

County of San Benito, CA

Ray Espinosa
County Administrative Officer
481 Fourth Street
County Administration Building
Hollister, California 95023
www.cosb.us



Meeting Agenda- **POSTED AND FINAL**

November 5, 2019 - 9:00 AM

Board of Supervisors

Mark Medina
Board Chairman
District No. 1
Anthony Botelho
District No. 2
Peter Hernandez
District No. 3
Jim Gillio
District No. 4
Jaime De La Cruz
Vice-Chairman
District No. 5



SAN BENITO COUNTY BOARD OF SUPERVISORS

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter
Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice-Chair

County Administration Building - Board of Supervisors Chambers, 481 Fourth Street, Hollister,
California

REGULAR MEETING AGENDA - **POSTED AND FINAL**

November 5, 2019

9:00 AM

Mission Statement

The County Board of Supervisors will recognize the public trust it holds, will on all occasions conduct business with honesty, integrity, and respect for the individual, and will hold the organization of County government to that same standard.

The San Benito County Board of Supervisors welcomes you to this meeting and encourages your participation.

- If you wish to speak on a matter which does not appear on the agenda, you may do so during the Public Comment period at the beginning of the meeting. Please complete a Speaker Card and provide it to the Clerk of the Board prior to the meeting. Except as otherwise provided by law, no action shall be taken on any item not appearing on the agenda. When addressing the Board, please state your name for the record. Please address the Board as a whole through the Chair.
- If you wish to speak on an item contained in the agenda please complete a Speaker Card identifying the item(s) and provide it to the Clerk of the Board prior to consideration of the item.

Each individual speaker will be limited to a presentation total of (3) minutes.

CALL TO ORDER

- a. Pledge of Allegiance

**Pledge of Allegiance to be led by Supervisor Anthony Botelho,
District #2.**

- b. Acknowledge Certificate of Posting

Certificate of Posting.

- c. **Presentations and Recognitions**

- d. **Public Comment**

Opportunity to address the Board on items of interest not appearing on the agenda. No action may be taken unless provided by Govt. Code Section

54954.2.

- e. **Department Head Announcements: Information Only**
- f. **Board Announcements: Information Only**

CONSENT AGENDA

These matters shall be considered as a whole and without discussion unless a particular item is removed from the Consent Agenda. Approval of a consent item means approval of the recommended action as specified on the Agenda Item Transmittal.

If any member of the public wishes to comment on a Consent Agenda Item, please fill out a speaker card, present it to the Clerk prior to consideration of the Consent Agenda and request the item be removed and considered separately.

1. ASSESSOR'S OFFICE - T. SLAVICH

Adopt Resolutions establishing Agricultural Preserves and approve the Land Conservation Act Contracts for William Rist & Robin Rist (Rist William & Robin Family Trust) and Armond Rist, Jr. & Ann Rist (Rist Family Trust UTD 2001), and authorize the Board Chairman to sign the Resolutions and LCA Contracts.

SBC FILE NUMBER: 7

RESOLUTION NO: 2019-107

RESOLUTION NO: 2019-108

2. BOARD OF SUPERVISORS

Approve Proclamation declaring November 14, 2019 as Philanthropy Day in San Benito County. To be presented at ceremony at San Juan Oaks.

SBC FILE NUMBER: 430

3. BOARD OF SUPERVISORS

Approve Certificates of Recognition for 2019 LULAC Veteran of the Year Honorees: Jim Gibson, Ralph Marquez and Adam Mendolla, to be presented at the Veterans Day Breakfast on November 11, 2019.

SBC FILE NUMBER: 156

4. CLERK OF THE BOARD OF SUPERVISORS - J. SLIBSAGER

Approve the action minutes of the August 20, 2019 regular meeting and the September 10, 2019 regular meeting

SBC FILE NUMBER: 119

5. COUNTY ADMINISTRATION OFFICE - R. ESPINOSA

Approve budget amendment to transfer \$142,177.19 from the General Fund to Health & Human Services for reimbursement of foster care recoupment payments starting from FY 16/17 through FY18/19. (4/5 vote)

SBC FILE NUMBER: 130

6. HEALTH AND HUMAN SERVICES AGENCY – T. BELTON

Adopt Resolution accepting the Disgorgement Assistance Program (DAP) grant agreement in the amount of \$12,902.00; and approve Standard Agreement No. 20D-1029 with the State of California Department of Community Services and Development for the term of October 1, 2019 through December 31, 2020; approve budget adjustment/transfer in the amount of \$12,902.00. (4/5 vote)

SBC FILE NUMBER: 130

RESOLUTION: 2019-109

7. **HEALTH AND HUMAN SERVICES AGENCY - T. BELTON**

Approve the License Agreement between the County of San Benito and the Department of Housing and Community Development authorizing the limited use of the San Benito County Migrant Center as a Family Winter Shelter Program during the period of December 16, 2019 through March 31, 2020.
SBC FILE NUMBER: 130

8. **HEALTH & HUMAN SERVICES AGENCY - T. BELTON**

Approve contract with First 5 San Benito for Child Abuse Prevention Services for a 5 year term of November 1, 2019 through June 30, 2024, in an amount not to exceed of \$750,000.00.
SBC FILE NUMBER: 130

9. **PROBATION DEPARTMENT - J. FRONTELLA, JR.**

Authorize the appropriation of the Community Corrections Partnership (CCP) AB109 funding as agreed and voted upon by the San Benito County Community Corrections Partnership Executive Committee (CCP-EX); approve budget adjustment/transfer in the amount of \$107,333.98. (4/5 vote)
SBC FILE NUMBER: 510

10. **RESOURCE MANAGEMENT AGENCY - H. MAVROGENES**

Adopt Resolution codifying that the County will use the Caltrans policies and procedures described in Chapter 10 of the Caltrans Local Assistance Procedures Manual (LAPM), entitled "Consultant Selection", as the process by which the County retains Consultant Services related to federal and state funded transportation projects.
SBC FILE NUMBER: 105
RESOLUTION NO: 2019-110

11. **RESOURCE MANAGEMENT AGENCY – H. MAVROGENES**

Approve additional change order authority for RMA Director in the amount of \$720,000.00 or approximately (3) three percent of the contract total for the construction of the Jail Expansion Project. Approve a budget amendment transferring \$300,000 of Jail Impact fees to the capital improvement fund and a capital budget amendment increasing appropriations on the Jail Expansion project by \$500,000. (4/5 vote)
SBC FILE NUMBER: 120.5

REGULAR AGENDA

For each regular agenda item, the following schedule shall occur:

- a) Staff report.*
- b) Public opportunity to address the Board on a particular agenda item. Please fill out a speaker card and present it to the Clerk prior to consideration of the item.*
- c) Consideration by the Board.*

12. **COUNTY COUNSEL'S OFFICE - B. THOMPSON**

Discuss and provide direction to staff regarding scope of conflict of interest advice to be provided by the County Counsel's Office.
SBC FILE NUMBER: 160

13. **RESOURCE MANAGEMENT AGENCY - H. MAVROGENES**

Approve legal services agreement with Burke, Williams & Sorenson to assist with land use entitlement and CEQA advice concerning proposed developments within the County, in an amount not to exceed \$20,000.00.
SBC FILE NUMBER: 790

CLOSED SESSION

Matters discussed during Closed Session include existing and pending litigation, personnel matters and real property negotiations. Reportable actions taken by the Board during Closed Session will be announced during open session. (Gov. Code Section 54957.1(a) and (b), Ralph M. Brown Act.)

14. **CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (d)(2), (e)(2) of Government Code Section 54956.9

Number of cases:1

Potential of additional litigation regarding Master Tax Agreement currently being litigated in *Award Homes and BMC Promise Way*.

SBC FILE NUMBER: 235.6

15. **CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION**

No. of cases: 1 Subdivisions (a) and (d)(1) of Section 54956.9 Name of Case:

Preserve Our Rural Communities v. County of San Benito, Superior Court of California, County of San Benito, Case No. CU-19-00174.

SBC FILE NUMBER: 235.6

ADJOURNMENT

Adjourn to the next regular meeting of November 19, 2019.

NOTE: A copy of this Agenda is published, along with supportive documents, on the County's Web site on the Friday preceding each Board meeting and may be viewed at www.cosb.us/government/meetings-agendas/. All proposed agenda items with supportive documents are also available for viewing at the San Benito County Administration Building, 481 Fourth Street, Hollister, CA between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday (except holidays). This is the same packet that the Board of Supervisors reviews and discusses at each Board meeting.

As required by Gov. Code Section 54957.5 any public record distributed to the Board of Supervisors less than 72 hours prior to this meeting in connection with any agenda item shall be made available for public inspection at the office of the Clerk of the Board, San Benito County Administration Building, 481 Fourth Street, Hollister, CA 95023. Public records distributed during the meeting will be available for public inspection at the meeting if prepared by the County. If the public record is prepared by some other person and distributed at the meeting it will be made available for public inspection following the meeting at the office of the Clerk of the Board.

In compliance with the Americans with Disabilities Act (ADA) the Board of Supervisors meeting facility is accessible to persons with disabilities. If you need special assistance to participate in this meeting, please contact the Clerk of the Board's office at (831) 636-4000 at least 48 hours before the meeting to enable the County to make reasonable arrangements to ensure accessibility.



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number:

MEETING DATE: 11/5/2019

DEPARTMENT: BOARD OF SUPERVISORS

DEPT HEAD/DIRECTOR:

AGENDA ITEM PREPARER: Janet Slibsager

SBC DEPT FILE NUMBER: 156

SUBJECT:

Pledge of Allegiance to be led by Supervisor Anthony Botelho, District #2.

AGENDA SECTION:

Pledge of Allegiance

BACKGROUND/SUMMARY:

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Pledge of Allegiance to be led by Supervisor Anthony Botelho, District #2.

ADDITIONAL PERSONNEL:



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number:

MEETING DATE: 11/5/2019

DEPARTMENT: CLERK OF THE BOARD OF SUPERVISORS

DEPT HEAD/DIRECTOR:

AGENDA ITEM PREPARER: Janet Slibsager

SBC DEPT FILE NUMBER:

SUBJECT:

Certificate of Posting.

AGENDA SECTION:

Acknowledge Certificate of Posting

BACKGROUND/SUMMARY:

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Acknowledge Certificate of Posting.

ADDITIONAL PERSONNEL:**ATTACHMENTS:**

Description

Certificate of Posting

Upload Date Type

10/22/2019

Certificate of Posting

COUNTY OF SAN BENITO
BOARD OF SUPERVISORS
CERTIFICATE OF POSTING

Pursuant to California Government Code Section 59454.2(a), the meeting agenda for the San Benito County Board of Supervisors Meeting of Tuesday, November 5, 2019 was posted on the October 31st of October, 2019 at the following locations, freely accessible to the public:

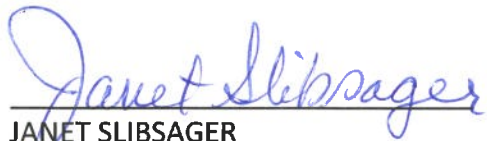
The bulletin board outside the front entrance of the Old County Courthouse,
Monterey Street, City of Hollister, County of San Benito, State of California

And

The bulletin board outside the front entrance of the San Benito County Administration
Building, 481 Fourth Street, Hollister, CA

The meeting agenda was also posted on the County of San Benito's website, www.cosb.us, in the Local Meeting and Events Calendar and Quicklinks – NOVUS Agenda and Minutes sections of the webpage.

I, Janet Slibsager, Clerk of the Board of Supervisors, certify under penalty of perjury, that the foregoing is true and correct.



JANET SLIBSAGER
CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF SAN BENITO, CA



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 1.

MEETING DATE: 11/5/2019

DEPARTMENT: ASSESSOR

DEPT HEAD/DIRECTOR: T. Slavich

AGENDA ITEM PREPARER: Tom Slavich

SBC DEPT FILE NUMBER: 7

SUBJECT:

ASSESSOR'S OFFICE - T. SLAVICH

Adopt Resolutions establishing Agricultural Preserves and approve the Land Conservation Act Contracts for William Rist & Robin Rist (Rist William & Robin Family Trust) and Armond Rist, Jr. & Ann Rist (Rist Family Trust UTD 2001), and authorize the Board Chairman to sign the Resolutions and LCA Contracts.

SBC FILE NUMBER: 7

RESOLUTION NO: 2019-107

RESOLUTION NO: 2019-108

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

Based on previous actions by the Board of Supervisors at a duly public hearing, the property owner is required to complete new Land Conservation Act Contracts when a division or lot-line adjustment of an existing contract is completed. The contracts are ready to be signed and processed for recording. Also, resolutions are required to authorize the establishment of Agricultural preserves. These documents are submitted for final approval by the Board.

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

It is recommended the Board of Supervisors:
Adopt Resolutions establishing Agricultural Preserves, approve the Land Conservation Act
Contracts and authorize the Chairman of the Board of Supervisors to sign the Resolutions and
LCA Contracts.

ADDITIONAL PERSONNEL:

ATTACHMENTS:

Description	Upload Date	Type
Rist Family Trust UTD 2001 - Resolution & LCA Contract	10/28/2019	Contract
Rist William & Robin Family Trust - Resolution & LCA Contract	10/28/2019	Contract

RESOLUTION NO. _____

RESOLUTION ESTABLISHING AGRICULTURAL PRESERVE

WHEREAS, an application has been filed establishing an agricultural preserve within the meaning of the California Land Conservation Act of 1965 with respect to the following described property: (Either Assessor's parcel number (s) or legal description):

Assessor Parcel Numbers: 031-060-001 and 031-060-004 and 031-050-013 and 031-050-014

WHEREAS, a public hearing has been had upon such application in the manner prescribed by the said Act.

NOW THEREFORE, IT IS HEREBY RESOLVED as follows:

1. That the said land meets the requirements prescribed for eligibility for an agricultural preserve.
2. That the said land is hereby designated and established as an agricultural preserve within the meaning of and pursuant to the California Land Conservation Act of 1965 and shall be known as Preserve No. _____
3. That the compatible uses authorized for such preserve are those set forth in Chapter 19.01, Article II "Agricultural Preserves" of the San Benito County Code heretofore adopted by this Board.
4. The Chairman of the Board is hereby authorized to execute on behalf of the County of San Benito, a Land Conservation Contract with the owner of the lands within the agricultural preserve created hereby.

Passed and adopted by the Board of Supervisors of the County of San Benito, State of California, this ____ day of _____, 20_____, by the following vote:

AYES: Supervisors:
NOES: Supervisors:
ABSENT: Supervisors:

Chairman of said Board

ATTEST:

Clerk of said Board

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL

Shirley L. Murphy Oct. 28, 2019
DEPUTY COUNTY COUNSEL DATE

By: _____
Deputy Clerk of the said Board

CLCA Form (11-67), Rev.(1-13)

**SAN BENITO COUNTY
LAND CONSERVATION CONTRACT**

THIS CONTRACT made and entered into this _____ day of _____, 20_____,
by and between Rist Family Trust UTD 2001
Armond E. Rist, Jr. and Ann C. Rist

_____, hereinafter referred to as "Owner (s)", and the COUNTY OF SAN BENITO, a political
subdivision of the State of California, hereinafter referred to as "County":

WITNESSETH:

The purpose of this contract is to qualify the land subject hereto for land assessment purposes as provided in the Land Conservation Act of 1965, as amended, as said Act existed at the time of execution of this contract.

WHEREAS, OWNER possesses certain real property located within County, which property is presently devoted to agricultural use and is described as follows:

(Either Assessor's parcel number (s) or legal description)

Assessor's Parcel Numbers: 031-060-001 and 031-060-004 and 031-050-013 and 031-050-014

WHEREAS, said property is situated within an agricultural preserve heretofore established by County as Preserve No _____, and,

WHEREAS, both Owner and County desire to limit the use of said property to agricultural and compatible uses in order to discourage premature and unnecessary conversion of such land to urban use, recognize that such land has substantial value to the public as open space and the preservation of such land in such use constitutes an important physical, social, esthetic, and economic asset to County,

Now, therefore, the parties, in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. The within Contract is made and entered into pursuant to the Land Conservation Act of 1965, as amended at the time of execution of this Contract, and is subject to the applicable provisions thereof.

2. During the term of this Contract the above described land shall not be used for any purpose, other than agricultural and compatible uses. No structures shall be erected upon said land except such structures as may be directly related to and compatible with allowed uses hereunder.

3. If any action in eminent domain for the condemnation of any land described herein is hereafter filed, or any portion of the property is acquired in lieu of condemnation, the provisions of Sections 51290-51295 of the California Government Code shall apply.

4. This contract shall be effective commencing on the 31st day of December, 20____ and shall remain in effect for an initial period of ten (10) years therefrom. Each year, on the anniversary date of this Contract, one year shall be automatically added to the initial term, unless notice of non-renewal is given as provided in Section 51245 of the California Government Code.

5. Owner shall not receive any payment from County in consideration of the obligations imposed hereunder, inasmuch as the parties recognize and agree that the consideration for the execution of the within Contract is the substantial public benefit to be derived therefrom and the advantage which will accrue to Owner as a result of the method of calculating the assessed value of the subject land due to the restrictions placed thereon.

6. This contract may not be cancelled except in the manner provided in Sections 51280 through 51287 of the Government Code of California.

7. The within contract shall run with the land described herein and shall be binding upon the heirs, successors, and assigns of the parties hereto.

8. In the event the land under this contract is divided, a contract identical to the contract then covering said land shall be executed by the Owner (s) of each parcel created by the division at the time of the division. Any such division shall be made only upon approval of County and upon condition that each parcel after division meets the requirements for an agricultural preserve. County shall require, as a condition of the approval, the execution of the contracts provided for in this paragraph.

IN WITNESS WHEREOF, the parties hereto have executed the within Agreement the day and year first above written.

OWNERS SIGNATURE

Armond Everett
Rist, Jr.
Ann Carol Rist

NAME (TYPEWRITTEN)

Armond Everett

Rist, Jr

Ann Carol Rist

NOTE: Each Signature Must Be Notarized

COUNTY OF SAN BENITO

By _____
Chairman of the Board of
Supervisors of said County.

ATTEST:

Clerk of said Board

BY: _____
Deputy Clerk of the said Board

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL

Shirley L. Murphy Oct. 28, 2019
DEPUTY/COUNTY COUNSEL/ DATE

(attach acknowledgements)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

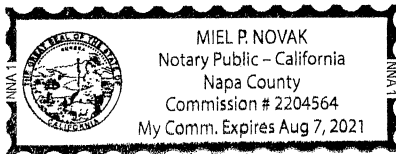
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Napa)
 On 9/17/2019 before me, Miel P. Novak, notary public,
 Date Here Insert Name and Title of the Officer
 personally appeared Armond Everett Rist, Jr. and Ann Carol Rist,
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
 Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

RESOLUTION NO. _____

RESOLUTION ESTABLISHING AGRICULTURAL PRESERVE

WHEREAS, an application has been filed establishing an agricultural preserve within the meaning of the California Land Conservation Act of 1965 with respect to the following described property: (Either Assessor's parcel number (s) or legal description):

Assessors Parcel # 031-050-012

WHEREAS, a public hearing has been had upon such application in the manner prescribed by the said Act.

NOW THEREFORE, IT IS HEREBY RESOLVED as follows:

1. That the said land meets the requirements prescribed for eligibility for an agricultural preserve.
2. That the said land is hereby designated and established as an agricultural preserve within the meaning of and pursuant to the California Land Conservation Act of 1965 and shall be known as Preserve No. _____
3. That the compatible uses authorized for such preserve are those set forth in Chapter 19.01, Article II "Agricultural Preserves" of the San Benito County Code heretofore adopted by this Board.
4. The Chairman of the Board is hereby authorized to execute on behalf of the County of San Benito, a Land Conservation Contract with the owner of the lands within the agricultural preserve created hereby.

Passed and adopted by the Board of Supervisors of the County of San Benito, State of California, this ____ day of _____, 20____, by the following vote:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

Chairman of said Board

ATTEST:

Clerk of said Board

By: _____
Deputy Clerk of the said Board

CLCA Form (11-67), Rev.(1-13)

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL

Shirley L. Murphy Oct. 28, 2019
DEPUTY COUNTY COUNSEL DATE

**SAN BENITO COUNTY
LAND CONSERVATION CONTRACT**

THIS CONTRACT made and entered into this _____ day of _____, 20_____,
by and between Rist William & Robin Family Trust
William C. Rist & Robin I. Rist

_____, hereinafter referred to as "Owner (s)", and the COUNTY OF SAN BENITO, a political
subdivision of the State of California, hereinafter referred to as "County":

WITNESSETH:

The purpose of this contract is to qualify the land subject hereto for land assessment purposes as provided in
the Land Conservation Act of 1965, as amended, as said Act existed at the time of execution of this contract.

WHEREAS, OWNER possesses certain real property located within County, which property is presently
devoted to agricultural use and is described as follows:
(Either Assessor's parcel number (s) or legal description)
Assessors Parcel # 031-050-012

WHEREAS, said property is situated within an agricultural preserve heretofore established by County as
Preserve No _____, and,

WHEREAS, both Owner and County desire to limit the use of said property to agricultural and compatible
uses in order to discourage premature and unnecessary conversion of such land to urban use, recognize that such
land has substantial value to the public as open space and the preservation of such land in such use constitutes
an important physical, social, esthetic, and economic asset to County,

Now, therefore, the parties, in consideration of the mutual covenants and conditions set forth herein and the
substantial public benefits to be derived therefrom, do hereby agree as follows:

1. The within Contract is made and entered into pursuant to the Land Conservation Act of 1965, as
amended at the time of execution of this Contract, and is subject to the applicable provisions thereof.

2. During the term of this Contract the above described land shall not be used for any purpose, other than
agricultural and compatible uses. No structures shall be erected upon said land except such structures as may be
directly related to and compatible with allowed uses hereunder.

3. If any action in eminent domain for the condemnation of any land described herein is hereafter filed, or
any portion of the property is acquired in lieu of condemnation, the provisions of Sections 51290-51295 of the
California Government Code shall apply.

4. This contract shall be effective commencing on the 31st day of December, 20____ and shall remain in
effect for an initial period of ten (10) years therefrom. Each year, on the anniversary date of this Contract, one
year shall be automatically added to the initial term, unless notice of non-renewal is given as provided in
Section 51245 of the California Government Code.

5. Owner shall not receive any payment from County in consideration of the obligations imposed hereunder, inasmuch as the parties recognize and agree that the consideration for the execution of the within Contract is the substantial public benefit to be derived therefrom and the advantage which will accrue to Owner as a result of the method of calculating the assessed value of the subject land due to the restrictions placed thereon.

6. This contract may not be cancelled except in the manner provided in Sections 51280 through 51287 of the Government Code of California.

7. The within contract shall run with the land described herein and shall be binding upon the heirs, successors, and assigns of the parties hereto.

8. In the event the land under this contract is divided, a contract identical to the contract then covering said land shall be executed by the Owner (s) of each parcel created by the division at the time of the division. Any such division shall be made only upon approval of County and upon condition that each parcel after division meets the requirements for an agricultural preserve. County shall require, as a condition of the approval, the execution of the contracts provided for in this paragraph.

IN WITNESS WHEREOF, the parties hereto have executed the within Agreement the day and year first above written.

OWNERS SIGNATURE

William C. Rist
Robin L. Rist

NAME (TYPEWRITTEN)

William C. Rist

Robin L. Rist

NOTE: Each Signature Must Be Notarized

COUNTY OF SAN BENITO

ATTEST:

Clerk of said Board

BY: _____
Deputy Clerk of the said Board

By _____
Chairman of the Board of
Supervisors of said County.

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL

Shirley L. Murphy Oct. 28, 2019
DEPUTY COUNTY COUNSEL DATE

(attach acknowledgements)



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 2.

MEETING DATE: 11/5/2019

DEPARTMENT: BOARD OF SUPERVISORS

DEPT HEAD/DIRECTOR:

AGENDA ITEM PREPARER: Janet Slibsager

SBC DEPT FILE NUMBER: 430

SUBJECT:

BOARD OF SUPERVISORS

Approve Proclamation declaring November 14, 2019 as Philanthropy Day in San Benito County.
To be presented at ceremony at San Juan Oaks.

SBC FILE NUMBER: 430

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

See attached Proclamation.

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Approve Proclamation declaring November 14, 2019 as Philanthropy Day in San Benito County.
To be presented at ceremony at San Juan Oaks.

ADDITIONAL PERSONNEL:

ATTACHMENTS:

Description	Upload Date	Type
Proclamation - Philanthropy Day	10/7/2019	Proclamation



SAN BENITO COUNTY BOARD OF SUPERVISORS

Mark Medina
District 1

Anthony Botelho
District 2

Peter Hernandez
District 3

Jim Gillio
District 4

Jaime De La Cruz
District 5

PHILANTHROPY DAY PROCLAMATION

WHEREAS, Philanthropic organizations are responsible for enhancing the quality of life of people; and

WHEREAS, in recognition of the role played by the uniquely American tradition of Philanthropy, the United States Congress has designated November 14, 2019 as National Philanthropy Day; and

WHEREAS, voluntary associations formed to address societal needs are an integral part of American society; and

WHEREAS, the history of American philanthropy is filled with the names of prominent citizens, and their efforts spawned universities, free public libraries, homes for widows and orphans, and volunteer fire departments, to name a few; and

WHEREAS, in year 2008, Americans contributed nearly 280 “*billion*” dollars to over one “*million*” non-profit organizations registered with the Internal Revenue Service (IRS); and

WHEREAS, today the non-profit sector affects nearly every citizen in one way or another. They include the religious organizations, the museums and concerts our children attend on school sponsored day trips, the little leagues, and 4-H clubs that enrich their youth, the social service agencies that provide food, clothing, housing and training for help for the indigent.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO, does hereby proclaim NOVEMBER 14, 2019 to be PHILANTHROPY DAY IN SAN BENITO COUNTY, and urge all of the residents of San Benito County to recognize the tradition of American philanthropy as it continues to improve and enhance the lives of all by promoting the common good.

Dated this 5th day of November 2019.

Mark Medina, Chairman
San Benito County Board of Supervisors



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 3.

MEETING DATE: 11/5/2019

DEPARTMENT: CLERK OF THE BOARD OF SUPERVISORS

DEPT HEAD/DIRECTOR:

AGENDA ITEM PREPARER: Janet Slibsager

SBC DEPT FILE NUMBER: 156

SUBJECT:

BOARD OF SUPERVISORS

Approve Certificates of Recognition for 2019 LULAC Veteran of the Year Honorees: Jim Gibson, Ralph Marquez and Adam Mendolla, to be presented at the Veterans Day Breakfast on November 11, 2019.

SBC FILE NUMBER: 156

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

(See attached)

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:**STAFF RECOMMENDATION:**

Approve Certificates of Recognition for 2019 LULAC Veteran of the Year Honorees: Jim Gibson, Ralph Marquez and Adam Mendolla, to be presented at the Veterans Day Breakfast on November 11, 2019.

ADDITIONAL PERSONNEL:**BOARD ACTION RESULTS:**

Approved per staff recommendation. (5/0 vote)

ATTACHMENTS:

Description	Upload Date	Type
2019 Veteran of the Year Invitation	10/28/2019	Backup Material
Certificate of Recognition-Jim Gibson	10/28/2019	Certificate of Recognition
Certificate of Recognition-Ralph Marquez	10/28/2019	Certificate of Recognition
Certificate of Recognition-Adam Mendolla	10/28/2019	Certificate of Recognition



Veteran's Breakfast

Monday, NOVEMBER 11, 2019

7:00am – 12: noon

Veteran Recognition Program:

8:00am-9:00am

HOLLISTER COMMUNITY CENTER

300 West Street- Hollister

Veterans Day, November 11th, is a time to pause and remember the service and sacrifice of all Veterans who fought to defend our freedom. Join LULAC in a salute to our Veterans.

Honored 2019 Veterans

Jim Gibson, Ralph Marquez, Adam Mendolla,

Breakfast Cost -\$8.00

Phone: 831-673-1977 831-596-2914

Email: ruthieh55@yahoo.com

Sponsored by San Benito County LULAC Council #2890



CERTIFICATE OF RECOGNITION

JIM GIBSON
United States Army

2019 LULAC VETERAN HONOREE AWARD

*Congratulations on Your Outstanding Accomplishments
From the San Benito County Board of Supervisors*

November 11, 2019

Anthony Botelho

Jim Gillio

Mark Medina, Chairman

Jaime De La Cruz, Vice Chair

Peter Hernandez



SAN BENITO COUNTY LULAC VETERAN NOMINATION - 2019 Honoree

Name of Nominee: JIM GIBSON
Address: C/O Windmill Market
City : San Juan Bta.CA 95045
Phone number: 831-637-3020

Branch of Service: US Army, Alpha Battery, 2nd Bn, 11th Artillery,
101 First Airborne
Fort Ord, CA / San Antonio, Texas
Republic of Vietnam

Years of Service: Sept 1969 – April 1970

Special awards/commendations: Medic, Alpha B

Reason for Nomination: One of the most supportive persons in our community when it comes to student education. Jim is a quiet and silent hero to many. He served his country well and continues to serve his community.

Nominated By: Vince Luna
Phone: 831-673-1977

Please submit completed and signed form to Vince Luna at vincl42@yahoo.com
Submittal deadline is September 5, 2019

CERTIFICATE OF RECOGNITION

RALPH MARQUEZ

United States Army-Vietnam Veteran

2019 LULAC VETERAN HONOREE AWARD

*Congratulations on Your Outstanding Accomplishments
From the San Benito County Board of Supervisors*

November 11, 2019

Anthony Botelho

Jim Gillio

Mark Medina, Chairman

Jaime De La Cruz, Vice Chair

Peter Hernandez



SAN BENITO COUNTY LULAC VETERAN NOMINATION - 2019 Honoree

Name of Nominee: RALPH MARQUEZ
Address: 2887 CHRISTOPHER DRIVE
City: SAN JUAN BAUTISTA, CA 95045
Phone number: (408) 767-9068

Branch of Service: U.S. Army
Years of Service: TWO YEARS
Special awards/commendations: BRONZE STAR with V device
FOR HEROISM. (1969)

Reason for

Nomination: RECOGNITION FOR SERVICE IN VIETNAM
AND A TRUE HERO. IN BATTLE HE ASSUMED COMMAND
WHEN THE PLATOON SERGEANT WAS SERIOUSLY WOUNDED
EXPOSING HIMSELF TO ENEMY SNIPER FIRE. HE WAS
HIGHLY INSTRUMENTAL IN THE TOTAL EFFORT TO DEFEAT
THE ENEMY

Nominated By: Cesar Flores
Phone (408) 804-3235

Cesar E. Flores

Please submit completed and signed form to Vince Luna at vincei42@yahoo.com
Submittal deadline is September 5, 2019

CERTIFICATE OF RECOGNITION

ADAM MENDOLLA

United States Army –Vietnam Veteran

2019 LULAC VETERAN HONOREE AWARD

***Congratulations on Your Outstanding Accomplishments
From the San Benito County Board of Supervisors***

November 11, 2019

Anthony Botelho

Jim Gillio

Mark Medina, Chairman

Jaime De La Cruz, Vice Chair

Peter Hernandez



**SAN BENITO COUNTY LULAC
VETERAN NOMINATION - 2019 Honoree**

Name of Nominee: Adams Mendolba

Address: 1640 Petaluma Ct

City: Holister CA

Phone number: 831-801-1387

Branch of Service: ARMY

Years of Service: 68-71

Special awards/commendations: Good conduct Medal, Army
Vietnam Service Medal, Commendation
Medal

Reason for

Nomination: Helps out in Community
VFW Honor Guard, Community Help, Chambers
Childrens Center, San Benito Stage Company
Sending care packages to deployed soldiers
helps V.I.E.Rans in need, helps special needs kids
Always there to help others

Nominated By: Bernie Ramirez

Phone 831-902-1811

Please submit completed and signed form to Vince Luna at vincel42@yahoo.com
Submittal deadline is September 5, 2019



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 4.

MEETING DATE: 11/5/2019

DEPARTMENT: CLERK OF THE BOARD OF SUPERVISORS

DEPT HEAD/DIRECTOR:

AGENDA ITEM PREPARER: Janet Slibsager

SBC DEPT FILE NUMBER: 119

SUBJECT:

CLERK OF THE BOARD OF SUPERVISORS - J. SLIBSAGER

Approve the action minutes of the August 20, 2019 regular meeting and the September 10, 2019 regular meeting

SBC FILE NUMBER: 119

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:**STAFF RECOMMENDATION:**

Approve the action minutes of the August 20, 2019 regular meeting and the September 10, 2019 regular meeting

ADDITIONAL PERSONNEL:**ATTACHMENTS:**

Description	Upload Date	Type
Action minutes of the August 20, 2019 regular meeting	10/25/2019	Minutes
Action minutes of the September 10, 2019 regular meeting	10/31/2019	Minutes



SAN BENITO COUNTY BOARD OF SUPERVISORS

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La
Cruz
District No. 5
Vice-Chair

*County Administration Building - Board of Supervisors Chambers, 481 Fourth Street, Hollister,
California*

REGULAR MEETING MINUTES August 20, 2019 9:00 AM

Mission Statement

The County Board of Supervisors will recognize the public trust it holds, will on all occasions conduct business with honesty, integrity, and respect for the individual, and will hold the organization of County government to that same standard.

The San Benito County Board of Supervisors welcomes you to this meeting and encourages your participation.

- If you wish to speak on an item contained in the agenda please complete a Speaker Card identifying the item(s) and provide it to the Clerk of the Board prior to consideration of the item.

Each individual speaker will be limited to a presentation total of (3) minutes unless otherwise permitted by the Board Chair.

CALL TO ORDER

The meeting was called to order at 9:00 a.m. by Chairman Mark Medina. Those present were Supervisors Anthony Botelho, Jim Gillio, Peter Hernandez and Jaime De La Cruz, as well as County Counsel Barbara Thompson, County Administrative Officer Ray Espinosa and Clerk of the Board Janet Slibsager.

- a. Pledge of Allegiance

**Pledge of Allegiance to be led by Supervisor Jaime De La Cruz,
District #5.**

The Pledge of Allegiance was led by Supervisor Jaime De La Cruz.

- b. Acknowledge Certificate of Posting

Certificate of Posting.

MOTION:

Motion to Acknowledge the
Certificate of Posting:

Made by **Supervisor Jim Gillio** and seconded by
Supervisor Anthony Botelho

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

c. Presentations and Recognitions

BOARD OF SUPERVISORS

Present proclamation to Jacob's Heart Children's Cancer Support Services declaring the month of September 2019 as "Childhood Cancer Awareness Month" in San Benito County.

SBC FILE NUMBER: 430

No one was present from Jacob's Heart Children's Services. Supervisor Jim Gillio said that this Proclamation is honoring Jacob's Heart Children's Cancer Support Services and Childhood Cancer Awareness Month in San Benito County and read part of the Proclamation and provided information on Jacob's Heart; formed in 1998 and is a way of support for families and children that are going through cancer for folks in our community.

