laguna Honda Boulevard; and

10 WHEREAS, In April 2022, after deeming LHH out of compliance with applicable  
11 Medicare regulations, the California Department of Public Health (CDPH) and the federal  
12 Centers for Medicare & Medicaid Services (CMS) terminated LHH’s CMS Medicare/Medicaid  
13 Provider Agreements and its certification in the Medicare/Medicaid program; and

14 WHEREAS, LHH intends to reapply for certification in the Medicare/Medicaid  
15 programs; and

16 WHEREAS, Should the San Francisco Department of Public Health’s (SFDPH)  
17 recertification efforts fail, SFDPH would begin to lose up to \$16.5 million monthly in  
18 Medicare/Medicaid funding, and without this funding, SFDPH could be forced to close LHH;  
19 and

20 WHEREAS, As a 769-bed skilled nursing facility, closure of LHH would have a  
21 significant negative impact on the availability of skilled nursing beds in San Francisco to serve  
22 patients, such as those recovering from an injury, stroke or significant illness, who require  
23 ongoing medical, nursing or rehabilitative care; and

24  
25

1           WHEREAS, To obtain new Provider Agreements and its recertification into the  
2 Medicare/Medicaid programs, SFDPH must demonstrate LHH substantially complies with all  
3 applicable Medicare regulations and pass certification surveys; and

4           WHEREAS, Non-conforming conditions that could jeopardize LHH’s ability to achieve  
5 certification and maintain substantial compliance may include, but are not be limited to, the  
6 capital improvement and/or maintenance of kitchen freezer area repairs, fire alarm separation  
7 project, HVAC 3B project, fuel line replacement, pharmacy compounding room repairs and  
8 renovation, station X-ray project, and water tank replacement project, and emergency power  
9 replacement; and

10           WHEREAS, Public Works staff determined that the extensive and technical scope of  
11 work necessitate that an outside contractor or contractors be hired to perform the critical  
12 repairs and upgrades; and

13           WHEREAS, Public Works staff analyzed the circumstances extensively and  
14 determined that the estimated cost of the repairs and remediation is expected to exceed  
15 \$250,000; and

16           WHEREAS, Pursuant to Section 6.60(c)(3) of the Administrative Code, which states an  
17 “actual emergency” includes “Unforeseen occurrences of unusual character resulting in an  
18 insufficient number of hospital beds or the lack of hospital beds or the lack of hospital,  
19 surgical, mental health or hospital ancillary services so as to leave patients of the City without  
20 required hospital or medical services,” the Interim Director of Public Works declared an  
21 emergency on May 12, 2023, at the request of SFDPH; and

22           WHEREAS, Under authority granted by Administrative Code, Section 6.60(b), the  
23 Interim Director of Public Works gave notice of the emergency declaration to the Board of  
24 Supervisors, Mayor, and Controller on May 15, 2023; and

25

1           WHEREAS, Administrative Code, Section 6.60(d), requires that the Board of  
2 Supervisors approves emergency work with an estimated cost in excess of \$250,000; and

3           WHEREAS, SFDPH estimates the cost of the emergency work to be no more than  
4 \$28,400,000; and

5           WHEREAS, SFDPH has the necessary funds appropriated in their budget for these  
6 projects; now, therefore, be it

7           RESOLVED, That the Board of Supervisors approves the Interim Director of Public  
8 Works' emergency declaration for the necessary repair work at Laguna Honda Hospital and  
9 Rehabilitation Center for the projects listed on page 31 of the Budget and Legislative Analyst's  
10 report dated September 1, 2023, a copy of which is on file with the Clerk of the Board of  
11 Supervisors in Board File No. 230811, with estimated costs not to exceed \$28,400,000.

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13 RECOMMENDED

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15 /s/\_\_\_\_\_  
16 San Francisco Public Works  
17 Interim Director, Carla Short

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<b>Item 8</b> <b>File 23-0811</b>	<b>Department:</b> Public Works (DPW), Public Health (DPH)
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**EXECUTIVE SUMMARY**

**Legislative Objectives**

- The proposed resolution would approve the Department of Public Works’ (DPW) emergency declaration for repair work at LHH, estimated to cost in excess of \$250,000.

**Key Points**

- Following loss of Laguna Honda Hospital’s (LHH) Medicaid and Medicare certification in April 2022, the City entered into a settlement agreement that allowed Medicaid and Medicare payments for existing residents through March 2024. In August 2023, LHH was granted recertification in the Medicaid Provider Program only, thus enabling Medicaid funding for eligible patients beyond March 2024. The hospital’s Medicare recertification will be submitted on September 17, 2023.
- The proposed emergency declaration is requested for repair work at LHH facilities that is required for Medicaid and Medicare certification.

**Fiscal Impact**

- Public Works provided construction costs ranging from \$18.6 million to \$28.4 million for eight recertification projects. Project costs are funded by a combination of General Fund operating and capital planning allocations in the Laguna Honda budget, General Fund debt, and surplus capital funds remaining from canceling a Laguna Honda capital project.

**Policy Consideration**

- The proposed resolution does not limit the scope of the emergency authority to specific projects or spending amounts. Any contracts awarded under this authority would be exempt from all requirements in Administrative Code chapters 6, 12A, 12B, 12C, & 14B.
- Although deficient conditions motivating all projects were identified years prior to the immediate re-certification process that began in April 2022, DPH considers their completion to be an emergency because they are critical to receiving and maintaining Medicaid & Medicare certification and funding.

**Recommendations**

- The Board should consider limiting the scope of the emergency contracting authority in the following ways: (a) amend the proposed resolution to specify the projects that qualify for emergency contracting procedures and/or (b) add a not to exceed amount of \$28,400,000.
- Approval of the proposed resolution is a policy matter for the Board of Supervisors.

