

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

April 22, 2014

**FROM: GERRY NEWCOMBE, Director
Department of Public Works – Environmental & Construction**

**SUBJECT: CONTRACT WITH ALLEGHENY CASUALTY COMPANY FOR THE FIFTH
AVENUE AT WALNUT STREET PROJECT, MENTONE AREA**

RECOMMENDATION(S)

Approve an **Agreement No. 14-211** with Allegheny Casualty Company, the surety on the performance and payment bond for the Fifth Avenue at Walnut Street Project, Mentone Area, which provides that the County will transfer the remaining contract balance of \$325,924.09 owed to the contractor, STI, Inc., under County Contract No. 12-248, to Allegheny Casualty Company due to their legal claim to the remaining contract funds and commits them to correct one contract deficiency.

(Presenter: Gerry Newcombe, Director, 387-7906)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as the Project will be financed by Proposition 1B funds. Sufficient appropriation and revenue are included in the 2013-14 Road Operations budget (SAA TRA TRA 2445 14HB0012).

BACKGROUND INFORMATION

This item will close out the Fifth Avenue at Walnut Street Project (Project). More specifically, the agreement will authorize the County to transfer the remaining contract balance of \$325,924.09 owed to the contractor, STI, Inc. (STI), under County Contract No. 12-248 to Allegheny Casualty Company (ACC) due to ACC's legal claim to the remaining contract funds and commits ACC to correct one contract deficiency. The one contract deficiency is the replacement of a palm tree that was relocated as part of the Project. The County dispersing the remaining contract funds to ACC due to their legal claim to the remaining said funds will allow the County to operate in a fiscally-responsible and business-like manner by finalizing and closing out this project.

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cc: Trans-Mann w/agree
Contractor c/o Dept w/ agree
ATC-Acct Pay Mgr w/agree
EBIX/BPO c/o Risk
PW-Newcombe
Purchasing-Gomez
CAO-Forster
File - w/agree
jr 4/23/14

ITEM 35

Record of Action of the Board of Supervisors

**APPROVED (CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
Board of Supervisors**

MOTION	<u>MOVE</u>	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>AYE</u>
	1	2	3	4	5

LAURA H. WELCH, CLERK OF THE BOARD

BY _____

DATED: April 22, 2014

**CONTRACT WITH ALLEGHENY CASUALTY COMPANY FOR THE FIFTH
AVENUE AT WALNUT STREET PROJECT, MENTONE AREA
APRIL 22, 2014
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On May 8, 2012 (Item No. 27), the Board of Supervisors awarded a contract to STI for the construction of the Project. On February 25, 2013, STI completed all items of work with the exception of fulfilling its obligation for plant maintenance. In addition, STI defaulted under the Contract by failing to pay when due its subcontractors and suppliers on the Project. Certain subcontractors and suppliers of STI filed Stop Payment Notices with the County and claims under the Payment Bond against ACC. ACC has paid a total of \$659,317.03 to resolve the claims and get the related Stop Payment Notices released.

ACC has supplied the County with a copy of the Agreement of Indemnity (AI) executed by STI in favor of ACC, dated November 9, 2011, which provides that STI assigned to ACC all rights of STI growing out of the bond projects, including this Project. ACC claims it has a priority right to the remaining contract balance under County Contract No. 12-248 based on its rights under the AI and generally pursuant to the surety's equitable right of subrogation. The agreement includes an indemnity provision in favor of the County.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott M. Runyan, Deputy County Counsel, 387-5455) on April 9, 2014; Purchasing (Leo Gomez, Supervising Buyer, 387-2063) on April 10, 2014; Finance (Tom Forster, Administrative Analyst, 387-4635) on April 3, 2014; and County Finance and Administration (Mary Jane Olhasso, Assistant Executive Officer, 387-4599) on April 11, 2014.