

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
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
specified in [Section 22050(a)(1)], the governing body shall initially review the emergency
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

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

- 32 • Lonoak Road; and

33 WHEREAS, damage assessments are ongoing, and the Resource Management Agency
34 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, December 14, 2021, January 25, 2022, February 8, 2022, February 22, 2022, and
March 8, 2022, 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 competitive

1 solicitation for bids, and that emergency repair contracts continued to be necessary to
2 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, December 14, 2021, January 25, 2022, February 8, 2022,
20 February 22, 2022, and March 8, 2022 meetings, concurred with the recommended
21 findings and determinations, and adopted Resolution Nos. 2021-27, 2021-33, 2021-40,
22 2021-47, 2021-55, 2021-63, 2021-76, 2021-89, 2021-103, 2021-113, 2021-117, 2021-126,
23 2021-127, 2021-136, 2021-143, 2021-158, 2021-166, 2022-10, 2022-15, 2022-25, and 2022-34,
24 respectively, adopting the recommended findings and determinations, and:
25 (1) confirming the Resource Management Agency Director's authority to enter into
26 emergency repair and replacement contracts pursuant to Public Contracts Code Section
27 22050, without adoption of plans and specifications or competitive bidding; (2) finding
28 that there is a need to continue such emergency action, pursuant to Section 22050;
(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 (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

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

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

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

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

BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito, that it 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.

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

1 necessary equipment, services, and supplies for those purposes, without adoption of
2 plans and specifications, or giving notice for bids to let contracts.

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

10 BE IT FURTHER RESOLVED by the Board of Supervisors of the County of San Benito,
11 that it hereby reaffirms its prior findings and determines that the emergency repairs and
12 replacements in, on, under and along the State and County highways and other facilities
13 identified herein, and as may be further identified during ongoing damage assessments,
14 are exempt from the California Environmental Quality Act ("CEQA") and CEQA
15 Guidelines, pursuant to CEQA Guidelines Section 15269(d), because they are for
16 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.

17 PASSED AND ADOPTED by the San Benito County Board of Supervisors at the meeting
18 of said Board held on the 22nd day of March 2022, by the following vote:

19 AYES: Supervisor(s)
20 NOES: Supervisor(s)
21 ABSENT: Supervisor(s)
ABSTAIN: Supervisor(s)

22 By: _____
23 Bea Gonzales, Chair

24 ATTEST:

APPROVED AS TO LEGAL FORM

25 Jennifer Frechette, Clerk of the Board

San Benito County Counsel's Office

26 By: _____
27

By: Shirley L. Murphy
Shirley L. Murphy, Deputy County Counsel

28 Date: _____

Date: March 8, 2022