## MANDATE STATEMENT

Administrative Code Section 6.60(d) states that contracts entered into for emergency work that are more than \$250,000 are subject to Board of Supervisors approval. Prior to the commencement of emergency work above the \$250,000 threshold, the Department must also secure approval in writing from the Mayor, the President of the Board, or the Commission. If the emergency does not permit approval of the emergency determination by the Board of Supervisors before work begins, the Department head must submit a resolution approving the emergency determination to the Board of Supervisors within 60 days of when the Department declares an emergency.

## BACKGROUND

Laguna Honda Hospital and Rehabilitation Center (LHH) is a hospital operated by the Department of Public Health (DPH) that provides skilled nursing services and acute medical and rehabilitation services for seniors and adults with disabilities. In April 2022, the California Department of Public Health (CDPH) and the Centers for Medicare and Medicaid Services (CMS) determined LHH out of compliance with Medicare regulations and terminated their CMS Medicare and Medicaid Provider Agreements and its Medicare and Medicaid program certification. The City, CDPH, and CMS later entered into a settlement agreement that allowed Medicaid and Medicare payments for existing residents through March 2024. In August 2023, LHH was granted recertification in the Medicaid Provider Program only, thus enabling Medicaid funding for eligible patients beyond March 2024. The hospital's Medicare recertification will be submitted on September 17, 2023.

As part of obtaining Medicare and Medicaid recertification and maintaining that status, LHH must comply with all Medicare regulations and pass certification surveys. The most recent survey occurred in June 2023. A final survey is scheduled to take place between August 2023 and September 2023. The proposed emergency declaration is requested for work at LHH facilities that were deemed as "non-conforming conditions" by LHH and DPW and/or cited by CDPH and CMS and required to ensure continued Medicaid and Medicare certification.

Following a request from the San Francisco Department of Public Health, DPW declared an emergency at Laguna Honda on May 16, 2023. The proposed resolution for Board of Supervisors approval of that emergency was introduced on July 11, 2023, within the sixty-day timeframe required by Administrative Code Section 6.60(d).

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Department of Public Works' (DPW) emergency declaration for repair work at LHH, estimated to cost in excess of \$250,000. The proposed resolution does not limit the scope of the emergency authority to specific projects or spending amounts.

According to DPW, the repair work needed to ensure compliance with Medicare regulations includes the following:

- **Kitchen Freezer #3:** remodel and replace Freezer #3 at Laguna Honda Kitchen due to excessive ice accumulation in order to reestablish additional cold storage capacity, as required for CMS recertification;
- **Hospital HVAC Controls:** Address HVAC system deficiencies (as identified by CDPH annual surveys), which include ensuring system has ability to reduce temperatures to safe levels and meet fire safety standards;
- **Fuel Line Replacement:** Replace existing leaking underground fuel line system that provides fuel to emergency detectors;
- **Pharmacy HVAC Upgrade:** Addition of HVAC unit with greater air change capacity for operation of pharmacy compounding rooms due to regulatory upgrade requirements and LHH cited as being out of compliance;
- **Stationary X-Ray Replacement:** Replace X-Ray station which has reached end of life to meet regulatory requirements;
- **Water Tank Replacement:** Replace one of two 300,000-gallon water storage tanks which supply all potable and fire water to the LHH campus;
- **Kitchen Floor Replacement:** Replace flooring system in kitchen areas on the second level of the Link Building on the LHH campus, which is causing leaks in the ceiling of the first-floor cafeteria and must be replaced to meet code, health and safety requirements as part of the recertification process. The project entails standing up a temporary kitchen while permanent kitchen floor is replaced.
- **Emergency Power Replacement:** provide the hospital with generator backup power to existing normal panelboards to several buildings by new automatic transfer switches with bypass isolation switches and feeders and wiring. Installation of new ATS switches with bypass isolation and feeders to be done in 6 phases.

## FISCAL IMPACT

Exhibit 1 below summarizes the current estimated ranges cost of the emergency work and status of each project.

**Exhibit 1: Project Status and Costs**

<b>Project</b>	<b>Estimated Emergency Work Costs (in millions)</b>	<b>Status</b>	<b>Funding Source</b>
Kitchen Freezer #3	\$0.4 – \$0.7	Contractors have been selected. Timeline for work is August 2023-Sept 2023. (Deficiency identified in August 2022)	Reallocation of DPH funds from a completed Boiler Replacement project and the canceled LHH Remodeling/Loading Dock project
Hospital HVAC Controls	\$2.8 – \$4.2	Phase 3B (design) is ongoing and expected to be complete in May 2024. Phase 4 (construction) is anticipated to be completed in June 2025. (Deficiency identified in 2010)	Reallocation of DPH funds from cancelled Remodeling/Loading Dock project
Fuel Line Replacement	\$1.8 – \$2.5	Not started. Timeline for work is September 2023 - January 2024. (Deficiency identified in January 2023)	Reallocation of DPH funds from cancelled Remodeling/Loading Dock project
Pharmacy HVAC Upgrade	\$1.4 – \$2.5	Design contractor selected; construction contractor will be selected in Winter 2023/Spring 2024. Construction will be complete in Summer 2024. (Deficiency identified in 2018)	General Fund Project
Stationary X-Ray Replacement	\$1.1 – \$1.8	Design contractor selected; construction contractor will be selected in Fall 2023/Winter 2023. Construction will be complete in Summer 2024. (Deficiency identified in 2021)	Reallocation of DPH funds from cancelled Remodeling/Loading Dock project
Water Tank Replacement	\$2.5 – \$3.2	Design contractor selected; construction contractor will be selected in Fall 2023/Winter 2023. Construction will be complete in Winter 2023. (Deficiency identified in 2017)	General Fund and Certificates of Participation
Kitchen Floor Replacement	\$5.3 – \$8.1	Design contractor selected. Construction contractor will be selected Spring/Summer 2024 and construction expected to be complete Summer 2025. (Deficiency identified in 2021)	General Fund and surplus funds from the LHH Remodel/Loading Dock project
Emergency Power Replacement	\$3.5 – \$5.6	Soliciting bids from design contractors. Construction expected to begin in Winter 2023/early 2024 and be completed in 30-months.	Certificates of Participation
<b>Range of Emergency Work Cost</b>	<b>\$18.6 – \$28.4</b>		

