

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

2 A RESOLUTION OF THE SAN BENITO COUNTY        )        Resolution No. 2022-\_\_\_\_  
3 BOARD OF SUPERVISORS (1) CONFIRMING THE     )  
4 RESOURCE MANAGEMENT AGENCY                )  
5 DIRECTOR'S AUTHORITY 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  
infrastructure; damage to public and private utilities; and damage to public facilities,  
further resulting in road closures, areas of isolation, and loss of critical infrastructure  
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  
required for emergency purchases required "in order to avoid a hazard to life or  
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

29 WHEREAS, California Public Contracts Code Section 22050(b)(3) provides that if an  
30 officer with such delegated authority “... orders any action specified in [Section  
31 22050(a)(1)], that person shall report to the governing body, at its next meeting required  
32 pursuant to ... section [22050(b)(3)], the reasons justifying why the emergency will not  
33 permit a delay resulting from a competitive solicitation for bids and why the action is  
34 necessary to respond to the emergency”; and

35 WHEREAS, California Public Contract Code Section 22050(c)(2) further provides that  
36 “[i]f a person with authority delegated pursuant to [Section 22050(b)] orders any action  
37 specified in [Section 22050(a)(1)], the governing body shall initially review the emergency  
38 action not later than seven days after the action, or at its next regularly scheduled

1 meeting if that meeting will occur not later than 14 days after the action, and at least at  
2 every regularly scheduled meeting thereafter until the action is terminated, to determine,  
3 by a four-fifths vote, that there is a need to continue the action..."; and

4 WHEREAS, pursuant to California Public Contract Code Section 22050(c)(3), the Board of  
5 Supervisors "... shall terminate the action at the earliest possible date that conditions  
6 warrant so that the remainder of the emergency action may be completed by giving  
7 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  
14 project is within the existing right of way of that highway and is initiated within one year  
15 of the damage occurring..."; and

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

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

WHEREAS, additional damages were found to have been sustained during the events  
described in the February 4, 2021 Emergency Proclamation to County and State highways  
throughout the County, on the following roadways:

- Lonoak Road; and

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

16 WHEREAS, the Resource Management Agency Director and County Administrative  
17 Officer also reported to the Board of Supervisors at its March 9, 2021 meeting that, for the  
18 reasons set forth herein, and on the public record, there is substantial evidence that the  
19 emergency does not permit a delay resulting from a competitive solicitation for bids, and  
20 that emergency repair contracts are necessary to respond to the emergency; and

21 WHEREAS, the Board of Supervisors reviewed the report at its March 9, 2021 meeting,  
22 and concurred with the recommended findings and determinations; and

23 WHEREAS, the Board of Supervisors adopted Resolution No. 2021-23, adopting the  
24 recommended findings and determinations, and: (1) delegating authority to the Resource  
25 Management Agency Director to enter into emergency repair and replacement contracts  
26 pursuant to Public Contracts Code Section 22050, without adoption of plans and  
27 specifications or competitive bidding; (2) finding that there is a need to continue such  
28 emergency action, pursuant to Section 22050; and (3) finding that the emergency repair  
and replacement work is statutorily exempt from CEQA under CEQA Guidelines  
Section 152659(d) for emergency projects within the rights-of-way of existing County  
highways, to repair or restore existing highways damaged by flooding and storm events;  
and

WHEREAS, at the regularly scheduled meetings of the Board of Supervisors on  
March 23, 2021, April 13, 2021, April 27, 2021, May 11, 2021, May 25, 2021, June 8, 2021,  
June 22, 2021, July 27, 2021, August 10, 2021, August 24, 2021, September 14, 2021,  
September 28, 2021, October 12, 2021, October 26, 2021, November 9, 2021, November 23,  
2021, and December 14, 2021, the Resource Management Agency Director and County  
Administrative Officer reported that, for the reasons set forth therein, and on the public  
record, there was substantial evidence that the emergency events described in the  
February 4, 2021 Emergency Proclamation still did not permit a delay resulting from a

1 competitive solicitation for bids, and that emergency repair contracts continued to be  
2 necessary to respond to the emergency; and

3 WHEREAS, at the regularly scheduled meeting of the Board of Supervisors on March 23,  
4 2021, the Resource Management Agency Director presented contracts with the Don  
5 Chapin Co. and Granite Rock Co. for On-Call Emergency Response Roadway Repairs  
6 (PWP-2101) on various County roads damaged by the events described in the February 4,  
7 2021 Emergency Proclamation, and the Board of Supervisors approved the contracts; and