BOARD OF SUPERVISORS

Approve proclamation proclaiming September 7th & 8th, 2019 the San Juan Bautista Sesquicentennial Celebration. "Let us continue to celebrate our diversity, our freedom, our oneness and our home, San Juan Bautista".

SBC FILE NUMBER: 430

Supervisor Anthony Botelho spoke about the Board of Supervisors and that they will be presenting this Proclamation on the 7th in San Juan Bautista proclaiming 150 years of San Juan Bautista being a City.

Supervisor Botelho invited Ann Finch from San Juan Bautista to the podium to say a few words about the event. She invited everyone to come to San Juan on the 7th of September, she said they will be having a parade, a lot of classic cars and horses. After the parade we will be going over to Abby Park for a family day in the park with lots of entertainment. She thanked the Board for recognizing their day.

MOTION:

Motion to approve the Proclamation to
presented to San Juan Bautista:

Made by **Supervisor Anthony Botelho** and
seconded by **Supervisor Jim Gillio**

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

d. Public Comment

Opportunity to address the Board on items of interest not appearing on the agenda. No action may be taken unless provided by Govt. Code Section 54954.2.

Those speaking from the public were:

Jerry Tatro, San Juan Bautista resident, spoke in regards to road conditions on Salinas Grade Road. He said that he had a problem with a tree that came down in the culvert and it needed to be taken care of and that he took care of it. He presented the Board with a bill for removal of the tree in the amount of \$1,700.00. He said that little effort is being done on the culverts and guardrails, etc. Would like more help on Salinas Grade road.

Randy Starbuck, Interim Director of the San Benito County EDC, introduced himself and Casey Johnson. He said he was here today to say hello and thanked the Board for their support and that he looks forward to working with all of them and the staff.

e. Department Head Announcements: Information Only

There were no department head announcements.

f. Board Announcements: Information Only

Supervisor Peter Hernandez reported that on August 6th he attended the National Night Out in downtown Hollister; August 7th attended a First Five meeting, working on getting grant funding; August 8th attended the McCarthy Park Grand Opening; August 8th attended the San Benito County Business Council meeting in regards to EDC; August 15th met with the Library folks in regards to feasibility study; August 19th met with Commissioner Spandri on the Vet's Park Commission in regard to improving the park; August 21st met with Harry Mavrogenes at RMA in regards to sports complex concept. He said that he would like to bring our National Motto to the Board Chambers as a sign of unity to show who we are.

Supervisor Jim Gillio reported that he attended the EDC round table meeting in regards to new businesses; attended COG meeting and spoke about SB1 funding and how it is likely to change which would mean a less of a match for us. Also spoke about the roundabout at Hwy 25/156. He mentioned that the Citizens Advisory Committee is up and running for COG. Met with Congressman Panetta in regards to opening San Justo Reservoir and Clear Creek National Park.

Supervisor Anthony Botelho announced that Aromas Days is this Sunday, it is a fun time in Aromas starting off with a Pancake Breakfast at the La Grange from 7:00 a.m. to 9:00 a.m., with booths set up through Carpeteria Street. Reported that he attended an RCRC meeting and that Monterey County has now joined the organization. They took a position on Assemblyman Rivas's Bill 1783 on Agricultural Employee Housing, they took a neutral position; reported that he attended COG meeting and that they need to work with CalTrans on Hwy 25/156 because it is a dangerous intersection.

Supervisor Jaime De La Cruz reported that he attended the Nights Out Celebration in downtown Hollister; attended the Streets Safety and Improvements at the Veterans Hall; attended the Business Council meeting at San Juan Oaks; attended the McCarthy Park Grand Opening Ceremony; attended the San Benito County Health Foundation grand opening of their self sufficient building. He thanked the Farm Bureau for hosting a nice BBQ at the Labor Camp.

Chairman Mark Medina attended the City Council which he said that they selected their Ad Hoc

committee for the tax sharing. He asked if Supervisor Hernandez would be part of an Ad Hoc committee with him for the tax sharing for the County.

Supervisor Hernandez excepted.

Chairman Medina spoke about an Ego. He said that we were elected to take care of our constituents and to put our personnel feelings aside and do what is best for the community. Sometimes that is agreeing or working with people that you do not agree with 100% but you take some of their thoughts and together you get a fa-nominal decision. He wants everyone to think about it every time they make a decision that they represent the residents the public.

CONSENT AGENDA

These matters shall be considered as a whole and without discussion unless a particular item is removed from the Consent Agenda. Approval of a consent item means approval of the recommended action as specified on the Agenda Item Transmittal.

If any member of the public wishes to comment on a Consent Agenda Item, please fill out a speaker card, present it to the Clerk prior to consideration of the Consent Agenda and request the item be removed and considered separately.

MOTION:

Motion to approve the Consent Agenda #1-14, with the exception of Item #2 and Item #5, which were pulled for discussion:

Made by **Supervisor Anthony Botelho** and seconded by **Supervisor Jim Gillio**

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

1. **AGRICULTURAL COMMISSIONER - K. OVERSTREET**

Approve State contract, 19-0647-000-SA, for nursery stock inspection activities, from July 1, 2019 through June 30, 2020, for a total contract value of \$500.00.

SBC FILE NUMBER: 1.1

2. **COUNTY ADMINISTRATION OFFICE - R. ESPINOSA**

Adopt a Resolution approving a Proposition 68 Grant application for the San Benito County River Parkway Focus Area Project and delegate authority to the CAO to sign and submit the necessary documentation for the grant.

SBC FILE NUMBER:

RESOLUTION NO: 2019-78

This item was pulled by Supervisor Peter Hernandez to thank CAO Ray Espinosa and staff for moving this forward.

Supervisor Jim Gillio said that he echoed Supervisor Hernandez.

MOTION:

Motion to Adopt Resolution No. 2019-78

Made by **Supervisor Peter Hernandez** and

per staff recommendation:

seconded by Supervisor Jim Gillio

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

3. COUNTY ADMINISTRATION OFFICE - R ESPINOSA

Accept the annual reports from Community-Based Organizations (CBOs) regarding the funding allocations they received for FY 18/19.
SBC FILE NUMBER: 119

4. COUNTY ADMINISTRATION OFFICE - R ESPINOSA

Approve contracts with the Community-Based Organizations (CBOs) receiving allocations of funding approved in the FY 19/20 Approved Budget for the period of July 1, 2018 to June 30, 2019 in the total amount of \$40,000.

Community Food Bank	\$12,000
Emmaus House	\$15,000
CASA	\$ 5,000
Chamberlains Children Center	\$ 4,000
San Benito Arts Council	\$ 4,000

SBC FILE NUMBER: 119

5. COUNTY CLERK/AUDITOR/RECORDER/ELECTIONS - J. P. GONZALEZ

Adopt Voluntary Collection Agreement with Airbnb, Inc. for Proposed Transient Occupancy Tax Agreement; and delegate authority to the Chair to execute, including approving any changes to the agreement if required by Airbnb.
SBC FILE NUMBER: 675

This item was pulled by Supervisor Anthony Botelho who thanked the Auditor for bringing this forward. He also had a question on why it is a Voluntary Agreement not mandatory.

Auditor Joe Paul Gonzalez provided information as to why it is a voluntary agreement.

County Counsel Barbara Thompson provided additional information.

Discussion ensued by Board and staff.

MOTION:

Motion to Approve per staff recommendation:

Made by Supervisor Anthony Botelho and seconded by Supervisor Jim Gillio

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

6. COUNTY COUNSEL'S OFFICE - B. THOMPSON

Approve Amendment No. 3 to legal services agreement with Thomas Law

Group in additional amount not to exceed \$60,000.00 for a total not to exceed \$109,900.00; and authorize the CAO to execute an additional amendment to this agreement if necessary in the amount not to exceed an additional 20%.
SBC FILE NUMBER: 160

7. **HEALTH AND HUMAN SERVICES AGENCY – T. BELTON, INTERIM**
Approve contract Amendment #2 for Shared Vision Consulting for Child Welfare Services in the amount of \$250,000 for a total sum not to exceed \$631,120.00.
SBC FILE NUMBER: 130
8. **HEALTH & HUMAN SERVICES AGENCY - T. BELTON, INTERIM**
Approve and Authorize the Chair to sign a Contract Amendment with Community Solutions to clarify the persons to be included for travel.
SBC FILE NUMBER: 130
9. **RESOURCE MANAGEMENT AGENCY – H. MAVROGENES**
Accept all bids for the Shore Road Bridge (43C0012) & San Felipe Road Bridge (43C0051) Replace Guard Railings – STPLX-5943(057) PWB-1908, find Bugler Construction as the lowest responsive responsible bidder; award contract to Bugler Construction in the amount of \$595,371.00; approve contract and authorize the RMA Director to execute the contract upon receipt of all contract documents required in the Invitation For Bids, and authorize the RMA Director to issue change orders in an amount of not to exceed \$42,268.55 (Contract Contingency Amount).
SBC FILE NUMBER: 105
10. **RESOURCE MANAGEMENT AGENCY - H. MAVROGENES**
Receive and file the updated County Service Area (CSA) FY 2019-2020 fee/tax report that corrects an administrative error.
SBC FILE NUMBER: CSA'S
11. **RESOURCE MANAGEMENT AGENCY-H. MAVROGENES**
Approval of Final Map for TSM 12-85, Tract No. 308, commonly known as Santana Ranch, Unit 11, located at East of Fairview Road.
SBC FILE NUMBER: 790
12. **RESOURCE MANAGEMENT AGENCY - H. MAVROGENES**
Approve Stipulation for Entry of Administrative Order and Administrative Order Thereon for matter of 2050 Chittenden Road, Aromas, California 95004.
SBC FILE NUMBER: 790.3
13. **SHERIFF'S OFFICE - D. THOMPSON**
Authorize Sheriff to accept a MRAP/MATV rescue vehicle, free of charge, from the Federal Government and amend Sheriff's Schedule of Fixed Assets to include MRAP/MATV rescue vehicle.
SBC FILE NUMBER: 110
14. **TREASURER/TAX COLLECTOR - M CASILLAS**
Approve an MOU between CSAC Financing Corporation and the County of San Benito for participation in the Tax Refund Exchange and Compliance

REGULAR AGENDA

For each regular agenda item, the following schedule shall occur:

- a) Staff report.*
- b) Public opportunity to address the Board on a particular agenda item. Please fill out a speaker card and present it to the Clerk prior to consideration of the item.*
- c) Consideration by the Board.*

15. HEALTH AND HUMAN SERVICES AGENCY - T. BELTON, INTERIM

Receive presentation of the 2019 San Benito County Homeless Census Executive Summary Report.
SBC FILE NUMBER: 130

Enrique Arreola from Health and Human services provided a PowerPoint presentation on the San Benito County Homelessness Census 2019 Executive Summary Report which included: Salinas/Monterey/San Benito County Continuum of Care members; Homeless Census: Longitudinal Trend, 2011-193, 2013-365, 2015-651, 2017-527, 2019-283; Homeless Executive Summary: 2019 Sheltered/unsheltered population; First episode of Homelessness; Accommodation on County Night; Age; Gender; Primary event or condition that led to Homelessness; Ways to obtain Permanent Housing; Duration of current episode of Homelessness; Self reported Health; Disabling conditions; Services and Assistance; Questions.

Discussion ensued by Board and staff.

Presentation only.

16. TREASURER/TAX COLLECTOR - M CASILLAS

Receive presentation of FY 2019 Tax Collections statistics and Adopt Resolution approving Request for Discharge of Accountability of delinquent unsecured accounts.
SBC FILE NUMBER: 685.2
RESOLUTION NO: 2019-79

Treasurer/Tax Collector Melinda Casillas provide information on collection statistics and what they do in the Tax Collectors Office. She provided a PowerPoint presentation that included the following: San Benito County Office of the Tax Collector as of June 30, 2019 paid & unpaid taxes by type; As of June 30, 2019 Each Type of Receivable Approximately \$118 Million Average Collection Rate 96%; Supplemental Bills; New Communications and Information: Bilingual services provided in the office; New answering machine message; Bilingual inserts; Targeted delinquent areas; Delinquent Unsecured about 1 Million dollars to collect from 2002-2018; Proposed Discharge of Delinquent Unsecured Taxes as of June 30, 2018: Total unpaid \$842,300.38; Proposed net discharge \$391,470.95; Proposed discharge analysis; Questions.

She said that she is here today to have the Board adopt a Resolution approving request for Discharge of Accountability of delinquent unsecured accounts.

Discussion ensued by Board and staff.

MOTION:

Motion to Adopt Resolution No.
2019-79 as presented:

Made by **Supervisor Jim Gillio** and seconded by
Supervisor Peter Hernandez

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

17. OFFICE OF EMERGENCY SERVICES - K. O'NEILL

Receive presentation on emergency preparedness activities by the Office of Emergency Services.

SBC FILE NUMBER: 75.5

Office of Emergency Services Director Kevin O'Neil provided a PowerPoint presentation on the Office of Emergency Services 2019 Update which included the following: Background information of what EMS does in a disaster; Upcoming Community Engagement: CERT Basic Course-Mid to Late Fall; Emergency Preparedness Workshops-November 2019; 211 Campaign;EOC Update: New, warm EOC currently in progress at the Airport; Updating Plans; Backup EOC - Hollister Pd & SBC Sheriff's Office; Training: EOC Courses; Countywide Emergency Preparedness Webinar; Exercise: Functional Field Based Exercise-Bolado Park; EOC Tabletop Exercise; EOC Functional Exercise; Coordination: Monthly Stakeholder meetings; School Preparedness; Fire Safe Council; Other Ongoing Projects: PSPS, 211; Partner MOUs; Management of Grants; Plan Updates for 2019/2020; 2017 Flood Recovery; Various Regional Projects; Questions.

Discussion ensued by Board and staff.

Supervisor Jim Gillio thanked Kevin for a great presentation. Said that he supports this.

Supervisor Peter Hernandez said that he is passionate about supporting this.

Supervisor Anthony Botelho said that he appreciated the report.

Report only.

CLOSED SESSION

County Counsel Barbara Thompson announced that closed session Item #18 and #19 will be continued to the next meeting. She read the remaining closed session items in to the record.

The Board adjourned in to closed session at 10:58 a.m.

The Board reported out of closes session at 12:21 p.m.

County Counsel reported that there was no reportable action.

Matters discussed during Closed Session include existing and pending litigation, personnel matters and real property negotiations. Reportable actions taken by the Board during Closed Session will be announced during open session. (Gov. Code Section 54957.1(a) and (b), Ralph M. Brown Act.)

18. **CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL -
ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (d)(2), (e)(2) of Government Code Section 54956.9

Number of cases: 1

Facts and Circumstances Justifying Closed Session: Potential of litigation relating to current landfill agreement.

SBC FILE NUMBER: 235.6

This item was continued to the next Board meeting.

19. **CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL -
ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (d)(2), (e)(2) of Government Code Section 54956.9

Number of cases: 1

Facts and Circumstances Justifying Closed Session: Potential of additional litigation regarding Master Tax Agreement currently being litigated in *Award Homes, Inc. v. County of San Benito, et. al*, Case No. CU-15-00099, and *BMC Promise Way, LLC, dba Benchmark Communities v. County of San Benito, et. al.*, Superior Court of California, County of San Benito, Case No. CU-15-00056.

SBC FILE NUMBER: 235.6

This item was continued to the next Board meeting.

20. **CLOSED SESSION-CONFERENCE WITH LEGAL COUNSEL -
ANTICIPATED LITIGATION**

Significant Exposure to litigation pursuant to Section 54956.9: Number of Cases: (1)

Closed session is authorized by Section 54956.9(d)(2), (e)(1).

SBC FILE NUMBER: 235.6

No reportable action.

21. **CLOSED SESSION - CONFERENCE WITH REAL PROPERTY
NEGOTIATORS Section 54956.8**

Property street address: 0 Buena Vista Road (APN 019-230-002) (On Buena Vista Road across the road from where Buena Vista Road makes a 90 degree turn towards the north)

Agency Negotiators: Ray Espinosa, County Administrative Officer; County Counsel Barbara Thompson

Negotiating parties: Graniterock

Under Negotiation: Price and Terms of Payment

SBC FILE NUMBER: 235.6

No reportable action.

22. **CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL**

Threat to Public Services or Facilities

Government Code 54957a.

SBC FILE NUMBER: 235.6

No reportable action.

23. CLOSED SESSION-CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: Michael McDougall, Ray Espinosa, Edgar Nolasco, Stewart Patri, Elvia Barocio and Barbara Thompson.

Employee Organizations:

Institutions Association

Law Enforcement Management

Management Employees' Group

SEIU Local 521 (General Unit Employees)

Deputy Sheriff's Association

Confidential Employees

Confidential Management Employees

Appointed Department Heads

Unrepresented Employees

AUTHORITY: California Government Code Section 54957.6

SBC FILE NUMBER: 235.6

No reportable action.

ADJOURNMENT

Adjourn to the next regular meeting of September 10, 2019.

MOTION:

Motion to adjourn the meeting at 12:21 p.m.: Made by Supervisor Jim Gillio and seconded by Supervisor Peter Hernandez

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

NOTE: A copy of this Agenda is published, along with supportive documents, on the County's Web site on the Friday preceding each Board meeting and may be viewed at www.cosb.us/government/meetings-agendas/. All proposed agenda items with supportive documents are also available for viewing at the San Benito County Administration Building, 481 Fourth Street, Hollister, CA between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday (except holidays). This is the same packet that the Board of Supervisors reviews and discusses at each Board meeting.

As required by Gov. Code Section 54957.5 any public record distributed to the Board of Supervisors less than 72 hours prior to this meeting in connection with any agenda item shall be made available for public inspection at the office of the Clerk of the Board, San Benito County Administration Building, 481 Fourth Street, Hollister, CA 95023. Public records distributed during the meeting will be available for public inspection at the meeting if prepared by the County. If the public record is prepared by some other person and distributed at the meeting it will be made available for public inspection following the meeting at the office of the Clerk of the Board.

In compliance with the Americans with Disabilities Act (ADA) the Board of Supervisors meeting facility is accessible to persons with disabilities. If you need special assistance to participate in this meeting, please contact the Clerk of the Board's office at (831) 636-4000 at least 48 hours before the meeting to enable the County to make reasonable arrangements to ensure accessibility.



SAN BENITO COUNTY BOARD OF SUPERVISORS

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La
Cruz
District No. 5
Vice-Chair

County Administration Building - Board of Supervisors Chambers, 481 Fourth Street, Hollister,
California

REGULAR MEETING MINUTES September 10, 2019 9:00 AM

Mission Statement

The County Board of Supervisors will recognize the public trust it holds, will on all occasions conduct business with honesty, integrity, and respect for the individual, and will hold the organization of County government to that same standard.

The San Benito County Board of Supervisors welcomes you to this meeting and encourages your participation.

- If you wish to speak on an item contained in the agenda please complete a Speaker Card identifying the item(s) and provide it to the Clerk of the Board prior to consideration of the item.

Each individual speaker will be limited to a presentation total of (3) minutes unless otherwise permitted by the Board Chair.

CALL TO ORDER

The meeting was called to order at 9:03 a.m. by Chairman Mark Medina. Those present were Supervisors Anthony Botelho, Jim Gillio, Peter Hernandez and Jaime De La Cruz, as well as County Counsel Barbara Thompson, County Administrative Officer Ray Espinosa and Clerk of the Board Janet Slibsager.

- a. Pledge of Allegiance

**Pledge of Allegiance to be led by Supervisor Anthony Botelho,
District #2.**

The Pledge of Allegiance was led by Supervisor Jaime De La Cruz.

- b. Acknowledge Certificate of Posting

Certificate of Posting.

MOTION:

Motion to Acknowledge the
Certificate of Posting:

Made by **Supervisor Jim Gillio** and seconded by **Vice-
Chair Jaime De La Cruz**

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

CLOSED SESSION

Matters discussed during Closed Session include existing and pending litigation, personnel matters and real property negotiations. Reportable actions taken by the Board during Closed Session will be announced during open session. (Gov. Code Section 54957.1(a) and (b), Ralph M. Brown Act.)

County Counsel Barbara Thompson announced that Item #1 and #3 will be taken off of the closed session agenda. She read closed session Item #2 into the record.

The Board adjourned in to closes session at 9:04 a.m.

The Board reported out of closed session at 9:16 a.m.

County Counsel reported that there was not reportable action.

1. CLOSED SESSION - CONFERENCE WITH REAL PROPERTY NEGOTIATORS Section 54956.8

Property street address: 0 Buena Vista Road (APN 019-230-002) (On Buena Vista Road across the road from where Buena Vista Road makes a 90 degree turn towards the north)

Agency Negotiators: Ray Espinosa, County Administrative Officer; County Counsel Barbara Thompson

Negotiating parties: Graniterock

Under Negotiation: Price and Terms of Payment

SBC FILE NUMBER: 235.6

This item was taken off of the agenda.

2. CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (d)(2), (e)(2) of Government Code Section 54956.9

Number of cases:1

Facts and Circumstances Justifying Closed Session: Request for reimbursement from Union Heights/CSA 35 related to damage to roads.

SBC FILE NUMBER: 235.6

No reportable action.

3. CLOSED SESSION-CONFERENCE WITH LEGAL COUNSEL-

ANTICIPATED LITIGATION

Significant Exposure to litigation pursuant to Section 54956.9: Number of Cases: (1)

Closed session is authorized by Section 54956.9(d)(2), (e)(1).

SBC FILE NUMBER: 235.6

This item was taken off of the agenda.

c. Presentations and Recognitions

d. Public Comment

Opportunity to address the Board on items of interest not appearing on the agenda. No action may be taken unless provided by Govt. Code Section 54954.2.

Those speaking from the public were:

Sue Logue announced that on October 23rd at 6:00 p.m. they will be having a celebration for the Friends of the Library and they will also be having a drawing contest which they have sent out to all of the schools.

Mary Schreider, Friends of the Library, mentioned that today September 10th the Community Foundation is sponsoring San Benito Gifts and they have matching funds for people who would like to donate to a non profit organization. She said that she would like to recommend that you consider the Friends of the Library as a worthy recipient for your gift. She said that they would like to help the Library to enhance their technology as they grow. To learn more about the Friends of the Library you can visit their website at sbcfriends.org.

Suzy Caston, SEIU member and County Employee, spoke of their contract and that they are concerned with only having three more meetings left to negotiate to get it done by October 30th. She spoke of the study that is being done by the County and that that County workers deserve to get a fair salary increase. She said that the agreement that they end up with will be in place for an entire year. She spoke of the rising cost of the Health Care Benefits for the County. She said that we are looking forward to the results of the class and comp study and appreciate the investment that the County has made. We understand there is a lot of work to do to implement the results of the study and that it will take time. We encourage the Board to tell the negotiator to make a real offer that will abstain and maybe retain your employees for the next year.

Valerie Eglund, SJB resident, spoke about getting a number of calls about the traffic that is diverted off of the 101 Highway during busy times and the flow of traffic through the little country roads. She said that it is becoming more significant that people are considering moving. She said that she was thinking that the Board could ask the Public Works Department to look in to signage that would deter people from going down the road without saying that you cannot go down the road.

Denise Quintana, County Employee and member of SEIU, spoke about County Employees and people leaving our County for higher wages and lower cost in Health Care. She spoke about the comp study and negotiations that are in the works. She said that we are asking the County to respect the work that we do and stop San Benito County from being a training ground.

e. Department Head Announcements: Information Only

County Counsel Barbara Thompson introduced the new Assistant County Counsel Joel Ellinwood.

Mr. Ellinwood said that he is grateful for the opportunity to be of service for San Benito County.

f. **Board Announcements: Information Only**

The Board announcements were moved to the end of the meeting.

Chairman Mark Medina said that we have several people out in the audience today and we have several items on this agenda that may spur some reflection. He asked that everyone be courteous of each others opinions even if you disagree. He said that he will not tolerate any obscenities or disrespect towards anyone.

CONSENT AGENDA

These matters shall be considered as a whole and without discussion unless a particular item is removed from the Consent Agenda. Approval of a consent item means approval of the recommended action as specified on the Agenda Item Transmittal.

If any member of the public wishes to comment on a Consent Agenda Item, please fill out a speaker card, present it to the Clerk prior to consideration of the Consent Agenda and request the item be removed and considered separately.

MOTION:

Motion to approve the Consent Agenda with the exception of Item #13 which was pulled from agenda and moved to the next meeting, Item #14 & #22 which were pulled for discussion:

Made by **Supervisor Jim Gillio** and seconded by **Supervisor Anthony Botelho**

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

4. **ASSESSOR'S OFFICE - T. SLAVICH**

Adopt Resolution Approving a Compatible Use Request on an Agricultural Preserve under Contract Number 70-828 for a Telecommunication Facility (Callan-Kreiger Family Trust).

SBC FILE NUMBER: 7

RESOLUTION NO: 2019-80

5. **BEHAVIORAL HEALTH DEPARTMENT - A. YAMAMOTO**

Approve contract renewal with Traditions Behavioral Health for Psychiatry Services for the period of July 1, 2019 through June 30, 2020, in an amount not to exceed \$456,352.00.

SBC FILE NUMBER: 810

6. **BEHAVIORAL HEALTH DEPARTMENT - A. YAMAMOTO**

Approve contract renewal with BHC Heritage Oaks Hospital for the period of

July 1, 2019 through June 30, 2020, in an amount not to exceed \$94,000.00.
SBC FILE NUMBER: 810

7. **BEHAVIORAL HEALTH DEPARTMENT - A. YAMAMOTO**

Approve contract with Cielo House, Residential Treatment Facility for the period of September 10, 2019 through June 30, 2020, in the amount not to exceed \$100,000.00.

SBC FILE NUMBER: 810

8. **BOARD OF SUPERVISORS**

Approve Certificate of Recognition for Monica and Raymond Rodriguez, Hollister Youth Alliance for their outstanding commitment and leadership to our community's Youth & Families, to be presented at a later date.

SBC FILE NUMBER: 156

9. **BOARD OF SUPERVISORS**

Approve the appointment of Ralph Anthony Stork as Director of the San Benito Resource Conservation District for a term of September 10, 2019 through November 30, 2022 and John Nolan as Associate Director for a term of September 10, 2019 through November 30, 2022.

SBC FILE NUMBER: 1059

10. **BOARD OF SUPERVISORS**

Approve the appointment of Supervisor Peter Hernandez to serve as an additional alternate delegate on the Rural County Representatives of California (RCRC) board and authorize the Chair to sign the letter of appointment.

SBC FILE NUMBER: 156

11. **CLERK OF THE BOARD OF SUPERVISORS - J. SLIBSAGER**

Approve the action minutes of the regular meeting of June 25, 2019.

SBC FILE NUMBER: 119

12. **COUNTY ADMINISTRATION OFFICE - R. ESPINOSA**

Adopt resolution approving amendments to the Joint Powers Authority (JPA) Agreement for the Golden State Finance Authority (GSFA), a JPA of which San Benito County is a member.

FILE NUMBER: 119

RESOLUTION NO: 2019-81

13. **COUNTY ADMINISTRATION OFFICE - R. ESPINOSA**

Adopt Resolution authorizing the County Administrative Officer to prepare all necessary documents for the Board of Supervisors' consideration, to permanently close, vacate and dispose of a portion of Nash Road between West Street and Monterey Street, and authorize the County Administrative Officer to negotiate the terms of a shared use agreement with the San Benito High School District for construction and shared use of a parking lot on the High School Campus, connected to the River Parkway Bypass Road, to be funded by the County in the estimated amount not to exceed \$301,000.

SBC FILE NUMBER: 119

RESOLUTION NO: 2019-82

This item was pulled and moved to the next meeting per Supervisor Jaime De La Cruz, he said it is the request of the Ad Hoc committee.

14. **COUNTY ADMINISTRATION OFFICE - R. ESPINOSA**

Adopt resolution authorizing the CAO to execute a Memorandum of Understanding with the Economic Development Corporation of San Benito County, to allocate funds to the EDC to support economic development within San Benito County,
SBC FILE NUMBER: 425
RESOLUTION NO: 2019-83

This item was pulled by Supervisor Peter Hernandez. He said that he supports this item with a slight amendment to direct the CAO to coordinate with the Boards negotiating team which would include himself and from Administration Dulce Alonso to work out the contract before it is approved.

The Board said that they would be o.k. with that.

MOTION:

Motion to move forward with item and Adopt Resolution No. 2019-83 with the amendment to direct the CAO to coordinate with the negotiating team before finalizing the MOU upon execution and to be brought back at our next meeting September 24, 2019:

Made by **Supervisor Peter Hernandez** and seconded by **Supervisor Jim Gillio**

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

15. **COUNTY COUNSEL'S OFFICE - B. THOMPSON**

Approve Amendment No. 5 to legal services agreement with Thomas Law Group in additional amount not to exceed an additional \$50,000, for a total contract amount of \$181,880; and authorize the CAO to execute an additional amendment to this agreement if necessary in the amount not to exceed an additional 20%.

SBC FILE NUMBER: 160

16. **COUNTY COUNSEL'S OFFICE - B. THOMPSON**

Approve Memorandum of Understanding with Dunneville Estate Common Properties, Inc, the property owner on which CSA facilities are located, 1) authorizing payments of CSA #50 funds in the amount of \$8,400.00 (for FY 19-20), and \$4,200.00 per year thereafter, plus an annual COLA; and 2) granting an easement to the County.

SBC FILE NUMBER: CSA #50

17. **COUNTY LIBRARY - N. CONTE**

The San Benito County Free Library requests Board approval to take the bookmobile to attend, as an exhibitor, the San Benito County Fair at Bolado Park beginning October 3rd, 2019.

SBC FILE NUMBER: 80

18. **HEALTH AND HUMAN SERVICES AGENCY – T. BELTON, INTERIM**

Adopt Resolution authorizing Closure of San Benito County Public Health Services, and Environmental Health Offices on October 29, 2019 for the annual community mass influenza vaccination clinic.

SBC FILE NUMBER: 420

RESOLUTION NO: 2019-84

19. **HEALTH AND HUMAN SERVICES AGENCY - T. BELTON, INTERIM**

Approve the Revised San Benito County Workforce Development Board (WDB) Bylaws to be effective from the time of BOS approval.

SBC FILE NUMBER: 130

20. **HEALTH AND HUMAN SERVICES - T. BELTON, INTERIM**

Approve the Homeless Emergency Assistance Program (HEAP) Capital Development Contract in the amount of \$1,100,000.00 and the Program Services contract in the amount of \$771,098.00 between the Monterey/San Benito Counties Coalition of Homeless Services Providers ("Coalition") and San Benito County; approve Budget Adjustment/Transfer in the amount of \$1,871,098.00. (4/5 vote)

SBC FILE NUMBER: 130

21. **RESOURCE MANAGEMENT AGENCY – H. MAVROGENES**

Approve Contract with Medina Systems Contracting, Inc., to replace existing Jail Controls to include New and Existing Jail Controls at Existing Jail to integrate with New Jail Expansion project, for the period of September 15, 2019 through June 1, 2020, for an amount not to exceed \$174,800.00.

SBC FILE NUMBER: 120.5

22. **RESOURCE MANAGEMENT AGENCY – H. MAVROGENES**

Approve Contract Change Orders No. 1, 2, 3, 4, 5, 6, 7, 8 for County Service Areas #11-#5-#8-#35-#9 Road Maintenance Project PWB-1903 with VSS International, Inc.; authorize the RMA Director to execute Contract Change Orders 1, 2, 3, 4, 5, 6, 7, 8, with VSS International, Inc.; and, so long as the requirements set forth in *Graydon v. Pasadena Redevelopment Agency* (1980) 104 C.A.3d 631 are met, authorize the RMA Director to issue change orders in an amount of not to exceed \$6,657.47 for these change orders (in addition to the original change order authority of \$38,310.00 for a total change order authority of \$44,967.47). (Contract Contingency).

SBC FILE NUMBER: CSA'S

This item was pulled from Matthew Thrasher of the public. He said that he would like the Board to reconsider speed humps that are being agreed upon on their street. He said that they would like the Board to possibly consider an access gate that would possibly help with the traffic.

Dee Slykas, Bonnieview resident, spoke about the speed humps and her concerns. She said there are a lot of residents that want the humps and some that would like the access gate. She said the Bonnieview residents would like to see if they could get four humps to decrease traffic the traffic coming down the road. She said that safety is an issue on that road.

Chairman Mark Medina said that there has been several meetings between the City and the County in regards to Bonnieview Road. They all decided on the speed humps.

MOTION:

Motion to approve the contract change orders number 1 through 8 for the County Service Areas #11, #5, #8, #35, #9 road maintenance project PWB-1903 with VSS International and not to delay the contract for the 4 speed humps; and authorize RMA Director to issue change orders and any supplemental change orders and other recommendation actions as stated:

Made by
Supervisor Jim Gillio and
seconded by
Supervisor Anthony Botelho

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

23. **RESOURCE MANAGEMENT AGENCY -H. MAVROGENES**

Accept all bids for the SB-1 Cold In-Place Recycling Overlay- Seal Coat Projects At Various Locations FY 2018-2019 PWB-1904, CIR-Overlay on Fairview Road from Fallon Road to Rosa Morada Road, CIR-Overlay on Union Road from Southside Road to Highway 25, CIR-CAPE Seal on Southside Road from San Benito River to near intersection of Highway 25, Seal Coat on F Street, find Granite Rock Company as the lowest responsive responsible bidder, award contract to Granite Rock Company in the amount of \$1,076,010.20, approve contract and authorize the RMA Director to execute the contract upon receipt of all contract documents required in the Invitation for Bids, and authorize the RMA Director to issue change orders in an amount of not to exceed \$66,300.51 (Contract Contingency).

SBC FILE NUMBER: 105

24. **RESOURCE MANAGEMENT AGENCY - H. MAVROGENES**

Approve contract with JT Plumbing in the amount of \$55,249.45 to replace back flow prevention devices in County Service Area (CSA) #31 - Stonegate, for the period of September 10, 2019 through November 30, 2019.

SBC FILE NUMBER: CSA #31

25. **RESOURCE MANAGEMENT AGENCY - H. MAVROGENES**

Approve Contract with DAS Systems, Inc. for the Emergency Responder radio System Installation for the San Benito County New Jail Expansion Project, for an amount not to exceed \$72,500.00. This contract shall commence on September 15, 2019, and end on November 1, 2019, unless sooner terminated as specified herein.

SBC FILE NUMBER: 120.5

26. **SHERIFF'S OFFICE - D. THOMPSON**

Accept report on inmate welfare expenditures for FY 2018-19.

SBC FILE NUMBER: 110

PUBLIC HEARING

27. **COUNTY COUNSEL'S OFFICE - B. THOMPSON**

Continued Public Hearing from the June 11, 2019 meeting regarding new proposed hemp ordinance, County Code Chapter 7.04. Read title, waive further reading and continue to September 24, 2019 for adoption of an ordinance to add Chapter 7.04 to Title 7 of the San Benito County Code related to Hemp regulation, including but not limited to definitions, prohibitions, the establishment of the Hemp Entity Management Program, registration requirements and regulations, fees, zoning for cultivation, required setbacks, odor and pollen drift mitigation, minimum parcel size, other requirements and administration and enforcement provisions. ENVIRONMENTAL EVALUATION: Exempt from CEQA, including, but not limited to, State CEQA Guidelines sections 15061, subd. (b)(3) and 15308. APPLICANT/PROPONENT: San Benito County. PROPERTY: Unincorporated San Benito County. SBC FILE NUMBER: 160

County Counsel Barbara Thompson read the title of the ordinance for the record regarding new hemp ordinance and the recommended changes that the Planning Commission recommended to the Board.