Source: Public Works, construction costs only



As shown above, Public Works provided construction costs ranging from \$18.6 million to \$28.4 million for all eight projects for recertification, with total project costs ranging from \$26.5 million to \$40.5 million.<sup>1</sup>

### **Funding Sources**

Project costs are funded by a combination of General Fund operating and capital planning allocations in the Laguna Honda budget, General Fund debt,<sup>2</sup> and surplus capital funds remaining from canceling the Laguna Honda loading dock project. In addition, Public Works states that none of the emergency repair work costs will later be reimbursed by the Federal Government or the State.

## **POLICY CONSIDERATION**

### **Emergency Declaration Waives Procurement Regulations**

By approving the proposed resolution, the Board of Supervisors is approving an open-ended emergency work authorization for repair projects at Laguna Honda related to maintaining the hospital's compliance with Medicare and Medicaid regulations. Unlike other emergency declarations the Board has considered, there is no not to exceed amount that limits the amount of emergency work covered by the waivers. The authorization includes the projects described in this report but could be used for other Laguna Honda Medicare/Medicaid regulation compliance projects. The purpose of the emergency authorization is to expedite procurement of design, construction, and construction management contractors. Any contracts awarded under this authority would be exempt from all requirements in the following Administrative Code chapters:

- Chapter 6 (Public Works Contracting Policies & Procedures)
- Chapter 12A (Human Rights Commission)
- Chapter 12B (Nondiscrimination in Contracts)
- Chapter 12C (Nondiscrimination in Property Contracts)
- Chapter 14B (Local Business Enterprise Utilization)

Administrative Code Section 6.60(e) states that Departments contracting under an emergency declaration should still "make every effort" to comply with Chapters 12A, 12B, 12C and 14B.

#### *Public Works Emergency Contracting Procedures*

Public Works has pursued competitive solicitations for the emergency work contractors selected so far but could award them on a sole source basis under the emergency authority provided by Administrative Code Section 6.60. In May 2023, the Interim Director of Public Works established procurement procedures for contracts procured under the emergency authority provided by Administrative Code Section 6.60. The procedures require emergency work be overseen by a

<sup>1</sup> All estimated project costs are un-escalated and are valid until end of first quarter of CY 2024. Total project costs include design and project delivery costs.

<sup>2</sup> File 23-0816 is an ordinance pending Board of approval that would authorize Certificates of Participation, including \$4.1 million to fund the Water Tank Replacement Project and \$7.6 million for the Emergency Power project.

project manager, independent cost estimates, attempting to solicit quotes for at least three contractors, working with the Contract Monitoring Division to conduct vendor outreach, and posting a list of selected contractors on the DPW website. Public Works will provide bi-annual summary to the San Francisco Public Works Commission on all emergency declarations and contracts awarded.

### **Some Projects Are Ongoing or Will Not Begin in 2023**

In addition, two projects listed in this report, Hospital HVAC Control and Pharmacy HVAC Upgrade have been ongoing since 2016 and 2018, respectively. Public Works is in the process of selecting a design- contractor for the Kitchen Floor Replacement project, however a construction contractor will not be selected until April 2024 at the earliest, according to Public Works staff. Although deficient conditions motivating all projects were identified years prior to the immediate re-certification process that began in April 2022, DPH considers their completion to be an emergency because they are critical to receiving and maintaining Medicaid & Medicare certification and funding.

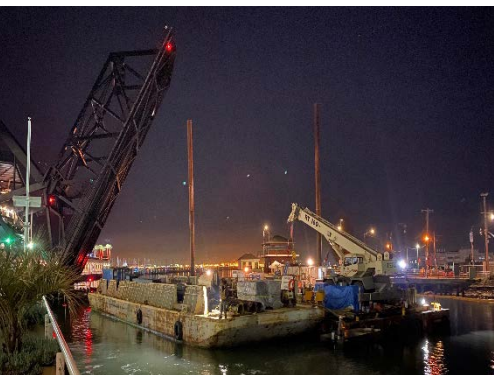
### **Policy Options**

Rather than approve an open-ended emergency declaration for all repair work related to Laguna Honda, the Board should consider limiting the scope of the emergency contracting authority in the following ways: (a) amend the proposed resolution to specify the projects that qualify for emergency contracting procedures and/or (b) add a not to exceed amount of \$28,400,000, the estimated total construction cost of all eight projects, according to DPW staff.

As is typical for other emergency work, the Department may seek Board approval for additional emergency spending once costs are better defined. This would provide additional oversight over the repair work at Laguna Honda and provide an opportunity for the Department to procure contractors using the City's standard procurement procedures.

## **RECOMMENDATIONS**

1. The Board should consider limiting the scope of the emergency contracting authority in the following ways: (a) amend the proposed resolution to specify the projects that qualify for emergency contracting procedures and/or (b) add a not to exceed amount of \$28,400,000.
2. Approval of the proposed resolution is a policy matter for the Board of Supervisors.

