

1                   **BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SAN BENITO**

2   A RESOLUTION OF THE SAN BENITO COUNTY    )           Resolution No. 2021-\_\_\_\_  
3   BOARD OF SUPERVISORS (1) DELEGATING       )  
4   AUTHORITY TO THE RESOURCE MANAGEMENT    )  
5   AGENCY DIRECTOR TO ENTER INTO             )  
6   EMERGENCY REPAIR AND REPLACEMENT        )  
7   CONTRACTS PURSUANT TO PUBLIC               )  
8   CONTRACTS CODE SECTION 22050, WITHOUT    )  
9   ADOPTION OF PLANS AND SPECIFICATIONS OR   )  
10  COMPETITIVE BIDDING; (2) FINDING THAT     )  
11  THERE IS A NEED TO CONTINUE SUCH           )  
12  EMERGENCY ACTION, PURSUANT TO SECTION     )  
13  22050; AND (3) FINDING THAT THE EMERGENCY  )  
14  REPAIR AND REPLACEMENT WORK IS            )  
15  STATUTORILY EXEMPT FROM THE CALIFORNIA    )  
16  ENVIRONMENTAL QUALITY ACT (CEQA)          )  
17  UNDER CEQA GUIDELINES SECTION 15269(d)    )  
18  FOR EMERGENCY PROJECTS WITHIN THE         )  
19  RIGHTS-OF-WAY OF EXISTING COUNTY          )  
20  HIGHWAYS, TO REPAIR OR RESTORE EXISTING    )  
21  HIGHWAYS DAMAGED BY FLOODING AND         )  
22  STORM EVENTS                                 )

16   WHEREAS, on February 4, 2021, the San Benito County Administrative Officer  
17   proclaimed a state of local emergency, finding an atmospheric river event occurring  
18   between January 26, 2021 through January 28, 2021 resulted and was anticipated to result  
19   in multiple significant rainfall/wind events causing damage to public infrastructure and  
20   property within San Benito County, including damages to infrastructure from localized  
21   flooding, roadway slope erosion and embankment slip-outs, debris flows, landslides, and  
22   culvert failures affecting the safety of said roadways; obstruction of public roadways  
23   from storm water, storm debris and roadway failure; damage to storm drain  
24   infrastructure; damage to public and private utilities; and damage to public facilities,  
25   further resulting in road closures, areas of isolation, and loss of critical infrastructure  
26   affecting the public's safety and repose; and

24   WHEREAS, on February 9, 2021, the Board of Supervisors adopted Resolution  
25   No. 2021-10, ratifying and extending the County Administrative Officer's Proclamation  
26   of a local emergency through April 10, 2021: and

27   WHEREAS, Section 5.09.010 of the San Benito County Code provides that except as  
28   otherwise directed by law or the Board of Supervisors, competitive bidding is not  
29   required for emergency purchases required "in order to avoid a hazard to life or  
30   property..."; and

1 WHEREAS, Section 5.09.015 of the San Benito County Code states, "(A) [e]mergency  
2 purchases may be made by the Purchasing Agent or Assistant Purchasing Agent when a  
3 generally unexpected occurrence or unforeseen circumstances require an immediate  
4 purchase of material, supplies or equipment: (1) [i]n order to avoid a hazard to life or  
5 property ... or (4) [i]n order to avoid economic loss to the county" ... [and]  
6 (B) [e]mergency purchases shall be submitted to the Board of Supervisors for ratification  
7 at its next meeting"; and

8 WHEREAS, Section 11.01.005(A) of the San Benito County Code designates the County  
9 Administrative Officer as the Director of Emergency Services; and

10 WHEREAS, in the event of the proclamation of a local emergency, Section 11.01.006(A)(6)  
11 of the San Benito County Code empowers the Director of Emergency Services "(a) [t]o  
12 make and issue rules and regulations on matters reasonably related to the protection of  
13 life and property as affected by the emergency ... [which] must be confirmed at the  
14 earliest practicable time by the Board of Supervisors; [and] (b) [t]o obtain vital supplies,  
15 equipment and such other properties found lacking and needed for the protection of life  
16 and property and to bind the county for the fair value thereof..."; and

17 WHEREAS, California Public Contract Code Section 1102 defines an emergency as "a  
18 sudden unexpected occurrence that poses a clear and imminent danger, requiring  
19 immediate action to prevent or mitigate the loss or impairment of life, health, property,  
20 or essential public services"; and