Chairman Mark Medina opened the public hearing.

Public Comment: Elia Salinas said that the State does not require anything that it has to be separate, are we talking about cultivation or manufacturing. Does not understand why the County is going to go against what the State has already mandated.

Ms. Thompson said that they can bring that back and address that at the next meeting before they adopt it.

Chairman Medina closed the public hearing.

Supervisor Anthony Botelho said a lot of counties have banned hemp completely. He said I think the County has done a good job on this ordinance.

Supervisor Peter Hernandez provided information to the exclusions and how to separate hemp from cannabis, it is a lot more complicated and expensive. He said we are moving forward to try and support hemp.

Discussion ensued by Board and staff.

MOTION:

Motion to accept the introduction and waive further reading of the ordinance and continue the item to September 24th for adoption:

Made by **Supervisor Anthony Botelho** and seconded by **Vice-Chair Jaime De La Cruz**

5 - 0

For (5):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

Against (0):

28. **RESOURCE MANAGEMENT AGENCY - H. MAVROGENES**

Public hearing and study session for the Board of Supervisors to consider the recommendations of the Planning Commission adopted at a special meeting on September 4, 2019, in Resolution No. 2019-18 and Resolution No. 2019-10 adopted on May 15, 2019 with regard to the Regional Commercial (C-3) nodes, and take final action to either adopt the proposed ordinances as appropriate, or otherwise deny the following items.

Environmental Evaluation: The Board will consider finding that the creation of the C-3 zoning district nodes as currently proposed were adequately considered and consistent with the County 2035 General Plan Environmental Impact Report as certified in Resolution No. 2015-58, and that the adoption of an addendum is appropriate as more particularly described in the staff report and proposed CEQA findings.

1. **2035 General Plan Land Use Maps Clerical Corrections:** The Board will consider for accuracy five General Plan Land Use maps (Figures 3.2-3.6) corrected to accurately reflect the Board's adoption of the 2035 General Plan on July 21, 2015. The maps have been corrected to show the removal of the fourth commercial regional node not approved at State Route 156 that the Board approved for relocation to the "Livestock 101" site. This item will correct clerical mapping errors that do not reflect the final action taken by the Board.

2. **PLN180024-ZA (Zoning Code Amendment):** Change provisions of County Code including Chapter 25.16 and Sections 25.03, 25.05 and 25.29 to adopt by ordinance the Regional Commercial (C-3) Zoning District and associated minor Code amendments.

3. **Amend the County Zoning Map to establish boundaries for the Regional Commercial (C-3) District:** If the Code amendment is approved, amend the County Zoning Map by ordinance to change the zoning district for land area recommended for inclusion in each of four separate Commercial Regional nodes, with specific site and property boundaries, to Regional Commercial (C-3) Zoning District. Each site will have its own unique theme and undergo site-specific review for uses not allowed through a master development permit or conditional use permit process in accordance with General Plan Policy and new Code provisions.

a. **PLN180024-ZC1 "Betabel" (Zone Change):**

OWNER/APPLICANT: McDowell Charitable Trust and Betabel RV Park, LLC. LOCATION: West side of U.S. 101 at Betabel Road interchange, 9664 and 9644 Betabel Road, San Juan Bautista, CA (APN 013-150-017, -018, -024 & -025). ZONING DESIGNATION: Request to change zoning from Agricultural Rangeland-Floodplain (AR-FP) to Regional Commercial-Floodplain (C-3-FP) on approximately 29-acres. GENERAL PLAN LAND USE DESIGNATION: Rangeland/Commercial Regional.

b. **PLN180024-ZC2 "SR129/Searle Road" (Zone Change):**

OWNER/APPLICANT: Weiler Family, Johnson Family, Lavagnino Family & Burke Family Trusts, Mohssin & Saleh, and Rubio.
LOCATION: Westerly side of U.S. 101 at Highway 129/Searle Road, San Juan Bautista, CA (APN 012-010-006, -007, -021, -024, 012-030-017, -019 & -023). ZONING DESIGNATION: Request to change zoning from Agricultural Rangeland-Floodplain (AR-FP), Rural or Commercial Thoroughfare (C-2) to Regional Commercial (C-3) on approximately 33-acres. GENERAL PLAN DESIGNATION: Rural or Rangeland/Commercial Regional.

c. **PLN180024-ZC3 "Rocks Ranch" (Zone Change):**
OWNER/APPLICANT: Bingaman Trust. LOCATION: Southerly side of U.S. 101 at San Juan Road interchange, San Juan Bautista, CA (portion of APN 011-310-006). ZONING DESIGNATION: Request to change zoning from Agricultural Rangeland (AR) or Agricultural Productive (AP) to Regional Commercial (C-3) on approximately 77.3-acres. GENERAL PLAN DESIGNATION: Commercial Regional and Rangeland or Agriculture

d. **PLN180024-ZC4 "Livestock 101" (Zone Change):**
OWNER/APPLICANT: Warren Family Trust. LOCATION: Northerly side of U.S. 101 and easterly side of Cole Road, 4400 Hwy 101, Aromas, CA (APN 011-280-027, -028, -029, -030, -034, -035 & -036). ZONING DESIGNATION: Request to change the zoning from Rural (R) and Neighborhood Commercial (C-2) to Regional Commercial (C-3) on approximately 159.3-acres. GENERAL PLAN DESIGNATION: Rural/Commercial Regional

SBC FILE NUMBER: 790

Daryl Boyd, Project Planner with the Resource Management Agency, said that he is going to do a PowerPoint presentation with a few slides and then he will hand it over to Michael Groves of EMC Planning Group to present the rest. He said that this is an implementation project for the 2035 General Plan and there will be 5 related ordinances that they will be asking for the Board to take action on. The first ordinance is to amend Title 25 to adopt the regional C-3 zoning districts. If the Board adopts that ordinance the next four actions would be to apply the C-3 zoning and regulations to the real property in four nodes. He said a couple of other key points is; if the Board adopts those ordinances there will be no construction or development, it is merely, to put the regulatory frame work in place so that in the future, at these four nodes, development proposals could come in and go through the development process. He said since this is the first time the Board is seeing this they have set this up as a study session/work session to allow staff to present the C-3 project. He said that we would take final action on September 24th. He provided information that it went to the Planning Commission for review and consideration and the process by law what needed to take place. He went over the Board packet materials and the public outreach process that took place; background; Regional C-3 Districts; C-3 Nodes being Betabel, Highway SR129, Searle Road, Rocks Ranch and Livestock 101; General Plan Policies directing the creation of Commercial Regional Nodes.

Micheal Groves, President of EMC Planning Group, provided additional information on the Regional Commercial (C-3) District Overview which included the following: Zoning, definition of specific node boundaries; Proposed Regional Commercial Code; C-3 District Code-Master Development Plan; C-3 District Code-Limitations; C-3 Economic Development; Betabel Road

zone change-29 acres, Theme: Mid Century Roadside; Hwy 129 zone change-33.1 acres, Theme: Early Farmstead; Rocks Ranch zoning change-77.3 acres, Theme: Old California Village; Livestock 101 zoning change-159.3 acres, Theme: Working Ranch; CEQA Compliance; General Plan Clerical Mapping corrections for the four nodes.

He provided the actions the Board will take for the C-3 Districts on the September 24th: Accept Map Correction, Adopt 5 resolutions, one for each node being considered; and ordinance for the new C-3 Code Section; and 4 ordinances for each node; and a resolution for finding of facts on the Regional Commercial Nodes. He said remember that no physical development occurs with the rezoning and all future development proposals will require a separate review and discretionary action by the Planning Commission and have a CEQA review.

Chairman Mark Medina said that he would like clarification from County Counsel on the two day hearing process and what we are voting on today.

County Counsel Barbara Thompson provided information as follows: The zoning ordinance only requires one public hearing and the hearing notice has to be published after the Planning Commission's recommendation is received, so there was no time to publish the public hearing with the Planning Commission's recommendation for today's date. So all of the actions that will be taken by the Board for approval, if approved today, will take place on September 24th and there will be public notice published with the Planning Commission's recommendation. Today's notice was to get as much outreach as possible for the public. We are having two public hearings which is unusual for zoning ordinances.

Chairman Medina said that they thought it would be wise to hear it twice because we want to make sure that everybody understands what we are voting on and what it is.

Chairman Medina opened the public hearing.

Public comment:

Marty Richman, Hollister resident, spoke about how revenue is important and the clean air quality. He said that we need this opportunity.

Mary Edge, San Juan Bautista resident, asked the Board to think of the City of San Juan Bautista before making this decision.

Zachary Walton, Attorney for Property Owners, thanked staff for putting together quality documents. Spoke about the adoption of the general plan and commercial nodes zoning in 2015.

Andy Hsia-Coron, Aromas resident and member of P.O.R.C., spoke of the nodes in the context of cancer. Spoke of how there will be more traffic with this development. He said that you can say no and change your mind to these commercial areas.

Cara Vonk, San Juan Bautista resident, said that the C-3 zone district authorizes development that will affect the natural beauty of our City. The City of San Juan Bautista City Council opposed this plan.

Ann Marie Sayers, Indian Canyon resident, said that this is a very sacred area and destroy for commercial is not acceptable.

Tom Karis, Aromas resident and member of P.O.R.C., voiced his objection to the commercial nodes along Highway 101 and asked the Board to not adopt the commercial zoning.

Mary Hsia-Coron, Aromas resident and member of P.O.R.C., read comments from another member that could not be present in regards to the 101 Livestock zoning clerical error that had been made.

Jackie Morris Lopez, San Juan Bautista resident, spoke in opposition of the C-3 Nodes and that she agrees with the previous speakers.

Jacob Mohammed, Aromas resident, spoke of how the traffic has gotten worse and that the Board should focus on the infrastructure like the roads before approving commercial development live these. He said I understand that the County needs money but this is not the way.

Natasha Wist, Hollister resident, said that she is asking for the Board of Supervisors to follow the legal mandates of the State regards to major zoning change.

Lori Iacopi, Aromas resident, thanked the Board of Supervisor for their service. Spoke of road, traffic control, security and water that can be affected by these nodes.

John Deikman, Royal Oaks resident and a member of P.O.R.C., spoke in opposition of the nodes.

Richard Wist, Hollister resident, asked that the Board consider every word they say. He said that this County if a Gold Mine, we have a beautiful place and it needs to be protected.

James Starkwolf, Prunedale resident and member of P.O.R.C., spoke about preserving their sacred rights, we don't want another Prunedale.

Adam Scow, Watsonville resident, spoke about ground water concerns and problems now. Echoed the concerns of the residents.

Demetrio Pruneda, Prunedale resident, read a poem and stated that he supports the Protect Our Rural Community (P.O.R.C.).

Robert Robe, Aromas resident, spoke about the 101 Livestock clerical error and how they should postpone the C-3 Node for 101 Livestock. Spoke of environmental concerns.

Jared McDonald, Vice-Chair of the Chamber of Commerce, said that they are in support of the adoption of the zoning change and appreciates the work that has gone in to this.

Joe Torquato, San Juan Bautista resident, spoke of having a beautiful County and Resources that we want to preserve. He said that this is an opportunity to bring business and income to our County to help the financial needs of the County. He asked that the Board support this.

Jim Warren, Owner of 101 Livestock, said that we have been commercial for all these years. He said that we promote agriculture and are not interested in developing the property. He said it is not about the money. We are an agriculture node and do promote agriculture to this community and all over the United States.

Ben Bingaman, Owner of Rocks property, provided clarification to the C-3 zoning and his site and about things that are being said.

Sarah Jones, President of Children's Cancer Funding Group, spoke in regards to the Betabel project and what it means to her. She spoke about a legacy that we would leave behind.

Daniel Dodge Jr., Watsonville resident, spoke about supporting the rezoning and smart growth.

Greg Weiler, San Juan Bautista resident, said that this is so well planned. I urge the Board to adopt this zoning.

Suzy Caston, County Employee and member of SEIU, spoke of how the zoning change of the nodes would put the County in a much better position to generate needed revenue that is currently lacking. It would help the County to provide much needed services to our community. She said our union fully supports the adoption of the zoning change.

Chairman Mark Medina announced that they received two letter's against the project and five letter's that were in support of the project.

Supervisor Anthony Botelho thanked everybody who took the time today to come out and speak. He spoke about the General Plan and the different C-3 nodes that are being proposed. He said that he is 100% support of the nodes. Expressed gratitude to staff and consultants.

Supervisor Peter Hernandez said that he is all for preserving our community. He said it is a tough decision but this is an opportunity for our County.

Supervisor Jim Gillio thanked everyone for being here. He said that there is a lot to look at before we decide. He said that, yes, the City of San Juan Bautista is concerned about what this could do to their City. He encourages folks to read our General Plan and Land Use Section which talks about all of the restrictions, etc.

Supervisor Jaime De La Cruz thanked Preserve Our Rural Communities (P.O.R.C.) and all the members of the public, staff and applicants. He said he is about fairness and the decisions they make don't always make everyone happy.

Chairman Medina thanked P.O.R.C., Mary Edge and Leslie Jordan. He said that he sat down with them and listened to what they had to say and I told them my view. He said that they will back here on the 24th and thanked everybody for their patience.

MOTION:

Motion to continue the public hearing Made by **Supervisor Anthony Botelho** and seconded
to September 24, 2019: by **Vice-Chair Jaime De La Cruz**

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

REGULAR AGENDA

For each regular agenda item, the following schedule shall occur:

- a) Staff report.*
- b) Public opportunity to address the Board on a particular agenda item. Please fill out a speaker card and present it to the Clerk prior to consideration of the item.*
- c) Consideration by the Board.*

29. **HEALTH AND HUMAN SERVICES AGENCY – T. BELTON, INTERIM**

Receive Presentation from Public Health and Opioid Task Force with an update on local strategies that have been implemented to mitigate opioid overdose deaths, raise youth and parent education and awareness, and spotlight successes in the countering the opioid epidemic.

SBC FILE NUMBER: 130

Lynn Mello from Health and Human Services Agency provided an update on the efforts that have been happening the past year to mitigate the Opioid epidemic and crisis within our own jurisdiction.

Doctor Mary White from the Health Department thanked the Board for their support in regards to the Opioid crisis in our community. She provided a PowerPoint presentation that provided the following: San Benito County Opioid Task Force update and history: In 2017 San Benito County had the 12th highest opioid overdose death rate in the State; Established September 2017 over have grown to over 50 members; Narcan Opioid overdose reversing medication; Over 20% decrease in last 2 years; Outreach; 1,000 pounds collected in San Benito County; October 26th is take back days by the Hollister Police Department from 10:00 a.m. to 2:00 p.m.; Quick facts website- www.sbcopioidtaskforce.org; Americorps Vista Program; Tipping Point achievements; 2017-2018 data; Congressman Panetta's visit. She thanked the Board for their continued support and time today.

She announced that flu season is fast approaching so they encourage everyone to get their flu shot and mentioned that the Countywide Flu Shot Clinic will be on October 29th from 3:00 p.m. to 8:00 p.m. at the Vet's Hall.

Presentation only.

30. **COUNTY COUNSEL'S OFFICE - B. THOMPSON**

Read Title for the Record, Waive formal reading and continue to September 24, 2019 for adoption an ordinance amending Chapter 5.09, the County's ordinance related to purchasing, making minor modifications relating to service contracts.

SBC FILE NUMBER: 160

County Counsel Barbara Thompson read the title of the ordinance for the record amending Chapter 5.09, the County's ordinance related to purchasing and making minor modifications relating to service contracts. She read the changes that are being made and would becoming back on September 24th for adoption.

MOTION:

Motion to waiver further reading and continue to September 24, 2019 for adoption:

Made by **Supervisor Anthony Botelho** and seconded by **Supervisor Jim Gillio**

4 - 0

For (4):

Against (0):

Ayes: Botelho, Gillio, Hernandez, Medina

31. **COUNTY COUNSEL'S OFFICE - B. THOMPSON**

Read Title of the ordinance for the record, waive further reading and Accept Introduction of Ordinance amending Section 21.01.092 to allow movement of

a building from one site to another even if it does not meet minimum code requirements at time of initial inspection, and continue to September 24, 2019 for adoption.

SBC FILE NUMBER: 160

County Counsel Barbara Thompson read the title of the ordinance into the record along with changes amending Section 21.01.092 to allow movement of a building from one site to another. This item will be continued to September 24, 2019 for adoption.

Discussion ensued by Board and staff.

MOTION:

Motion to adopt the staff recommendation waiver further reading of the ordinance per staff recommendation and continue to September 24, 2019 for adoption:

Made by **Supervisor Jim Gillio** and seconded by **Supervisor Anthony Botelho**

4 - 0

For (4):

Against (0):

Ayes: Botelho, Gillio, Hernandez, Medina

32. RESOURCE MANAGEMENT AGENCY – H. MAVROGENES

Adopt Resolution, expressing opposition and non-support of the State Highway Operations and Protection Program project to construct a Roundabout at the intersection of SR 156 and SR 25, and that the SHOPP funds be reallocated to another eligible project within San Benito County.
SBC FILE NO:105

RESOLUTION NO: 2019-85

Resource Management Agency Director Harry Mavrogenes said that this is actually mirroring the resolution that the City of Hollister adopted last week being in opposition of the roundabout at the intersection of Hwy 156/25. He said that this issue will be coming up at the next COG meeting as well. He spoke about some of the issues he was concerned about in regards to this roundabout and that the SHOPP funds be reallocated to another eligible project within San Benito County.

Public Comment:

Kevin Stopper, Hollister resident, spoke about letter opposing it and safety issues. He said that he doesn't think a roundabout is a good answer, should attack an overpass first.

Supervisor Anthony Botelho said that this has been discussed a number of times at COG. Concerned about safety at that intersection. He said he is in support of this resolution but feels that we need to continue to work with CalTrans to improve the safety of that intersection.

Supervisor Jim Gillio said that there is a vast amount of commercial traffic going one direction and vehicle traffic also. He said that we need to adopt this resolution today, we are not saying no to safety.

Supervisor Peter Hernandez said that we get a lot of truck traffic and need to address that intersection but CalTrans seems to be one sided. He said that he supports this resolution.

Supervisor Jaime De La Cruz said that there are safety concerns but CalTrans needs to work together with us.

MOTION:

Motion to adopt Resolution 2019-85 to oppose the roundabout at Highway 156 and Highway 25. With recommendation by Supervisor Botelho that the Resolution go out to everyone: Made by **Supervisor Jim Gillio** and seconded by **Vice-Chair Jaime De La Cruz**

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

33. RESOURCE MANAGEMENT AGENCY - H. MAVROGENES

Adopt Resolution of the Board of Supervisors (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)

SBC FILE NUMBER: 105

RESOLUTION NO: 2019-87

County Counsel Barbara Thompson provided information to the resolution and pointed out some changes in paragraph 4 and 5.

RMA Director Harry Mavrogenes provided information to the resolution and that this is to improve the pothole projects so that they can get done before the rainy season.

Supervisor Jaime De La Cruz asked what is happening with Buena Vista Road.

Mr. Mavrogenes replied that would fall under the Measure G Funds but would also need to work with the City of Hollister on this.

Supervisor Anthony Botelho said that we need to work with the City of Hollister in regards to the impacts of the developments. He said that they need to pick up some of the costs.

MOTION:

Motion to Adopt Resolution No. 2018-87 with the changes made by County Counsel: Made by **Supervisor Jim Gillio** and seconded by **Supervisor Peter Hernandez**

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

34. BOARD OF SUPERVISORS

Adopt Resolution authorizing the display of the National Motto, "In God We Trust", and delegate authority to accept donations.

SBC FILE NUMBER: 156
RESOLUTION NO: 2019-86

Supervisor Peter Hernandez asked for this to be on the agenda to support the National Motto. He said that it is a sentiment in reflection of unity, dialogue, diversity, etc. He said this is something we should be proud of.

Public Comment:

Gary Cameron, he said that he was pleased to see this item was on the agenda because it is important to a democratic society. He said that motto's are more than just words. He said that "In god we trust" is appropriate for the Board of Supervisor to pass today.

Matt Kirkland, Pastor, said that he supports the motto to displayed here.

Supervisor Anthony Botelho said that he studied this really hard and that it is important. He said he has a concern that we may be getting to close to religion in the government setting for the people that don't share the same faith. We may be taking a step to far. He supports donations going to a display is okay. He said that he can't support the resolution as written.

Supervisor Jaime De La Cruz said that he does understand in government that there needs to be a separation. He does support Supervisor Hernandez position to support the resolution.

Chairman Mark Medina said that he also spent a lot of time researching this. We are not creating anything it is on our money and it is the right thing to do. He said that he would agree to this National Motto.

Supervisor Jim Gillio said this was a tough one for him. He said that personally he supports the National Motto 100%, but can't support this today in the fashion that it is. He said that he can support a Resolution four our National Motto.

Supervisor Peter Hernandez said to clarify, there is nothing religious about the resolution the reality is that is is very patriotic. He said that he has had County Counsel look at it and it does not interfere with any legal issues.

County Counsel Barbara Thompson she said that the Board would be adopting it for historic and patriotic purposes, not religious.

Chairman Medina asked how may other cities or counties have done this.

Ms. Thompson provided information.

MOTION:

Motion to adopt Resolution No. 2019-86 authorizing the display of the National Motto "In God We Trust" and delegate authority to accept donations:

Made by **Supervisor Peter Hernandez** and seconded by **Vice-Chair Jaime De La Cruz**

4 - 1

For (4):

Against (1):

Ayes: De La Cruz, Gillio, Hernandez, Medina Nays: Botelho

35. COUNTY ADMINISTRATIVE OFFICE - RESPINOSA

Received FY18/19 3rd Quarter Financial Report.
SBC FILE NUMBER: 119

Chairman Mark Medina announced that they will be bringing this item back with the Fourth Quarter report at a future meeting.

MOTION:

Motion to adjourn the meeting
at 2:45 p.m.:

Made by **Vice-Chair Jaime De La Cruz** and seconded by
Supervisor Jim Gillio

5 - 0

For (5):

Against (0):

Ayes: Botelho, De La Cruz, Gillio, Hernandez, Medina

CLOSED SESSION

County Counsel Barbara Thompson read the closed session items in to the record. She mentioned that Item #40 was taken off of the agenda.

Chairman Medina announced that they would be back from closed session at 1:30 p.m.

The Board adjourned in to closed session at 12:01 p.m.

The Board reported out of closed session at 1:48 p.m.

Ms. Thompson reported that there was no reportable action except on Item #38 she was authorized to sign a conflict waiver and on Item #40 approved a tolling agreement.

Matters discussed during Closed Session include existing and pending litigation, personnel matters and real property negotiations. Reportable actions taken by the Board during Closed Session will be announced during open session. (Gov. Code Section 54957.1(a) and (b), Ralph M. Brown Act.)

**36. CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL -
ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (d)(2), (e)(2) of Government Code Section 54956.9

Number of cases:3

Facts and Circumstances Justifying Closed Session: Potential of litigation relating to current landfill agreement; Potential of additional litigation regarding Master Tax Agreement currently being litigated in *Award Homes and BMC Promise Way*.

SBC FILE NUMBER: 235.6

No reportable action.

37. CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL

Threat to Public Services or Facilities

Government Code 54957a.

SBC FILE NUMBER: 235.6

No reportable action.

38. **CLOSED SESSION-CONFERENCE WITH LEGAL COUNSEL-
ANTICIPATED LITIGATION**

Significant Exposure to litigation pursuant to Section 54956.9: Number of Cases: (2)

Closed session is authorized by Section 54956.9(d)(2), (e)(1).

SBC FILE NUMBER: 235.6

The Board authorized County Counsel to sign a conflict waiver.

39. **CLOSED SESSION-CONFERENCE WITH LABOR NEGOTIATORS**

Agency designated representatives: Michael McDougall, Ray Espinosa, Edgar Nolasco, Stewart Patri, Elvia Barocio and Barbara Thompson.

Employee Organizations:

Institutions Association

Law Enforcement Management

Management Employees' Group

SEIU Local 521 (General Unit Employees)

Deputy Sheriff's Association

Confidential Employees

Confidential Management Employees

Appointed Department Heads

Unrepresented Employees

AUTHORITY: California Government Code Section 54957.6

SBC FILE NUMBER: 235.6

No reportable action.

40. **CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL-
EXISTING LITIGATION**

No. of cases: 1 Subdivisions (a) and (d)(1) of Section 54956.9 Name of Case:

Rose, et. al. v. County of San Benito, Superior Court of California, County of San Benito, Case No. CU-17-00151.

SBC FILE NUMBER: 235.6

This item was taken off of the agenda.

41. **CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL:**

Conference with Legal Counsel - Anticipated Litigation

Initiation of litigation pursuant to subdivision (d)(4) of Government Code Section 54956.9

Number of Cases: 1

SBC FILE NUMBER: 235.6

The Board approved a tolling agreement.

ADJOURNMENT

Adjourn to the next regular meeting of September 24, 2019.

NOTE: A copy of this Agenda is published, along with supportive documents, on the County's Web site on the Friday preceding each Board meeting and may be viewed

at www.cosb.us/government/meetings-agendas/. All proposed agenda items with supportive documents are also available for viewing at the San Benito County Administration Building, 481 Fourth Street, Hollister, CA between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday (except holidays). This is the same packet that the Board of Supervisors reviews and discusses at each Board meeting.

As required by Gov. Code Section 54957.5 any public record distributed to the Board of Supervisors less than 72 hours prior to this meeting in connection with any agenda item shall be made available for public inspection at the office of the Clerk of the Board, San Benito County Administration Building, 481 Fourth Street, Hollister, CA 95023. Public records distributed during the meeting will be available for public inspection at the meeting if prepared by the County. If the public record is prepared by some other person and distributed at the meeting it will be made available for public inspection following the meeting at the office of the Clerk of the Board.

In compliance with the Americans with Disabilities Act (ADA) the Board of Supervisors meeting facility is accessible to persons with disabilities. If you need special assistance to participate in this meeting, please contact the Clerk of the Board's office at (831) 636-4000 at least 48 hours before the meeting to enable the County to make reasonable arrangements to ensure accessibility.



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 5.

MEETING DATE: 11/5/2019

DEPARTMENT: COUNTY ADMINISTRATION OFFICE

DEPT HEAD/DIRECTOR: Ray Espinosa

AGENDA ITEM PREPARER: Stewart Patri

SBC DEPT FILE NUMBER: 130

SUBJECT:

COUNTY ADMINISTRATION OFFICE - R. ESPINOSA

Approve budget amendment to transfer \$142,177.19 from the General Fund to Health & Human Services for reimbursement of foster care recoupment payments starting from FY 16/17 through FY18/19. (4/5 vote)

SBC FILE NUMBER: 130

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

Title IV-A and IV-E of the Social Security Act cover Federal Foster Care and CalWORKs payments that are made to eligible families/foster parents for daily care and supervision of children placed in their care by Child Welfare Services. These payments are made by the County's Health & Human Services Agency (HHSA) through monthly assistance checks and carry a County share of cost that are funded with Social Services realignment dollars.

Recoupment payments are received through Child Support Services when an absent parent, whose children are in foster care or whose family is receiving aid, is court ordered to pay child

support to cover the assistance costs. Section 12-425(d)(1) of the California Department of Social Services Manual, which provides regulations for Child Support collections and distribution, states that "any amount of current child, family, or spousal support collected that remains after the amount distributed under Section 12-425(c) shall be retained by the county to reimburse, in whole or in part, the aid payment for that month, and any past aid payments made to the family which have not been otherwise reimbursed."

The County General Fund provided Health and Human Services Department a contribution for ongoing maintenance of effort for services prior to fiscal year (FY) 16/17. The mandated maintenance of effort required by the State Department of Social Services was shifted to social service realignment funding, thus the General Fund contribution was no longer required. Since FY16/17 the County General Fund has no longer provided contributions to the Health and Human Services Department, but the recoupments from foster care services were continued to be deposited into the General Fund. By approving a transfer of funds for the recoupments received between FY16/17 and FY18/19 the County is reimbursing the Health and Human Services Department for the costs that they incurred for providing the foster care services during this time period. Administration will revise the internal procedure for recoupment funding beginning in FY19/20.

The amount of funding received during this period is as follows:

Fiscal Year	Recoupment Amount
FY16/17	\$52,987.17
FY17/18	\$49,887.21
FY18/19	\$39,302.81
Total:	\$142,177.19

BUDGETED:

No

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Approve budget amendment to transfer \$142,177.19 from the General Fund to Health & Human Services for reimbursement of foster care recoupment payments starting from FY 16/17 through FY18/19. (4/5 vote)

ADDITIONAL PERSONNEL:

ATTACHMENTS:**Description**

Foster Care Recoupment Payments

Budget Adjustment Transfer

Upload Date Type

10/31/2019

Exhibit

10/31/2019

Budget Adjustment/Transfer Form

G/L Date Range 07/01/16 - 09/30/19

Exclude Sub Ledger Detail

Exclude Accounts with No Activity

G/L Date	Journal	Journal Type	Sub Ledger	Description/Project	Source	Reference	Debit Amount	Credit Amount	Actual Balance
G/L Account Number	101.15.1020.1000.570.004	Other Revenues Assistance Recoupments						Balance To Date:	\$0.00
11/30/2016	2017-00003234	JE	RA	WF Receipt Deposit batch 11.30.16 p1	Collections		2,975.33		(2,975.33)
01/13/2017	2017-00003634	JE	GL	correct CSE LCSA postings				18,621.38	(21,596.71)
03/15/2017	2017-00005015	JE	RA	WF Receipt Deposit Batch 03.15.17	Collections		3,367.06		(24,963.77)
03/30/2017	2017-00005398	JE	RA	WF Receipt Deposit Batch 03.30.17	Collections		6,103.95		(31,067.72)
04/27/2017	2017-00006138	JE	RA	WF Receipt Deposit Batch 04.27.17	Collections		5,547.53		(36,615.25)
05/17/2017	2017-00006499	JE	RA	WF Receipt Deposit Batch 05.17.17	Collections		4,477.84		(41,093.09)
06/30/2017	2017-00007427	JE	RA	WF Receipt Deposit Batch 06.30.17 P1	Collections		4,886.62		(45,979.71)
06/30/2017	2017-00007606	JE	GL	DCSS CS34&35 June 2017 R#2018-358 rec'd 7/25/17			7,007.46		(52,987.17)
08/25/2017	2018-00000817	JE	RA	WF Receipt Deposit Batch 08.25.17	Collections		3,314.57		(56,301.74)
10/09/2017	2018-00001586	JE	RA	WF Receipt Deposit Batch 10.09.17	Collections		3,256.52		(59,558.26)
10/24/2017	2018-00001853	JE	RA	WF Receipt Deposit Batch 10.24.17	Collections		2,821.54		(62,379.80)
11/28/2017	2018-00002466	JE	RA	WF Receipt Deposit Batch 11.28.17	Collections		3,038.70		(65,418.50)
01/12/2018	2018-00003062	JE	RA	WF Receipt Deposit Batch 01.12.18	Collections		4,591.46		(70,009.96)
01/23/2018	2018-00003286	JE	RA	WF Receipt Deposit Batch 01.23.18	Collections		4,315.29		(74,325.25)
03/28/2018	2018-00004388	JE	RA	WF Receipt Deposit Batch 03.28.18	Collections		6,430.78		(80,756.03)
04/26/2018	2018-00004915	JE	RA	WF Receipt Deposit Batch 04.26.18	Collections		5,216.05		(85,972.08)
05/04/2018	2018-00005089	JE	RA	WF Receipt Deposit Batch 05.04.18	Collections		4,114.44		(90,086.52)
05/25/2018	2018-00005488	JE	RA	WF Receipt Deposit Batch 05.25.18	Collections		4,017.58		(94,104.10)
06/26/2018	2018-00006026	JE	RA	WF Receipt Deposit Batch 06.26.18	Collections		5,323.01		(99,427.11)
06/30/2018	2018-00006470	JE	GL	CS34&CS35 June 18 R#2018- 8963 Rec'd 8/3/18			3,447.27		(102,874.38)

G/L Date Range 07/01/16 - 09/30/19

Exclude Sub Ledger Detail

Exclude Accounts with No Activity

G/L Date	Journal	Journal Type	Sub Ledger	Description/Project	Source	Reference	Debit Amount	Credit Amount	Actual Balance
G/L Account Number	101.15.1020.1000.570.004	Other Revenues Assistance Recoupments						Balance To Date:	\$0.00
09/07/2018	2019-00001030	JE	RA	WF Receipt Deposit Batch 09.07.18	Collections			3,165.21	(106,039.59)
09/28/2018	2019-00001187	JE	RA	WF Receipt Deposit Batch 09.28.18 P2	Collections			2,587.68	(108,627.27)
10/23/2018	2019-00001599	JE	RA	WF Receipt Deposit Batch 10.23.18	Collections			2,923.28	(111,550.55)
12/11/2018	2019-00002640	JE	RA	WF Receipt Deposit Batch 12.11.18	Collections			2,724.02	(114,274.57)
12/19/2018	2019-00002647	JE	RA	WF Receipt Deposit Batch 12.19.18	Collections			2,664.18	(116,938.75)
01/31/2019	2019-00003151	JE	RA	WF Receipt Deposit Batch 01.31.19 P1	Collections			2,599.02	(119,537.77)
02/28/2019	2019-00003640	JE	RA	WF Receipt Deposit Batch 02.28.19 P1	Collections			3,648.73	(123,186.50)
04/11/2019	2019-00004312	JE	RA	WF Receipt Deposit Batch 04.11.19	Collections			4,609.03	(127,795.53)
04/23/2019	2019-00004509	JE	RA	WF Receipt Deposit Batch 04.23.19	Collections			7,023.19	(134,818.72)
06/14/2019	2019-00005483	JE	RA	WF Receipt Deposit Batch 06.14.19	Collections			5,011.40	(139,830.12)
06/19/2019	2019-00005601	JE	RA	WF Receipt Deposit Batch 06.19.19	Collections			2,347.07	(142,177.19)
07/22/2019	2020-00000327	JE	RA	WF Receipt Deposit Batch 07.22.19	Collections			4,182.56	(146,359.75)
07/22/2019	2020-00000746	JE	RA	Change Receipt Post	Change Receipt		4,182.56		(142,177.19)
Account Other Revenues Assistance Recoupments Totals							\$4,182.56	\$146,359.75	(\$142,177.19)
Program/Section/Activity Administration Totals							\$4,182.56	\$146,359.75	
Division Non-Departmental Rev/Exp Totals							\$4,182.56	\$146,359.75	
Department County Administrative Office Totals							\$4,182.56	\$146,359.75	
Fund General Fund Totals							\$4,182.56	\$146,359.75	
Grand Totals							\$4,182.56	\$146,359.75	

Please Indicate Type:

X

(Requires 4/5 Board of Supervisors Approval)

1

(Requires 4/5 Board of Supervisors Approval)

1

Interobject Transfer>\$25,000

[illegible]

(Requires Admin. and Auditor Approval)

--	--

(Requires Auditor Approval)

Comments: Transfer will move recoupment payments for Foster Care from the general fund to Health and Human Services Department for the collected period between FY16/17 - FY18/19.