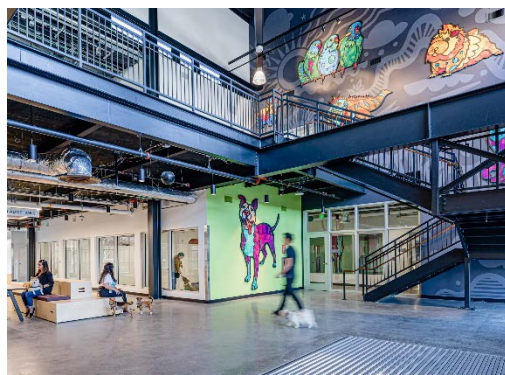


September 6, 2023, Presentation to Budget & Finance Committee

## Request: Approve Emergency Declaration for Laguna Honda Hospital

### To Allow for Construction-related Repairs and Other Emergency Work – In Order for DPH to Meet and Maintain Recertification and Regulatory Compliance

Carla Short, Interim Director, San Francisco Public Works



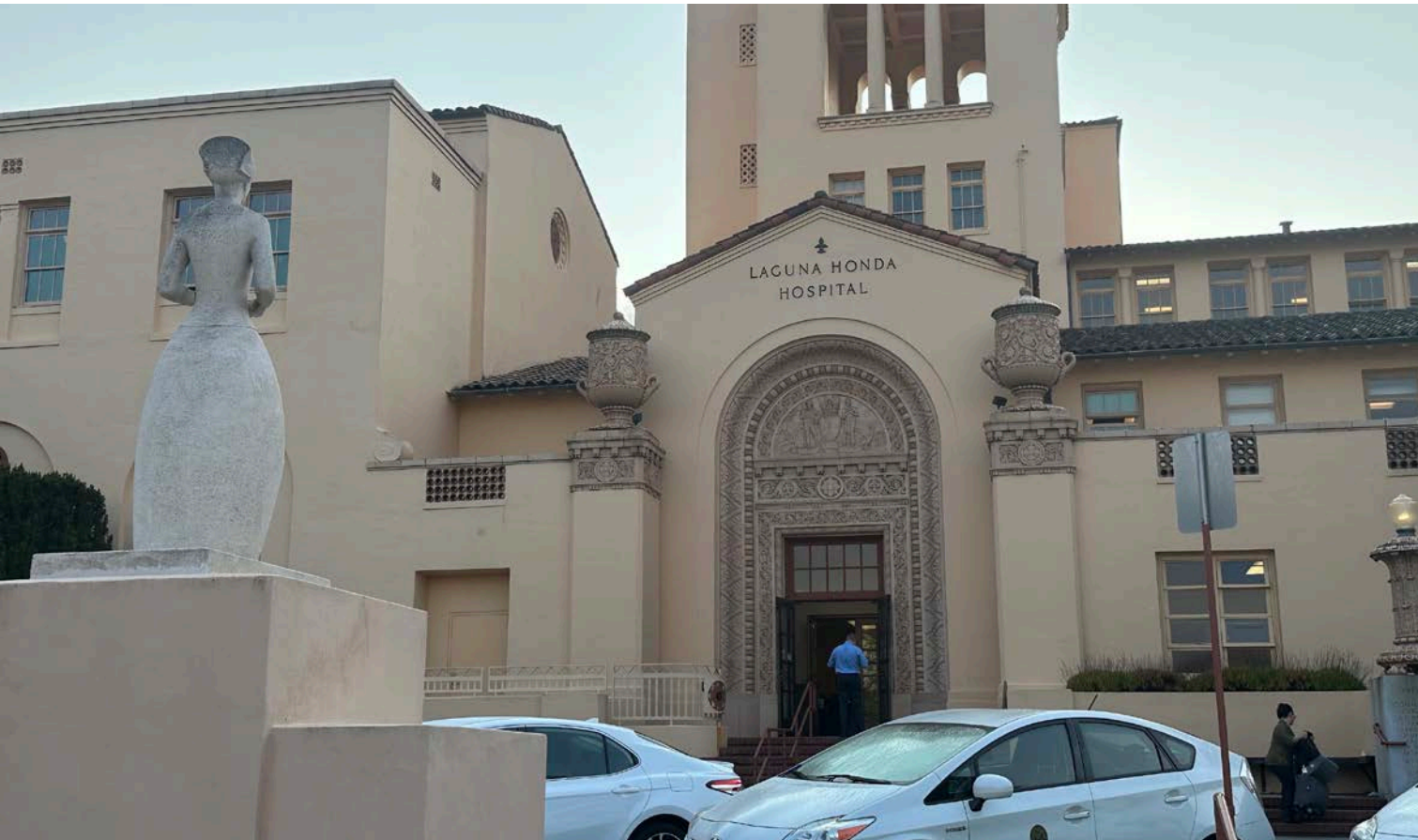


# Emergency Declaration Projects – Request for Approval



- **April 2022:** California Department of Public Health (CDPH) and federal Centers for Medicare & Medicaid Services (CMS) terminated Laguna Honda Hospital's (LHH's) provider agreements and program certification for Medicare/Medicaid.
- **August 2023:** CDPH and California Department of Health Care Services approved LHH for Medicaid recertification.
- **Recertification with Medicaid restores up to \$16M monthly in Medicaid funding.**
- **The deadline to implement the CMS-required Closure Plan has been extended to September 2023.**
- **Efforts to maintain certification are now ongoing, as State surveyors continue to visit LHH campus. Efforts to achieve Medicare recertification are also ongoing, as LHH awaits a CMS survey.**

# Recertification Risks and Vulnerabilities



Public Works, City Attorney and Hospital Leadership have been working closely the last 9 months to identify areas of risk to compliance and recertification.