21 WHEREAS, California Public Contract Code Section 22050(a)(1) states, "[i]n the case of  
22 an emergency, a public agency, pursuant to a four-fifths vote of its governing body may  
23 repair or replace a public facility, take any directly related and immediate action required  
24 by that emergency, and procure the necessary equipment, services, and supplies for  
25 those purposes, without giving notice for bids to let contracts"; and

26 WHEREAS, California Public Contract Code Section 22050(b)(1) further provides that  
27 "[t]he governing body, by a four-fifths vote, may delegate, by resolution or ordinance, to  
28 the appropriate county administrative officer, ... chief engineer, or other nonelected  
agency officer, the authority to order any action specified in [Section 22050(a)(1)]"; and

WHEREAS, California Public Contracts Code Section 22050(b)(3) provides that if an  
officer with such delegated authority "... orders any action specified in [Section  
22050(a)(1)], that person shall report to the governing body, at its next meeting required  
pursuant to ... section [22050(b)(3)], the reasons justifying why the emergency will not  
permit a delay resulting from a competitive solicitation for bids and why the action is  
necessary to respond to the emergency"; and

WHEREAS, California Public Contract Code Section 22050(c)(2) further provides that  
"[i]f a person with authority delegated pursuant to [Section 22050(b)] orders any action

1 specified in [Section 22050(a)(1)], the governing body shall initially review the emergency  
2 action not later than seven days after the action, or at its next regularly scheduled  
3 meeting if that meeting will occur not later than 14 days after the action, and at least at  
4 every regularly scheduled meeting thereafter until the action is terminated, to determine,  
by a four-fifths vote, that there is a need to continue the action...”; and

5 WHEREAS, pursuant to California Public Contract Code Section 22050(c)(3), the Board of  
6 Supervisors “... shall terminate the action at the earliest possible date that conditions  
7 warrant so that the remainder of the emergency action may be completed by giving  
notice for bids to let contracts”; and

8 WHEREAS, emergency road repair projects are statutorily exempt from the California  
9 Environmental Quality Act (“CEQA”) (California Public Resources Code Sections 21000,  
10 et seq. and CEQA Guidelines (Title 14 of the California Code of Regulations, Sections  
11 15000 et seq.), pursuant to CEQA Guidelines Section 15269(d), which applies to projects  
12 “...to maintain, repair, or restore an existing highway damaged by fire, flood, storm,  
13 earthquake, land subsidence, gradual earth movement, or landslide, provided that the  
project is within the existing right of way of that highway and is initiated within one year  
of the damage occurring...”; and

14 WHEREAS, initial assessments have identified damages sustained during the events  
15 described in the February 4, 2021 Emergency Proclamation to County and State highways  
16 throughout the County, with the following major (Arterial and Collector) roads, listed in  
alphabetical order, being most severely impacted:

- 17 • Cienega Road - from Mudstone Ranch to Bird Creek (near the entrance to the  
18 Hollister State ORV Park);
- 19 • Coalinga Road - from State Route 25 to Fresno County;
- 20 • Fairview Road - near and north of the Hollister City limits (shoulder flooding);
- 21 • King City Road - from State Route 25 to Monterey County;
- 22 • New Idria Road - from Panoche Valley to 20+ miles south (complete washout);
- 23 • Panoche Road - from Paicines to Fresno County;
- 24 • Salinas Grade Road - from San Juan Bautista to Monterey County;
- 25 • Southside Road - from the Hollister City limits to Tres Pinos Creek;
- 26 • State Route 25 - south of Pinnacles National Park; and
- Union Road - near Riverside Drive (shoulder flooding); and

27 WHEREAS, damage assessments are ongoing, and the Resource Management Agency  
28 Director will update the Board of Supervisors, as additional damages sustained in, on,

1 under and around County and State highways throughout the County, as a result of the  
2 events described in the February 4, 2021 Emergency Proclamation, are identified; and

3 WHEREAS, the Resource Management Agency Director and County Administrative  
4 Officer hereby report to the Board of Supervisors that, for the reasons set forth herein,  
5 and on the public record, there is substantial evidence that the events described in the  
6 February 4, 2021 Emergency Proclamation, resulting in roadway failures, roadway slope  
7 erosion and embankment slip-outs, debris flows, landslides, culvert failures, damage to  
8 storm drain infrastructure and utilities, in, on, under and along the State and County  
9 highways identified herein, and as may be further identified during ongoing damage  
10 assessments, were sudden, unexpected occurrences that posed a clear and imminent  
11 danger to the general public, particularly affecting the safety of said State and County  
12 highways, and further resulting in road closures, areas of isolation, and loss of critical  
13 infrastructure affecting the public's safety and repose, requiring immediate action to  
14 prevent or mitigate the loss or impairment of life, health, or property; and