Date _____

Date _____

Date _____

Date _____

Vote: _____ Yes _____ No

By:



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 6.

MEETING DATE: 11/5/2019

DEPARTMENT: HEALTH AND HUMAN SERVICES AGENCY

DEPT HEAD/DIRECTOR: Tracey Belton, Interim

AGENDA ITEM PREPARER: Cynthia Larca

SBC DEPT FILE NUMBER: 130

SUBJECT:

HEALTH AND HUMAN SERVICES AGENCY – T. BELTON

Adopt Resolution accepting the Disbursement Assistance Program (DAP) grant agreement in the amount of \$12,902.00; and approve Standard Agreement No. 20D-1029 with the State of California Department of Community Services and Development for the term of October 1, 2019 through December 31, 2020; approve budget adjustment/transfer in the amount of \$12,902.00. (4/5 vote)

SBC FILE NUMBER: 130

RESOLUTION: 2019-109

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

The State Department of Community Services & Development (CSD) has made available Utility Assistance and Emergency Heating and Cooling Assistance services to eligible clients. This one-time funding will allow low-income eligible clients to receive assistance with their energy bills for emergency situations. CSWD requests adoption of a resolution to accept the DAP grant, approve the grant agreement, and authorize the HHSA Director or Deputy Director to take certain actions necessary to

administer the grant, including executing Standard Agreement No. 20D-1029 and any amendments thereto that do not require a budget augmentation, and any administrative documents relating to said Agreement on behalf of the County.

The attached budget action will allow for receipt and appropriate the grant funds. There is no impact to the County General Fund.

BUDGETED:

No

SBC BUDGET LINE ITEM NUMBER:

240.80.2555.2760.556.001

CURRENT FY COST:

12,902

STAFF RECOMMENDATION:

Adopt Resolution accepting the DAP grant in the amount of \$12,902.00 and approve the Standard Agreement No. 20D-1029 with the California Department of Community Services Development and authorize HHSA Director or Deputy Director to execute the agreement and any amendments thereto; approve budget adjustment/transfer in the amount of \$12,902.00. (4/5 vote)

ADDITIONAL PERSONNEL: No

ATTACHMENTS:

Description	Upload Date	Type
DAP Contract Articles	10/7/2019	Backup Material
DAP Resolution	10/7/2019	Resolution
CSD Agreement Number 20D-1029	10/7/2019	Contract
Budget Adjustment Transfer	10/28/2019	Budget Adjustment/Transfer Form

RESOLUTION NO. _____

**A RESOLUTION OF THE SAN BENITO COUNTY BOARD OF SUPERVISORS,
ACCEPTING THE DISGORGEMENT ASSISTANCE GRANT 20D-1029,
APPROVING THE GRANT AGREEMENT AND DELEGATING AUTHORITY
TO THE DIRECTOR OR DEPUTY DIRECTOR OF THE SAN BENITO
COUNTY HEALTH AND HUMAN SERVICES AGENCY TO ENTER INTO
AND SIGN THE GRANT AGREEMENT ANY AMENDMENTS TO THE
GRANT AGREEMENT, AND OTHER DOCUMENTS RELATED TO THE
GRANT, FOR AND ON BEHALF OF THE COUNTY OF SAN BENITO**

WHEREAS, the State of California Department of Community Services & Development (CSD) has made Disgorgement Assistance Program (DAP) funds available to the County of San Benito for October 1, 2019 through December 31, 2020 through grant agreement #20D-1029, to the San Benito County Health and Human Services Agency, Department of Community Services & Workforce Development; and

WHEREAS the San Benito County Board of Supervisors has determined that there is a need for energy assistance programs and is willing to accept the aforementioned grant; and

WHEREAS, the Department of Community Services & Workforce Development certifies that all uses of funds will be in compliance with CSD regulations, guidelines, and grant provisions.

NOW, THEREFORE, BE IT RESOLVED, THAT the Board of Supervisors of the County San Benito hereby accepts the DAP grant, approves the grant agreement and authorizes the HHSA Director or Deputy Director to enter into and sign the grant agreement (Contract 20D-1029), any amendments to the grant agreement, and other documents related to the grant, with the State of California Department of Community Services & Development, and to perform any and all responsibilities in relationship to such grant, for and on behalf of the County of San Benito.

PASSED AND ADOPTED by the San Benito County Board of Supervisors, State of California, at the meeting of said Board held on the 5th day of November 2019.

AYES: SUPERVISORS:
NOES: SUPERVISORS:
ABSENT: SUPERVISORS:
ABSTAIN: SUPERVISORS:

By: _____
Mark Medina, Chair

ATTEST:
Janet Slibsager, Clerk of the Board

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

By: _____

By:  10-7-19
Irma Valencia, Deputy County Counsel

STANDARD AGREEMENT

AGREEMENT NUMBER

PURCHASING AUTHORITY NUMBER (if applicable)

STD. 213 (Rev 03/2019) CSD (Rev 07/2019)

20D-1029

1. This Agreement is entered into between the Contracting Agency and the Contractor named below

CONTRACTING AGENCY NAME

Department of Community Services and Development

CONTRACTOR NAME

San Benito Co. Health & Human Svcs Agency, Comm Svcs & Workforce Development

2. The term of this Agreement is: October 1, 2019 through December 31, 2020

3. The maximum amount of this Agreement is: Total \$12,902.00

4. The parties agree to comply with the terms and conditions of the following exhibits that are by this reference made a part of the Agreement:

Part I

Preamble

Article 1 - Scope of Work

Article 2 - Contract Administration, Procedure

Article 3 - Agreement Changes

Article 4 - Administrative Policies and Procedures

Article 5 - Administrative and Program Expenditure Requirements

Article 6 - Reporting Policies and Procedures

Article 7 - Program Policies and Procedures

Article 8 - Program Implementation

Article 9 - Training, Licensing and Certifications

Article 10 - Compliance Policies and Procedures

Article 11 - Federal and State Policy Provisions

Definitions

Table of Forms and Incorporated Documents

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL

 10-7-19
DEPUTY COUNTY COUNSEL DATE

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO

CONTRACTOR		California Department of General Services Approval (or exemption, if applicable)	
CONTRACTOR NAME (If other than an individual, state whether a corporation, partnership, etc.) San Benito Co. Health & Human Svcs Agency, Comm Svcs & Workforce Development			
CONTRACTOR BUSINESS ADDRESS, CITY, STATE ZIP 1111 San Felipe Road Ste., 108, Hollister, CA 95023			
PRINTED NAME OF PERSON SIGNING		TITLE	
CONTRACTOR AUTHORIZED SIGNATURE		DATE SIGNED	
STATE OF CALIFORNIA			
CONTRACTING AGENCY NAME Department of Community Services and Development			
CONTRACTING AGENCY ADDRESS 2389 Gateway Oaks Drive, Suite 100	CITY Sacramento	STATE CA	ZIP 95833
PRINTED NAME OF PERSON SIGNING Brian Dougherty	TITLE Deputy Director, Administrative Services		
CONTRACTING AGENCY AUTHORIZED SIGNATURE		DATE SIGNED	

STANDARD AGREEMENT

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STANDARD AGREEMENT

PREAMBLE

This subvention agreement, for the implementation of the Disgorgement Assistance Program (DAP) in program year 2020, funded by the October 30, 2017 Federal Energy Regulatory Commission (FERC) and Barclay's Bank Settlement Agreement is entered into between the Department of Community Services and Development, a department of the State of California ("CSD" or "Department") and the contractor named on Form STD 213, the face sheet of this document, and shall be effective and enforceable on the date last signed.

WHEREAS:

- I. The FERC approved a Settlement with Barclays Bank PLC on November 7, 2017 resolving the Commission's claims against the bank for violations of the Federal Power Act and the Commission's Anti-Manipulation Rule. The Agreement provides that \$9.4 million shall go to the Low-Income Home Energy Assistance Program in California for the benefit of the electric energy customers.
- II. CSD shall allocate \$6.9 million of the settlement to provide Weatherization (WX) assistance, Home Energy Assistance Program (HEAP) assistance, and Energy Crisis Intervention Program (ECIP) assistance to eligible participants residing in the service area described in Section 1.4, pursuant to Title 42 of the United States Code (USC) Section 8621 et seq. (the Low-Income Home Energy Assistance Act of 1981, as amended) and Government Code Section 16367.5 et seq., as amended. Contractor shall ensure that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, and that the services and activities funded by this Agreement shall also meet all other assurances specified at 42 U.S.C. § 8624.
- III. CSD's Network administers CSD's federal energy programs, the Low-income Home Energy Assistance Program ("LIHEAP") and the Department of Energy, Weatherization Assistance Program (DOE WAP), as well as other CSD programs funded by the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Department of Health and Human Services ("HHS").

NOW THEREFORE, with due regard to the above-stated principles, and in consideration of the promises and the mutual agreements and covenants hereinafter set forth, CSD and CONTRACTOR hereby agree as follows:

STANDARD AGREEMENT

ARTICLE 1 – SCOPE OF WORK

1.1 General

Contractor shall provide Weatherization (WX), Home Energy Assistance Program (HEAP), and Energy Crisis Intervention Program (ECIP) assistance to eligible participants residing in the service area described in Section 1.2, pursuant to Title 42 of the United States Code (USC) Section 8621 et seq. (the Low-Income Home Energy Assistance Act of 1981, as amended) and Government Code Section 16367.5 et seq., as amended. Contractor shall ensure that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, and that the services and activities funded by this Agreement shall also meet all other assurances specified at 42 U.S.C. § 8624.

1.2 Service Area

- A. The services shall be performed in the Service Territory comprised of the following service area(s):

The DAP Contract Numbers, Contractors, and Service Territories listing may be accessed at <https://providers.csd.ca.gov/Energy/Contracts.aspx>.

- B. Contractors that provide services in Los Angeles and San Diego counties shall refer to the ZIP Codes listing located at <https://providers.csd.ca.gov/Energy/Contracts.aspx> to determine the zip codes for their respective area.

1.3 Term and Amount of Agreement

- A. The term of this Agreement shall be for the period represented on the face sheet (Form STD 213).
- B. The contract amount as represented on the face sheet (Form STD. 213) of this Agreement consists of Contractor's total allocation to include the "Direct Services" and "Utility Assistance" portions attributable to Contractor's service area(s).
- C. Direct Services and Utility Assistance, as defined in Part II Definitions, that are allocated to Contractor, shall be expended, reported and accounted for in accordance with the provisions of this Agreement.

1.4 Program Authorities – Requirements, Standards and Guidance

- A. All services and activities are to be provided in accordance with applicable federal, state, and local laws and regulations, and as those laws and regulations may be amended from time to time, including but not limited to, the following:

STANDARD AGREEMENT

1. The Low-Income Home Energy Assistance Program Act of 1981, 42 U.S.C. §§ 8621 et seq., and 45 Code of Federal Regulation (CFR) Part 96;
 2. The California Government Code §§ 16367.5 et seq., as amended, and Title 22, California Code of Regulations (CCR), §§ 100800 et seq.; and
 3. The Single Audit Act, 31 U.S.C. §§ 7301 et seq., and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (45 CFR Part 75).
- B. Conflict of Laws. Contractor shall comply with all of the requirements, standards, and guidelines contained in the authorities listed below, as they may be amended from time to time, with respect to procurement, administrative, and other costs claimed under this Agreement, including those costs incurred pursuant to subcontracts executed by Contractor, notwithstanding any language contained in the following authorities that might otherwise exempt Contractor from their applicability. To the extent that the requirements, standards, or guidelines directly conflict with any State law or regulation at Government Code §16367.5 et seq. or 22 CCR §100800 et seq., or any provision of this Agreement, then that law or regulation or provision shall apply, unless, under specified circumstances, a provision of federal law, such as 45 CFR 96.30, allows for the application of state law.
1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (45 CFR Part 75); and
 2. Contractor further agrees to abide by all requirements in California Contractor Certification Clauses 04/2017 (CCC-04/2017).
- C. CSD shall provide Contractor with short-term program guidance to inform or direct immediate action to correct a problem or provide relief from an obligation in the form of a “CSD Program Advisory (CPA) No. XX-XXX” posted at <https://providers.csd.ca.gov/Home/AllCSDCPAsCPNs.aspx>.
- D. CSD shall provide Contractor with specific program guidance which shall be binding on the Contractor as a condition of the Contractor’s participation in the DAP program, and as a condition of receipt of funds under the program, PROVIDED:
1. That such guidance shall be issued by CSD in writing in the form of “CSD Program Notice (CPN) No. XX-XX” posted at <https://providers.csd.ca.gov/Home/AllCSDCPAsCPNs.aspx>;
 2. That such guidance shall be issued by CSD in writing in the form of “CSD Program Advisory (CPA) No. XX-XXX” posted at <https://providers.csd.ca.gov/Home/AllCSDCPAsCPNs.aspx>;

STANDARD AGREEMENT

3. That such guidance shall be issued by CSD in the most timely and expeditious manner practicable;
 4. That such guidance shall be reasonably necessary to realize the purposes of DAP;
 5. That major and material changes in the program and/or requirements which substantially affect the Contractor's and/or CSD's ability to fulfill their obligations or otherwise serve to create a substantial hardship on either the Contractor or CSD shall be subject to an amendment to this Agreement;
 6. Contractor shall notify CSD within 10 working days of issuance of a CPN, if contractor is unable to fulfill its obligations under the new guidance;
 7. That the parties' failure to execute a mutually acceptable amendment or CPN, as contemplated in subparagraph C 5 and C 6, in a reasonable period of time, shall result in this Agreement being without force and effect subject only to such provisions contained herein as are intended to survive the Agreement in accordance with the express and implied provisions of applicable federal and state law; and
 8. That upon CSD's good faith determination, delivered to the Contractor by written notice that Agreement between the parties to any necessary amendment or CPN as contemplated in subparagraph C 5 and C 6 cannot be achieved, then this contract shall be "closed out" and the funds disposed in accordance with established CSD procedure and policy and as required under federal and state law.
- E. The federal and state laws, regulations and other authorities referenced in this Section are hereby incorporated by reference into this Agreement. Copies may be accessed for reference at www.csd.ca.gov.
- F. Contract Elements Integral to Agreement and Enforceability Conditions
1. Contractor shall provide the following documents, satisfactory to CSD in form and substance, together with an executed copy of this Agreement before CSD executes and returns the Agreement to Contractor for implementation:
 - a. Federal Funding Accountability and Transparency Act Report (CSD 279)
 - b. Contractor Certification Clause (CCC-04/2017)
 - c. Current Insurance or Self-Insurance Authority Certification

STANDARD AGREEMENT

- d. Board Resolution authorizing execution of this Agreement
 - e. Agency Staff and Board Roster (CSD 188).
2. Forms must be completed by Contractor before CSD will execute the Agreement and Contractor is authorized to commence work. CSD will not forbear from executing this Agreement pending its own review and final approval of Contractor's submission, provided Contractor acts in good faith to rectify any outstanding issues associated forms. The approved forms shall become part of this Agreement.
- G. Contractor's signature affixed hereon shall constitute a certification that to the best of Contractor's ability and knowledge it will, unless exempted, comply with the provisions set forth in Part II, Article 11, Section 11.1, "Certifications" of this Agreement.

1.5 DAP Program Coordination and Leveraging Requirements

The following principles shall guide and inform the implementation of DAP when providing initial weatherization services:

- A. DAP weatherization measures shall be leveraged with the full complement of applicable LIHEAP or DOE weatherization services within the Contractor's DAP Service Territory as defined in Section 1.2.
- B. Because DAP is intended to be leveraged as a companion program to LIHEAP, the parties intend that, to the greatest extent possible, DAP and LIHEAP shall employ, and be subject to, the same requirements, rules, procedures, and processes in order to simplify and facilitate program implementation. To that end, Contractor's LIHEAP and DOE Contract, is hereby made a part of this Agreement and is incorporated by reference and shall be the authority for contract and program implementation, *unless* there are inconsistencies between the LIHEAP and DOE Contract and this Agreement. When contradictions or inconsistencies between DAP and LIHEAP or DOE program requirements exist, each respective contract shall be controlling for the program in question.

STANDARD AGREEMENT

ARTICLE 2 – CONTRACT ADMINISTRATION, PROCEDURE

2.1 State Contracting Requirements – “General Terms and Conditions, GTC 04/2017”

In accordance with State contracting requirements, specified contracting terms and conditions are made a part of this agreement and are fully binding on the parties in accordance with state law. The provisions in their entirety are found at the Department of General Services’ website at:

<https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>

Click the “GTC 04/2017” link to download the current requirements

2.2 State Contracting Requirements – “Contractor Certification Clauses, CCC 04/2017”

In accordance with State contracting requirements, specified contracting terms and conditions are made a part of this agreement and are fully binding on the parties in accordance with state law. The provisions in their entirety are found at the Department of General Services’ website at:

<https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>

Click the “CCC 04/2017” link to download the current requirements

2.3 Contractor’s Option of Termination

A. Contractor may, at Contractor’s sole option, elect to terminate this contract in lieu of adherence to the procedures set out in this Agreement, should Contractor determine that any subsequent program guidance or proposed amendment to the contract is unjustifiably onerous or otherwise inimical to Contractor’s legitimate business interests and ability to implement the contract in an effective and reasonable manner, PROVIDED:

1. Such notice of termination is in writing and will be effective 30 days after receipt by CSD, delivered by U.S. Certified Mail, Return Receipt Requested.
2. Notice contains a statement of the reasons for termination with reference to the specific provision(s) in the program guidance or proposed amendment in question.

B. Contractor shall be entitled to reimbursement for all allowable costs incurred prior to termination of the contract. Such reimbursement shall be in accordance with

STANDARD AGREEMENT

the program guidance and contract provisions in effect at the time the cost was incurred.

- C. Contractor shall, within 60 days of termination, close out the contract in accordance with contractual closeout procedures.
- D. CSD may at its option, without further obligation to Contractor, procure a replacement provider for Contractor's service area in accordance with this Agreement and state law.

2.4 Budget Contingencies

State Budget Contingency

- A. It is mutually agreed that if funds are not appropriated for implementation of DAP through the State budget process or otherwise, whether in the current year and/or any subsequent year covered by this Agreement, this Agreement shall be of no further force and effect. Upon written notice to Contractor by CSD that no funds are available for contract implementation, the State shall be obligated to pay only for jobs that are already in-progress or committed in writing, prior to Contractor's receipt of written notice from CSD. Thereafter, the State shall have no obligation to pay Contractor or to furnish other consideration under this Agreement and there shall be no obligation for further performance of this Agreement by the State or Contractor, excepting only such obligations as are intended to survive contract termination or the end of the contract term, such as, but not limited to, contract closeout and final settlement.
- B. If program funding for any fiscal year is reduced to such degree that CSD reasonably determines that the program cannot be implemented effectively, the State shall at its sole discretion have the option either to terminate this Agreement upon written notice to Contractor or, in the alternative, to offer and negotiate an amendment addressing the reduced funding. If the parties fail to reach agreement on such amendment, CSD may at its option give written notice of termination, in which event the State shall be obligated to pay only for jobs that are already in-progress or committed in writing prior to Contractor's receipt of written notice from CSD. Thereafter, the State and Contractor shall have no further obligations under this Agreement except for contract closeout obligations and final settlement.

2.5 Miscellaneous Provisions

- A. Assignment. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any party without the prior written consent of the other parties, except in the case where responsibility for program implementation and oversight may be transferred by the State to another State agency. In the event of such transfer, this Agreement is binding on the agency to

STANDARD AGREEMENT

which the program is assigned.

- B. Merger/Entire Agreement. This Agreement (including the attachments, documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.
- C. Severability. If any provision of this Agreement be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement will not be in any way impaired and shall remain in full force and effect.
- D. Notices. Unless otherwise provided herein, notice given by the parties shall be in writing, delivered personally, by United States mail, or by overnight delivery service (with confirmation). Certain reporting and other communications may be delivered electronically as specified by CSD or as is customary between the parties. Notice shall be delivered as follows:
 - 1. To Contractor's address of record; and
 - 2. To CSD at:
Department of Community Services and Development
2389 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

**COUNTY OF SAN BENITO
BUDGET ADJUSTMENT/TRANSFER**

Please Indicate Type:

Fiscal Year: 2019-2020
Department: Health & Human Services
Org Key: CSWD 240.80.2555

- ☒ **Appropriation/Est. Revenue Increase**
(Requires 4/5 Board of Supervisors Approval)
☐ **Contingency Transfer**
(Requires 4/5 Board of Supervisors Approval)
☐ **Interdepartmental Transfer or Interobject Transfer >\$25,000**
(Requires Board of Supervisors Approval)
☐ **Interobject Transfer <\$25,000**
(Requires Admin. and Auditor Approval)
☐ **Intraobject Transfer**
(Requires Auditor Approval)

LOGOS #	Description	Exp. Decrease/ Rev. Increase	Exp. Increase Rev. Decrease
240.80.2555.2760.556.001	Aid From Federal Grants	12,902	
240.80.2555.2760.630.114	Utility Assistance		12,902
Total		\$ 12,902	\$ 12,902

Comments: DAP grant agreement 20D-1029

Submitted: Cynthia Larca 10/03/2019
Department Head/Authorized Signature Date
Verification of [Signature] 10/16/19
Sufficient Funds: Auditor-Controller Date
Approval: [Signature] 10/28/19
Administrative Officer Date

Approval by Board of Supervisors _____
Date
Attested: _____
Clerk of the Board: _____ Vote: _____ Yes _____ No

AUDITOR USE ONLY	
Budget Adjustment No: _____	
Date Batch Input Completed: _____	By: _____



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 7.

MEETING DATE: 11/5/2019

DEPARTMENT: HEALTH AND HUMAN SERVICES AGENCY

DEPT HEAD/DIRECTOR: Tracey Belton

AGENDA ITEM PREPARER: Enrique Arreola

SBC DEPT FILE NUMBER: 130

SUBJECT:

HEALTH AND HUMAN SERVICES AGENCY - T. BELTON

Approve the License Agreement between the County of San Benito and the Department of Housing and Community Development authorizing the limited use of the San Benito County Migrant Center as a Family Winter Shelter Program during the period of December 16, 2019 through March 31, 2020.

SBC FILE NUMBER: 130

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

For over 32 years, Community Services & Workforce Development has been operating the Family Winter Shelter Program at the San Benito County Migrant Center. The program historically serves 20-30 families. This upcoming year, we will serve up to 20 homeless families. The Office of Migrant Services (OMS) is requiring that we enter into a License Agreement for the use of up to 20 units for homeless families.

The County currently has a 50 year lease agreement with the Department of Housing and

Community Development recorded in 1998 which restricts the use of the Migrant Center for migrant housing only. The license agreement will allow the County to lawfully use the Migrant Center on a limited basis for the operations of the Winter Shelter Program during the period of December 16, 2019 through March 31, 2020. Historically, the program start date has been December 1st; but since the State approved a post extension for Migrant farm workers to remain at the center until December 15, 2019, the earliest the program can begin is December 16, 2019. The cost has been incorporated in the current year budget.

BUDGETED:

Yes

SBC BUDGET LINE ITEM NUMBER:

240.80.2555

CURRENT FY COST:

50,000

STAFF RECOMMENDATION:

1. Approve the License agreement between the County of San Benito and the Department of Housing and Community Development authorizing the limited use of the San Benito County Migrant Center as a Family Winter Shelter during the period of December 16, 2019 through March 31, 2020;
2. Authorize the Chair of the Board to sign said License Agreement.

ADDITIONAL PERSONNEL: No

ATTACHMENTS:

Description	Upload Date	Type
License Agreement	10/23/2019	Contract
State OMS Letter	10/14/2019	Cover Memo

Department of Housing and
Community Development
Office of Migrant Services Program
P.O. Box 952052
Sacramento, CA 94252-2052

MIGRANT CENTER LICENSE AGREEMENT FOR EMERGENCY SHELTER PROGRAM

This License Agreement (this "Agreement") is dated as of **September 18, 2019**, for reference purposes only, between the Department of Housing and Community Development, a public agency of the State of California (the "Department" or "Licensor"), and County of **San Benito CSWD**, a public body corporate and politic ("Licensee").

Where the Department operates the Office of Migrant Services ("OMS"), a seasonal program, which provides affordable housing for migratory agricultural workers and their families under Health and Safety Code sections 50710-50715, California Code of Regulations Title 25 Subchapter 7, Sections 7600 et seq., and all applicable law.

Where the primary purpose of the OMS program is to provide seasonal housing to migratory agricultural workers and their families but where the Department has discretion for its 24 OMS centers ("OMS Centers") to be used for alternative purposes, which serve the public interest; and where the Department has consented to this Emergency Shelter use so long as the use, does not incur any cost to the OMS program, and does not impede the normal operations of the OMS Center, which must be prioritized.

RECITALS

A. By a certain master lease and sublease (the "Leases") recorded in the Official Records of **San Benito County**, California, on **March 27, 1998**, as Instrument No. **9803432**, Licensor obtained a leasehold estate and other interests in that property more particularly described in the Leases described in Exhibit A (the "Premises"). The Department is the current holder of the leasehold estate created by the Leases.
B. The parties desire, by this Agreement, to provide for the licensing by Licensor to Licensee, of the revocable right to use and occupy the Premises described in Exhibit A and as set forth in the Leases.

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this License Agreement, the parties agree as follows:

SECTION ONE. GRANT OF LICENSE

Licensor grants to Licensee a revocable license to occupy and use the Premises subject to all of the terms and conditions of this Agreement, and pursuant to Health and Safety Code, Chapter 8.5 of Part 2 of Division 31 Section 50715 and that the Licensee shall comply with all applicable law and specifically with the requirements of Health and Safety Code, Chapter 11.5 commencing with Section 50800.

OMS License
Emergency Shelter
Rev: 08/22/2019
Prep: 09/18/2019

SECTION TWO. DESCRIPTION OF PREMISES

The Premises is commonly known by the following name and street address:

San Benito Migrant Center
3235 Southside Road
Hollister, CA 95023

SECTION THREE. ACCESS TO UNITS

Subject to the terms and conditions set forth in this Agreement, Licensor authorizes the Licensee to use no more than **20** units on the Premises for the purpose of providing a temporary homeless shelter and associated services to individuals and families (Emergency Shelter Program). The property is comprised of **67** units. The Licensee may use space surrounding the units as is needed and reasonable to carry out the purpose of providing temporary homeless shelter and associated services. On or prior to commencement of this Agreement, the Department, in its sole discretion, will designate in writing the units available for Licensee's use.

SECTION FOUR. ON-SITE MANAGEMENT

Licensee must employ, at its own expense, and prior to allowing occupancy of the Premises, a resident manager and necessary staff to perform the services and duties of Licensee's proposed Emergency Shelter Program. Employment of current OMS-funded personnel, who are employed year-round by the OMS program, is strictly prohibited for employment for purposes of the Emergency Shelter; as said employees are already employed for year-round OMS purposes. Licensee may contract with a management agent for the performance of the services; however, such an arrangement does not relieve the Licensee of responsibility for proper performance of these duties and compliance with the provisions of this Agreement.

SECTION FIVE. UTILITIES

Licensee understands and agrees to provide its own utilities as required for its use of the Premises, including water, electrical, gas, and garbage collection. Licensee must convert all utility service to its own name prior to occupying the Premises, and cover all utility costs through **March 31, 2020**; or agree to a pro-rata share of utilities based on the number of units being used for Winter Shelter versus the number of units being used by Department for housing on-site manager and maintenance staff. Utility payments will be billed monthly to Licensee based on pro-rata of units under this License for the total of all utilities.

If heating devices are needed in each respective unit due to cold weather, and where the OMS Centers were not constructed or equipped to provide year-round housing, Licensee shall provide and install adequate heating devices, whether temporary or permanent, which meet State and local codes and do not exceed the capacity of the migrant housing center's electrical or gas system. In such an event, a letter must be provided to OMS indicating that the heating devices are safe and in proper working order, and have an Underwriters Laboratories (UL) certification or other appropriate approval rating.

SECTION SIX. NO ALTERATIONS

Licensee shall not make any alterations, changes, or additions in or to the Premises without Department's prior written consent.

SECTION SEVEN. INSURANCE

Prior to occupying the Premises, Licensee shall procure and carry, at its own expense, or provide evidence of self-insurance for: commercial general liability insurance with a combined single limit for bodily injury and property damages of not less than \$1 million per occurrence and \$2 million in the aggregate; and, a policy of standard fire, extended coverage and special extended coverage insurance (all risks), including a vandalism and malicious mischief endorsement. Licensee shall have its insurer issuing the insurance described above waive any rights of subrogation that such company may have against Department.

SECTION EIGHT. DURATION OF LICENSE SPECIFIED

Department gives to Licensee the privilege of entering on the above-described Premises to operate the Emergency Shelter Program and associated services **commencing when this Agreement is fully executed** and all prerequisite provisions of this Agreement have been satisfied. This License is to remain valid and in full effect until **March 31, 2020**, unless sooner revoked by the Department in writing pursuant to the terms of this Agreement.

SECTION NINE. RENT AND OTHER INCOME

Licensee shall pay the Licensor, a monthly flat fee without deduction set off, the sum of twelve and no/100 dollars (\$12.00) per unit, per the total amount of authorized units, as described in Section Three. Accordingly, **the rent per month totals seven thousand two hundred and no/100 dollars (\$7,200.00)**. This amount will be payable on a monthly basis and due on the last day of each month in the manner required by the Department. The Licensor has calculated \$12.00 per night per unit as the cost of operating the center. Statutorily the Department cannot incur any associated center costs that are not OMS related. The Licensor is granting use of the Premises for for Emergency Shelter purposes based on timely payment of the cost of operating the OMS Centers at \$12.00 per night, per unit. Licensee has the discretion to use all of the units detailed in Section Three, and accordingly a flat payment will be made for all units.

SECTION TEN. DOCUMENTATION SUBMITTAL TIMELINE

All documentation requested in Section Three of the OMS Emergency Shelter Procedures must be received by OMS no less than ten (10) business days prior to the Emergency Shelter Program start date. Failure to comply with this requirement will prohibit the use of the Premises for the Emergency Shelter Program for the current season.

SECTION ELEVEN. EARLY TERMINATION

Should the Premises or any essential part of such Premises, be destroyed by fire or other casualty, this Agreement will immediately terminate. Any party upon three (3) days written notice may terminate this Agreement for good cause. Said termination will be effective at the end of three (3) days. Licensee shall immediately take steps to remove all persons occupying the Migrant Center upon the receipt of, or giving of notice of termination of the Agreement. The parties' obligation to pay any sums under this agreement survives the termination of this agreement.

SECTION TWELVE. HOLDING OVER AFTER TERMINATION OF LICENSE

Licensee shall have no right to occupy the Premises after termination of this Agreement. If Licensee remains in possession of the licensed area after the expiration or other termination of this Agreement, Licensee shall be responsible for all damages and costs incurred by the Department as a result of such unauthorized occupancy, including but not limited to alternate housing costs for migrant farmworkers scheduled to occupy the premises. Nothing in this paragraph is construed to grant Licensee any right to occupy the licensed Premises after termination.

SECTION THIRTEEN. CONDITION OF PREMISES NOT WARRANTED

Licensor does not warrant nor represent the Premises as safe, healthful, or suitable for the purposes for which it is permitted to be used under the terms of this Agreement.

SECTION FOURTEEN. INDEMNIFICATION OF DEPARTMENT

Licensee shall indemnify, protect, defend and hold the Department harmless from any and all claims arising from Licensee's use of the Premises or from the conduct of its Emergency Shelter Program or from any activity, work or thing which may be permitted or suffered by Licensee in or about the Premises and shall further indemnify, protect, defend and hold the Department harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Licensee's part to be performed under this Agreement or arising from the negligence or willful misconduct of Licensee or any of its agents, contractors, employees, invitees, patrons, customers, or members in or about the Premises and from any and all costs, attorneys' fees and costs, expenses and liabilities incurred in the defense of any claim or any action or proceeding brought thereon, including negotiations in connection therewith. Licensee hereby assumes all risk and damage to property or injury to persons in or about the Premises from any cause during its use or occupancy of the Premises or otherwise in connection with the license afforded by this Agreement, and Licensee hereby waives all claims in respect thereof against the Department in connection therewith; provided, however the foregoing will not extent to the gross negligence or willful misconduct of Licensor.

SECTION FIFTEEN. DESTRUCTION OF PREMISES

Licensee shall keep the units designated to Licensee in good condition and repair. All damage or injury to the Premises from any acts or omissions of Licensee, its employees, agents, guests, and invitees, shall be promptly repaired by Licensee, at its sole cost and expense to the satisfaction of the Department. The Licensee shall bear the cost to repair or replace property and inventory of any said unit (e.g. mattresses, stoves, door handles, etc.) as a result of any and all damages caused by Licensee or any Emergency Shelter Program participants or guests (regardless of whether vetted by the Licensee) that occupy, dwell or visit the unit through the Emergency Shelter Program, as all units must be returned to the Licensor in the same condition delivered to Licensee. Licensee and Department will conduct a pre-occupancy walk through to identify any pre-existing damage. A post-occupancy walk through will be conducted on **March 31, 2020** or earlier if Licensee ceases occupancy prior to the termination date. All damages in the pre-occupancy walk through and post-occupancy walk through will be memorialized in a written report, with the Licensee bearing the full responsibility to restore the post-occupancy condition of the Premises to the pre-occupancy condition. If the Premises are not restored to Licensee's pre-occupancy condition by **March 31, 2020**, Licensee shall cover the cost to house the migrant farmworkers that are scheduled to start reporting to the Premises.

SECTION SIXTEEN. MODIFICATION OF AGREEMENT

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement is binding only if evidenced in writing signed by each party or an authorized representative of each party.

SECTION SEVENTEEN. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement regarding the subject matter contained herein between the parties and any prior understanding or representation of any kind preceding the date of this Agreement will not be binding on either party except to the extent incorporated in this Agreement.

SECTION EIGHTEEN. NOTICES

Any notice provided for or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth below:

To Licensor:
Department of Housing and Community Development
Office of Migrant Services Program
P.O. Box 952052
Sacramento, CA 94252-2052
Attn: OMS Program Manager

To Licensee:
Agency Name: San Benito County Health & Human Services Agency, CSWD
Address: 1111 San Felipe Road #107
Address: Hollister, CA 95023
Attn: Enrique Arreola

SECTION NINETEEN. ASSIGNMENT OF RIGHTS

The rights of the Licensee under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the Department.

SECTION TWENTY. GOVERNING LAW

This Agreement is governed by, construed, and enforced in accordance with the laws of the State of California.

SECTION TWENTY-ONE. COMPLIANCE WITH APPLICABLE LAW

Licensee must comply with all applicable federal, state, and local law, in connection with their occupancy of the Premises and operation of the emergency shelter, and conform to existing uses, notices, and applicable requirements of any nature.