Non-conforming conditions that could jeopardize ability to maintain compliance include capital improvement and/or maintenance of:

- Kitchen Freezer Area Repairs
- Fire Alarm Separation Project
- HVAC 3B Project
- Fuel Line Replacement
- Omnicell Cabinet Replacement
- Pharmacy Compounding Room Repairs and Renovation
- Station X-Ray Project
- Water Tank Replacement Project
- Kitchen Floor Replacement
- UPS Replacement Project

# Status and Progress



- DPH and Public Works addressed facilities/maintenance scopes that posed decertification risks:
  - Courtyard Resurfacing project completed. (No longer considered a risk.)
  - Freezer project progressed enough to lessen concerns, but still requires successful completion.
- Public Works declared an emergency at the request of DPH and continues to address project needs.
- Public Works will coordinate with DPH on the subsequent awards for each emergency project.



# Emergency Declaration Projects – Request for Approval



**Request:**  
Approve emergency declaration for Laguna Honda Hospital to allow for construction-related repairs and other emergency work in order for DPH to meet and maintain recertification and regulatory compliance.



# QUESTIONS





**Carla Short, Interim Director** | Director's Office

carla.short@sfdpw.org | T. 628.271.3078 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

May 12, 2023

Mayor London Breed  
City and County of San Francisco  
City Hall, Rm. 200

The Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, Rm. 244  
Attention: Ms. Angela Calvillo, Clerk of the Board

Mr. Ben Rosenfield, Controller  
City and County of San Francisco  
City Hall, Rm. 316

Public Works Commission  
City and County of San Francisco  
Attention: Bob Fuller, Commission Affairs Manager

Subject: Emergency Declaration for the Laguna Honda Hospital and Rehabilitation Center (LHH) Recertification Project

Dear Mayor London Breed, Members of the Board, Mr. Rosenfield and Public Works Commission:

In April 2022, after deeming LHH out of compliance with applicable Medicare regulations, the California Department of Public Health (CDPH) and the federal Centers for Medicare & Medicaid Services (CMS) terminated LHH's CMS Medicare/Medicaid Provider Agreements and its certification in the Medicare/Medicaid programs.

LHH intends to reapply for certification in the Medicare/Medicaid programs. Should DPH's recertification efforts fail, DPH would begin to lose up to \$16 million monthly in Medicare/Medicaid funding. Further, without this funding, DPH could be forced to close LHH.

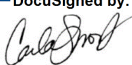
To obtain new Provider Agreements and its recertification into the Medicare/Medicaid programs, DPH must demonstrate that LHH substantially complies with all applicable Medicare regulations and pass certification surveys. To obtain new Provider Agreements and its certification in the Medicare/Medicaid programs, DPH must demonstrate that LHH substantially complies with all applicable Medicare regulations and pass certification

surveys. Non-conforming conditions that could jeopardize LHH's ability to achieve certification and maintain substantial compliance may include, but may not be limited to, the capital improvement and/or maintenance of:

- 1) Kitchen Freezer Area Repairs
- 2) Fire Alarm Separation Project
- 3) HVAC 3B Project
- 4) Fuel Line Replacement
- 5) Omnicell Cabinet Replacement
- 6) Pharmacy Compounding Room Repairs and Renovation
- 7) Station X-Ray Project
- 8) Water Tank Replacement Project

Pursuant to Section 6.60(c)(3) of the Administrative Code, which states an "actual emergency" includes, "Unforeseen occurrences of unusual character resulting in an insufficient number of hospital beds or the lack of hospital beds or the lack of hospital, surgical, mental health or hospital ancillary services so as to leave patients of the City without required hospital or medical services," Public Works declared an emergency at the request of DPH. Public Works will coordinate with DPH on the subsequent awards for each emergency project.

Sincerely,

DocuSigned by:  
  
5/15/2023 | 2:09:52 PM PDT  
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Carla Short

Interim Director of Public Works

Enclosures: Public Works Order



San Francisco Public Works  
General – Director’s Office  
49 South Van Ness Ave., Suite 1600  
San Francisco, CA 94103  
(628) 271-3160 [www.SFPublicWorks.org](http://www.SFPublicWorks.org)

**Public Works Order No: 208106**

**CITY AND COUNTY OF SAN FRANCISCO  
SAN FRANCISCO PUBLIC WORKS  
EMERGENCY DECLARED**

An **Emergency** exists at the **Laguna Honda Hospital and Rehabilitation Center (LHH)** located at 375 Laguna Honda Blvd., San Francisco, CA 94116.

LHH is a 769-bed skilled nursing facility (SNF) attached to an 11-bed acute care hospital unit. Nationwide, and specifically in the San Francisco Bay Area, there is a recognized shortage of SNF beds for low-income patients Medi-Cal (Medicaid) recipients. While San Francisco has the largest number of SNF beds in the Bay Area, between 2013 and 2020, there was a 23.4 percent decrease in hospital-based and 10.6 percent decrease in free-standing SNF beds in San Francisco. Excluding LHH, there were only 340 Medi-Cal-certified, hospital-based SNF beds and only 368 Medi-Cal-certified, free-standing SNF beds (out of approximately 845 total free-standing SNF beds) in San Francisco. San Francisco has only approximately 16 SNF beds per 1,000 adults. Closing LHH would have a significant impact on the availability of SNF beds in San Francisco.

In April 2022, after deeming LHH out of compliance with applicable Medicare regulations, the California Department of Public Health (CDPH) and the federal Centers for Medicare & Medicaid Services (CMS) terminated LHH’s CMS Medicare/Medicaid Provider Agreements and its certification in the Medicare/Medicaid programs.

LHH intends to reapply for certification in the Medicare/Medicaid programs. If the Department of Public Health (DPH) recertification efforts fail, DPH would begin to lose up to \$16 million monthly in Medicare/Medicaid funding. Further, without this funding, DPH could be forced to close LHH, resulting in an insufficient number of hospital beds or the lack of hospital beds or the lack of hospital, surgical, mental health or hospital ancillary services so as to leave patients of the City without required hospital or medical services.