8 WHEREAS, at the regularly scheduled meeting of the Board of Supervisors on June 22,  
9 2021, the Resource Management Agency Director further reported to the Board of  
10 Supervisors that the On-Call Emergency Response Roadway Repairs (PWP-2101) work  
11 that was assigned to the Don Chapin Co. has been completed, and the remaining budget  
12 under the contract with the Don Chapin Co. shall be transferred to complete the On-Call  
13 Emergency Response Roadway Repairs (PWP-2101) work that was assigned to the  
14 Granite Rock Co.; and

15 WHEREAS, the Board of Supervisors reviewed the Resource Management Agency  
16 Director's reports at its March 23, 2021, April 13, 2021, April 27, 2021, May 11, 2021,  
17 May 25, 2021, June 8, 2021, June 22, 2021, July 27, 2021, August 10, 2021, August 24, 2021,  
18 September 14, 2021, September 28, 2021, October 12, 2021, October 26, 2021, November 9,  
19 2021, November 23, 2021, and December 14, 2021 meetings, concurred with the  
20 recommended findings and determinations, and adopted Resolution Nos. 2021-27,  
21 2021-33, 2021-40, 2021-47, 2021-55, 2021-63, 2021-76, 2021-89, 2021-103, 2021-113, 2021-117,  
22 2021-126, 2021-127, 2021-136, 2021-143, 2021-158, and 2021-166, respectively, adopting the  
23 recommended findings and determinations, and: (1) confirming the Resource  
24 Management Agency Director's authority to enter into emergency repair and  
25 replacement contracts pursuant to Public Contracts Code Section 22050, without  
26 adoption of plans and specifications or competitive bidding; (2) finding that there is a  
27 need to continue such emergency action, pursuant to Section 22050; (3) finding that the  
28 emergency repair and replacement work is statutorily exempt from CEQA under CEQA  
Guidelines Section 152659(d) for emergency projects within the rights-of-way of existing  
County highways, to repair or restore existing highways damaged by flooding and storm  
events; and (4) confirming the Resource Management Agency Director's authority to  
approve a contract amendment transferring the budget remaining from the contract with  
the Don Chapin Co. to the contract with Granite Rock Co., to complete the On-Call  
Emergency Response Roadway Repairs (PWP-2101); and

WHEREAS, at the July 27, 2021 meeting, the Interim Resource Management Agency  
Director reported to the Board of Supervisors that repairs to the following County roads  
have been completed:

- King City Road – from State Route 25 to Monterey County;
- Lonoak Road; and
- Panoche Road – from Paicines to Fresno County; and

1 WHEREAS, at the August 10, 2021 meeting, the Interim Resource Management Agency  
2 Director further reported to the Board of Supervisors that, for the reasons set forth  
3 herein, and on the public record, there is substantial evidence that the emergency  
4 conditions continue to exist with regard to the remaining County roads identified in  
5 Resolution No. 2021-23 and subsequent Resolutions, that such ongoing emergency  
6 conditions do not permit a delay resulting from a competitive solicitation for bids, and  
7 that emergency repair contracts continue to be necessary to respond to the emergency;

8 and  
9 WHEREAS, the Board of Supervisors accepts the Interim Resource Management Agency  
10 Director's report, concurs with the recommended findings and determinations, and finds  
11 that: (1) there is a need to continue the action; (2) the current state of emergency will not  
12 permit a delay resulting from a competitive solicitation for bids; and (3) actions taken by  
13 the Resource Management Agency Director were necessary to respond to the emergency.

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

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

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

BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito,  
that, until formally revoked, pursuant to California Public Contracts Code Section  
22050(b)(1), the Board of Supervisors hereby declares its delegation, and reaffirms its  
prior delegation, to the Interim Resource Management Agency Director and the County  
Administrative Officer, the authority 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, in order to  
prevent or mitigate the loss or impairment of life, health, or property, that were caused  
by the events described in the February 4, 2021 Emergency Proclamation, take any  
directly related and immediate action required by that emergency, and procure the  
necessary equipment, services, and supplies for those purposes, without adoption of  
plans and specifications, or giving notice for bids to let contracts.

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

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

15 PASSED AND ADOPTED by the San Benito County Board of Supervisors at the meeting  
16 of said Board held on the 25<sup>th</sup> day of January 2022, by the following vote:

17 AYES: Supervisor(s)  
18 NOES: Supervisor(s)  
19 ABSENT: Supervisor(s)  
20 ABSTAIN: Supervisor(s)

20 By: \_\_\_\_\_  
21 Bea Gonzales, Chair

22 ATTEST: APPROVED AS TO LEGAL FORM  
23 Jennifer Frechette, Clerk of the Board San Benito County Counsel's Office

24  
25 By: \_\_\_\_\_ By: Shirley L. Murphy  
26 Date: \_\_\_\_\_ Date: Jan. 14, 2022  
27  
28