OMS License
Emergency Shelter
Rev: 08/22/2019
Prep: 09/18/2019

SECTION TWENTY-TWO. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which is an original and all of which will constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the reference date first set forth above.

CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT:

By: _____

Name: _____

Deputy Director, Division of Financial Assistance

LICENSEE: SAN BENITO COUNTY BOARD CHAIR

By: _____

Name: _____

Title: _____

[ALL SIGNATURES MUST BE ACKNOWLEDGED]

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL

 10-23-19
DEPUTY COUNTY COUNSEL DATE

**SAN BENITO COUNTY
AGENDA ITEM
TRANSMITTAL FORM**

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 7.**MEETING DATE: 11/5/2019****DEPARTMENT: HEALTH AND HUMAN SERVICES AGENCY****DEPT HEAD/DIRECTOR: Tracey Belton****AGENDA ITEM PREPARER: Enrique Arreola****SBC DEPT FILE NUMBER: 130****SUBJECT:****HEALTH AND HUMAN SERVICES AGENCY - T. BELTON**

Approve the License Agreement between the County of San Benito and the Department of Housing and Community Development authorizing the limited use of the San Benito County Migrant Center as a Family Winter Shelter Program during the period of December 16, 2019 through March 31, 2020.

SBC FILE NUMBER: 130

AGENDA SECTION:**CONSENT AGENDA****BACKGROUND/SUMMARY:**

For over 32 years, Community Services & Workforce Development has been operating the Family Winter Shelter Program at the San Benito County Migrant Center. The program historically serves 20-30 families. This upcoming year, we will serve up to 20 homeless families. The Office of Migrant Services (OMS) is requiring that we enter into a License Agreement for the use of up to 20 units for homeless families.

The County currently has a 50 year lease agreement with the Department of Housing and Community Development recorded in 1998 which restricts the use of the Migrant Center for migrant housing only. The license agreement will allow the County to lawfully use the Migrant Center on a limited basis for the operations of the Winter Shelter Program during the period of December 16, 2019 through March 31, 2020. Historically, the program start date has been December 1st; but since the State approved a post extension for Migrant farm workers to remain at the center until December 15, 2019, the earliest the program can begin is December 16, 2019. The cost has been incorporated in the current year budget.

BUDGETED:

Yes

SBC BUDGET LINE ITEM NUMBER:

240.80.2555

CURRENT FY COST:

50,000

STAFF RECOMMENDATION:

1. Approve the License agreement between the County of San Benito and the Department of Housing and Community Development

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE
OFFICE OF MIGRANT SERVICES**

2020 W. El Camino Avenue, Suite 400, 95833
P. O. Box 952054
Sacramento, CA 94252-2054
(916) 263-2771 / (FAX) 263-2763
www.hcd.ca.gov



September 18, 2019

Enrique Arreola, Deputy Director
County of San Benito CSWD
1111 San Felipe Road, Suite 108
Hollister, CA 95023

Dear Enrique Arreola:

RE: OMS ESP License Agreement

Enclosed to this letter are two copies of the License Agreement between The Department of Housing and Community Development and the County of San Benito CSWD to operate the San Benito Migrant Center as a cold weather emergency shelter during the months of December 2019 through March 2020.

Please sign and notarize both copies of the License Agreement and send them back to:

Department of Housing and
Community Development
Office of Migrant Services Program
Attn: Jeff Oxtal
P.O. Box 952052
Sacramento, CA 94252-2052

The Department will send you an executed License Agreement and a letter of approval immediately after all the required conditions to approve the ESP have been met. Keep in mind that ESP can only commence after explicit authorization from OMS Program Manager.

The Department thanks your organization for its continued efforts to provide affordable, safe and healthy housing for families in need during the cold season in your region.

Respectfully,


Enrique Muñoz
OMS Program Manager



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 8.

MEETING DATE: 11/5/2019

DEPARTMENT: HEALTH AND HUMAN SERVICES AGENCY

DEPT HEAD/DIRECTOR: Tracey Belton, Interim

AGENDA ITEM PREPARER: Cynthia Larca

SBC DEPT FILE NUMBER: 130

SUBJECT:

HEALTH & HUMAN SERVICES AGENCY - T. BELTON

Approve contract with First 5 San Benito for Child Abuse Prevention Services for a 5 year term of November 1, 2019 through June 30, 2024, in an amount not to exceed of \$750,000.00.

SBC FILE NUMBER: 130

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

BUDGETED:

Yes

SBC BUDGET LINE ITEM NUMBER:

221.80.2285

CURRENT FY COST:

150,000

STAFF RECOMMENDATION:

Approve and Authorize the Chair to Sign a Contract with First 5 San Benito for Child Abuse Prevention Services for a 5 year term (November 1, 2019- June 30, 2024) in the not to Exceed Amount of \$750,000 (\$150,000 per fiscal year).

ADDITIONAL PERSONNEL: No**ATTACHMENTS:**

Description	Upload Date	Type
First 5	10/7/2019	Standard Contract

C O N T R A C T

The COUNTY OF SAN BENITO ("COUNTY") and First 5 San Benito ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. Duration of Contract.

This contract shall commence on November 1, 2019, and end on June 30, 2024, unless sooner terminated as specified herein.

2. Scope of Services.

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. Compensation for Services.

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. General Terms and Conditions.

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. Insurance Limits.

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: \$1,000,000
- (c) Comprehensive motor vehicle liability insurance: California State Minimum

6. Termination.

The number of days of advance written notice required for termination of this contract is 30.

7. Specific Terms and Conditions (check one)

- ☒ [X] There are no additional provisions to this contract.
- ☐ [] The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☐ [] The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: Tracey Belton

Title: Interim Director

Address: 1111 San Felipe Rd. #205

Hollister, Ca. 95023

E-Mail: tbelton@cosb.us

Telephone No.: (831) 630-5146

Fax No.: (831) 637-2910

Contract Administrator for CONTRACTOR:

Name: Lisa Faulkner

Title: Executive Director

Address: 351 Tres Pinos Suite 100-A

Hollister, Ca. 95023

E-Mail: lisa@first5sb.org

Telephone No.: (831) 634-2046

Fax No.: (831) 427-7957

SIGNATURES

APPROVED BY COUNTY:

Name: Mark Medina

Chair, San Benito County Board of Supervisors

Date: _____

APPROVED BY CONTRACTOR:



Name: Lisa Faulkner

Title: Executive Director

Date: 9/30/2019

APPROVED AS TO LEGAL FORM:

Barbara Thompson, San Benito County Counsel

By: 

Date: 10-7-2019

ATTACHMENT A

Scope of Services

The program's goals include reducing incidence of child abuse and neglect as measured by:

- Slowed rate of substantiated child maltreatment cases
- Reduction in significant mental health problems in children
- Decrease in parents' levels of depression, stress and other emotional distress
- Reduction in the risk of children developing later problems such as depression, by decreasing family risk factors
- Fewer foster care and out-of-home placements for children
- Improved family functioning*

* Families or allopuments include single parents, foster parents, adoptive parents, grandparents, or individual with legal responsibility for a child.

Contractor shall provide Child Abuse Prevention and Intervention services using evidence-based practices and curricula that are aligned and target specific risks facing each family at the appropriate developmental level of the child participants. These families will be referred by the County.

To achieve these goals, Contractor shall execute the following strategies:

- 1) implement the **parent/ child educational sessions**, in both English and Spanish, using evidence – based prevention and intervention curricula including ***Positive Parenting Program*** for families with children ages 3- 11 years, and ***Strengthening Families Program***, parent education classes with an accompanying education component for children ages 11 – 18 years.
 - *Positive Parenting – (families with children ages 3 to 10 years)
three 8-week sessions / 10 months = 36 families (Spanish/ English)*
 - *Strengthening Families – (families with children ages 11 to 16 years)
two 8-week sessions/ 10 months= 20 families (Spanish / English)*
- 2) provide **Family Wellness court-mandated** Family Strengthening Program to families referred by CPS.
 - *Family Wellness – Court Mandated – for families referred to program
six 8-week sessions for 11 months = 60 families*
- 3) provide intervention **case management** services and group support / connections to families referred by CPS. Services will be provided to families, with children ages birth – 18 years, with alleged allegations of child abuse and neglect and/ or at risk of child abuse, depression, emotional distress, and/or substance abuse; and

- 4) implement the ***Parents As Teachers***, a evidence-based home visiting program serving families at risk or underserved for prevention and intervention services as they relate to child abuse. It is estimated that 117 families that are prenatal/perinatal or with children birth to 5 years of age will be served by this program. Services will be offered in English and in Spanish.
- 5) host **Family Fun Nights** or **Parent Child Interactions** that will consist of 5 levels of prevention and intervention parent education and parent/child interaction classes including:
 - *Hola Bebe – parents with infants (ages 6 weeks to 1 year)
12 weekly sessions/10 months = 120 families*
 - *Happiest Baby – parents with newborns (birth to 3 years –
three 8-week sessions = 30 families*

Data Plan

Data from three sources - parents, children, and therapists/trainers - will be collected to improve triangulation of the data and to capture change in the child, the parents, and the family environment. Program effectiveness will be measured using pre-post questionnaires.

Local Evaluation Plan

1. The standardized Strengthening Families Program (SFP) Parent Interview Questionnaire (195-items), with questions to gauge client satisfaction and recommendations for SFP improvements added to the Follow-up Parent Interviews;
2. The SFP Children's Interview Questionnaire (150-items);
3. SFP Teacher/Trainer Interview Questionnaire (about 160-items), modified in response to the local site evaluator recommendations and pilot tests of the instrument.

These tools are standardized CSAP Family Core Measures and GPRA measures that have demonstrated high reliability, change sensitivity, and validity. To reduce testing burden, only subscales of selected instruments that measure the hypothesized outcomes will be used. These subscales include the following:

- Family Relationships, measuring family conflict, communication, cohesions, and organization
- Parenting, measuring parenting style, discipline, monitoring, parenting self-efficacy
- Children's social skills and resiliency, grade level academic work
- Children's aggression, depression, and conduct disorders
- Parents' depression
- Children's association with substance using and/or anti-social peers

- Children's and parents' tobacco, alcohol, and other drug use

The families will also provide children's report cards to the trainers to capture objective school achievement data (i.e., grades, absences, tardiness, effort).

Using structured interviews with parents and youth, qualitative data will be collected by the evaluation staff at baseline (pre-test and needs assessment) and post-test, as well as at the annual surveys. The client participants and stakeholders in the Project Advisory Committee will be involved in the development of the interview questions.

Process Evaluation

The evaluation is designed as a pre-post test assessment of child, parent, and family outcomes, with quantitative and qualitative data collected at intake and exit. The SFP evaluation will be staffed by an external evaluator, Applied Survey Research. In collaboration with First 5 San Benito, ASR will design the evaluation, oversee data collection and analyses. The data themselves will be collected by group leaders and site coordinator, whom the families trust.

The SBC project will expand the existing FSP "Family Night" program by 10 families; Partners will serve up to a total of 40 families each year.

Tracking Participants

The evaluation data, along with child and parent participation data will be recorded and the staff will keep attendance logs and each family will be held accountable for their attendance. Contractor will provide documentation of successful completion and also failures in our reports to the County. These reports will also be available to the court and probation department if program completion is a legal requirement.

Documentation

Contractor staff will work with the trainers to complete family intake questionnaires and pre - post surveys from each session. The trainers and staff will participate in reflective practices circles to discuss each individual family and develop a Family Sheet for documentation.

All training and education will be documented by staff and all educational and instructional materials are available for review/audit.

Outcome Evaluation

Means, standard deviations, and change scores will be calculated for each question on the instruments, as well as the instrument subscales. Missing data will be calculated using missing data multiple imputation. When two adults complete the parent interview items concerning the target child, inter-rater reliabilities will be calculated. Results from these analyses will be used to determine whether the average scores for both parents, or only use the mother's self-report, which has been found to have greater validity (Fitzgerald, Zucker, Maguin, & Reider, 1994). Cronbach's alphas will be calculated for instrument subscales to measure reliability. Scales with low reliability ($\alpha < 0.7$) will not be used.

Capturing valid self-report data can be problematic with children younger than 9 years of age; hence, some of the data for the 8-9 year old's may not be used in the final analyses. Instead, data from the parents' and therapist/trainers' reports and school data will be used to measure change in outcomes for this age group. The transcriptions of the structured interviews will be analyzed by an ethnographic software program (Nudist) looking for emerging themes in risk and protective factors and how they change after the interventions.

List of outcome variables that will be tracked.

- Family Relationships
 - o Family conflict
 - o Communication
 - o Cohesions
 - o Organization
- Parent
 - o Parenting style
 - o Discipline
 - o Monitoring
 - o Parenting self-efficacy
 - o Parent depression symptoms
 - o Parent tobacco, alcohol, and other drug use

List of outcomes that will be tracked.

- Family Relationship Quality
- Parenting Practices
- Parent Substance Use
- Child Mental and Behavioral Health
- Child's Substance Use
- Child Peer Relationships
- Child Academic Outcomes

- Child
 - 0 Child social skills
 - 0 Child resiliency
 - 0 Child aggression
 - 0 Child depression symptoms
 - 0 Child conduct disorder symptoms
 - 0 Child peer relationships
 - 0 Child tobacco, alcohol, and other drug use
 - 0 Child grades
 - 0 Child absences and tardies

Participant success/failure in the project.

Program impact will be assessed by conducting statistical significance testing on the pre- to the post-test paired differences in mean scores on the instrument subscales. This will not include subjects who have dropped out of the program in the analysis, as they can bias the data. Participant success will be considered for each measure that demonstrates statistically significant pre-post change ($p < .05$). The percentage of families who improve on each instrument will be calculated and will consider the program successful if the percent who improve on each measure is at least 80%.

ATTACHMENT B
Payment Schedule

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis:

- ☐ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☒ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$ _____, or
- ☒ a total sum not to exceed \$750,000 (Seven Hundred Fifty Thousand Dollars),

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

B-4. SPECIAL COMPENSATION TERMS: (check one)

- ☐ There are no additional terms of compensation.
- ☒ The following specific terms of compensation shall apply: (Specify)

- a) Services will be invoiced monthly, in arrears.
- b) Invoices will be detailed to match expenditure line items as described in the program budget. (attachment B1)
- c) Based on State and Federal allocation and expenditure requirements, unspent funds do not carry forward.

Accounting contact for COUNTY:

Name: Casey Estorga

Title: Fiscal Officer

Address: 1111 San Felipe Rd Ste 103

Hollister, California 95023

E-Mail: cestorga@cosb.us

Telephone No.: (831) 630-5179

Fax No.: NA

Accounting contact for CONTRACTOR:

Name: Lisa Faulkner

Title: Executive Director

Address: 351 Tres Pinos Rd Ste 100A

Hollister, Ca. 95023

E-Mail: lisa@first5sb.org

Telephone No.: (831) 634-2046

Fax No.: (831) 427-7957

END OF ATTACHMENT B

First 5 San Benito Five-Year Annual Budget

BUDGET CATEGORY	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	BUDGET NARRATIVE
PERSONNEL						
Salaries						
1 FTE Home visitors/Case Manager	\$ 95,680	\$ 95,680	\$ 95,680	\$ 95,680	\$ 95,680	2 home visitors/case manager @ \$23 per hr @ 40hrs per wk/ 52wks
Benefits	\$ 22,963	\$ 22,963	\$ 22,963	\$ 22,963	\$ 22,963	24% x 2 FTE (Health, Vision, Dental...)
TOTAL PERSONNEL	\$ 118,643	\$ 118,643	\$ 118,643	\$ 118,643	\$ 118,643	
CONTRACTORS						
Court Mandated Class	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000	1 Trainer @ \$300 per session x 40 wks
Family Strengthening	\$ 9,900	\$ 9,900	\$ 9,900	\$ 9,900	\$ 9,900	1 Trainer @\$225 x 2 orientations 3 Trainers @\$225 x 14 sessions
TOTAL CONTRACTORS	\$ 21,900	\$ 21,900	\$ 21,900	\$ 21,900	\$ 21,900	
MATERIALS						
Program Materials/ Curricula	\$ 3,157	\$ 3,157	\$ 3,157	\$ 3,157	\$ 3,157	90 families (about 2 adults & 2 children per family)
Copies	\$ 300	\$ 300	\$ 300	\$ 300	\$ 300	family handouts
TOTAL MATERIALS	\$ 3,457	\$ 3,457	\$ 3,457	\$ 3,457	\$ 3,457	
Indirect Costs (4%)	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	(rent, administration & evaluation)
TOTAL INDIRECT	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	
TOTAL REQUESTED FUNDS	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	TOTAL \$ 750,000 (5 years)

ATTACHMENT C

General Terms and Conditions

C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed. CONTRACTOR certifies that no one who has or will have any financial interest under this contract is an officer or employee of COUNTY.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or
- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of

such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with

respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to the execution of this contract. For purposes of this paragraph, obligations arising prior to the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY shall give CONTRACTOR notice of the amount of any offset and the reason for the deduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

END OF ATTACHMENT C.



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 9.

MEETING DATE: 11/5/2019

DEPARTMENT: PROBATION DEPARTMENT

DEPT HEAD/DIRECTOR: Joseph A. Frontella, Jr.

AGENDA ITEM PREPARER: Lorraine M. Carrasquillo

SBC DEPT FILE NUMBER: 510

SUBJECT:

PROBATION DEPARTMENT - J. FRONTELLA, JR.

Authorize the appropriation of the Community Corrections Partnership (CCP) AB109 funding as agreed and voted upon by the San Benito County Community Corrections Partnership Executive Committee (CCP-EX); approve budget adjustment/transfer in the amount of \$107,333.98. (4/5 vote)

SBC FILE NUMBER: 510

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

The Community Corrections Partnership Executive Committee (CCP-EX) held a budget meeting on September 09, 2019, to discuss and approve Ongoing and Carry-Over requested expenditures to support new and existing programs. The AB109 Criminal Justice Re-Alignment funding is intended to support impact of the realigned population, and develop systems and services in support of the entire adult criminal justice population. The CCP-EX voted and agreed to accept the listed proposals to assist in the criminal justice system.

Department/Division	Description	Funding	Cost
Proposal #1 Probation	Dell Laptops	Carry-Over	\$8,858.14
Proposal #2 Probation (Biennial Cost)	PassPoint Drug Screening	Ongoing	\$16,800.00

Proposal #3 Sheriff's Dept. / Jail	Dell Laptops / Carrier Cart	Carry-Over	\$26,925.84
Proposal #4 Sheriff's Dept. / Jail	COMPAS Cloud	Ongoing	\$18,750.00
Proposal #5 Behavioral Health SUDS /HHSA	SLE Residential Housing	Ongoing	\$36,000.00
Total			\$107,333.98

BUDGETED:

No

SBC BUDGET LINE ITEM NUMBER:

411.15.4040.1000.670.000

CURRENT FY COST:

\$107,333.98

STAFF RECOMMENDATION:

Approve the appropriation of submitted proposal voted and agreed upon by the CCP-EX to continue to support the criminal justice system; approve budget adjustment/transfer in the amount of \$107,333.98. (4/5 vote)

ADDITIONAL PERSONNEL:

ATTACHMENTS:

Description	Upload Date	Type
CCP Meeting Minutes 09-30-19	10/21/2019	Cover Memo
Budget Adjustment/Transfer	10/31/2019	Budget Adjustment/Transfer Form



Joseph A. Frontella, Jr.
Chief Probation Officer

San Benito County Probation Department

400 Monterey Street
Hollister, CA 95023
831-636-4070
831-636-5682 FAX



Community Corrections Partnership (CCP)

September 30, 2019 at 10:30 a.m.

San Benito County Probation Community Transition Center
1111 San Felipe Road, Suite 101
Hollister, CA

MINUTES

Members Present:

Joseph Frontella, Chief Probation Officer *
Alan Yamamoto, SBC Behavioral Health *
Darren Thompson, SBC Sheriff *

Candice Hooper, District Attorney *
David Westrick, HPD Chief *
Renee Hankla, CTC Reentry Program

Members Not Present:

Steve Sanders, Superior Court Judge *
Ray Espinosa, County Administrative Officer
Tony Lamonica, SBC Sheriff
Tracy Belton, Health & Human Services

Krystal Lomanto, SBC Office of Education
Greg LaForge, Public Defender *
Diane Ortiz, Youth Alliance
Steven Reid, SBC Behavioral Health

Guests:

James Bucknell, Probation Department
Lorraine Carrasquillo, Probation Department
Karen Dozal, Probation Department

Stewart Patri, SBC Administration
Wendy Solorio, Child Support Services
Kip Ward, Hollister School District

**Executive Committee*

1. Call Meeting to Order:

Chief Probation Officer Joseph Frontella called the meeting to order at 10:35 a.m. In lieu of roll call, CCP members and guests introduced themselves around the table.

2. Acknowledgement of the Certificate of Posting (Motion):

Candice Hooper motioned to acknowledge the posting, which was seconded by Director Yamamoto and all were in favor.

3. Public Forum:

None.

4. Minutes (Motion):

Minutes were distributed and reviewed from the last meeting. There was one correction: Officer Tom's name was corrected to Officer Tong. Dave Westrick made a motion to approve the minutes, which was seconded by Alan Yamamoto and all were in favor.

5. Budget Update:

Lorraine Carrasquillo: The City of Hollister submitted the invoice for payment on the UNET officer. In order to pay the allotted money owed to the UNET officer, the Auditors need approval from the Board of Supervisors. The staff report for the UNET payment will be on the BOS October 8, 2019 meeting. Ms. Carrasquillo presented the CCP budget with all FY18/19 expenditures that have been processed.

Budget Proposals: During the July 15, 2019 CCP meeting, CPO Frontella requested everyone submit their budget requests to him and a meeting would be scheduled with the Community Corrections Partnership Executive Committee (CCP-EX) for review. On September 18, 2019, the CCP-EX met and reviewed all proposals and all were unanimously recommended, with the exception of the Youth Alliance Probation Parenting Program, which was tabled.

AB109 Proposals: FY19/20

	Department/Division	Description	Funding	Cost	Vote
Proposal #1	Probation	Dell Laptops	Carry-Over	\$8,858.14	Approved
Proposal #2	Probation	PassPoint Drug Screening (Biennial Cost)	Ongoing	\$16,800.00	Approved
Proposal #3	Sheriff's Dept. / Jail	Dell Laptops / Carrier Cart	Carry-Over	\$26,925.84	Approved
Proposal #4	Sheriff's Dept. / Jail	COMPAS Cloud	Ongoing	\$18,750.00	Approved
Proposal #5	Behavioral Health SUDS /HHSA	SLE Residential Housing	Ongoing	\$36,000.00	Approved
Proposal #6	Youth Alliance	Probation Parenting Program	Ongoing	\$60,000.00	Tabled

6. Round Table:

Kip Ward, Director of Student Services with the Hollister School District, attended the CCP for the first time to inquire about any AB109 funding that may assist him in developing a new program for youths who attend San Benito County middle schools. Mr. Ward would like to hire mental health therapist interns to support youths, parents and their families who experience trauma in the home. Services will include counseling, consultation, mental health assessments, and collaborative case management for students, staff, parents and families.

Alan Yamamoto shared they are moving forward on a new building to be located next to their existing building. Stewart Patri commented that the bid for the new building came in lower than expected.

Chief Frontella informed the Committee that due to the increase in probation staff, they have received approval to occupy part of the old Public Health Department building located next to the Probation Department. Chief Frontella also mentioned the opportunity of hiring a consultant to review the Probation Department's current case management system.

Wendy Solorio inquired about the jail opening and an opportunity to tour the new facility. Renee Hankla and Sheriff Thompson responded by offering to set up a tour for Wendy and staff.

7. Schedule Upcoming CCP Meeting:

Chief Frontella stated the next CCP Budget meeting will be scheduled in two to three weeks and the full CCP meeting date and location is to be determined.

8. Meeting Adjourned:

At 11:00 a.m., a motion was made by CPO Frontella to adjourn the meeting, which was seconded by Darren Thompson, and all were in favor.

Respectfully submitted,

Karen Dozal
Secretary

**COUNTY OF SAN BENITO
BUDGET ADJUSTMENT/TRANSFER**




Please Indicate Type:

Fiscal Year: FY2019/20
Department: Probation (AB109)
Org Key: 4040

- ☒ **Appropriation/Est. Revenue Increase**
(Requires 4/5 Board of Supervisors Approval)
☐ **Contingency Transfer**
(Requires 4/5 Board of Supervisors Approval)
☐ **Interdepartmental Transfer or Interobject Transfer >\$25,000**
(Requires Board of Supervisors Approval)
☐ **Interobject Transfer <\$25,000**
(Requires Admin. and Auditor Approval)
☐ **Intraobject Transfer**
(Requires Auditor Approval)

Org Key:	Object No:	Description	Decrease/ Rev. Increase	Increase
411.15.4040.1000		Fund Balance	\$ 107,333.98	\$ -
411.15.4040.1000.670.000		AB109 Trust Fund - Transfer out	\$ -	\$ 36,000.00
411.15.4040.1000.619.250		Special Dept. Contracts	\$ -	\$ 16,800.00
411.15.4040.1000.619.142		Computer Hardware	\$ -	\$ 35,783.98
411.15.4040.1000.619.138		Computer Maintenance	\$ -	\$ 18,750.00
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
Total			\$ 107,333.98	\$ 107,333.98

Comments: Transfer from AB109 Funding

Submitted:  Joseph A. Frontella, Jr. 10/23/19
Department Head/Authorized Signature Date
Verification of Sufficient Funds:  Leann Godinez 10/31/19
Auditor-Controller Date
Approval:  Stewart Patri 10/31/19
Administrative Officer Date

Approval by Board of Supervisors

Attested: _____ Date _____
Clerk of the Board: _____ Vote: _____ Yes _____ No

AUDITOR USE ONLY

Budget Adjustment No: _____
Date Batch Input Completed: _____ By: _____



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 10.

MEETING DATE: 11/5/2019

DEPARTMENT: RESOURCE MANAGEMENT AGENCY

DEPT HEAD/DIRECTOR: Harry Mavrogenes

AGENDA ITEM PREPARER: Scott Lines

SBC DEPT FILE NUMBER: 105

SUBJECT:

RESOURCE MANAGEMENT AGENCY - H. MAVROGENES

Adopt Resolution codifying that the County will use the Caltrans policies and procedures described in Chapter 10 of the Caltrans Local Assistance Procedures Manual (LAPM), entitled "Consultant Selection", as the process by which the County retains Consultant Services related to federal and state funded transportation projects.

SBC FILE NUMBER: 105

RESOLUTION NO: 2019-110

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

The County of San Benito manages many road and transportation improvement projects every year, some of which are funded with federal grants.

The federal government has granted Caltrans oversight authority of these federal funds, which are administered by Caltrans Office of Local Assistance.

As the administering agency of federal and state funds, Caltrans has created the Local Assistance Procedures Manual (Manual) which guides, directs, and outlines all the requirements that local governments across the State of California are required to adhere to when receiving federal or state funds on transportation projects. The Manual undergoes frequent updates to incorporate changes in federal law and procedures.

The most recent major update to the Manual requires the County to specifically adopt Chapter 10 of this Manual for the selection of architectural and engineering consultants.

While the County has always followed the process and procedures outlined in the most current version of the Manual, Caltrans now requires formal adoption to insure County staff are fully aware of the current federal requirements.

Chapter 10 of the Manual sets forth requirements to be included in County Requests for Proposals (RFPs) or Request for Qualifications (RFQs) and subsequent consultant proposals, including but not limited to, having a clearly defined scope of work, staff performing an independent cost analysis of what the consultant contract may cost prior to receiving proposals, procedures for evaluating and scoring of proposals, and certain financial documents required to be submitted at the time proposals are received, evaluating and scoring of proposals, and selection of consultants.

If the attached policy manual is not adopted then the County will not be able to seek reimbursement from Caltrans for current and future road, bridge, and transportation projects.

BUDGETED:

Yes

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Adopt Resolution codifying that the County will use the Caltrans policies and procedures described in Chapter 10 of the Caltrans Local Assistance Procedures Manual (LAPM), entitled "Consultant Selection", as the process by which the County retains Consultant Services related to federal and state funded transportation projects.

ADDITIONAL PERSONNEL: No

ATTACHMENTS:

Description	Upload Date	Type
Resolution	10/31/2019	Cover Memo

BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SAN BENITO

A RESOLUTION OF THE SAN BENITO) Resolution No. 2019 ____
COUNTY BOARD OF SUPERVISORS)
ADOPTING THE CALTRANS POLICY TO)
USE THE COMPETITIVE SELECTION)
PROCESS FOUND IN CHAPTER 10 OF THE)
LOCAL ASSISTANCE PROCEDURES MANUAL)

WHEREAS, San Benito County intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans); and

WHEREAS, to ensure fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3) in the award and administration of DOT-assisted contracts in Caltrans' highway, transit, and bridge financial assistance programs, San Benito County must comply with the California Department of Transportation Local Assistance Procedures Manual as a condition of receiving this assistance; and

WHEREAS, the Agreement states that the County Board of Supervisors must adopt the policies and procedures described in Chapter 10 "Consultant Selection", as the process by which the County retains Consultant Services related to federal and state funded transportation projects ; and

WHEREAS, this policy will apply to all County departments within the County structure, and under this policy, the County acknowledges that it is fully committed to selecting professional services contractors using a fair and open process in all phases of procurement and contracting activity within the scope of current and existing law.

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

1. The above recitals are true and correct.
2. The County is committed to complying with the Federal and State requirements to select professional services contractors using a fair and open process in all phases of procurement and contracting process;
3. The Resource Management Agency shall submit this policy and all other relevant documents to the California Department of Transportation to ensure that County road and bridge projects remain eligible for review, processing, and reimbursement;
4. The County hereby adopts the policies and procedures described in Chapter 10 "Consultant Selection", as the process by which the County retains Consultant Services related to federal and state funded transportation projects.

PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF
SAN BENITO THIS 5th OF NOVEMBER, 2019 BY THE FOLLOWING VOTE:

Ayes: Supervisor(s):
Noes: Supervisor(s):
Absent: Supervisor(s):
Abstain: Supervisor(s):

By: _____
Mark Medina, Chair
San Benito County Board of Supervisors

ATTEST:
Janet Slibsager
Clerk of the Board of Supervisors

APPROVED AS TO LEGAL FORM
Barbara Thompson
San Benito County Counsel

By: _____

By: _____
G. Michael Ziman, Deputy County Counsel

Date: _____

Date: _____

Chapter 10 **Consultant Selection**

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Exhibits

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[*Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist*](#)

[*Exhibit 10-B: Suggested Consultant Evaluation Sheet*](#)

[*Exhibit 10-C: A&E Consultant Contract Reviewers Checklist*](#)

[*Exhibit 10-H: Sample Cost Proposal \(Example#1 thru #3\)*](#)

[*Exhibit 10-I: Notice to Proposers DBE Information*](#)

[*Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System*](#)

[*Exhibit 10-01: Consultant Proposal DBE Commitment*](#)

[*Exhibit 10-02: Consultant Contracts DBE Commitment*](#)

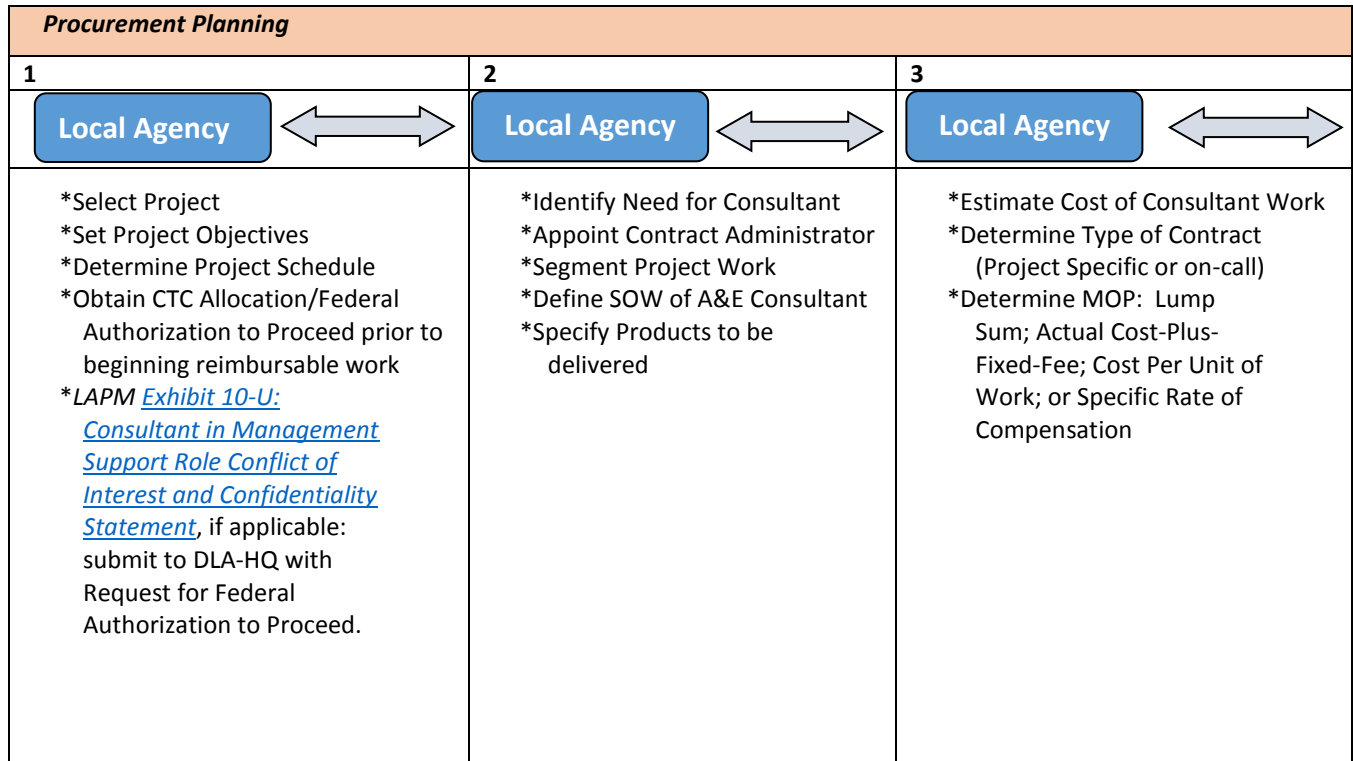
[*Exhibit 10-Q: Disclosure of Lobbying Activities*](#)

[*Exhibit 10-R: A&E Sample Contract Language*](#)

[*Exhibit 10-S: Consultant Performance Evaluation*](#)




[*Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement*](#)

[*Exhibit 10-U: Consultant in Management Support Role Conflict of interest and Confidentiality Statement*](#)



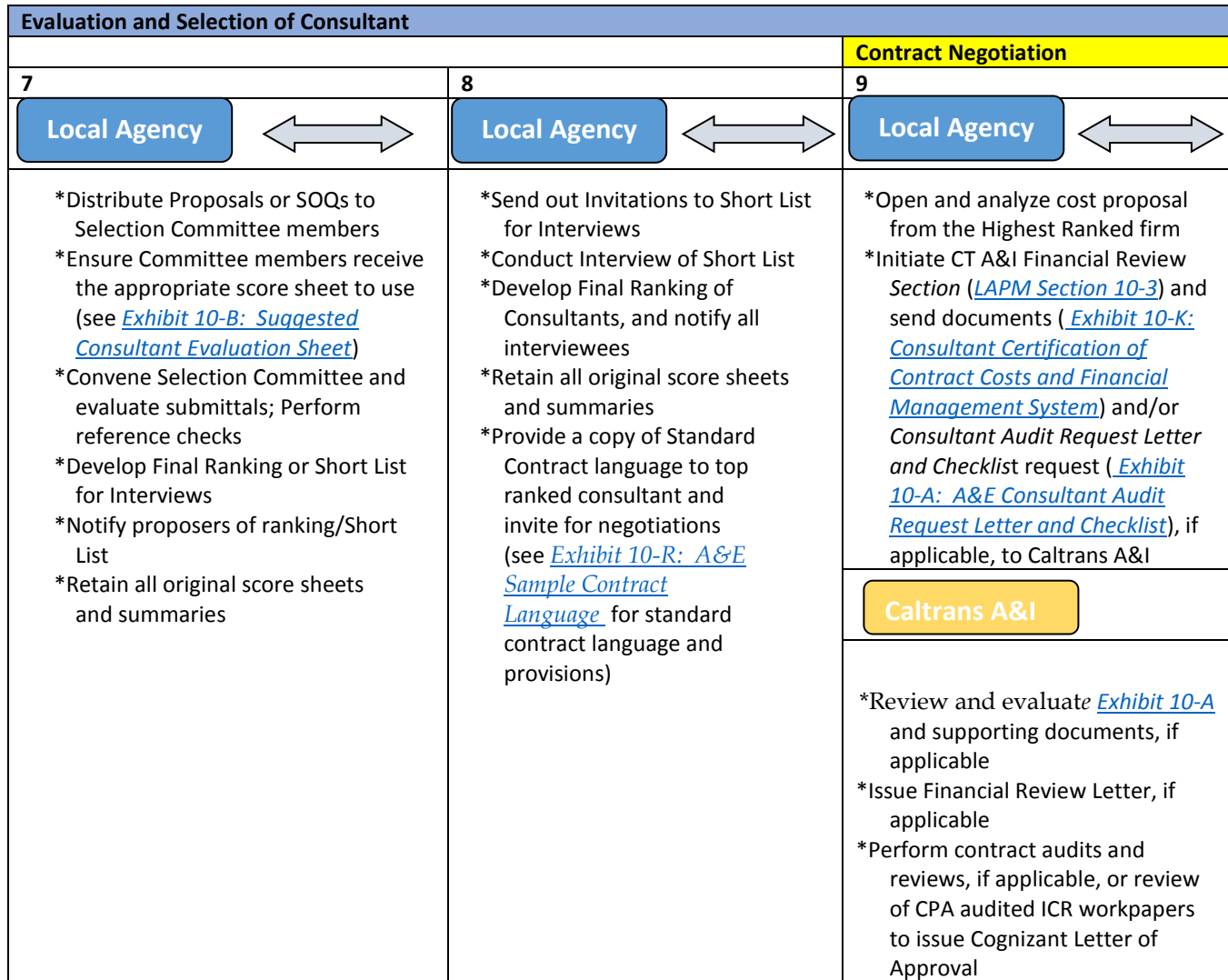
A&E = Architectural and Engineering
A&I = Caltrans Audits and Investigations
CT = Caltrans
DBE = Disadvantaged Business Enterprise
DLA = Division of Local Assistance
DLAE = District Local Assistance Engineer
DLA-HQ = Division of Local Assistance-Headquarters
LAPG = Local Assistance Program Guidelines
LAPM = Local Assistance Procedures Manual
MOP = Method of Payment
RFP = Request for Proposal
RFQ = Request for Qualifications
SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram

Solicitation Documents and Advertisement		
4	5	6
		
<ul style="list-style-type: none"> *Determine Solicitation Document; RFP or RFQ *Appoint Consultant Selection Committee *Collect signed Conflict of Interest forms and Confidentiality Statements (see Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement) from all committee members *Determine Procurement Schedule *Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ 	<ul style="list-style-type: none"> *Prepare RFP or RFQ documents *Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see Exhibit 10-H: Sample Cost Proposal) minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (see Exhibit 10-I: Notice to Proposers DBE Information), submittal deadline *Advertise RFP or RFQ on public forum (newspaper, technical publications, Web Hosting Site, other local websites) *Issue RFP or RFQ (direct mailing, web posting) 	<ul style="list-style-type: none"> *Prepare to respond to RFP/RFQ questions *Conduct Proposers Conference, if applicable *Receive Proposals or SOQs

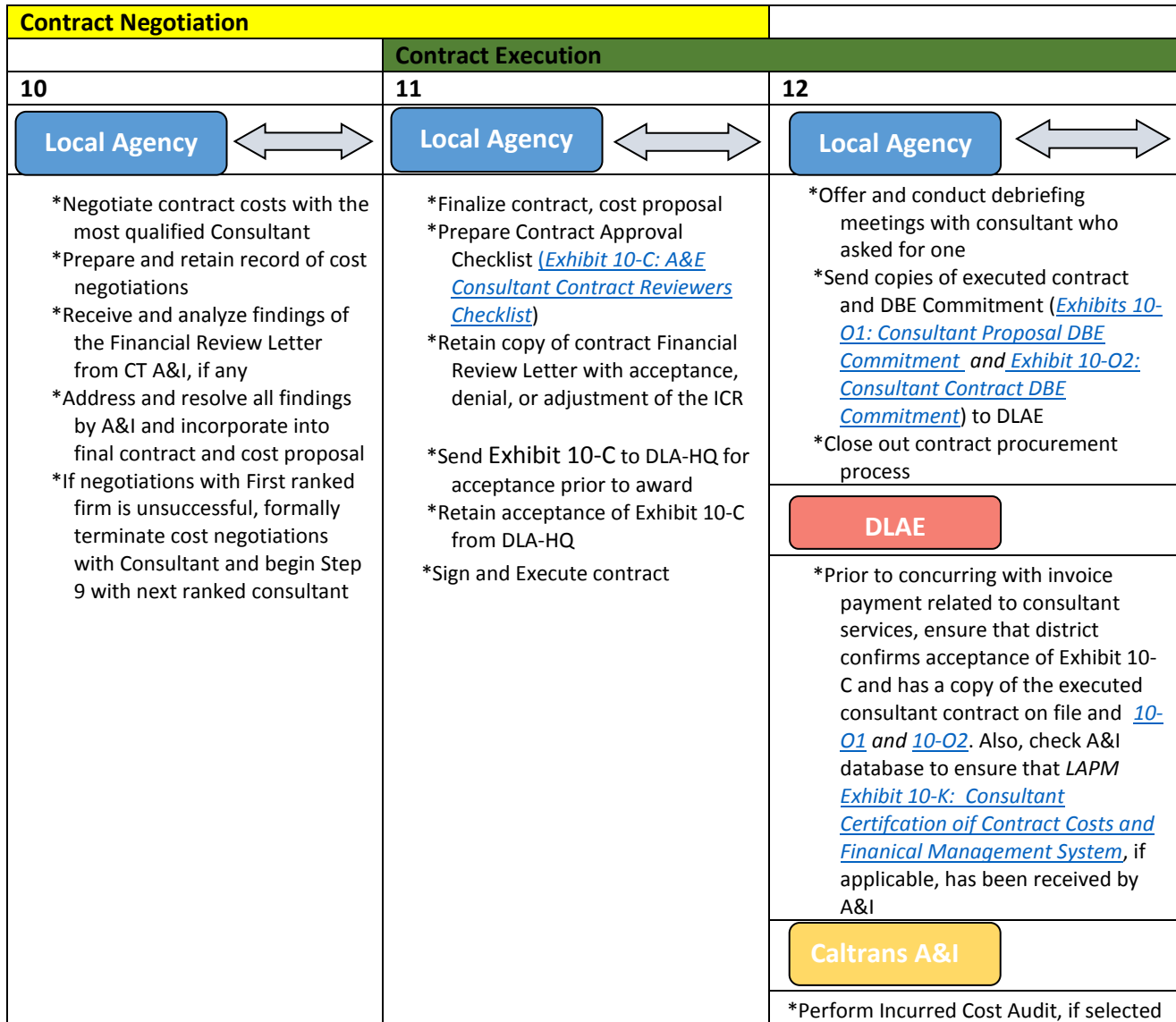
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Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued



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A&I = Caltrans Audits and Investigations
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Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued



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Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued

Chapter 10 **Consultant Selection**

10.1 **GENERAL**

Introduction

A local agency may engage consultants to perform architectural, engineering, and related services to develop a federal-aid or state funded project. Those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or construction project management services are termed Architectural and Engineering (A&E) Consultants. Local agencies requesting federal or state funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

Architectural and Engineering Consultants

The Brooks Act (40 USC, Section 1104) requires local agencies to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency, if above the small purchase procurement threshold, must be sealed and may not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the local agency must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the local agency.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations websites below:

- [DIR FAQ](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html) website:
http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
- [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website:
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>

Non A&E Consultants

Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal. The Brooks Act and the audit and review process for approving ICR's described in [Section 10.3: A&E Consultant Audit and Review Process](#) of this chapter are optional for non A&E Consultant contracts.

Non-A&E contract procurement on highway projects must also comply with California State Public Contract Code, Section 10335-10381.

For more details on non-A&E consultants, see Section 10.10 [Section 10.10: Non-A&E Consultants](#) of this chapter.

Selecting the Project

The local agency is responsible for selecting and initiating a federal-aid or state financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The local agency must identify the project's objectives including the general level of improvement or service, operating standards, maximum cost and the target date for project completion before commencing any consultant selection process.

Subcontracted Services

The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subconsultants must be identified in the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract.

Organizational and Consultant Conflicts of Interest

In the procurement of contracts for engineering services by private consulting firms using federal-aid highway or state funds, local agencies must take all the steps necessary to prevent fraud, waste, and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest.

A conflict of interest occurs when a public official's private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). The appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.

Federal Regulation Governing Conflict of Interest (23 CFR 1.33) Requires that:

- No contracting agency employee who participates in the procurement, management, or administration of federal or state funded contracts or

subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;

- No person or entity performing services for a contracting agency in connection with a federal or state funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project.

Consultants Performing Work on Multiple Phases of Federal-aid Projects

Local agencies sometimes wish to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can cause project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the local agencies are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, direct or indirect, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an

extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted. All consultants acting in a management support role must complete [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) (see [Section 10.9: Miscellaneous Considerations](#) in this chapter) and retain it in the local agency files.

Section 10.9: Miscellaneous Considerations Authorization to Proceed

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the [LAPM Chapter 3: Project Authorization](#)). For state funded projects see the [Local Assistance Program Guidelines \(LAPG\), Chapter 23: Local Agency State Transportation Improvement Program Projects](#), for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the local agency project files for future audit.

10.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS

The need for a consultant is identified by comparing the project's schedule and objectives with the local agency's capabilities, its staff availability of the required expertise, and its funding resources. If the local agency does not have sufficient staff capabilities, it may solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid or state funds are to be requested for the project segment to be contracted out.

Appointing the Contract Administrator

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant's work. The Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant's work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator's duties include, but are not limited to:

- Ensures that all records, files and other documents related to contract procurement and management activities are retained in contract/project files;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant's cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records
- Serves as the local agency's primary contact person for the successful consultant;
- Monitors the consultant's progress and provides direction;
- Reviews and approves the consultant's invoices and/or progress payments to ensure that billings are in accordance with the terms and conditions of the contract, and correspond accurately to the work performed during the billing period;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports ([*Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises \(DBE\) and First-Tier Subcontractors*](#)).

Determining the Project Schedule

The local agency develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

- Selecting the consultant;
- Developing the consultant contract;
- Completing the A&E consultant contract audit process;
- Conducting meetings and project reviews.

Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see [LAPM Chapter 6: Environmental Procedures](#) and [Standard Environmental Reference \(SER\) Chapters 31: Environmental Assessment \(EA\) and Finding of No Significant Impact \(FONSI\)](#) and [Chapter 32: Environmental Impact Statement \(E\)](#)). Final detailed design shall not begin until environmental clearance has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

Figure 10-2: Segmenting Consultant Work

Specify Products to be Delivered

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

Scope of Consultant Work

The scope of work, which the contract must include, is a detailed description of the products or

services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

Non-Discrimination Clause

The Non-Discrimination Clause ([Exhibit 10-R: A&E Sample Contract Language](#), Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the nondiscrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

Disadvantaged Business Enterprise (DBE) Participation

When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Such steps include the setting of goals to ensure DBE firms are considered by the proposing consultants and, when feasible, organizing the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts. For detailed information and requirement on the DBE Program, see [LAPM Chapter 9: Civil Rights and Disadvantaged Business Enterprises](#).

The consultant must ensure that certified DBE firms have the opportunity to participate in the performance of the contract and must take all necessary and reasonable steps to facilitate participation by DBE firms for such assurance.

A DBE goal must be established by the local agency for each contract.. [Exhibit 10-I: Notice to Proposers DBE Information](#) must be included in the RFQ or RFP if the proposed contract will include federal-aid funds. The consultant must meet the goal by using DBEs, or if not able to meet the DBE goal, document that a good faith effort was made to meet the contract goal. Good faith efforts must be documented by the consultant and approved by the local agency (see [Exhibit 15-H: DBE Information-Good Faith Efforts](#)). If the consultant's documented good faith efforts are found to be inadequate by the local agency, the consultant must be offered an opportunity for reconsideration.

If a DBE subconsultant is unable to perform its subcontracted services and the goal is not otherwise met, the consultant must make a good faith effort to replace it with another DBE subconsultant to the extent needed to meet the DBE goal. For more detailed information see [Exhibit 10-I](#). A contract provision for DBE Participation must be included in all consultant contracts with federal-aid funds. For sample contract clauses with and without specified DBE goals see [Exhibit 10-R](#), Article XX Disadvantaged Business Enterprise (DBE) Participation.

Reporting DBE Commitments and DBE Information

For Contracts with DBE Goals: If the local agency has set a DBE goal, [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) must be included in the proposal package provided to the local agency by each (prime consultant) proposer. The purpose of [Exhibit 10-01](#) is to demonstrate the

proposer's commitment to meet the DBE goal set by the local agency. [Exhibit 10-O2: Consultant Contract DBE Commitment](#), must be completed at the conclusion of cost negotiations, incorporated into the final agreement and a copy sent the DLAE. The purpose of this form is to capture DBE participation in accordance with 49 CFR, Part 26. This form must include the names, addresses, and phone numbers of DBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a subcontracted item of work is not to be performed or furnished by the DBE firm, a description of the exact portion of work to be performed or furnished by that DBE must be included in the DBE commitment, including the planned location of that work. A proposer certified as a DBE firm must describe the work it has committed to be performed with its own forces, as well as any other work that it has committed to be performed by the DBE subconsultant, suppliers, and trucking companies.

The winning proposer must provide written confirmation from each DBE firm participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the proposer must submit a copy of the joint venture agreement.

For Contracts with No DBE Goals:

For contracts with no DBE contract goal, [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) is not necessary and only [Exhibit 10-O2: Consultant Contract DBE Commitment](#) must be included in the award package and provided by the winning proposer.

Reporting DBE Final Utilization (Contracts with or without Goals):

Upon completion of the contract a summary of the DBE final utilization must be prepared, certified correct, and submitted on [Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise \(DBE\) and First-Tier Subcontractor](#) or equivalent to the local agency showing total dollars paid to each subconsultant and supplier. [Exhibit 17-F](#) is reviewed by the local agency and certified as complete and accurate. The local agency must send the original, plus one copy of the completed [Exhibit 17-F](#) with the final invoice to the DLAE within 30 days after completion of the contract.

Estimated Cost of Consultant Work

An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a cost analysis of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency's negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation

of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible.

Some of the costs estimating techniques are:

Analogous Estimating:

Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

Parametric Estimating:

Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

Bottom-up Estimating:

This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

Determine Type of Contract

Types of contracts to be used are described as follows:

- Project-specific contract is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.
- Multi-purpose or Multi-phased contract is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses. On-call contract is a contract for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity are needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use

these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172).

- To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
 - Must define a general scope of work, complexity, and professional nature of services.
 - Specify a task order procedure the local agency uses to procure project specific work under the contract.
 - No task order is valid unless the on-call contract is still enforced. For example, if the on call contract is expired, all task orders will become invalid.
 - If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services:
 - Identify the number of consultants that may be selected or contracts that may be awarded.
- Specify procedures in the contracts the local agency will use to award/execute task orders among the consultants:
- Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ process later in this chapter), OR
 - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only.

Determine Method of Payment

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed:

- Actual Cost-Plus-Fixed Fee (see [Exhibit 10-H: Sample Cost Proposal](#), Example #1);
- Cost Per Unit of Work (see [Exhibit 10-H](#), Example #3);
- Specific Rates of Compensation (see [Exhibit 10-H](#), Example #2);
- Lump Sum (see [Exhibit 10-H](#), Example #1).

Actual Cost-Plus-Fixed Fee

The consultant is reimbursed for actual costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated

from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. Fixed fees apply to the total direct and indirect costs. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H: Sample Cost Proposal Example #1](#) and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, *Option 1* in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.

Cost Per Unit of Work

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance; but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #3 and [Exhibit 10-R](#), Article V *Option 2*).

Specified Rates of Compensation

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant's estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of consultant's level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see [Exhibit 10-H](#), Example #2 and [Exhibit 10-R](#), Article V, *Option 3*).

Lump Sum or Firm Fixed Price

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see [Exhibit 10-H: Sample Cost Proposal, Example #1](#) and [Exhibit 10-R: A&E Sample Contract Language](#), Article V, Option 4).

Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.

10.3 A&E CONSULTANT AUDIT AND REVIEW PROCESS

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (A&I), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

APPLICABLE STANDARDS

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed. The local agencies, consultants, and subconsultants are responsible for complying with state, federal and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants. Applicable standards include, but are not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between the local agency and Caltrans, i.e. Master Agreements;
- Project Program Supplemental Agreements;
- 23 United States Code (U.S.C.), Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation, Chapter 1, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards (CAS), Subpart 9900;

- 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- United States Government Accountability Office, Government Auditing Standards
 - Generally accepted government auditing standards (GAGAS);
- California Government Code sections 4525-4529; and
- Proposed contract terms and conditions.

See section [10.10 “References”](#) of this Chapter for links to above referenced standards.

AUDIT GUIDANCE AVAILABLE

The American Association of State Highway Officials, Uniform Audit & Accounting Guide ([AASHTO Audit Guide](#)), which is referred to frequently in this section, is an invaluable tool to guide local agencies, consultants and certified public accountants (CPA) through the requirements for establishing, and audits of, FAR compliant Indirect Cost Rate (ICR). The [AASHTO Audit Guide](#) is used extensively as an industry guide in the audit and review process.

The local agency may seek financial and accounting assistance from its own internal audit staff and independent CPAs for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the [AASHTO Audit Guide](#), Ch 2.5 C. *Selection of CPA Firm as Overhead Auditor* for guidance in the selection process. Training is also offered by FHWA’s National Highway Institute (see <http://www.nhi.fhwa.dot.gov/default.aspx>). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA- NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

If consultants seek training that provides resources on how to build an ICR and basic timekeeping, there are Indirect Cost Rate and Timekeeping webinars created by the Washington State Department of Transportation (WA DOT). The link to the webinars is available at <http://www.dot.ca.gov/hq/audits/>. For training and additional information provided by the Caltrans Local Assistance, visit Caltrans Local Assistance Blog at <http://www.localassistanceblog.com/>. For FHWA’s Q&A for ICRs and audits, and A&E related services, visit FHWA at <http://www.fhwa.dot.gov/programadmin/172qa.cfm>.

ALLOWABLE COSTS

23 USC 112 (b)(2)(B) provides that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, shall be performed and audited in compliance with the Federal cost principles. Local agencies are required to perform a cost analysis to ensure all costs are

allowable in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs shall be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Local agency may use a sample Cost Analysis Worksheet (See Exhibit 10-H1 through 4).

Indirect costs incurred by local agencies are required to apply consultant or subconsultant's ICR, which has been accepted by Caltrans to contracts. An ICR is valid for the one-year applicable accounting period. ICRs shall be updated on an annual basis in accordance with the consultant's annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the firm is subject to CAS, the firm must use the applicable indirect cost rate for the contract.

A consultant's accepted ICR for its one-year applicable accounting period shall be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period and agreed by all concerned parties.

Consultants shall account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with the Federal cost principles.

A&I and representatives of the Federal Government have the right to conduct an audit of all costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR Part 172 and 48 CFR Part 31.

Generally, whenever the local agencies, consultants and contractors are unable to provide requested information, it shall be viewed that the required actions were either never performed or not properly recorded. Therefore, retention of all the relevant documents is not only required but also important as it minimizes negative findings, **disallowed costs** and assumptions. For more references, refer to Applicable Standards in this chapter.

APPROVAL OR ACCEPTANCE OF INDIRECT COST RATES

Cognizant Letters of Approval

A cognizant approved ICR refers to the ICR established by an audit in accordance with GAGAS or CPA Workpaper Review in accordance with GAGAS to test compliance with the Federal cost principles and accepted by a cognizant agency.

Once reasonable assurance is obtained, the cognizant agency establishes and approves the ICR and a cognizant approval letter is issued. A cognizant agency may be the home state Department of Transportation (DOT) (the state where the consultant's accounting and financial records are located), a federal agency, or a State transportation agency to which

cognizance for the particular ICRs of a consulting firm has been delegated or transferred in writing. When providing cognizant ICR approval, the cognizant agency may perform either an ICR audit or review of an audit report and related work performed by, and the workpapers prepared by a CPA in accordance with GAGAS.

Caltrans Acceptance of Indirect Cost Rate

When the ICRs have not been established by a cognizant agency, Caltrans shall perform an audit or review of a consultant's and subconsultant's ICR to provide reasonable assurance of compliance with the Federal cost principles. An audit or review may consist of one or more of the following:

- Conduct a risk-based review of the ICR calculation and supporting documents;
- Perform an audit in accordance with GAGAS and issuing an audit report;
- Review and accept an audit report and related workpapers prepared by a CPA or another State Transportation Agency;

The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Local agencies shall ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period be applied to contracts, if rates are not under dispute. Local agencies may check A&I's website for consultant's approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by A&I that is posed to A&I's website at <http://www.dot.ca.gov/hq/audits/>. This ID number should be referenced on all future contracts that use the same fiscal year ICR.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period but an ICR accepted by Caltrans may only be applied to A&E contracts entered into with the Caltrans and local agencies. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agency that receive federal funds from Caltrans.

Financial Review Performed Prior to Contract Execution

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than \$150K are subject to a financial review of the ICR by A&I. The financial documents required are detailed in the Exhibit 10-A, *A&E Consultant Financial Review Request Letter and Exhibit 10-A Checklist*. A&I will review the ICR financial documents to either accept, adjust, or reject the rate **prior to contract execution** using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Financial stability;
- Conformance to terms and conditions of previous contracts;
- General responsiveness and responsibility;
- The approximate dollar amount of all A&E contracts awarded to the consultant by

- Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant's accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant's internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
- Stability of organizational staffing.

For ICRs that have been adjusted or rejected by A&I, the consultant must provide a revised cost proposal that reflects the adjusted or excluded indirect costs.

Local Agencies' Responsibilities

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A (*A&E Consultant Audit Request Letter*) and the Exhibit 10A-Checklist. Local Agencies are responsible for forwarding these documents to A&I for review and acceptance of the ICR. Local agencies are also required to ensure that A&I has copies of the Exhibit 10-K "*Consultant Certification of Contract Costs and Financial Management System*" and Exhibit 10-H "*Cost Proposal*" for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract.

The Exhibit 10-H "*Cost Proposal*" includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policy and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, allowable, and allocable to the contract and comply with federal cost principles.

Contracts below \$150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 23 CFR Part 172 and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Consultants' Responsibilities (Both prime consultants and subconsultants)

A&E prime consultants and sub-consultants in contract with local agencies using state or federal-aid highway fund should refer to Exhibit 10-A and the 10-A Checklist for the ICR

financial documents required to be submitted to their local agency for forwarding to A&I. Consultants must complete the “Annual Certification of Indirect Costs and Financial Management System” (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR Part 31) and that the consultant’s financial management system is adequate to accumulate and segregate, reasonable, allowable and allocable direct and indirect project costs. For all future contracts in one fiscal year, the consultant need only provide a copy of the Exhibit 10-K to the Local Agency. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to A&I along with all other related and required financial documents.

Consultants must also follow all the federal, state, and contract requirements outlined above in the Section above, “*Applicable Standards*”. Each contracting consultant must ensure its ICR is not combined with any parent company’s or subsidiaries’ ICR.

ICR schedules should be prepared using the accrual basis of accounting and presented in compliance with the Federal cost principles for both the prime consultant and subconsultants.

All workers employed on public works project must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. Prime and subconsultant consultants must include prevailing wage rate information in the cost proposal (see Exhibit 10-H1-3 for example) and provide a Prevailing Wage Rate Policy on company letterhead, signed and dated. The policy must document their accounting treatment for prevailing wage deltas and including the following information:

- Description of types of work they perform which require payment of prevailing wage rates
- Explanation of how the firm pays prevailing wage deltas to affected employees (e.g. pay directly to employee as single amount to cover delta base and delta fringe, pay delta base to employee and pay delta fringe amount to a third party plan, etc.)
- Accounting method used for prevailing wage delta base costs
- Accounting method used for prevailing wage delta fringe costs
- Effect on firm’s most recently completed indirect cost rate

For guidance see Caltrans’ Prevailing Wage Interpretive Guidance on A&I’s website www.dot.ca.gov/audits

Consultant’s labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid), wages earned, and benefits accrued by all of the consultant’s employees. The labor summary report should detail, but not be limited to, employee names, salaries, hourly rates, total hours worked, direct hours, indirect hours by type, general ledger accounts, paid time off hours, uncompensated hours and amounts, etc.

Executive compensation analysis is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with the Federal cost principles and AASHTO Audit Guide. The executive compensation analysis using the

National Compensation Matrix or independent compensation surveys demonstrates and supports the allow ability and reasonableness of executive compensation.

Audits and Investigations' Responsibilities

After A&I receives a complete financial document packet (per Exhibit 10-A) from the local agency, A&I will review the consultants' proposed ICR and supporting documents and then notify consultants and local agencies in writing whether the proposed ICRs are accepted, adjusted, or denied.

Caltrans A&I and representatives of the federal government have the right to conduct a final audit of all costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment.

Contracts will be executed after A&I either accepts, adjusts, or rejects the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT need to be cleared through Caltrans A&I before executing the contract. The letter of acceptance along with the executed contract shall be retained in the project file. Failure to reflect the adjusted or denied ICR in a revised final cost proposal may result in the disallowance of costs.

Instructions are provided in the Exhibit 10-A on how to submit a complete Financial Review packet. Submit documents for Financial Review requests to conformance.review@dot.ca.gov.

Alternatively, if you do not have Internet access, you can mail Financial Review packets to Caltrans' A&I mailing address:

Department of Transportation
Independent Office of Audits and
Investigations, MS 2 Attention:
External Audit Manager
P.O. Box 942874 Sacramento, CA 94274-0001

AUDITS AND REVIEWS TO BE PERFORMED

An audit, as defined in 23 CFR 172.3, is defined as a formal examination, in accordance with professional standards of a consultant's accounting systems, incurred cost records, and other cost presentations to test the reasonableness, allow ability, and allocability of costs in accordance with the Federal cost principles (as specified in 48 CFR part 31.) AASHTO Audit Guide Chapter 1.3 defines an audit as a formal examination, in accordance with professional standards, of accounting systems, incurred cost records, and other cost presentations to verify their reasonableness, allowability, and allocability for negotiating agreement fees and for determining allowable costs to be charged to government contracts. Audit objectives include the identification and evaluation of all activities that contribute to, or have an impact on, proposed or incurred costs related to government contracts.

Indirect Cost Rate Audits

During an ICR audit, the auditors (A&I or independent CPAs) will examine the consultant's proposed ICR for the applicable one-year accounting period on the proposed contract to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements. As a result of the audit, the local agency will work with the consultant to adjust the ICR and contract costs, if applicable, where disallowed costs are identified based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. The review program in the AASHTO Audit Guide, Appendix A, should be used as a guide in performing ICR audits. This review program is used for reviews of CPA audited ICR workpapers.

CPA Workpaper Reviews

During a workpaper review of a CPA audit of an ICR, A&I will review the CPA's audit workpapers to determine whether it is appropriate to issue a Cognizant Letter of Approval or accept the ICR. The CPA Workpaper Review is conducted to determine whether: (a) the CPA's audit of the ICR was conducted in accordance with generally accepted government auditing standards (GAGAS), (b) the CPA adequately considered the auditee's compliance with the Federal cost principles and related federal and state laws and regulations, and (c) the audit report format and contents are acceptable. Figure 10-3 Standard Indirect Cost Rate Schedule provided at the end of this chapter provides required format and contents. Chapter 11 of the AASHTO Audit Guide provides information for the audit and required disclosures. CPAs are required to furnish copies of their workpapers as requested. A CPA Workpaper Review may apply to all contracts selected for review. The outcome of the CPA Workpaper Review is a Cognizant Letter of Approval or Caltrans Acceptance of ICR. The review program in the AASHTO Audit Guide, Appendix A, is used in performing CPA Workpaper Reviews.

IMPORTANT NOTE FOR CPAs: Contracts receiving state or federal funds are highly scrutinized. Materiality levels tend to be lower and more testing is required. GAGAS provides that auditors may find it appropriate to use lower materiality levels as compared with the materiality levels used in non-GAGAS audits because of the public accountability of government entities and entities receiving government funding, various legal and regulatory requirements, and the visibility and sensitivity of government programs. Use of the AASHTO Audit Guide should be used as a tool for performing audits and attestations of A&E firms.

Contract Audits

During a Contract Audit or Review, auditors will review contracts and the consultants' financial management system and contract cost proposal to determine if:

- The consultants' accounting system is adequate to accumulate and segregate costs;

- Costs are reasonable, allowable, and allocable and are supported adequately;
- The contract contains all required fiscal provisions and the provisions are verbatim;
- Proper state and federal procurement requirements were followed; and
- Other audits/reviews of the contract as necessary.

Incurred Cost Audits

During an Incurred Cost Audit auditors will review incurred contract costs to determine if:

- Cost data are maintained in an acceptable accounting control system that gathers, records, classifies, analyzes, summarizes, and report accurate and timely financial data, which includes subsystems such as project and other direct costs, compensation, billing, and labor.
- Costs are adequately supported;
- Reasonable, allowable, and allocable;
- Compliance with state and federal laws and regulations;
- Compliance with the Master Agreement and Supplemental Agreement;
- Compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

AUDIT FINDINGS AND REVIEW DEFICIENCIES

If audited or reviewed, local agencies are responsible for ensuring contracts, cost proposals, and ICR(s) are modified to conform to audit and review recommendations as necessary, and to ensure that audit findings and review deficiencies are resolved in a timely manner. Failure to do so may result in costs being disallowed.

The local agencies may be subject to sanctions outlined in [LAPM Chapter 20: Deficiencies and Sanctions](#) if the state or federal government determines that any reimbursements to the consultant are the result of the lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.

FAR Compliant, Inc. - Statement of Direct Labor, Fringe Benefits, and General Overhead For the year ended December 31, 20xx

Description	General Ledger Balance	Unallowable	FAR Reference	Total Proposed	Home Office	Field Office
Direct Labor	\$123,456,789	(\$934,568)	(1)(15)	\$122,522,221	\$85,765,555	\$36,756,666
Fringe Benefits						
Vacation/Paid Leaves	\$17,283,950			\$17,283,950	\$12,098,765	\$5,185,185
Payroll Taxes	\$1,530,864	(\$30,617)	(15)	\$1,500,247	\$1,050,173	\$450,074
Medical Insurance	\$10,864,197			\$10,864,197	\$7,604,938	\$3,259,259
401K Match	\$4,938,272			\$4,938,272	\$3,456,790	\$1,481,481
Incentives and Bonus	\$15,308,642	(\$3,123,456)	(2)	\$12,185,186	\$8,529,630	\$3,655,556
Other Employee Benefits	\$2,515,280	(\$553,433)	(3)	\$1,961,847	\$1,373,293	\$588,554
Total Fringe Benefits	\$52,441,206	(\$3,707,506)		\$48,733,700	\$34,113,590	\$14,620,110
General & Administrative Overhead						
Indirect Overhead Labor	\$72,696,030	(\$4,452,541)	(1)(2)(4)(15)	\$68,243,489	\$65,790,948	\$2,452,541
Purchased Labor/Subconsultants	\$22,433,019	(\$22,433,019)	(5)	\$ -	\$ -	\$ -
Office Rent	\$12,345,679	(\$987,654)	(6)	\$11,358,025	\$11,038,025	\$320,000
Supplies & Utilities	\$5,753,086			\$5,753,086	\$4,027,160	\$1,725,926
Postage and Shipping	\$1,770,000	\$321,456	(5)	\$2,091,456	\$1,464,019	\$627,437
Equipment and Maintenance	\$3,812,346			\$3,812,346	\$2,512,789	\$1,299,557
Depreciation Expense	\$6,202,469	(\$1,345,678)	(7)	\$4,856,791	\$3,205,482	\$1,651,309
Interest	\$123,456	(\$123,456)	(8)	\$ -	\$ -	\$ -
Dues and Subscription	\$123,456	(\$12,345)	(9)	\$111,111	\$77,778	\$33,333
Advertising & Marketing	\$427,406	(\$45,678)	(10)	\$381,728	\$267,210	\$114,518
Vehicles	\$5,896,123	(\$147,403)	(5)(11)(14)	\$5,748,720	\$4,024,104	\$1,724,616
Bad debts	\$12,345	(\$12,345)	(12)	\$ -	\$ -	\$ -
Legal and Accounting Services	\$3,713,580	(\$222,815)	(13)	\$3,490,765	\$3,490,765	\$ -
Fines and Penalties	\$80,000	(\$80,000)	(16)	\$ -	\$ -	\$ -
Total General & Admin. Overhead	\$135,388,995	(\$29,541,478)		\$105,847,517	\$95,898,280	\$9,949,237
Total Indirect Costs				\$154,581,216	\$130,011,870	\$24,569,347
Indirect Cost Rates				126.17%	151.59%	66.84%

Figure 10.3: Standard Indirect Cost Rate Schedule

FAR References:

- (1) FAR 31.202: Uncompensated overtime.
- (2) FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
- (3) FAR 31.205-46, 31.205-14 & 31.205-51: Meals not for valid business purposes and associated with lobbying and lacking adequate support
- (4) FAR 31.201-2: Administrative staff costs billed to projects/clients.
- (5) FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
- (6) FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
- (7) FAR 31.201-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
- (8) FAR 31.205-20: Interest and other financial costs not allowable.
- (9) FAR 31.201-2: Non-business related dues and subscriptions.
- (10) FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
- (11) FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
- (12) FAR 31-205-3: Bad debts and collection costs.
- (13) FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
- (14) FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
- (15) FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
- (16) FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

10.4 CONSULTANT SELECTION METHODS

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:

- One-Step RFP;
- One-Step RFQ;
- Two-Step RFQ/RFP.