To obtain new Provider Agreements and its certification in the Medicare/Medicaid programs, DPH must demonstrate that LHH substantially complies with all applicable Medicare regulations and pass certification surveys. Non-conforming conditions that could jeopardize LHH’s ability to achieve certification and maintain substantial compliance may include, but may not be limited to, the capital improvement and/or maintenance projects outlined in the attached letter DPH issued to Public Works on May 11, 2023 titled “LHH Emergency Declaration Request to DPW”.

Therefore, an Emergency is declared to exist under the provisions of Section 6.60 of the San Francisco Administrative Code to address LHH re-certification requirements. The estimated cost for the emergency work is expected to exceed \$250,000.

Any Contractor shall be required to indemnify and hold harmless the City & County of San Francisco, its officers, agents and employees and furnish certificates of insurance protecting Contractor, any sub-contractors and the City & County of San Francisco and its officers, agents and employees against claims arising out of work performed pursuant to this order with the City & County of San Francisco, its officers, agents and employees named as additional insureds.

Attachments: LHH Emergency Declaration Request to DPW

**DISTRIBUTION:**

LHH: [Grant.Colfax@sfdph.org](mailto:Grant.Colfax@sfdph.org)

SFPW BDC: [Christine.Tang@sfdpw.org](mailto:Christine.Tang@sfdpw.org); [Roger.Hay@sfdpw.org](mailto:Roger.Hay@sfdpw.org); [Julia.Laue@sfdpw.org](mailto:Julia.Laue@sfdpw.org); [Charles.Higueras@sfdpw.org](mailto:Charles.Higueras@sfdpw.org)

Deputy Director: [Ronald.Alameida@sfdpw.org](mailto:Ronald.Alameida@sfdpw.org)

Contract Admin: [ContractAdmin.Staff@sfdpw.org](mailto:ContractAdmin.Staff@sfdpw.org)

X

DocuSigned by:



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Short, Carla -073CF73A4EA6486...

Interim Director of Public Works



## San Francisco Department of Public Health

Grant Colfax, MD  
Director of Health

City and County of San Francisco  
London N. Breed  
Mayor

May 11, 2023

Dear Director Short:

The Department of Public Health (DPH) respectfully requests that the Director of Public Works declare an emergency under San Francisco Administrative Code Section 6.60 to enable the City to perform construction-related repairs and other emergency work at Laguna Honda Hospital and Rehabilitation Center (LHH).

### **Background:**

LHH is a 769-bed skilled nursing facility (SNF) attached to an 11-bed acute care hospital unit. Nationwide, and specifically in the San Francisco Bay Area, there is a recognized shortage of SNF beds for low-income patients Medi-Cal (Medicaid) recipients. While San Francisco has the largest number of SNF beds in the Bay Area, between 2013 and 2020, there was a 23.4 percent decrease in hospital-based and 10.6 percent decrease in free-standing SNF beds in San Francisco. Excluding LHH, there were only 340 Medi-Cal-certified, hospital-based SNF beds and only 368 Medi-Cal-certified, free-standing SNF beds (out of approximately 845 total free-standing SNF beds) in San Francisco. San Francisco has only approximately 16 SNF beds per 1,000 adults. Closing LHH would have a significant impact on the availability of SNF beds in San Francisco.

In April 2022, after deeming LHH out of compliance with applicable Medicare regulations, the California Department of Public Health (CDPH) and the federal Centers for Medicare & Medicaid Services (CMS) terminated LHH's CMS Medicare/Medicaid Provider Agreements and its certification in the Medicare/Medicaid programs.

LHH intends to reapply for certification in the Medicare/Medicaid programs. If DPH's recertification efforts fail, DPH would begin to lose up to \$16 million monthly in Medicare/Medicaid funding. Further, without this funding, DPH could be forced to close LHH, "resulting in an insufficient number of hospital beds or the lack of hospital beds or the lack of hospital, surgical, mental health or hospital ancillary services so as to leave patients of the City without required hospital or medical services." (See S.F. Admin. Code § 6.60(c)(3)).

To obtain new Provider Agreements and its certification in the Medicare/Medicaid programs, DPH must demonstrate that LHH substantially complies with all applicable Medicare regulations and pass certification surveys. Non-conforming conditions that could jeopardize LHH's ability to achieve certification and maintain substantial compliance include, but may not be limited to, the following capital improvement and/or maintenance projects at LHH. These projects must be underway and/or completed on or before November 13, 2023, when Medicare/Medicaid funding for LHH is scheduled to terminate:

1. Kitchen Freezer Area Repairs
2. Fire Alarm Separation Project



## San Francisco Department of Public Health

Grant Colfax, MD  
Director of Health

City and County of San Francisco  
London N. Breed  
Mayor

3. HVAC 3B Project
4. Fuel Line Replacement
5. Omnicell Cabinet Replacement
6. Pharmacy Compounding Room Repairs and Renovation
7. Station X Ray Project
8. Water Tank Replacement Project

### Emergency Contract Authorization:

Pursuant to Section 6.60(c)(3) of the Administrative Code, which states an “actual emergency” includes, “***Unforeseen occurrences of unusual character resulting in an insufficient number of hospital beds or the lack of hospital beds or the lack of hospital, surgical, mental health or hospital ancillary services so as to leave patients of the City without required hospital or medical services,***” DPH respectfully requests that the Director of Public Works declare an emergency and authorize the projects listed above to proceed under a Public Works emergency declaration.

A handwritten signature in blue ink, appearing to read "Grant Colfax".