15 WHEREAS, the Resource Management Agency Director and County Administrative  
16 Officer also hereby report to the Board of Supervisors that, for the reasons set forth  
17 herein, and on the public record, there is substantial evidence that the emergency does  
18 not permit a delay resulting from a competitive solicitation for bids, and that emergency  
19 repair contracts are necessary to respond to the emergency; and

20 WHEREAS, the Board of Supervisors has reviewed the report and concurs with the  
21 findings and determinations.

22 NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of San  
23 Benito, that it hereby finds and determines that the forgoing Recitals are true and correct.

24 BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito,  
25 that it hereby finds and determines that the events described in the February 4, 2021  
26 Emergency Proclamation constitute an "emergency" under California Public Contract  
27 Code Sections 1102 and 22050 and the Board of Supervisors hereby ratifies the County  
28 Administrative Officer's determination in this regard and the actions taken to remediate  
the emergency.

WHEREAS, the Board of Supervisors of the County of San Benito hereby finds there is a  
need to continue the emergency action, that the current state of emergency will not  
permit a delay resulting from a competitive solicitation for bids, and that it is necessary  
to make emergency repairs and replacements in, on, under and along the State and  
County highways and other facilities identified herein, and as may be further identified  
during ongoing damage assessments, without giving notice for bids, in order to respond  
to the emergency.

1 BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito,  
2 that, until formally revoked, pursuant to California Public Contracts Code Section  
3 22050(b)(1), the Board of Supervisors hereby delegates, and reaffirms its prior delegation,  
4 to the Resource Management Agency Director and the County Administrative Officer,  
5 the authority to make emergency repairs and replacements in, on, under and along the  
6 State and County highways and other facilities identified herein, and as may be further  
7 identified during ongoing damage assessments, in order to prevent or mitigate the loss or  
8 impairment of life, health, or property, that were caused by the events described in the  
9 February 4, 2021 Emergency Proclamation, take any directly related and immediate  
10 action required by that emergency, and procure the necessary equipment, services, and  
11 supplies for those purposes, without adoption of plans and specifications, or giving  
12 notice for bids to let contracts.

13 BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito,  
14 that, pursuant to Public Contract Code Section 22050(c)(3), by a four-fifths vote, the  
15 Board of Supervisors finds that there is currently a need to continue the emergency  
16 actions originally authorized by the County Administrative Officer, but that the  
17 emergency action will no longer be necessary and that the state of emergency will no  
18 longer exist upon the completion of the emergency repairs and replacements in, on,  
19 under and along the State and County highways and other facilities identified herein,  
20 and as may be further identified during ongoing damage assessments, to prevent or  
21 mitigate the loss or impairment of life, health, or property, that were caused by the  
22 events described in the February 4, 2021 Emergency Proclamation.

23 BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito,  
24 that it hereby finds and determines that the emergency repairs and replacements in, on,  
25 under and along the State and County highways and other facilities identified herein,  
26 and as may be further identified during ongoing damage assessments, are exempt from  
27 the California Environmental Quality Act ("CEQA") and CEQA Guidelines, pursuant to  
28 CEQA Guidelines Section 15269(d), because they are for purposes of maintaining,  
repairing, or restoring existing highways damaged by flood, storm, land subsidence,  
gradual earth movement, or landslide, that the projects are within the existing rights of  
way of the highways and will be initiated within one year of the damage occurring.

BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito,  
that it hereby directs Resource Management Agency staff to file a Notice of Exemption  
with the San Benito County Clerk's Office.

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PASSED AND ADOPTED by the San Benito County Board of Supervisors at the meeting of said Board held on the 9<sup>th</sup> day of March 2021, by the following vote:

AYES: Supervisor(s)  
NOES: Supervisor(s)  
ABSENT: Supervisor(s)  
ABSTAIN: Supervisor(s)

By: \_\_\_\_\_  
Mark Medina, Chair

ATTEST:  
Jennifer Frechette, Clerk of the Board

APPROVED AS TO LEGAL FORM  
San Benito County Counsel's Office

By: \_\_\_\_\_  
Date: \_\_\_\_\_

By: Shirley L. Murphy  
Shirley L. Murphy, Deputy County Counsel  
Date: March 4, 2021