The method used depends upon the scope of work, the services required, the project's complexity, and the time available for selection of the consultant.

In addition, there are other methods used in special situations such as noncompetitive procurement and small purchases under \$150,000.

Beginning with [Section 10.5: Consultant Selection Using the One-Step RFP Method](#) Using the One-Step RFP Method each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 172.

One-Step RFP

The One-Step RFP method may be used for Project-specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant's services are highly specialized and there are few qualified consultants.

One-Step RFQ

The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two step selection process is used for procurement of on-call contract(s).

Two-Step (RFQ Followed by RFP)

The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. For more information, refer to description of on-call contract in [Section 10.2: Identifying & Defining a Need for Consultants](#). This method requires substantially more work and time than the other two methods described above.

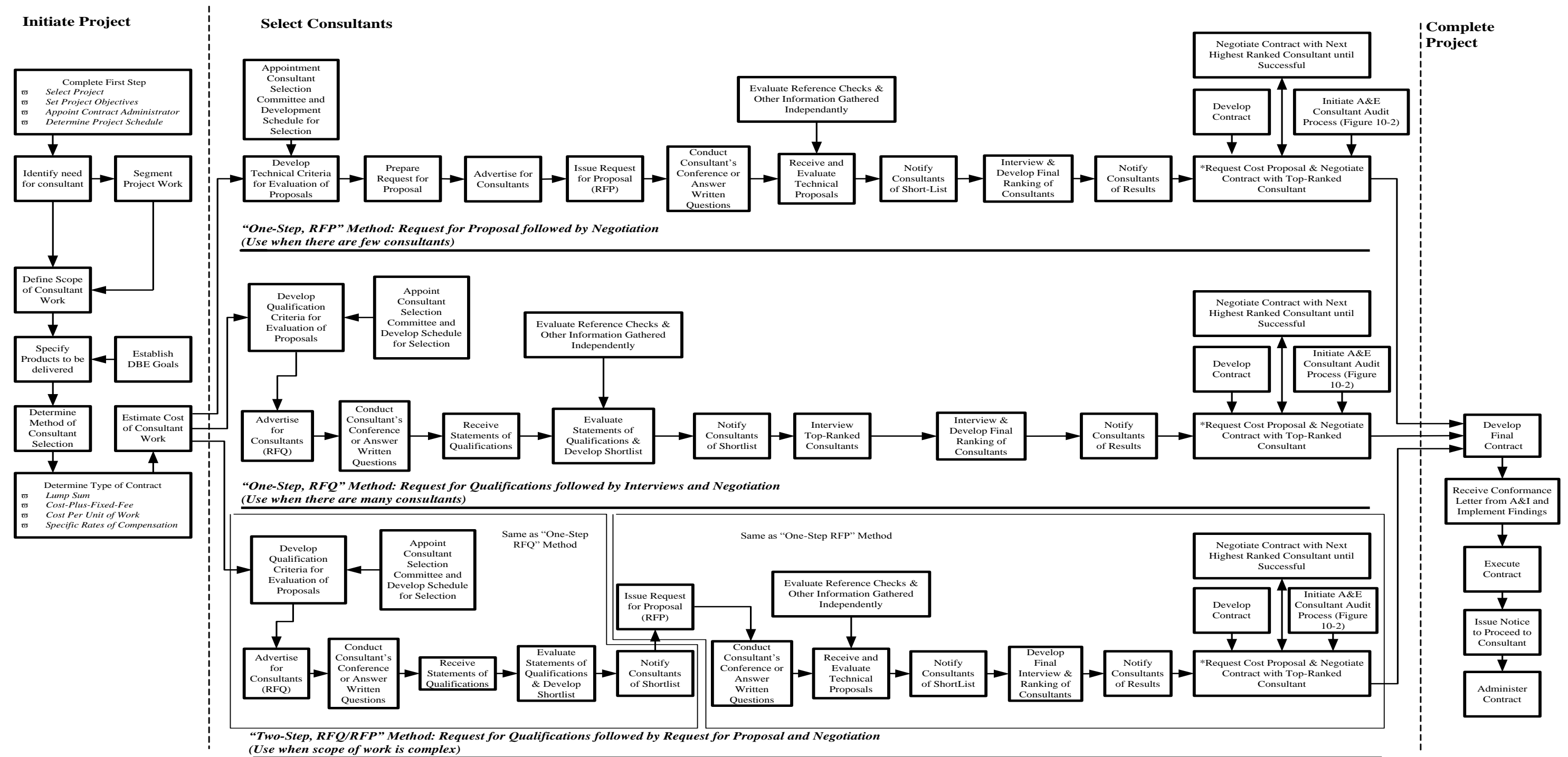


Figure 10-4: Consultant Selection Flowchart

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10.5 CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. For non-A&E consulting contracts, a cost proposal shall be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#).

Develop Technical Criteria for Evaluation of Proposals

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

Develop Schedule for Consultant Selection

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

Prepare RFP

The information required in a RFP includes the following:

- Description of project;
- Scope of work;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See [Exhibit 10-H: Sample Cost Proposal \(Example 3\)](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.3: A&E Consultant Audit and Review Process](#));
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- A DBE contract goal is specified (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#);
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);

- References.

Financial Management and Accounting System Requirements

The local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services shall be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, or posting the RFP on the local agency's or other widely used websites are all acceptable methods of solicitation.

To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

Issue/Publish RFP

The local agency shall publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFP on line as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.

Conduct Proposer's Conference or Answer Written Questions

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

Receive and Evaluate Technical Proposals

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be

considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Develop Final Ranking and Notify Consultants of Results

The selection committee discusses and documents the strengths and weaknesses of each proposal; interviews the three or more highest ranked consultants (short listed); and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others, and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Negotiate Contract with Top-Ranked Consultant

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System](#) of Costs and Financial Management System and [Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#), whichever applicable (see [Section 10.3: A&E Consultant Audit and Review Process](#)) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations

commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be properly disposed of by permanently deleting the cost proposals and/or any copy of the cost proposals.

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see [Section 10.3: A&E Consultant Audit and Review Process](#) in this chapter). Local agency Contract Administrator ensures that all required documentations are provided to Caltrans A&I within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans A&I will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans A&I Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. Fee is required to be negotiated as a separate element
- Hours, level of effort by task and/or classification

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#)), and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, the local agency must submit a completed [Exhibit 10-C](#) signed by the Contract Administrator for all new or amended federal and/or state funded A&E consultant contracts to aeoversight@dot.ca.gov for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of [Exhibit 10-C](#), the local agency must notify Caltrans and provide a copy of an updated [Exhibit 10-C](#) and all contract amendments to aeoversight@dot.ca.gov. Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of [Exhibit 10-C](#) to Caltrans HQ for acceptance is not required for non-A&E consultant contracts.

10.6 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project's functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#).

Develop Technical Criteria for Evaluation of Qualifications

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#) is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

Develop Schedule for Consultant Selection

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

Prepare RFQ

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See [Exhibit 10-H: Sample Cost Proposal](#) for sample cost proposal formats;
- Contract audit and review process requirements (see [Section 10.3: A&E Consultant Audit and Review Process](#));
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified (see [Exhibit 10-I: Notice to Proposers DBE Information](#)), if a federal-aid contract;
- Consultants acting in a management support role requirements [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#); Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;

- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see [Exhibit 10-O1: Consultant Proposal DBE Commitment](#);
- References.

Financial Management and Accounting System Requirements

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the local agency for the RFQ. The RFQs shall then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

Issue/Publish RFQ

The local agency shall publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the RFQ on line as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

Receive/Evaluate Statements of Qualifications and Develop Shortlist

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant's references. This check applies to major subconsultants also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

Notify Consultants of Shortlist

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Interview Top-Ranked Consultants

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.

Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their answers from the local agency in writing. It is required that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the

interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

Develop Final Ranking and Notify Consultants of Results

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

Conduct Scoping Meeting

The Contract Administrator meets with the first-ranked consultant's project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

Request Cost Proposal

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein.

Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant's cost proposal must follow the same format as the prime consultant's cost proposal.

Negotiate Contract with Top-Ranked Consultant

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) and [Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#), whichever applicable (see [Section 10.3: A&E Consultant Audit and Review Process](#)) will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and compares it with the local agency's confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be properly disposed of by permanently deleting the cost proposals and/or any copy of the cost proposals.

A contract audit and review may be required (see [Section 10.3: A&E Consultant Audit and Review Process](#) earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans A&I in a timely fashion, including all

documents for a Financial Review, if applicable. Caltrans A&I will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans A&I Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments and fee. Fee is required to be negotiated as a separate element.

The consultant's ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on actual cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#)), and receive Caltrans A&I's Financial Review acceptance letter, if applicable.

Prior to contract award, the local agency must submit a completed [Exhibit 10-C](#) signed by the Contract Administrator for all new or amended federal and/or state funded A&E consultant contracts to aeoversight@dot.ca.gov for Caltrans review and acceptance. If there are any changes to the contract after Caltrans acceptance of [Exhibit 10-C](#), the local agency must notify Caltrans and provide a copy of an updated [Exhibit 10-C](#) and all contract amendments to aeoversight@dot.ca.gov. Execution of an A&E consultant contract without Caltrans acceptance may result in ineligibility for reimbursement. Submission of [Exhibit 10-C](#) is not required for non-A&E consultant contracts..

10.7 CONSULTANT SELECTION USING THE TWO-STEP RFQ/RFP METHOD

Combined RFQ and RFP

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals.

The initial steps in this method (up to the development and notification of the shortlist) are the same as the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in

Figure 10-4: Consultant Selection Flowchart. Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is very complex or unusual. The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through single solicitation. The outcome of the first step - RFQ will be multiple contracts, or on-call list of consultants with cost/price agreements. The subsequent project work will be procured thru individual competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

10.8 COMPLETING THE PROJECT

Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the local agency and consultant have agreed to a fair and reasonable price, and (3) a letter, if applicable, is released by Caltrans A&I that accepts, denies or makes an adjustment to the proposed ICR. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to and made a part of the consultant contract. For informational purposes, sample contract language and format have been included as [Exhibit 10-R: A&E Sample Contract Language](#).

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.

Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) exceeding \$150,000, must be reviewed by the local agency to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal Exhibit 10-O2: Consultant Contract DBE Commitment is included for all contracts regardless of goal.;
- [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subs), and [Exhibit 10-A: A&E Consultant Audit Request Letter](#) and Checklist and all supporting documents, if applicable, have been submitted to Caltrans A&I;

- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;
- [*Exhibit 10-C: A&E Consultant Contract Reviewers Checklist*](#) must be used to ensure that required documentation has been provided;
- A cost proposal (see [*Exhibit 10-H: Sample Cost Proposal*](#)), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant's organization:

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;
- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.
- Has an adequate financial management system as required by the applicable federal regulations.

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract shall provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.

The contract shall also provide that the consultant establish a working office at a place acceptable to the local agency. The contract shall provide that the consultant and subconsultants shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and local agency authorized representatives; and copies thereof shall be furnished, if requested.

Following final settlement of the contract accounts with the State or FHWA, such records and documents may be archived at the option of the local agency, but in any event shall be retained for a three-year period after processing of the final voucher by the State or FHWA.

Execute Contract and Issue Notice to Proceed to Consultant

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be send to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved.

Administer the Contract

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing and assessing reports, plans, and other required products/deliverables;
- Receiving and reviewing state prevailing wages. (See Department of Industrial Relations websites below.
 - [DIR FAQ](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html) website:
http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html
 - [DIR Wage Determination](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm) website:
<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
- Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ;
- Completing the consultant performance evaluations (see [Exhibit 10-S: Consultant Performance Evaluation](#)).

Substitution of Consultant Personnel and Subconsultants

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the local agency. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract.

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant's project manager must be a registered engineer in the State of California.

Invoicing (or Progress Payments)

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see [LAPM Chapter 3: Project Authorization](#)) need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the local agency.

For federal or state reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant's invoices for reimbursement being returned to the agency unprocessed):

- Copy of Executed Consultant contract;
- [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) (federally funded projects only);
- [Exhibit 10-O2: Consultant Contract DBE Information](#) (federally funded projects only);

DLAE must confirm that the local agency has submitted copies of [Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#) (for Prime and Subconsultants) to Caltrans A&I and received acceptance of [Exhibit 10-C: Consultant Contract Reviewers Checklist](#) from Caltrans.

Invoices should include the following:

- Prepared on the consultant's letterhead;
- Signed by the consultant's project manager;
- Have a unique invoice number;
- Appropriate documentation attached;
- If the contract involved milestones, each milestone should be invoiced separately;
- If the contract involved subconsultants, a separate invoice for each subconsultant should be attached in the same format as the prime consultant's invoice and should be included in the summary of the prime consultant's invoice.

The following are requirements associated with each invoice that the local agency should include:

- A summary of the reimbursements to-date and a summary of the funds remaining in the contract. This should be compared to the local agency's own record of reimbursements to-date and a summary of the funds remaining in the contract.
- A summary of all payments to-date and funds remaining in the contract for each subconsultant.

The local agency is to follow the procedures given in [LAPM Chapter 5: Invoicing](#), to obtain reimbursement of federal or state funds.

Contract Amendments

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see [Q&As](#) at: http://www.fhwa.dot.gov/programadmin/172qa_01.cfm).

There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

For on-call consultant contracts, the amendment is restricted to the work (task order) that has already been started by the consultant and can not include any new work.

All contract amendments must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding. [Section 10.3: A&E Consultant Audit and Review Process](#) of this chapter shall apply to the entire contract and must be completed prior to execution of the contract amendment.

Performance Evaluation

Pursuant to 23 CFR §172.9(d) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant's performance after the consultant's final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant's project manager. See [Exhibit 10-S: Consultant Performance Evaluation](#) for a suggested format for use by the local agency.

Project Records

Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR Part 200). These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR Part 200.333).

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder's list;
- Documentation of DBE participation (including [Exhibit 10-O1: Consultant Proposal DBE Commitment](#) and [Exhibit 10-O2: Consultant Contract DBE Commitment](#));
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see [Exhibit 10-B: Suggested Consultant Evaluation Sheet](#));
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management ([Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System](#)) for contracts over \$150,000 or more;
- A&E Consultant Audit Request Letter and Checklist ([Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist](#)) for contracts over \$150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see [Exhibit 10-R: A&E Sample Contract Language](#) and [Exhibit 10-H: Sample Cost Proposal](#));
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;

- Performance evaluation (see [Exhibit 10-S: Consultant Performance Evaluation](#));
- Consultant contract checklists (see [Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#));
- Accounting records documenting compliance with State and federal administrative requirements;
- Certifications and Conflict of Interest forms ([Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#), [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) and [Exhibit 10-Q: Disclosure of Lobbying Activities](#), as appropriate).

Retention Clauses

At the option of the local agency, a retention clause may be included in the consultant contract. The usual retained amount is five percent; appropriate securities on deposit may be substituted for the retention. A retention clause in the consultant contract is recommended (see [Exhibit 10-R: A&E Sample Contract Language](#), Article XXXI).

Review of Local Agency Actions

Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

[Exhibit 10-C: A&E Consultant Contract Reviewers Checklist](#) is to be completed and signed. A copy shall be emailed to Caltrans at aeoversight@dot.ca.gov prior to contract award for acceptance. This acceptance of [Exhibit 10-C](#) must be retained in the local agency project files.

10.9 MISCELLANEOUS CONSIDERATIONS

Engineering Services Under \$150,000

The procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR 172.7(a)(2) and 48 CFR 2.101.

Local agencies should be fully aware that consultant services costing in aggregate no more than \$150,000 per contract may be obtained through a relatively simple and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and the project files must contain justification for the selection. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible. The Brooks Act and the consultant audit process described in [Section 10.3: A&E Consultant Audit and Review Process](#) of this chapter do not apply to consultant service contracts under \$150,000. Although this method of procurement is informal, it must still comply with [Sections 10.1: General](#), [10.2: Identifying & Defining a Need for Consultants Completing the Project](#), and [Section 10.9: Miscellaneous Considerations](#), of this chapter.

Project splitting should not be used to take advantage of the small purchase procedure in order to circumvent the Brooks Act.

Table 10-1: Summary of Required/Non-Required Activities for Small Purchase Procedure

REQUIRED	NOT REQUIRED
<ul style="list-style-type: none"> Competitive process (collect three bids) Conflict of interest determination Assigned Contract Administrator Defined scope of work/schedule of deliverables/start and end dates for contract Defined deliverables/Prime and Subconsultant responsibilities DBE goal for contract; Exhibit 10-O1: Consultant Proposal DBE Commitment, Exhibit 10-O2: Consultant Contract DBE Commitment Cost estimate prior to receiving bids Best method of payment determination Contract provisions/clauses Evaluation of consultant, justification of selection Contract management responsibilities <p>Exhibit 10-C: A&E Consultant Contract Reviewers Checklist</p>	<ul style="list-style-type: none"> No RFP/RFQ No Selection/Evaluation Panel No Evaluation criteria disclosure requirements No record of costs/profit negotiations <p>No audit and review requirement of contract (no Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist or Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System)</p>

Price or rate quotation may be considered in the selection of A&E consultants on contracts below \$150,000 and must be documented in the project files. Qualified small business firms shall be considered for selection on federal-aid and state reimbursed contracts. Additionally, on federal-aid contracts, qualified DBE firms shall be considered for selection, and the appropriate federal contract language shall be included.

The full amount of any contract modification or amendment that would cause the total contract amount to exceed the Federal simplified acquisition threshold (currently established at \$150,000) would be ineligible for federal funding. Also, FHWA reserves the right to withdraw all federal-aid funding from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

Noncompetitive Negotiated Contracts (Sole-Source)

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](#)).

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

The local agency shall:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans' or FHWA's review.

A Public Interest Finding (see [Exhibit 12-F: Cost-Effectiveness/Public Interest Finding](#)) is not required for a local agency to be reimbursed for contract administration activities associated with non-infrastructure type projects such as many Safe Routes to School or Transportation Alternatives Program projects. However, an indirect cost allocation plan must be approved in order to be reimbursed for this work (see <http://www.fhwa.dot.gov/legisregs/directives/policy/indirectcost.htm>).

Personal Services Contracts

A personal services contract is characterized by the employer-employee relationship created between the local agency and the contract personnel who essentially perform similar duties as the employees. When personal engineering services less than \$150,000 or non-engineering consultant or vendor services for non-infrastructure programs are needed and federal or state reimbursement will be sought, these services may be obtained through Small Purchase Procedures up to a limit of \$150,000 each.

The \$150,000 is a cumulative limit for services provided by any individual consultant or consulting firm. Such services must be under the direction and control of a full-time employee of the local agency in responsible charge. Compensation for construction engineering services should be based on actual costs incurred, plus a fixed fee, or in the case of individual compensation on an agreed-upon hourly or daily rate. Lump sum payments should not be used for construction engineering services.

For personal service contracts, the following information must be documented by the local agency and retained in the project files:

- Explanation of the services needed, and why they cannot be provided by the local agency;
- Name and qualification of the consultant, who provided the services;
- Documentation of the fees showing how the fee was calculated, and that it is reasonable by comparative standards;
- Any other records needed to show compliance with federal-aid program regulations.

Retaining a Consultant as an Agency Engineer or in Management Support Role

A local agency may retain qualified consultants in a management support role on its staff in professional capacities for state funded or federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the City, selecting other consultants, approving changes to schedule, scope, deliverables or costs, and approving invoices
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects or the work of other consultants and contractors on behalf of the public agency
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency

However, a consultant in a management support role is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency
- A consultant “project manager” performing contract management on behalf of the consultant on the public agency’s consultant contract.
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.

The use of a consultant in a management support role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter.

Eligibility for federal or state reimbursement for a consultant in a management support role requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;

- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;
- For a state funded or federal-aid project, completion of [Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement](#) by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;
- For a state funded or federal-aid project, a local agency consultant in a management support role shall not:
 - Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or subconsultant to a proposing firm;
 - Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
 - Apply for or receive reimbursement of federal-aid funds for the local agency's federal-aid project if either of the foregoing has occurred. However reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
 - Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant's contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal or state reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants in a management support role are procured with federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer or agent of the subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

- Subparagraph of 23 CFR §172.7(b) requires that the local agency shall receive approval from FHWA. In addition, any federal-aid projects designated as High Profile projects may also need approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally funded projects, local agencies that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a consultant in a management support role to be federally eligible, the following are required prior to contract execution:

- The local agency shall submit a request for approval via email the Scope of Work and Conflict of Interest Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at aeoversight@dot.ca.gov, prior to solicitation.
- Once the local agency receives FHWA's written response, the local agency can proceed with the RFQ.
- After consultant selection, the local agency shall submit the completed [Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement](#) to the DLA-HQ at aeoversight@dot.ca.gov. Local agency will receive FHWA's approved [Exhibit 10-U](#) via email.

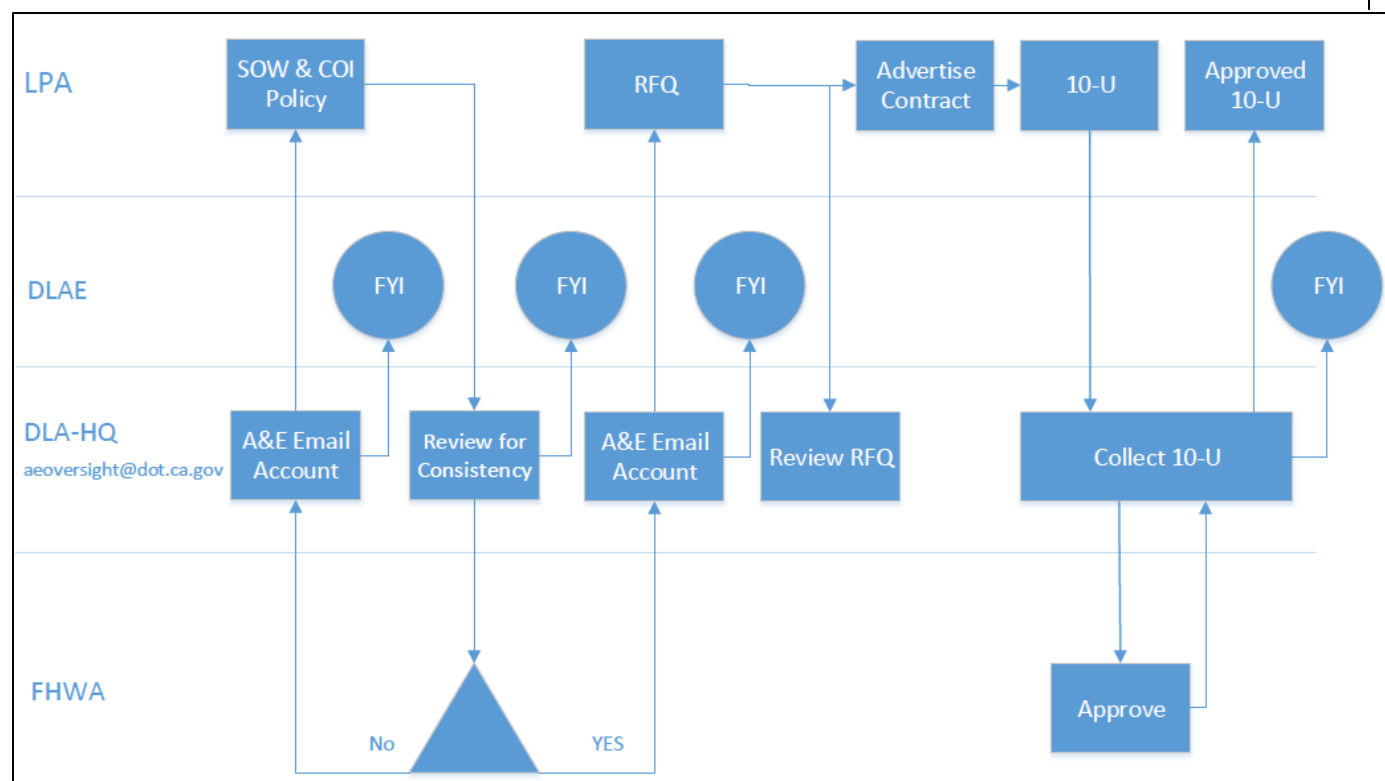


Figure 10-5: Consultant in a Management Support Role Flowchart

Construction Engineering Services

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter's requirements. The contract shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.

10.10 Non-A&E Consultants

Definition

Services and planning studies that are not included in the definition of A&E related services or are not directly related to a construction project may be considered non-A&E. These services include Right-of-Way appraisal and acquisition activities, conducting public outreach during environmental clearance or construction, and Active Transportation Program educational and outreach activities.

The determining factor for the required use of competitive negotiation/qualifications based selection procedures is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect. If a planning study is to determine the need for improvements within a corridor, to conduct travel demand studies, or to obtain information on costs for planning and programming processes, the consultant may not need to be procured under a qualifications based selection process.

Intelligent Transportation System (ITS) Projects

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, funds the acquisition of

technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (or A&E), construction, and non-engineering/non-architectural (or Non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves considerable software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it would be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a Non-A&E consultant contract. Examples of Non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system
- Software systems for arterial and freeway management systems
- Operating the 511 traveler information service
- Nonprofessional services for system support such as independent validation and verification, testing and specification development, and development of a concept of operations

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to *LAPG, Chapter 13* [LAPG Chapter 13: Intelligent Transportation Systems](#).

Non-Infrastructure Projects

- Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to LAPM Chapter 13), or the eventual physical construction of transportation facilities.

Procurement of Non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to *LAPM Chapter 3 Project Authorization*. [LAPM Chapter 3: Project Authorization](#).

Procurement of Non-A&E Consultant Contracts

Local agencies must use their own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal laws and regulations (2 CFR Part 200). All non-A&E

procurements for federal-aid funded projects must be conducted by competitive proposals in a manner providing full and open competition consistent with federal and state standards. Refer to California State Public Contract Code 10335-10381 for more information.

- a. Request for proposals must be publicized and all evaluation factors and their relative importance identified
- b. Proposals must be solicited from an adequate number of qualified sources (no less than three)
- c. Local agency must have a written procedure for evaluating proposals
- d. Consultants other than A&E consultants shall be selected using cost or cost and qualifications (best value)
- e. Public agencies contracting with other public agencies to perform work need an executed Memorandum of Understanding (MOU) or interagency agreement
- f. A consultant firm that was instrumental or listed in the application process for projects, such as ATP, is not entitled to be awarded a contract for its implementation without a competitive procurement. All federal/state funded contracts must be competitively solicited.

Determining Need for Consultant

To identify if a non-A&E professional services contract is needed, consider the following:

- Types of services needed
- Special licensing (not considered A&E)
- How necessary are the services
- When are the services needed
- One-time or on-going services
- Routine or extraordinary/unique
- Scope of Work

Preparing the Request for Proposal

An RFP for professional services should be as detailed and precise as possible and include minimum qualification requirements, solicitation and award time frames, term of agreement, scope of work, evaluation criteria and process, and technical proposal and performance specifications.

Be sure to attach complete scopes of work outlining local agency and consultant responsibilities and all special provisions for the work/services needed, and have all funding approved. Local agency contacts, or the Contract Administrator should be identified in the RFP.

An example RFP is provided on the Local Assistance Website at <http://www.dot.ca.gov/hq/LocalPrograms/AE/index.htm> and may be modified.

Scope of Work

Clear and concise scopes of work are critical elements of service contracts. SOWs must be detailed and specific and be organized in a logical manner. Sort work details by similar actions or requirements. Clearly define roles and responsibilities of consultant and local agency. Agency Contract Administrator should write SOWs to indicate what qualifications are required to perform the work and to express when, where, and how the work/service is to be performed.

Technical Proposal

The Technical proposal should include the following information:

- **Consultant Project Manager** – qualifications, roles and responsibilities.
- **Methodology** - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- **Workplan and Work Schedule** - the technical proposal should include activities and tasks, and their delivery schedule.
- **Personnel** - List of personnel who will be working on the project, and their resumes.
- **Facilities and resources** (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- **Sub-contracts** - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work shall be subcontracted unless listed in the technical proposal. Sub-consultant resumes should be provided.
- **References** - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

Cost Proposal Worksheet

The RFP should provide a standard format for cost proposal that all proposers must include in their technical proposal. The cost proposal format can be broken down by specific tasks, showing hourly labor rates, level of effort and material, and/or by milestones and deliverables.

DBE Consideration

DBE consideration is required on all federal-aid funded contracts including non-A&E..

Solicitation and Award of Contracts

Advertisement for RFPs may be through the local agency website, local publications, and national publications. Minimum solicitation time is 14 calendar days.

The solicitation should inform potential bidders that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to bidder's questions shall be provided to all potential bidders. Written responses to all questions will be collectively compiled and provided as an addendum.

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities shall be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate shall not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally funded projects.

Evaluation Criteria

Review all eligible proposals (i.e., those filed on time and in the manner prescribed) to determine which ones meet the format requirements and the standards specified in the RFP. Proposals meeting the minimum standards and format requirements can then be rated or scored. Those proposals shall be submitted to an agency evaluation committee. The evaluation committee will evaluate and score proposals using the methods specified in the RFP. The contract must be awarded to the responsible proposer whose proposal is given the highest score by an evaluation committee.

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation, late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Note that all criteria to be used to evaluate the technical proposals must have a logical foundation within the scope of work or within other technical requirements contained in the RFP. Each criterion must have a weight or level of importance, and it is recommended that total possible score for the evaluation criteria be one hundred (100) points. The proposed cost should be at least thirty percent (30%) of total points in evaluation criteria.

To establish effective competition, a minimum of three proposal must be evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) ([*LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding*](#)) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Oral Presentations

Oral presentations are optional. The evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon this criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

Protest/Appeals/Reinstatement Procedures

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthens the process by which the contracting agency reaches its ultimate goal and helps defends its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with 2 CFR 200.318(k)

10.11 REFERENCES

- [23 CFR, Part 172](http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3)
Administration of Engineering and Design Related Service Contracts
<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3>
- [40 USC, Section 1104](http://www.fhwa.dot.gov/programadmin/121205.cfm)
Brooks Act <http://www.fhwa.dot.gov/programadmin/121205.cfm>
- [41 CFR](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl)
Public Contracts and Property Management
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl
- [41 USC](http://law.onecle.com/uscode/41/index.html)
Public Contracts
<http://law.onecle.com/uscode/41/index.html>
- [23 USC](http://www.fhwa.dot.gov/map21/docs/title23usc.pdf)
Letting of Contracts
<http://www.fhwa.dot.gov/map21/docs/title23usc.pdf>
- [48 CFR, Chapter 1, Part 15.404](https://www.acquisition.gov/far/html/FARTOCP15.html)
<https://www.acquisition.gov/far/html/FARTOCP15.html>

- [48 CFR, Chapter 1, Part 31](https://www.acquisition.gov/far/html/FARTOCP15.html)
<https://www.acquisition.gov/far/html/FARTOCP15.html>
- [Title 48, Part 16 – Types of Contracts](http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1)
<http://www.elaws.us/subscriber/signin?returnurl=http://federal.elaws.us/cfr/title/4/10/2013/title48/chapter1/part16&IsHistory=1&AspxAutoDetectCookieSupport=1>
- [48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts](https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3)
<https://www.law.cornell.edu/cfr/text/48/part-27/subpart-27.3>
- [48 CFR 31.201-3](https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf)
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title48-vol1/pdf/CFR-2011-title48-vol1-sec31-201-6.pdf>
- [48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900](https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99)
<https://www.gpo.gov/fdsys/granule/CFR-2002-title48-vol7/CFR-2002-title48-vol7-chap99>
- [2 CFR Part 200](http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)
http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93fdc5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
- [49 CFR, Part 26](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)
Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl
- [American Association of State Highway and Transportation Officials \(AASHTO\) Uniform Audit and Accounting Guide](http://audit.transportation.org/Pages/default.aspx)
<http://audit.transportation.org/Pages/default.aspx>
- [Caltrans Division of Procurement and Contracts Website](http://www.dot.ca.gov/dpac/index.html)
<http://www.dot.ca.gov/dpac/index.html>
- [California Labor Code, Section 1775](http://law.onecle.com/california/labor/1775.html)
<http://law.onecle.com/california/labor/1775.html>
- [Government Auditing Standards \(GAS\) issued by the United States Government Accountability Office](http://www.gao.gov/yellowbook/overview)
<http://www.gao.gov/yellowbook/overview>
- [Government Code Sections 4525 through 4529.5](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5)
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5>

- [OMB Circular A-110](https://www.whitehouse.gov/omb/circulars_a110)
Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
https://www.whitehouse.gov/omb/circulars_a110
- [Standard Environmental Reference \(SER\)](http://www.dot.ca.gov/ser/)
<http://www.dot.ca.gov/ser/>



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 11.

MEETING DATE: 11/5/2019

DEPARTMENT: RESOURCE MANAGEMENT AGENCY

DEPT HEAD/DIRECTOR: HARRY MAVROGENES, RMA DIRECTOR

AGENDA ITEM PREPARER: Damon Felice

SBC DEPT FILE NUMBER: 120.5

SUBJECT:

RESOURCE MANAGEMENT AGENCY – H. MAVROGENES

Approve additional change order authority for RMA Director in the amount of \$720,000.00 or approximately (3) three percent of the contract total for the construction of the Jail Expansion Project. Approve a budget amendment transferring \$300,000 of Jail Impact fees to the capital improvement fund and a capital budget amendment increasing appropriations on the Jail Expansion project by \$500,000. (4/5 vote)

SBC FILE NUMBER: 120.5

AGENDA SECTION:

CONSENT AGENDA

BACKGROUND/SUMMARY:

The Jail Expansion project has been under construction for nearly 23 months and has approximately one month remaining. At the time of contract award, the Board delegated change order authority to the RMA Director in the amount of \$210,000, or approximately 1% of the total construction cost of \$20,139,852. That amount was increased by the board at the September 11, 2018 meeting to \$630,000. That amount has been exhausted and staff is requesting an additional change order authority in the amount of \$720,000.

Staff is requesting board approval of an additional \$720,000 (approximately 3.5%) in additional delegated change order authority for the RMA Director. Taking this action allows staff to get the project completed and closed out.