Dr. Grant Colfax  
Director  
San Francisco Department of Public Health

## Patrick Monette-Shaw

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975 Sutter Street, Apt. 6  
San Francisco, CA 94109  
Phone: (415) 292-6969 • e-mail: [pmonette-shaw@earthlink.net](mailto:pmonette-shaw@earthlink.net)

September 6, 2023

San Francisco Board of Supervisors Budget and Finance Committee  
The Honorable Connie Chan, Chair, Budget and Finance Committee  
The Honorable Rafael Mandelman, Member, Budget and Finance Committee  
The Honorable Ahsha Safai, Member, Budget and Finance Committee  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: **Agenda Item #8:** Repairs at Laguna Honda Hospital — Estimated Cost of Repairs Exceeds \$250,000

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Dear Chair Chan and Budget and Finance Committee Members,

The Budget and Finance Committee should reject outright the proposed Resolution sponsored by Mayor Breed and Supervisor Myrna Melgar. The Laguna Honda Hospital so-called “*emergency repair*” projects are projected to cost a total of at least \$40.5 million, not the mere \$250,000 threshold for projects needing emergency contracting.

The Resolution claims the eight LHH projects are all necessary for LHH to obtain recertification as a CMS provider. That appears to be a lie, because on January 15 2023, I specifically placed records request (Next Request 23-295) to obtain a list of all LHH capital projects then currently underway, or required, to obtain CMS recertification.

On January 25, SFDPH responded, saying there were **only four** Capital Improvement projects required for recertification: “[Kitchen] Freezer #3; Courtyard Resurfacing around the LHH Loading Dock; Conversion of Triples [Rooms] to Doubles [Rooms]; and Kitchen Floor Remediation Phase 2.”

Of the now 8 projects, only 2 were identified as for recertification necessary in January.

In January 2023, there was no mention of these six projects: an “*Emergency Power Replacement*” project, a “*Water Tank Replacement*” project, a “*Stationary X-Ray Replacement*” project, a “*Pharmacy HVAC Upgrade*” project, a “*Fuel Line Replacement*” project, or a “*Hospital HVAC Controls*” project as being necessary or required to obtain CMS recertification. Only two of the 8 projects were identified in January 2023 as necessary for recertification.

And indeed, missing from the eight project listed in this proposed Resolution is a “*Simon Auditorium Cooling Center*” project of \$1.5 million, and another potential project to ensure fire suppression doors close completely missing from the list.

As well, the eight listed projects are seeking to buy sympathy and public support as necessary for Laguna Honda Hospital’s recertification as Medicare and Medicaid providers. Given that four of the eight proposed repairs date back to 2010 to 2018, it’s clear these are long-standing capital improvement projects that have been neglected and deferred for years and years, and do not meet the definition of “*emergency projects*” under Administrative Code §6.60.

LHH obtained its Medicaid (Medi-Cal) recertification on August 16, and the BLA notes LHH is submitting its Medicare recertification application on September 17. These eight projects are not needed to obtain recertification, and the majority of the projects will not be completed until late 2024 or later, well *after* recertification occurs.

The eight projects are not necessary to obtain recertification, and so aren’t “*emergencies*.”

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**“ On January 25, SFDPH provided a list of 4 capital projects for recertification. Of the now 8 projects, only 2 were identified as recertification necessary in January. ”**

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**“ LHH obtained Medi-Cal recertification on August 16. The BLA notes LHH is submitting its Medicare recertification application on September 17. ”**

**These eight projects are *not* needed to obtain recertification, and the majority of the projects will not be completed until late 2024 or later, well after recertification has occurred.”**

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In reality, using emergency authority provisions of the Administrative Code is simply an end-run attempt to circumvent the City's competitive bidding processes on construction projects.

The Budget and Legislative Analyst (BLA) report posted on-line as background materials to this agenda item (Board File #230811) notes that Administrative Code Section 6.60 defines "emergency authority" as a "*sudden, unforeseeable and unexpected occurrence or a discovery of a condition involving a clear and imminent danger, demanding immediate action (emphasis added) to prevent or mitigate loss or damage to life, health, property or essential public services.*"

In the "Policy Options" section on page 33 the BLA says that rather than approving **an open-ended emergency declaration** for all repair work related to LHH, the Board should consider limiting the scope of this emergency contracting authority.

But that doesn't go far enough. The Board of Supervisors should reject this Resolution outright and completely, and require competitive bidding for all eight of these projects that have been neglected for years as capital funding projects. And they should **not** be funded using the so-called "*Certificates of Participation*" funding, but instead seek Capital Project funding through the City's regular financing processes, or use the planned Public Health general obligation bond in 2024.

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**"The Board of Supervisors should reject this Resolution outright and completely, and require competitive bidding for all eight of these projects."**

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If you don't reject this Resolution outright — or alternatively, add an additional stipulation to it — all of these projects will likely be granted sole-source contracts, further driving up the costs of each project.

## Background

The kitchen floor replacement project dates back to a related problem in September 2011. Just a year after the LHH replacement building opened in June 2010, in September of 2011 LHH staff discovered a leak in the kitchen cart wash leak that required repair and associated mold abatement. Elevator maintenance staff had discovered water in the elevator machine room on the floor below the new kitchen, which LHH staff traced back and found the water was due to a leak in the kitchen food-cart wash room on the floor above. In his [Budget Analyst June 5, 2013 report](#), (Board File 130473) the BLA noted that the wash cart room leak problem was **not** an "*Emergency Project*" under Administrative Code Section 6.60.

The BLA recommended back then that the then-proposed Resolution sponsored by then-Supervisor Norman Yee for emergency repairs not to exceed \$595,367 be reduced to not to exceed to \$328,644 and also require the Department of Public Works be required to forgo a sole-source contract and seek competitive construction bids instead to award a subsequent contract to the lowest responsive bidder for the remaining needed repair work. The Board adopted both recommendations.

It's painfully obvious that the \$595,367 cart was leak was never properly fixed between 2011 and 2013, and it eventually led to needing the entire kitchen floor be replaced, at a cost now projected to be \$8.1 **million** — 13.4 times higher!

The new Resolution before you is accompanied by a new BLA report dated June 5, 2023.

The BLA report now recommends on page 33 that the Board of Supervisors amend the proposed Resolution in two ways: a) To **amend** the Resolution to **explicitly name each of the eight projects** that will qualify under this emergency contracting procedures, and/or b) **Add a not-to-exceed amount of \$28.4 million** (actually, it should list not to exceed \$28.6 million, due to a BLA error).

## Problems With the BLA Report

- From public records responses, the "*Kitchen Freezer #3*" project costing approximately \$0.7 million appears to have been completed already, by June 30, 2023 at a cost of \$753,557. If it's already done, why is it on this list of emergency projects?
- The summary of estimated emergency work for the eight projects listed on numbered page 31 of the BLA report contains a mathematically-incorrect total on the range of Emergency costs. It actually adds up to \$28.6 million, not \$28.4 million.



September 6, 2023

**Agenda Item #8: Repairs at Laguna Honda Hospital — Estimated Cost of Repairs Exceeds \$250,000**

Page 2

- Page 31 of the BLA report asserts LHH’s *Water Tank Replacement* project is estimated to cost \$3.2 million. However, on page 26 of the BLA report itemizing projects being funded with \$77 million in “*Certificates of Participation*” lists LHH’s *Water Tank Replacement* project as costing \$5.6 million, a difference of \$2.4 million, which should be considered as being under-reported on page 31.
- Page 31 of the BLA report also asserts LHH’s *Emergency Back-Up Power* project is estimated to cost \$5.6 million. However, on page 17 of the BLA report itemizing projects being funded with \$77 million in “*Certificates of Participation*” lists LHH’s *Emergency Back-Up Power* project as costing \$8.2 million, a difference of \$2.6 million, which should be considered as being under-reported on page 31.
- Page 31 lists when each project’s “*deficiency*” had been identified (except for the *Emergency Power Replacement* project, which strangely does not list when the deficiency was identified). It’s not known whether the BLA is referring to when the California Department of Public Health (CDPH) may have identified the deficiencies, and perhaps issued a citation to LHH for a violation of State regulations, or if the BLA is referring to a date when the “*deficiency*” was brought to the City’s attention via some other method.
- Interestingly, the “*Hospital HVAC Controls*” project deficiency is listed as having been identified in the same year that the replacement LHH facility opened — in 2010. And the “*Kitchen Floor Replacement*” project is listed as having been identified in 2021. The BLA reported “*the flooring system in kitchen areas on the second level of the Link Building ... is causing leaks in the ceiling of the first-floor cafeteria.*”

The BLA is factually incorrect: The kitchen floor problem surfaced within the first year after LHH opened the Link Building in 2010. I first wrote an article — “[Of Mold and Men](#)” — about the kitchen flooring in the *Westside Observer* in July 2013, noting that the kitchen floor leak was actually causing a mold problem in the building, which had begun long before 2021 as the BLA wrongly asserted.

In addition, I also reported in my July 2014 [article](#) that in 2011, the City of San Francisco filed a Superior Court case against Anshen + Allen and Stantec Architecture alleging \$70 million in defective performance building the LHH replacement facility. The City eventually settled that lawsuit in 2014 and recovered \$15 million, which unfortunately was returned to the General Fund and wasn’t used to fix many of the LHH replacement project construction problems, including not repairing the LHH kitchen floor. Had that \$15 million been used back then, the \$8.1 million price tag could have been reduced significantly, given known escalation costs of construction expenses in the intervening 13 years since.

I recommend that the Budget and Finance Committee not only amend this proposed resolution by **incorporating *both* of the BLA’s recommendations** as a policy matter subject to your discretion, but you should also add a stipulation that all of the eight projects be put out for competitive bids rather than allowing the Department of Public Works to award sole-source contracts, similar to the BLA’s recommendations regarding Supervisor Yee’s Resolution back in 2013. That might help significantly reduce the now probable \$40.5 million cost of anticipated repairs.

If you don’t, it won’t surprise me if LHH uses this emergency contracting authority for other projects and purposes.

Respectfully submitted,

**Patrick Monette-Shaw**  
*Columnist/Reporter,*  
*Westside Observer* Newspaper

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**“ The Board of Supervisors should amend this proposed resolution by incorporating *both* of the BLA’s recommendations *and* add an additional stipulation requiring use of competitive bids. ”**

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cc: The Honorable Aaron Peskin, President San Francisco Board of Supervisors  
Angela Calvillo, Clerk of the Board  
Alisa Somera, Legislative Deputy Director  
Brent Jalipa, Clerk to the Budget and Finance Committee

**From:** [Conine-Nakano, Susanna \(MYR\)](#)  
**To:** [BOS Legislation \(BOS\)](#)  
**Cc:** [Paulino, Tom \(MYR\)](#); [Rubenstein, Beth \(DPW\)](#); [Farrah, Michael \(BOS\)](#)  
**Subject:** Mayor -- Resolution -- Laguna Honda Declaration of Emergency  
**Date:** Tuesday, July 11, 2023 4:03:36 PM  
**Attachments:** [DPW Approval.pdf](#)  
[7.7.23 draft LHH emergency declaration resolution.doc](#)

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Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution approving the Director of San Francisco Public Works' declaration of emergency under San Francisco Administrative Code Section 6.60 for repair work at Laguna Honda Hospital and Rehabilitation Center estimated to cost in excess of \$250,000.

Please note that Supervisor Melgar is a co-sponsor of this legislation.

Best,  
Susanna

**Susanna Conine-Nakano**

Office of Mayor London N. Breed  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 200  
San Francisco, CA 94102  
415-554-6147