

## **RESOLUTION NO. 2019-**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO (1) , CONFIRMING THE COUNTY ADMINISTRATOR’S AUTHORITY TO ENTER INTO EMERGENCY CONTRACTS PURSUANT TO PUBLIC CONTRACTS CODE 22050 WITHOUT COMPETITIVE BIDDING, (2) FINDING THAT THERE IS A NEED TO TAKE EMERGENCY ACTION, PURSUANT TO SECTION 22050 OF THE CALIFORNIA PUBLIC CONTRACT CODE; AND (3) 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**, 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**, 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 on June 25, 2019, the Board of Supervisors (1) Made CEQA findings per Attachment “A” and approved a contract for Public Works Road Maintenance Potholes Repair with Granite Rock Company not to exceed the amount of \$395,000 on Time and Materials Basis for pot hole repairing on the portions of the roads in Work Zones A , B, and C, as more particularly set forth in Notice to Contractors – Request for Proposal signed by Gregory J. Bucknell, P.E. on April 26, 2019, (2) Made CEQA findings per Attachment “A” and approved a contract for Public Works Panoche Road Maintenance Potholes Repair ( with Paving Construction Services, Inc. not to exceed the amount of \$350,000 on Time and Materials Basis for pot hole repairing on approximately 28 miles of Panoche Road, (3) Authorized the CAO to execute any additional contracts and to approve modifications to the Contract for Public Works Road Maintenance Potholes Repair with Granite Rock Company and to approve modifications to the Contract for Public Works Panoche Road Maintenance Potholes Repair with Paving Construction Services, Inc.; and,

**WHEREAS**, the Board of Supervisors finds that for the reasons set forth herein, and on the public record, that there was substantial evidence that the pothole conditions existing on aforementioned roads 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 Board also finds 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 finds that (1) there is a need to take action to repair the roads, (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 Board of Supervisors, as recited herein, is 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 repairing of the above-mentioned roads constitutes an "emergency" under Public Contract Code Section 1102 and 22050; and,
2. 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;
3. Emergency action taken under this Resolution shall terminate no later than September 30, 2019, unless there is further specific action of the Board of Supervisors.

**DULY PASSED AND ADOPTED** this 25<sup>th</sup> day of June, 2019 by the Board of Supervisors of the County of San Benito, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
**MARK MEDINA**, Chair  
San Benito County Board of Supervisors

**ATTEST:**  
Janet Slibsager  
Clerk of the Board

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

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

  
Barbara Thompson  
County Counsel 

## ATTACHMENT "A"

### **Finding No. 1:**

The Board of Supervisors of San Benito County finds that the pothole conditions existing on the County roads listed in this Resolution, constitute emergency conditions such that the emergency will not permit a delay resulting from a competitive solicitation of bids and that the foregoing actions are necessary to respond to the emergency. (Public Contract Code section 22050, SBCC section 5.09.010, subd. (O).) (Requires 4/5 vote)

### **Finding No. 2:**

The Board of Supervisors of San Benito County finds that the pothole conditions existing on the County roads listed in this Resolution, constitute emergency conditions such that the necessity to repair the potholes in order to protect the public health and safety justifies a waiver of additional bid requirements, including adopting plans, specifications, strain sheets, and/or working details. (Public Contract Code section 20134, SBCC section 5.09.010, subd. (O).)

### **Finding No. 3:**

The Board of Supervisors of San Benito County finds that the proposed action to repair the potholes is associated with emergency response and repair, and is therefore statutorily exempt from review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15269, subdivision (c) [Specific actions necessary to prevent or mitigate an emergency] and Public Resources Code Section 21080, subdivision (b)(2) [Emergency repairs to public service facilities necessary to maintain service] and subdivision (b)(4) [Specific actions necessary to prevent or mitigate an emergency].

The Board of Supervisors of San Benito County approves and directs the Resource Management Agency to file the Notice of Exemption.