Seven change orders have been approved by staff thus far (Change Order 1 was approved by the Board at time of contract award for purchasing insurance in the amount of \$390,000): Change Order 2 included 20 items with an extra cost of \$145,157.46 and credits of \$55,564.16, for a net extra cost of \$89,593.30. Change Order 3 included 16 items with an extra cost of \$103,883.26 and credits of \$1,624.51 for a net extra cost of \$105,507.77. Change Order 4 included 9 items with an extra cost of \$48,800. Change Order 5 included 12 items with an extra cost of \$234,515 and credits of \$16,074 for a net extra cost of \$218,441. Change Order 6 includes a total of 10 items with an extra cost of \$125,421. Change Order 7 includes 11 items with an extra cost of \$113,251. Change Order 8, which is still pending, includes 21 items with an extra cost of \$88,462. Change Order 9, which is still pending, includes 10 items and is forecasted to be an extra of \$170,000. The total change order amount is forecasted to be \$1,350,000 or 6.7%.

The overall project budget for the Jail Expansion is \$25,167,532. With the requested change order authorization amount of \$720,000, the overall project budget will require additional appropriations of approximately \$294,000. Without the addition of \$390,000 for insurance, which was part of Change Order #1, the overall project would be under the budgeted amount. The current jail budget update with all previous amendments approved by the Board of Supervisors is attached hereto.

Additionally, it is recommended that the board increase appropriations in the FY19/20 capital budget for \$500,000. At the FY19/20 budget hearings the board adopted a project budget for the jail expansion project in the amount of \$2,000,000 for the current fiscal year (19/20). This amount should have included an additional projected cost of \$200,000 at the time of the adoption for a total project amount of \$2,200,000. Due to this error, and the revision in projected total costs, a capital budget amendment is recommended for FY19/20 bringing the total projected costs to \$2,500,000.

The \$500,000 appropriations increase will be covered by fund balance currently held in the Capital Improvement Fund (\$200,000) and Jail/Juv Hall Impact Fees (\$300,000). The Capital Improvement Fund balance holds the Certificates of Participation financing revenue that was received in FY18/19.

BUDGETED:

Yes

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Staff respectfully recommends that the Board:

1. Approve additional change order authority for the RMA Director in the amount of \$720,000.00 or approximately 3.5% of the contract total for the construction of the Jail Expansion Project. (4/5 vote)
2. Approve a budget amendment transferring \$300,000 of Jail Impact fees to the capital improvement fund and a capital budget amendment increasing appropriations on the Jail Expansion project by \$500,000. (4/5 vote)

ADDITIONAL PERSONNEL: No

ATTACHMENTS:

Description	Upload Date	Type
Jail Expansion Budget Overview	10/31/2019	Staff Report
Jail Change Orders (4-8)	11/1/2019	Backup Material
Budget Adjustment/Transfer	10/31/2019	Budget Adjustment/Transfer Form

Jail Expansion Project Budget/Costs To-Date (10/31/2019)

	A	B	C	D	E
Construction Items	Amended Budget	Actual Expenditures	Projected Costs	Total Estimated Costs (B+C)	Total Net Budget (A-D)
Construction (Sletten)	\$ 21,146,844	\$ 20,122,175	\$ 1,463,590	\$ 21,585,765	\$ (438,921)
Additional Eligible Costs	\$ 866,138	\$ 457,051	\$ 175,000	\$ 632,051	\$ 234,087
Architectural (HMC)	\$ 1,564,510	\$ 1,646,148	\$ -	\$ 1,646,148	\$ (81,638)
Construction Management (Vanir)	\$ 954,040	\$ 879,807	\$ 81,761	\$ 961,568	\$ (7,528)
Total Construction Costs:	\$ 24,531,532	\$ 23,105,181	\$ 1,720,351	\$ 24,825,532	\$ (294,000)
In-Kind Items (Pre-construction)					
CEQA	\$ 18,000	\$ 18,661	\$ -	\$ 18,661	\$ (661)
Audit	\$ 2,000	\$ -	\$ -	\$ -	\$ 2,000
Site Acquisition	\$ 280,000	\$ 280,000	\$ -	\$ 280,000	\$ -
Needs Assessment	\$ 67,000	\$ 67,000	\$ -	\$ 67,000	\$ -
County Administration	\$ 240,000	\$ 238,297	\$ -	\$ 238,297	\$ 1,703
Transition Planning	\$ 19,000	\$ -	\$ -	\$ -	\$ 19,000
Real Estate Due Diligence	\$ 10,000	\$ 22,934	\$ -	\$ 22,934	\$ (12,934)
Total In-Kind Costs	\$ 636,000	\$ 626,892	\$ -	\$ 626,892	\$ 9,108
Total Project Costs	\$ 25,167,532	\$ 23,732,073	\$ 1,720,351	\$ 25,452,424	\$ (284,892)

Funding Sources for Jail Expansion Project

Construction Items	State AB900	Cash Match*	In-Kind Match	Total
Construction (Sletten)	\$ 13,000,000	\$ 8,146,844	\$ -	\$ 21,146,844
Additional Eligible Costs	\$ 625,000	\$ 241,138	\$ -	\$ 866,138
Architectural (HMC)	\$ 1,428,000	\$ 136,510	\$ -	\$ 1,564,510
Construction Management (Vanir)	\$ -	\$ 954,040	\$ -	\$ 954,040
CEQA	\$ -	\$ 18,000	\$ -	\$ 18,000
Audit	\$ -	\$ -	\$ 2,000	\$ 2,000
Site Acquisition	\$ -	\$ -	\$ 280,000	\$ 280,000
Needs Assessment	\$ -	\$ -	\$ 67,000	\$ 67,000
County Administration	\$ -	\$ -	\$ 240,000	\$ 240,000
Transition Planning	\$ -	\$ -	\$ 19,000	\$ 19,000
Real Estate Due Diligence	\$ -	\$ -	\$ 10,000	\$ 10,000
Total Costs	\$ 15,053,000	\$ 9,496,532	\$ 618,000	\$ 25,167,532

*The County's cash match has been covered through AB109 funding, Sheriff Equipment Impact Fees, and Jail Impact Fees.



County of San Benito
RESOURCE MANAGEMENT AGENCY

CONTRACT CHANGE ORDER NO. 4

PROJECT SAN BENITO COUNTY JAIL ADDITION

PROJECT No. 3000-824

CONTRACTOR SLETTEN CONSTRUCTION COMPANY

CONTRACT No. PWB-1605

ARCHITECT HMC ARCHITECTS, INC.

DATE 12.5.18

Note: Give complete description of work. The documents supporting this Change Order, including any drawings and estimates of cost, are referenced hereon and made a part hereof. (Reference supplemental drawing number, request for information number, change order request number, and any other documents as applicable. A copy of each shall be attached to the County's copy of this Change Order.)

S D #	R F I #	P C O #	Description	Extra	Credit	Days Ext.
		41	RFI 110; Add card readers	\$3,887.14		0
		42	ASI; Water closet change	\$3,382.02		0
		47	RFI 192 (ASI 030R); Changes to door 145C	\$3,270.80		0
		48	RFI 185; Skylight soffit	\$5,790.87		0
		49	RFI 194.1; Soffit/wall alignment	\$2,094.51		0
		51	ASI 037; Revised mesh to ½" spacing	\$17,430.38		0
		55	ASI 033; Power/data revisions at 106E	\$1,789.02		0
		58	ASI 036; Revised camera location at 125A	\$853.70		0
		59	RFI 201; Security plaster	\$10,301.96		0
Execution of this change order represents full and final costs of all direct, indirect, and delay costs for the scope of services identified hereon unless noted otherwise.						
TOTALS				\$48,800.40		0

I hereby certify upon my own personal knowledge that budget funds are available for this encumbrance.

CAPITAL PROGRAM MANAGER

Date

APPROVAL RECOMMENDED

CONSTRUCTION MANAGER

DATE

Net Extra.....\$633,901.47

or

Net Credit.....\$0

County of San Benito
Change Order • 4/12



County of San Benito
RESOURCE MANAGEMENT AGENCY

CONTRACTOR AGREEMENT

The undersigned hereby agrees to the above-described amendment of the contract.

Sletten Construction Company

(Legal firm name of Contractor)

SIGNATURE

TITLE

DATE

Note: The Contractor's name shall be as listed on the contract. All signatures must be signed in ink.

COUNTY APPROVAL

APPROVED

TITLE

DATE

Calendar days time extended: 0

Revised Completion Date: N/A

COPIES TO:

- Capital Program Manager
- Construction Manager
- Contractor
- Architect/Engineer
- Other (specify):
-



County of San Benito
RESOURCE MANAGEMENT AGENCY

CONTRACT CHANGE ORDER NO. 5

PROJECT SAN BENITO COUNTY JAIL ADDITION

PROJECT No. 3000-824

CONTRACTOR SLETTEN CONSTRUCTION COMPANY

CONTRACT No. PWB-1605

ARCHITECT HMC ARCHITECTS, INC.

DATE 1.10.19

Note: Give complete description of work. The documents supporting this Change Order, including any drawings and estimates of cost, are referenced hereon and made a part hereof. (Reference supplemental drawing number, request for information number, change order request number, and any other documents as applicable. A copy of each shall be attached to the County's copy of this Change Order.)

S D #	R F I #	P C O #	Description	Extra	Credit	Days Ext.
		11	RFI 057; Discovery of abandoned manholes	\$2,337.19		0
		45	ASI; Addition of polycarbonate panels at triple bunks per BSCC	\$24,193.18		22
		46	ASI 031; Construction of additional sidewalk at front of buildings	\$17,074.76		0
		53	ASI 032R; Construct conduit runs between the facilities for IT	\$151,234.54		0
		54	Add area drain by breezeway	\$6,939.04		0
		56	ASI 034; Revisions to Gate 7	\$934.43		0
		60	ASI 038; Install dome mirrors at 122E and 122M per BSCC	\$2,358.55		0
		61	Changes to Fire Alarm system per CSFM	\$29,112.73		0
		63	ASI 040; Deletion of motorized shades in housing		\$15,621.01	0
		64	ASI 041; Deletion of ceiling painting in 121		\$453.13	0
		67	RFI 217; Add t-bar grid ceiling w/o tiles in 160E	\$330.88		0
Execution of this change order represents full and final costs of all direct, indirect, and delay costs for the scope of services identified hereon unless noted otherwise.						
TOTALS				\$234,515.30	\$16,074.14	22

I hereby certify upon my own personal knowledge that budget funds are available for this encumbrance.

CAPITAL PROGRAM MANAGER

Date

APPROVAL RECOMMENDED

CONSTRUCTION MANAGER

DATE

Net Extra.....\$852,342.63

or

Net Credit.....\$0

County of San Benito
Change Order • 4/12



County of San Benito
RESOURCE MANAGEMENT AGENCY

CONTRACTOR AGREEMENT

The undersigned hereby agrees to the above-described amendment of the contract.

Sletten Construction Company

(Legal firm name of Contractor)

SIGNATURE

TITLE

DATE

Note: The Contractor's name shall be as listed on the contract. All signatures must be signed in ink.

COUNTY APPROVAL

APPROVED

TITLE

DATE

Calendar days time extended: 22

Revised Completion Date: 4/24/19

COPIES TO:

- Capital Program Manager
- Construction Manager
- Contractor
- Architect/Engineer
- Other (specify):
-



County of San Benito
RESOURCE MANAGEMENT AGENCY

CONTRACT CHANGE ORDER NO. 6

PROJECT SAN BENITO COUNTY JAIL ADDITION

PROJECT No. 3000-824

CONTRACTOR SLETTEN CONSTRUCTION COMPANY

CONTRACT No. PWB-1605

ARCHITECT HMC ARCHITECTS, INC.

DATE 4.23.19

Note: Give complete description of work. The documents supporting this Change Order, including any drawings and estimates of cost, are referenced hereon and made a part hereof. (Reference supplemental drawing number, request for information number, change order request number, and any other documents as applicable. A copy of each shall be attached to the County's copy of this Change Order.)

S D #	R F I #	P C O #	Description	Extra	Credit	Days Ext.
		50	Install additional roof penetration at IDF room for radio equipment	\$3,135.70		0
		71	Replace guardrail mesh at Dayroom stairs and mezzanine	\$71,858.91		28
		74	ASI 042; Install bollards, chain, and lock at each end of maintenance driveway	\$5,979.48		0
		76	Raise utility boxes	\$2,305.19		0
		77	ASI 044; Fill door panel at new door at existing rec yard	\$1,396.22		0
		78	RFI 229; Correct conflict with mirror at wall tile	\$2,718.06		0
		79	RFP-001; Provide new control touch screen system at existing central control room	\$25,996.76		10
		81	RFI 237; Modify door at Electrical Room to provide clearance	\$553.42		0
		82	RFI 236; Provide power for backlit exterior signage	\$5,041.62		0
		84	RFI 238.1; Use alternate HVAC security grilles	\$6,435.58		0
			WARRANTY: Warranty Start Date shall be 6/15/19			
			Execution of this change order represents full and final costs of all direct, indirect, and delay costs for the scope of services identified hereon unless noted otherwise.			
			TOTALS	\$125,420.94	\$0	38

I hereby certify upon my own personal knowledge that budget funds are available for this encumbrance.

CAPITAL PROGRAM MANAGER

Date



County of San Benito
RESOURCE MANAGEMENT AGENCY

APPROVAL RECOMMENDED			Net Extra.....\$977,763.57 or Net Credit.....\$0
<hr/> CONSTRUCTION MANAGER _____ DATE _____			
CONTRACTOR AGREEMENT <i>The undersigned hereby agrees to the above-described amendment of the contract.</i>			Calendar days time extended: 60 Revised Completion Date: 6/3/19
Sletten Construction Company <i>(Legal firm name of Contractor)</i>			
<hr/> SIGNATURE _____ TITLE _____ DATE _____			COPIES TO: <ul style="list-style-type: none">• Capital Program Manager• Construction Manager• Contractor• Architect/Engineer• Other (specify):•
Note: The Contractor's name shall be as listed on the contract. All signatures must be signed in ink.			
COUNTY APPROVAL			
<hr/> APPROVED _____ TITLE _____ DATE _____			



County of San Benito
RESOURCE MANAGEMENT AGENCY

CONTRACT CHANGE ORDER NO. 7

PROJECT SAN BENITO COUNTY JAIL ADDITION

PROJECT No. 3000-824

CONTRACTOR SLETTEN CONSTRUCTION COMPANY

CONTRACT No. PWB-1605

ARCHITECT HMC ARCHITECTS, INC.

DATE 7.8.19

Note: Give complete description of work. The documents supporting this Change Order, including any drawings and estimates of cost, are referenced hereon and made a part hereof. (Reference supplemental drawing number, request for information number, change order request number, and any other documents as applicable. A copy of each shall be attached to the County's copy of this Change Order.)

S D #	R F I #	P C O #	Description	Extra	Credit	Days Ext.
		68	ASI 043; Add mesh ceiling at room 121C	\$17,064.18		0
		75	ASI 045; Retention Pond drainage improvements	\$13,143.17		0
		80	Pump excess water from front pond	\$2,460.66		0
		86	RFI 248; Changes to Breezeway mesh	\$10,271.27		0
		87	RFI 235; Revised grades at north canopy entry	\$32,714.00		0
		91	RFI 257; Change light fixtures at Rec Yards	\$8,715.08		0
		95	Repair damage to underground sewer line	\$7,988.84		0
		97	Install door pulls	\$15,070.17		0
		98	ASI 050; Revisions to adjustable control room workstation	\$1,317.09		0
		102	RFI 263; Revisions to mounting of video visitation units	\$3,784.87		0
		104	Caulking at vertical posts in Rec Yards	\$721.68		0
Execution of this change order represents full and final costs of all direct, indirect, and delay costs for the scope of services identified hereon unless noted otherwise.						
TOTALS				\$113,251.01	\$0	0

I hereby certify upon my own personal knowledge that budget funds are available for this encumbrance.

CAPITAL PROGRAM MANAGER

Date

APPROVAL RECOMMENDED

Net Extra.....\$1,082,301.50

or



County of San Benito
RESOURCE MANAGEMENT AGENCY

CONSTRUCTION MANAGER _____ DATE _____		Net Credit.....\$0
CONTRACTOR AGREEMENT <i>The undersigned hereby agrees to the above-described amendment of the contract.</i>		Calendar days time extended: 60
<u>Sletten Construction Company</u> <i>(Legal firm name of Contractor)</i>		Revised Completion Date: 6/3/19
_____ SIGNATURE TITLE DATE Note: The Contractor's name shall be as listed on the contract. All signatures must be signed in ink.		COPIES TO:
COUNTY APPROVAL		<ul style="list-style-type: none">• Capital Program Manager• Construction Manager• Contractor• Architect/Engineer• Other (specify):•
_____ APPROVED TITLE DATE		



County of San Benito
RESOURCE MANAGEMENT AGENCY

CONTRACT CHANGE ORDER NO. 8

PROJECT SAN BENITO COUNTY JAIL ADDITION

PROJECT NO. 3000-824

CONTRACTOR SLETTEN CONSTRUCTION COMPANY

CONTRACT NO. PWB-1605

ARCHITECT HMC ARCHITECTS, INC.

DATE 10.18.19

Note: Give complete description of work. The documents supporting this Change Order, including any drawings and estimates of cost, are referenced hereon and made a part hereof. (Reference supplemental drawing number, request for information number, change order request number, and any other documents as applicable. A copy of each shall be attached to the County's copy of this Change Order.)

S D #	R F I #	P C O #	Description	Extra	Credit	Days Ext.
		57	ASI 035; Rev. Exterior Door Security Fence	\$4,149.43		0
		83	RFI 145; Add Sheetmetal @ corridor 137	\$5,964.30		0
		89	ASI 046; Water Softener Cover	\$2,268.50		5
		90	RFI 254; Solid Surface Sink Issue	\$2,764.65		0
		93	RFI 069; Door Exterior 101	\$2,839.98		5
		96	RFI 256; Shower Wands	\$8,533.74		0
		99	Owner Furniture Assembly and Installation	\$16,384.49		5
		100	Remove Exit Signs in Inmate Accessible Areas	\$2,259.94		39
		103	ASI 052; Breezeway Closure Plates	\$5,331.25		0
		105	ASI 053; Camera Replacement	\$4,636.48		14
		108	ASI 054; Additional Door Interlock	\$2,787.01		14
		110	RFI 281; Mitsubishi Splits	\$11,107.2		21
		111	Owner; Shroud Eyewash	\$1,424.61		0
		112	Video Visitation Mounting	\$3,784.87		0
		115	RFI 286; Security Electronics	\$844.90		5
		116	ASI 055; Change Light Fixture in Rm-123	\$766.74		0
		117	ASI 047; Security Control Panel Revision	\$2,089.51		0
		118	RFI 215; Loop Detector	\$6,103.31		0
		120	RFI 294; Touch Screen	\$3,301.84		0
		121	Owner; ADD Central Corridor Interlock	\$806.01		0
		123	Owner; ADD Medical Interlock	\$313.19		0



County of San Benito
RESOURCE MANAGEMENT AGENCY

Execution of this change order represents full and final costs of all direct, indirect, and delay costs for the scope of services identified hereon unless noted otherwise. (Time extensions to date are non-compensable)

TOTALS	\$88,461.96	\$0	108
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I hereby certify upon my own personal knowledge that budget funds are available for this encumbrance.

CAPITAL PROGRAM MANAGER

Date

APPROVAL RECOMMENDED

CONSTRUCTION MANAGER

DATE

CONTRACTOR AGREEMENT

The undersigned hereby agrees to the above-described amendment of the contract.

Sletten Construction Company

(Legal firm name of Contractor)

SIGNATURE

TITLE

DATE

Note: The Contractor's name shall be as listed on the contract. All signatures must be signed in ink.

COUNTY APPROVAL

APPROVED

TITLE

DATE

Net Extra.....\$1,179,476.54

Or

Net Credit.....\$0

Calendar days time extended: 212

Revised Completion Date: 11/02/19

COPIES TO:

- Capital Program Manager
- Construction Manager
- Contractor
- Architect/Engineer
- Other (specify):
-

Please Indicate Type:

(Requires Auditor Approval)



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 12.

MEETING DATE: 11/5/2019

DEPARTMENT: COUNTY COUNSEL

DEPT HEAD/DIRECTOR: Barbara Thompson

AGENDA ITEM PREPARER: Barbara Thompson

SBC DEPT FILE NUMBER: 160

SUBJECT:

COUNTY COUNSEL'S OFFICE - B. THOMPSON

Discuss and provide direction to staff regarding scope of conflict of interest advice to be provided by the County Counsel's Office.

SBC FILE NUMBER: 160

AGENDA SECTION:

REGULAR AGENDA

BACKGROUND/SUMMARY:

County Counsel's office has conducted an unofficial survey of County Counsel offices regarding conflict of interest advice, and would like Board direction regarding scope of legal services to be provided in this area. A presentation will be provided at the meeting, but will discuss:

- * Whether the Office should provide conflict of interest advice
- * Whether such advice should be capped at a limit per legal issue raised

If the Office provides such advice, no attorney client relationship is created between the official or employee and the County Counsel's office, as the Client would remain the County of San Benito.

Therefore, the information would not be subject to confidentiality provisions that normally would be part of the attorney-client relationship.

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

n/a

STAFF RECOMMENDATION:

Discuss and provide direction to staff regarding scope of conflict of interest advice to be provided by the County Counsel's Office.

ADDITIONAL PERSONNEL:



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 13.

MEETING DATE: 11/5/2019

DEPARTMENT: RESOURCE MANAGEMENT AGENCY

DEPT HEAD/DIRECTOR: Harry Mavrogenes

AGENDA ITEM PREPARER:

SBC DEPT FILE NUMBER: 790

SUBJECT:

RESOURCE MANAGEMENT AGENCY - H. MAVROGENES

Approve legal services agreement with Burke, Williams & Sorenson to assist with land use entitlement and CEQA advice concerning proposed developments within the County, in an amount not to exceed \$20,000.00.

SBC FILE NUMBER: 790

AGENDA SECTION:

REGULAR AGENDA

BACKGROUND/SUMMARY:

This item was put on the agenda by the request of the Board Chairman Mark Medina. The Resource Management Agency seeks to directly engage the legal services of Burke, Williams & Sorenson to assist the RMA with implementation and application of the County's General Plan. Partner Anna Shimko will serve as the firm's principal attorney and will work directly with RMA Director. The RMA Director will coordinate Ms. Shimko's services with the County Counsel. Services under this agreement shall not exceed \$20,000 without further Board approval.

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Approve legal services agreement with Burke, Williams & Sorenson to assist with land use entitlement and CEQA advice concerning proposed developments within the County, in an amount not to exceed \$20,000.00.

ADDITIONAL PERSONNEL:

ATTACHMENTS:

Description	Upload Date	Type
Retainer Agreement for Legal Services	10/31/2019	Service Agreement

October 25, 2019

Via E-mail and U.S. Mail

County of San Benito
Attn: Harry Mavrogenes
Director, San Benito County Resource Management Agency
2301 Technology Pkwy
Hollister, CA 95023
Email: hmavrogenes@cosb.us

Re: Retainer Agreement for Legal Services

Dear Mr. Mavrogenes:

We are pleased to represent the County of San Benito ("Client") with respect to the matters described in this Agreement. The following sets forth the terms pursuant to which **BURKE, WILLIAMS & SORESENSEN, LLP** ("Burke") and Client agree that Burke will provide legal services to Client. The hallmark of any productive professional relationship is effective communication, and we would invite you to contact us at any time during or after our representation with regard to any questions you may have associated with our representation or the matters described herein.

1. CONDITIONS. This Agreement will not take effect, and Burke will have no obligation to provide legal services, until the Director of the Resource Management Agency (the "Director") returns a signed copy of this Agreement. Upon signature of the Director, this agreement shall be subject to ratification by the Board of Supervisors in accordance with Chapter 5.09 of the San Benito County Code. The effective date of this Agreement will be November 5, 2019.

2. SCOPE OF SERVICES. Client hires Burke to assist with land use entitlement and CEQA advice concerning proposed developments within the County. No representation of any directors, officers, employees, shareholders, or any other persons or entities affiliated with Client shall be provided unless such representation is expressly included in this Agreement. Burke will provide those legal services reasonably required to represent Client. Burke will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. Services in any matter not described above will require a separate written agreement or a written modification to this Agreement.

County of San Benito
October 25, 2019
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3. CLIENT'S DUTIES. Client agrees to be truthful with Burke, to cooperate, to keep Burke informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Burke's bills on time, and to keep Burke advised of Client's address, telephone number, and whereabouts. Client will assist Burke in providing necessary information and documents and will appear when necessary at legal proceedings. Client designates the Director as the principal contact for all work performed under this Agreement. The Director shall coordinate with the County Counsel in accordance with San Benito County Code Section 5.09.11.

4. CONFLICTS OF INTEREST. Before accepting representation of Client, Burke has undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest or adversity of positions between Client and any other person or entity that would bar Burke from representing Client in general or in any of the specific matters listed in this Agreement. Burke has reviewed this issue in accordance with the Rules of Professional Conduct adopted in California. Burke believes that those rules, rather than the rules of any other jurisdiction, are applicable to Client's representation. Client's execution and return of the enclosed copy of this letter represents an express agreement to the applicability of the Rules of Professional Conduct adopted in California to any and all representation arising under this Agreement.

5. DISCLOSURE. Pursuant to the requirements of California Business & Professions Code Section 6148, Burke hereby discloses that it maintains professional errors and omissions insurance.

6. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay by the hour at Burke's prevailing rates for all time spent on Client's matter by Burke's legal personnel provided that charges for service under this Agreement shall not exceed Twenty Thousand Dollars (\$20,000), without approval from the Board of Supervisors. Current hourly rates for legal personnel are set forth in Attachment "A" to this Agreement. Burke's rates are subject to change on 30 days' written notice to Client. In addition, rates shall automatically increase annually on January 1 of each year as set forth in Attachment "A" to this Agreement. If Client declines to pay increased rates, Burke will have the right to withdraw as attorney for Client.

The time charged will include the time Burke spends on telephone calls relating to Client's matter, including calls with Client, witnesses, opposing counsel or court personnel. The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel

County of San Benito

October 25, 2019

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attends a meeting, court hearing or other proceeding, each will charge for the time spent. Burke will charge for waiting time in court and elsewhere and for travel time, both local and out-of-town.

7. COSTS AND OTHER CHARGES.

(a) Burke will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include: service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees, unavoidable administrative staff and secretarial overtime, and other similar items. Except for the items listed below, all costs and expenses will be charged at Burke's cost.

In-office photocopying/page:	\$.20
In-office color photocopying/page	\$ 1.00
Facsimile charges/page:	\$ 1.00
Mileage/mile:	\$.58 (per IRS notices)
Other:	

(b) Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Burke's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

8. BILLING STATEMENTS. Burke will send Client periodic statements for fees and costs incurred. Each statement will be payable within 30 days of its mailing date. Client may request a statement at intervals of less than 30 days. If Client so requests, Burke will provide one within 10 days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

9. INTEREST CHARGES. If a billing statement is not paid by its due date, interest will be charged on the principal balance (fees, costs, and disbursements) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .833% per month (TEN PERCENT [10%] ANNUAL PERCENTAGE RATE). The unpaid balance will bear interest from the date of the invoice until paid.

County of San Benito
October 25, 2019
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10. DISCHARGE AND WITHDRAWAL. Client may discharge Burke at any time. Burke may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Agreement, refusal to cooperate or to follow Burke's advice on a material matter or any fact or circumstance that would render Burke's continuing representation unlawful or unethical. When Burke's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Burke will, upon Client's request, deliver Client's file, and property in Burke's possession, whether or not Client has paid for all services.

11. DOCUMENT RETENTION POLICY. Client is entitled upon written request to any files in Burke's possession relating to the legal services performed by Burke for Client, excluding Burke's internal accounting records and other documents not reasonably necessary to Client's representation, subject to Burke's right to make copies of any files withdrawn by Client. Once a matter is concluded, Burke will close the file, and Client will receive notice thereof. Client's physical files may be sent to storage offsite, and thereafter there may be an administrative cost for retrieving them from storage. Thus, it is recommended that Client request the return of a file at the conclusion of a matter. Under Burke's document retention policy, Burke normally destroys files five (5) years after a matter is closed, unless other arrangements are made with Client.

All client-supplied materials and all attorney end product (referred to generally as "client material") are the property of Client. Attorney end product includes, for example, finalized contracts, pleadings, and trust documents. Attorney work product is the property of Burke. Attorney work product includes, for example, drafts, notes, internal memoranda and electronic files, and attorney representation and administration materials, including attorney-client correspondence and conflicts materials.

After the close of a matter, Burke will notify Client of any client materials that remain in Burke's possession. Client will be invited to retrieve these client materials within 45 days of notice, or Client may direct Burke to forward the client materials to Client, at Client's expense. If within 45 days of this notice Client fails to retrieve the client materials or request Burke to forward them, Client authorizes Burke to destroy the client materials.

After the 45-day period, Burke will, consistent with all applicable rules of professional conduct, use its discretion as to the retention or destruction of all attorney work product and any client materials that remain with Burke.

12. TECHNOLOGY. At its discretion, unless otherwise stated, Burke will employ technology to facilitate electronic discovery. This may include scanning of

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paper documents, culling of documents, converting electronically stored information into a format suitable for review, the usage of electronic review software, etc. Applicable associated costs, including electronic storage and transfer costs, will be billed to Client.

13. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in Burke's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Burke makes no such promises or guarantees. Burke's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Burke shall not be a guarantee. Actual fees may vary from estimates given.

14. MEDIATION/ARBITRATION; WAIVER OF JURY TRIAL. If a dispute arises out of or relating to any aspect of this Agreement between Client and Burke, or the breach thereof, and if the dispute cannot be settled through negotiation, Burke and Client agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure. Nothing herein shall limit or otherwise affect your right under Sections 6200-6206 of the California Business and Professions Code to request arbitration of any fee dispute by an independent, impartial arbitrator or panel of arbitrators through a bar association program created solely to resolve fee disputes between lawyers and clients. However, should discussions, mediation or the non-binding arbitration provided through a local bar association program not resolve the dispute, the dispute shall be determined by binding arbitration before the American Arbitration Association under its then prevailing commercial arbitration rules, except that discovery may be taken in that arbitration pursuant to the California Code of Civil Procedure. The claims or controversies subject to this provision shall include, without limitation, any claim of professional negligence or malpractice. The arbitration shall be held in San Francisco, California, unless we mutually select another venue, and judgment may be entered upon the arbitrator's award by any court having jurisdiction. Should you refuse or neglect to appear or participate in the arbitration proceedings, the arbitrator is empowered to decide the claim or controversy in accordance with the evidence presented. You should realize that by accepting the arbitration provision, YOU WILL WAIVE YOUR RIGHT TO A JURY TRIAL AND THE RIGHT, EXCEPT UNDER LIMITED CIRCUMSTANCES, TO APPEAL THE ARBITRATOR'S DECISION.

_____ (Client Initial Here) ACS (Burke Initial Here)

15. ATTORNEYS' FEES CLAUSE. The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement, with the exception of a fee arbitration or mediation under Business and Professions Code

County of San Benito
October 25, 2019
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Sections 6200-6206, will be awarded reasonable attorneys' fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered.

16. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

17. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

18. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them, or an oral agreement only to the extent that the parties carry it out.

19. EFFECTIVE DATE. This Agreement will govern all legal services performed by Burke on behalf of Client commencing with the date Burke first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Burke the reasonable value of any services Burke may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE BURKE FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: October ___, 2019

COUNTY OF SAN BENITO

By: _____
Harry Mavrogenes
Director, San Benito County Resource
Management Agency

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DATED: October 25, 2019

BURKE, WILLIAMS & SORESENSEN, LLP

By: 
Anna C. Shimko
Partner

Enclosure: return copy

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October 25, 2019
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Attachment "A"

Rates for Attorneys and other timekeepers through December 31, 2019:

\$ 535	Senior Partners
\$ 445	Junior Partners
\$ 330-390	Associates
\$ 165	Paralegals

Effective each January 1, the foregoing base rates shall be increased based on the U.S. Department of Labor Bureau of Labor Statistics San Francisco-Oakland-San Jose Consumer Price Index-All Urban Consumers ("CPI-U"), using the CPI-U for each prior January as the base and the value to escalate the hourly rates in the ratio of the most recent January CPI-U value, rounded up to the nearest \$5 increment.

The U.S. Dept. of Labor Bureau of Labor Statistics (BLS) website will be the source of the data utilized (if the URL is changed, the parties shall agree on the replacement web page to be as close as reasonably possible to the page detailed herein):

http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA421SA0,CUUS A421SA0



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 14.

MEETING DATE: 11/5/2019

DEPARTMENT: COUNTY COUNSEL

DEPT HEAD/DIRECTOR: Barbara Thompson

AGENDA ITEM PREPARER: Barbara Thompson

SBC DEPT FILE NUMBER: 235.6

SUBJECT:

**CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED
LITIGATION**

Significant exposure to litigation pursuant to subdivision (d)(2), (e)(2) of Government Code Section 54956.9

Number of cases:1

Potential of additional litigation regarding Master Tax Agreement currently being litigated in *Award Homes and BMC Promise Way*.

SBC FILE NUMBER: 235.6

AGENDA SECTION:

Closed Session - P.M.

BACKGROUND/SUMMARY:

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

n/a

STAFF RECOMMENDATION:

Hold Closed Session.

ADDITIONAL PERSONNEL:



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number: 15.

MEETING DATE: 11/5/2019

DEPARTMENT: COUNTY COUNSEL

DEPT HEAD/DIRECTOR: Barbara Thompson

AGENDA ITEM PREPARER: Barbara Thompson

SBC DEPT FILE NUMBER: 235.6

SUBJECT:

CLOSED SESSION - CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION

No. of cases: 1 Subdivisions (a) and (d)(1) of Section 54956.9 Name of Case:

Preserve Our Rural Communities v. County of San Benito, Superior Court of California, County of San Benito, Case No. CU-19-00174.

SBC FILE NUMBER: 235.6

AGENDA SECTION:

Closed Session - P.M.

BACKGROUND/SUMMARY:

Conference with Legal Counsel-Existing Litigation.
Subdivisions (a) and (d)(1) of Section 54956.9

Name of Case:

Preserve Our Rural Communities v. County of San Benito, Superior Court of California, County of San Benito, Case No. CU-19-00174.

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Hold Closed Session.

ADDITIONAL PERSONNEL:



SAN BENITO COUNTY AGENDA ITEM TRANSMITTAL FORM

Mark Medina
District No. 1
Chair

Anthony Botelho
District No. 2

Peter Hernandez
District No. 3

Jim Gillio
District No. 4

Jaime De La Cruz
District No. 5
Vice - Chair

Item Number:

MEETING DATE: 11/5/2019

DEPARTMENT: BOARD OF SUPERVISORS

DEPT HEAD/DIRECTOR:

AGENDA ITEM PREPARER: Janet Slibsager

SBC DEPT FILE NUMBER: 156

SUBJECT:

Adjourn to the next regular meeting of November 19, 2019.

AGENDA SECTION:

Next Meeting Date/Time

BACKGROUND/SUMMARY:

BUDGETED:

SBC BUDGET LINE ITEM NUMBER:

CURRENT FY COST:

STAFF RECOMMENDATION:

Adjourn to the next regular meeting of November 19, 2019.

ADDITIONAL PERSONNEL: