

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

2 **A RESOLUTION OF THE SAN BENITO)**
3 **COUNTY BOARD OF SUPERVISORS,)**
4 **MAKING CERTAIN PUBLIC INTEREST)**
5 **FINDINGS AND DETERMINATIONS AND)**
6 **DECLARING ITS INTENTION TO ORDER)**
7 **THE PREPARATION AND EXECUTION OF)**
8 **A CONSULTANT SERVICES CONTRACT)**
9 **WITH THE CONSULTING ENGINEERING)**
10 **FIRM OF RECORD TO COMPLETE THE)**
11 **ENGINEERING OF THE UNION ROAD)**
12 **BRIDGE REPLACEMENT OVER THE SAN)**
13 **BENITO RIVER PROJECT (FEDERAL)**
14 **PROJECT NUMBER BRLO-5943(055)))**

Resolution No. 2017-42

10 **WHEREAS**, the existing Union Road Bridge over the San Benito River (Bridge
11 No. 43C0002) is scour critical and does not meet current standards for road/bridge
12 width for the service level required of the bridge; and

13 **WHEREAS**, the Board of Supervisors ("Board") for the County of San Benito
14 ("County") determined that in the interest of public safety that the bridge should be
15 replaced and developed the Union Road Bridge Replacement Over the San Benito
16 River Project (Federal Project Number BRLO-5943(055)) ("Project"); and

17 **WHEREAS**, the Project is funded by the Federal Highway Administration, which
18 as a condition of funding requires recipients of said funding adhere to federal funding
19 guidelines, which requires selection of engineering consultant based on qualifications
20 through public advertisement for such services and competitive negotiation
21 (23 CFR 172.5); and

22 **WHEREAS**, following a public advertisement for consulting engineering services
23 and competitive negotiation, in accordance with 23 CFR 172.5, Biggs Cardosa and
24 Associates, Incorporated ("Consultant"), was selected to perform engineering and other
25 services regarding the Project; and

26 **WHEREAS**, these services included preparation of all environmental documents
27 required under the California Environmental Quality Act, performance of all
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1 investigations necessary to design the replacement bridge, and preparation of the plans
2 and specifications for construction of the Project (collectively, "Construction
3 Documents"); and

4 WHEREAS, on December 16, 2008, the Board approved a contract with
5 Consultant, retaining them to perform engineering and related services, and authorized
6 the Chair of the Board to execute the contract; and

7 WHEREAS, as a result of administrative oversight, the contract with Consultant
8 approved by the Board on December 16, 2008 expired on June 30, 2015; and

9 WHEREAS, on June 28, 2016, the Board approved a new contract with
10 Consultant, retaining them to continue to perform engineering and related services, and
11 authorized the Chair of the Board to execute the contract; and

12 WHEREAS, the new contract was not procured in accordance with
13 23 CFR 172.5; and

14 WHEREAS, to bring consultant services for the Project into compliance with
15 23 CFR 172.5 it is necessary to terminate the June 28, 2016 Consultant contract; and

16 WHEREAS, the preparation of the Construction Documents for construction of
17 the Project are approximately ninety-five percent (95%) complete; and

18 WHEREAS, public interest and necessity require the proposed Project to be
19 constructed, therefore, requiring completion of the Construction Documents by a
20 professional engineer licensed in the State of California; and

21 WHEREAS, the California Code of Regulations ("CCR") requires that any
22 professional engineer may assume responsible charge of a project (successor licensee)
23 as long as the successor licensee exercises the requisite extent of control and assumes
24 responsibility for all the engineering decisions involved in the design (16 CCR 404.1(c));
25 and

26 WHEREAS, any successor licensee or consulting engineering firm would be
27 compelled to re-evaluate or re-create the entire design to satisfy requisite responsible
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1 charge for the Project; and

2 **WHEREAS**, Consultant remains qualified to complete the Construction
3 Documents and has the base of knowledge in the Project design to maintain status as
4 the responsible charge/engineer of record as defined in 16 CCR 404.1; and

5 **WHEREAS**, federal funding guidelines allow for noncompetitive negotiation to
6 procure engineering and design related services on federal-aid participating contracts
7 when it is not feasible to award the contract using competitive negotiation, equivalent
8 State qualifications-based procedures, or small purchase procedures; and

9 **WHEREAS**, in the interest of public safety and economy the Board desires that
10 the Construction Documents for the Project be completed by Consultant under a new
11 contract through noncompetitive negotiation.

12 **NOW, THEREFORE, BE IT RESOLVED** that the San Benito County Board of
13 Supervisors hereby finds, determines, declares and resolves as follows:

- 14 1. The above recitals are all true and correct.
- 15 2. Based upon the evidence and alternatives presented, this Board finds,
16 determines, declares, and resolves each of the following:
 - 17 a. Public interest and necessity require the proposed completion of
18 the Project;
 - 19 b. Public safety would be better served through continuity in design
20 effort;
 - 21 c. Retaining the current Consultant in responsible charge of the work
22 is in the best interest of the public;
 - 23 d. Entering into a contract with Consultant is the best solution to
24 finishing the preparation of the Construction Documents; and
 - 25 e. It is appropriate to adopt a Public Interest Finding and a new
26 contract with Consultant should be negotiated.

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- 3. The Board directs the Resource Management Agency's Public Works Division (PW) to prepare and negotiate a new contract with Consultant, the terms of which shall be consistent with the prior agreement, and that no additional compensation will be allowed therefor.
- 4. The new agreement shall consider and ratify work performed by Consultant and the Consultant's subconsultants involved in the preparation of the Construction Documents for that period between the expiration of the prior contract and the new contract.
- 5. In the event a new contract cannot be negotiated in accordance with Section 3 and Section 4 of this Resolution, PW is directed and authorized to advertise for consultant services in accordance with 23 CFR 172.5 for the completion of the Project's Construction Documents.

PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO THIS 11TH DAY OF APRIL, 2017, BY THE FOLLOWING VOTE:

Ayes: Supervisor(s): *DeLaCruz, Medina, Rizo, Munoz*
 Noes: Supervisor(s): *None*
 Absent: Supervisor(s): *Botelho*
 Abstain: Supervisor(s): *None*

By: *Jaime De La Cruz*
 Jaime De La Cruz, Chair

ATTEST:
 Chase Graves, Clerk of the Board

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

By: *Janet Sitton*
 Deputy Clerk

By: *Shirley L. Murphy 4/5/17*
 Shirley L. Murphy, Deputy County Counsel