

RESOLUTION NO. 2017-

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO (1) RATIFYING THE COUNTY ADMINISTRATOR'S LETTING OF CONTRACTS TO REMEDIATE LOCAL EMERGENCY; (2) , CONFIRMING THE COUNTY ADMINISTRATOR'S AUTHORITY TO ENTER INTO EMERGENCY CONTRACTS PURSUANT TO PUBLIC CONTRACTS CODE 22050 WITHOUT COMPETITIVE BIDDING, (3) FINDING THAT THERE IS A NEED TO CONTINUE SUCH EMERGENCY ACTION, PURSUANT TO SECTION 22050 OF THE CALIFORNIA PUBLIC CONTRACT CODE; AND (4) FINDING THAT THE REPAIR WORK IS STATUTORILY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER CEQA GUIDELINE SECTION 15269(c) FOR EMERGENCY PROJECTS (4/5 vote required)

WHEREAS, on January 12, 2017, the San Benito County Deputy Director of Emergency Services proclaimed a state of local emergency; and,

WHEREAS, on January 17, 2017, the Board of Supervisors confirmed the Deputy Director's Proclamation of a local emergency; and,

WHEREAS, on January 23, 2017, the Governor of the State of California declared a State of Emergency for several counties within the State of California, including the County of San Benito; and,

WHEREAS, Section 5.09.010 of the San Benito County Code provides that except as 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,

WHEREAS, Section 5.09.015 of the San Benito County Code states, "Emergency purchases may be made by the Purchasing Agent or Assistant Purchasing Agent when a generally unexpected occurrence or unforeseen circumstances require an immediate purchase of material, supplies or equipment: (1) In order to avoid a hazard to life or property. . . or (4) In order to avoid economic loss to the county;" and,

WHEREAS, 5.09.015 of the San Benito County Code further states that "Emergency purchases shall be submitted to the Board of Supervisors for ratification at its next meeting; and,

WHEREAS, the Director of Emergency Services under San Benito County Code Chapter 11.01 is additionally authorized "to obtain vital supplies, equipment and such other properties found lacking and needed for the protection of life and property and to bind the county for the fair value thereof. . ."; and,

WHEREAS, Public Contract Code Section 1102 defines an emergency as "a sudden unexpected occurrence that poses a clear and imminent danger, requiring immediate action to

prevent or mitigate the loss or impairment of life, health, property, or essential public services”; and,

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

WHEREAS, Public Contract Code Section 22050(b)(1) further provides that “The governing body, by a four-fifths vote, may delegate, by resolution or ordinance, to the appropriate county administrative officer, . . . or other nonelected agency officer, the authority to order any action pursuant to [Section 22050(a)(1)]”; and,

WHEREAS, Public Contracts Code Section 22050(b)(3) provides that if such action is taken, “that person shall report to the governing body, at its next meeting required pursuant to this section, 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, Public Contract Code Section 22050(c)(2) further provides that “If a person with authority delegated pursuant [Section 22050(b)(1)] orders any action . . . the governing body shall initially review the emergency action... at its next regularly scheduled meeting . . . and at least at 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,

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

WHEREAS, by unanimously adopting Ordinance 853 on April 27, 2010, the Board of Supervisors delegated to the County Administrative Officer the authority to make emergency purchases when generally unexpected occurrence or unforeseen circumstances require an immediate purchase of material, supplies or equipment in order to avoid a hazard to life or property; and,

WHEREAS, pursuant to the authority delegated under San Benito County Code, (1) on or about February 2, 2017, the County Administrative Officer let three contracts to Granite Construction Company in the amounts of not to exceed \$100,000, \$100,000 and \$25,000, respectively for debris removal, hauling of debris off-site, and site restoration for any damage caused by remediation activity; (2) on or about February 3, 2017, the County Administrative Officer entered into a contract with Graniterock in an amount not to exceed \$75,000 for emergency road repair; (3) on or about February 3, 2017, the County Administrative Officer authorized work with the Don Chapin Company by purchase order in an amount up to \$50,000 for building a temporary access road to access the level; (4) on or about February 21, 2017, the

County Administrative Officer will enter into a contract with Graniterock in an amount not to exceed \$50,000 for emergency road repair; and (5) in late February or early March 2017, the County Administrative Officer will let a contract with the Don Chapin Company, or another company as may be determined, for emergency levee repair work; and,

WHEREAS, because this emergency procurement exceeds \$10,000 and pursuant to Government Code 22050, the County Administrative Officer has presented this Resolution to the Board of Supervisors at its next available regular meeting; and,

WHEREAS, the County Administrative Officer hereby reports to the Board of Supervisors that, for the reasons set forth herein, and on the public record, that there was substantial evidence that the flooding and levee break were sudden unexpected occurrences that posed a clear and imminent danger to the surrounding neighborhood and the general public, requiring immediate action to prevent or mitigate the loss or impairment of life, health, or property; and,

WHEREAS, the County Administrative Officer also hereby reports to the Board of Supervisors that, for the reasons set forth herein, and on the public record, that there was substantial evidence that the emergency did not permit a delay resulting from a competitive solicitation for bids, and that emergency contracts were necessary to respond to the emergency; and,

WHEREAS, the Board of supervisors has reviewed the County Administrative Officer's emergency action and concurs with the County Administrative Officer's findings and determinations; and,

WHEREAS, the Board of Supervisors accepts the report of the County Administrative Officer and finds that (1) there is a need to continue the action, (2) that the current state of emergency will not permit a delay resulting from a competitive solicitation for bids, and (3) the action taken by the County Administrative Officer as recited herein, was necessary to respond to the emergency.

NOW THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO DOES HEREBY RESOLVE AS FOLLOWS:

1. The flooding and levee break constitutes an "emergency" under Public Contract Code Section 1102 and 22050 and Board of Supervisors hereby ratifies the County Administrative Officer's determination in this regard and the actions taken to remediate the emergency; and,

2. The County Administrative Officer's decision to waive the competitive bidding requirements pursuant to Public Contract Code Section 22050 is hereby ratified.

3. Until formally revoked, the Board expressly declares its delegation, and reaffirms its prior delegation, to the County Administrative Officer the authority to order action pursuant to paragraph (1) of subdivision (a) of California Public Contracts Code section 22050;

4. Pursuant to Public Contract Code Section 22050(c)(3), by a four-fifths vote, the Board of Supervisors finds that there is a need to continue the emergency action originally authorized by the County Administrative Officer; and,

5. The Board directs that such emergency action shall be reviewed by the Board of Supervisors at each subsequent regular Board of Supervisors' meeting to determine whether there is a need to continue the action, until the action is terminated; and,

6. The action from the contracts and purchase order referenced herein is exempt from the California Environmental Quality Act ("CEQA") (Pub. Res. Code, §§ 21000, et seq. and Title 14 of the California Code of Regulations, §§ 15000 et seq. ("State CEQA Guidelines")), pursuant to 14 Cal. Code of Regs. §15269 as an emergency project, and Resource Management Agency staff is hereby directed to file a Notice of Exemption with the San Benito County Clerk's Office.

DULY PASSED AND ADOPTED this 14th day of March, 2017 by the Board of Supervisors of the County of San Benito, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAIME DE LA CRUZ, Chair
San Benito County Board of Supervisors

ATTEST:
Chase Graves
Clerk of the Board

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

By: _____

Barbara Thompson
Assistant County Counsel