AGENDA
SPECIAL MEETING
COUNCIL OF SAN BENITO COUNTY GOVERNMENTS

DATE: Thursday, January 24, 2019
3:00 p.m.

LOCATION: Board of Supervisors Chambers
481 Fourth St., Hollister, CA 95023

DIRECTORS: Ignacio Velazquez, Jim Gillio, Cesar Flores,
Mark Medina, and Marty Richman
Alternates: San Benito County: Anthony Botelho;
City of Hollister: Rolan Resendiz; City of San Juan Bautista: Mary Edge
Ex Officio: Caltrans District 5

Persons who wish to address the Board of Directors must complete a Speaker Card and give it to the Clerk prior to addressing the Board. Those who wish to address the Board on an agenda item will be heard when the Chairperson calls for comments from the audience. Following recognition, persons desiring to speak are requested to advance to the podium and state their name and address. After hearing audience comments, the Public Comment portion of the agenda item will be closed.

3:00 P.M. CALL TO ORDER

A. Pledge of Allegiance
B. Verification of Certificate of Posting
C. ELECT COG Chairperson for 2019
D. ELECT COG Vice Chairperson for 2019
E. Executive Director's Report
F. Caltrans Report - Gubbins/Loe
G. Board of Directors' Reports
H. Correspondence

CONSENT AGENDA:
(These matters shall be considered as a whole and without discussion unless a particular item is removed from the Consent Agenda. Members of the public who wish to speak on a Consent Agenda item must submit a Speaker Card to the Clerk and wait for recognition from the Chairperson. Approval of a consent item means approval as recommended on the Staff Report.)

1. RECEIVE Construction Projects Report – Caltrans District 5
2. APPROVE Contract with Michael Baker International, to prepare a Triennial Performance Audit for the Three Year Period Ending June 30, 2018 – Postigo
REGULAR AGENDA:

3. Council of San Benito County Governments Measure G – Gilbert
   a. RECEIVE Update on Measure G Outreach and Implementation
   b. ADOPT Resolution 2019-01 Authorizing Execution of Agreements with the State Department of Tax and Fee Administration
   c. ADOPT Resolution 2019-02 Authorizing the Examination of Transactions and Use Tax Records

CLOSED SESSION:

4. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
   Title: COG Executive Director
   Authority: Government Code Section: 54957 (B)

Adjourn to COG Meeting on February 21, 2019. Agenda Deadline is Tuesday, February 05, 2019 at 12:00 p.m.

In compliance with the Americans with Disabilities Act (ADA), if requested, the Agenda can be made available in appropriate alternative formats to persons with a disability. If an individual wishes to request an alternative agenda format, please contact the Clerk of the Council four (4) days prior to the meeting at (831) 637-7665. The Council of Governments Board of Directors meeting facility is accessible to persons with disabilities. If you need special assistance to participate in this meeting, please contact the Clerk of the Council’s office at (831) 637-7665 at least 48 hours before the meeting to enable the Council of Governments to make reasonable arrangements to ensure accessibility.
District Director’s Report
A quarterly publication for our transportation partners

Highway 1 Realignment Completed

Caltrans recently completed the $21.3 million Highway 1 Piedras Blancas project, which realigned 2.8 miles of roadway to protect from rising sea levels, storms and coastal erosion in San Luis Obispo County. The project moved Highway 1 up to 475 feet inland from its previous alignment and installed parking for trail access at both ends of the new segment. The new facility features widened shoulders near the Hearst San Simeon State Park.

All land west of the realigned highway will become state park land once restoration and mitigation work is completed on the old alignment. Over the next several years, the project will also restore and enhance 12 acres of off-site state park lands to mitigate impacts to natural areas. Caltrans also contributed $1.4 million for State Parks to construct a 3.5-mile new segment of the California Coastal Trail. The pathway will connect the existing network of bluff-top trails north and south of the new roadway with bicycle and pedestrian accessibility.

Highway 1 is a State Scenic Route, National Scenic Byway and All-American Road on the Pacific Coast Bicycle Route. More information: http://www.dot.ca.gov/distoc/projects/slos_piedras/index.htm

Roundabout Benefits

So far, District 5 has implemented three roundabouts on the state highway system in Santa Barbara County and local partners are planning for more throughout the District. Roundabouts are safer, more efficient, less costly and more aesthetically appealing than conventional intersections, according to the Federal Highway Administration. They substantially reduce the types of crashes resulting in injury or loss of life—from 78 to 82 percent compared to conventional stop-controlled and signalized intersections. Safety benefits include reducing the following collision types:

- 37 percent overall
- 75 percent injury
- 90 percent fatality
- 40 percent pedestrian

Photos Source: FHWA

The likelihood and severity of collisions are reduced as travel speeds are lowered between 15 and 25 mph. The innovative improvement also features a continuous, circular flow of traffic. Motorists yield to other drivers’ only before entering a roundabout; if no other vehicles are present, they continue moving. The mobile traffic helps prevent the incentive to speed up and beat the light as often occurs at more traditional signalized intersections. Roads entering a roundabout are gently curved to direct vehicles into the intersection and travel counterclockwise around the facility.

Continued on back

Please Submit Maintenance Service Requests at the Following Link: http://www.dot.ca.gov/hq/maint/msrsubmit/
Roundabout continued

The curved roads and one-way travel eliminate the possibility for T-bone and head-on collisions. Roundabouts are adaptable to different locations and come in all shapes and sizes, including oval, teardrop, peanut and dog-bone. They feature small, simple, single-lane facilities along with larger and more complex multi-lanes. They are designed to allow pedestrians to cross one direction of traffic at a time on each leg. The fewer conflict points for vehicles and pedestrians—plus slower speeds, well-defined crossings and splitter islands—result in motorists yielding to those on foot.

At roundabouts, bicyclists have the option to either take the lane as a vehicle or pedestrian on the shared use path around the facility. Recent nationwide safety research has not yet noted any substantial problems for bicyclists. Some studies show these improvements generate significantly less air pollution from vehicles compared to a stop-controlled intersection. They are also more cost-effective with the following benefits: safety, life-cycle, fewer travel delays, reduction of both fuel consumption and greenhouse gas emissions, and less right-of-way requirement on approaching streets. More information:

Transportation Asset Management Plan

The 2018 draft Transportation Asset Management Plan provides a framework for addressing performance gaps, prioritizing actions and instituting business practices streamlining asset management activities. The main goals include strengthening local, regional and state coordination and improving transportation infrastructure management through transparent information. Caltrans produced the living document through extensive statewide public outreach. It will be regularly updated with performance outcomes and consistency with the 2017 State Highway System Management Plan’s 10-year project plan. More information:
http://www.dot.ca.gov/assetmgmt/tam_plan.html

Climate Change Vulnerability

Caltrans recently released its first Climate Change Vulnerability Assessment detailing potential impacts to the state highway system in the San Francisco Bay Area. This is the first of 12 studies planned to cover each Caltrans District. The online report discusses the effects of rising sea levels and higher storm surges, more frequent wildfires, changing precipitation patterns and increasing temperatures. It also provides data to address changes in planning, design, construction, operations and maintenance.

Overall, the assessment seeks to guide future planning processes and investments ensuring the long-term future of the state’s transportation system. District 5’s assessment awaits more elevation data, and is scheduled for release in spring 2019. More information:
http://www.dot.ca.gov/paffairs/pr/2017/05/17pr32.html

Planning Grants Produce Sustainable Communities

Caltrans recently awarded the following transportation planning grants in District 5:

Sustainable Communities:

- T AMC – Seaside and Marina Complete Streets Plan, $362k.
- City of Guadalupe – Mobility and Revitalization Plan, $206k.
- City of Watsonville – Complete Streets Plan, $321k.
- Santa Cruz County Health Services Agency – Complete Streets to Schools Plan, $367k.

Climate Change Adaptation Planning:

- AMBAG – Central Coast Highway 1 adaptation strategies, $360k.
- City of Carpinteria – Sea Level Rise Transportation Policy & Infrastructure Adaptation Plan, $221k.
- Santa Ynez Band of Chumash Indians – Transportation Climate Change Vulnerability study, $185k.
- SBCAG – Santa Barbara County Transportation Network Resiliency Assessment, $100k.

SB 1 provided $25 million statewide for 2017-2018 local transportation planning grants

These successful grants were funded through the recently enacted Senate Bill 1, the Road Repair and Accountability Act, for maintaining and integrating the state’s multimodal transportation system. This funding adds to the Sustainable Transportation Planning Grant Program.

Call for Projects

A call for projects is under way for the 2018/2019 Transportation Planning Grants, which include Sustainable Communities ($29.5 million), Strategic Partnerships ($4.3 million) and Adaptation Planning ($7 million). Successful projects directly benefit the multimodal transportation system by improving public health, social equity, the environment and community livability. Deadline to submit applications to Caltrans is Friday, Feb. 23, 2018. Online applications, guidelines and more information:
http://www.dot.ca.gov/hq/tpp/grants.html
November 21, 2018

To: San Benito County Board of Supervisors Members  
   City of Hollister City Council Members  
   City of San Juan Bautista City Council Members  
   Members of San Benito County Council of Governments

From: Mike R. Graves  
     Stephen J. Rosati

RE: Measure G Sales Tax Increase for Local Roads

The voters of San Benito County have spoken and together we have passed another sales tax measure for road improvements in San Benito County. Measure G allows San Benito County leaders to begin the 30-year task of prioritizing the overdue safety improvements on our roads. This process will require a great deal of coordination and interaction between local and state agencies and our elected officials in Sacramento and Washington DC.

In order for this to happen five key steps require action by our local leaders:

1. The SBC Council of Governments will take the leadership role in the administration and allocation of Measure G funds to the SBC Board of Supervisors and the Hollister and San Juan Bautista City Councils.
2. The Board of Supervisors must also take a leadership role in the process, more specifically, overseeing the Regional Transportation Plan and the SBC Traffic Model with the Hollister and San Juan Bautista City Councils to ensure they are updated when appropriate.
3. A strong relationship must immediately be developed with the California Transportation Commission.
4. A strong relationship must be developed with the Santa Clara County Board of Supervisors, particularly the south county representative Mike Wasserman, and the Santa Clara Valley Transportation Authority.
5. Active quarterly communications with our elected representatives in Sacramento and Washington DC must be established.

In order for our projects to be completed in a timely manner, promised to the voters, a great deal of information and exchange of data will be necessary among the individuals and agencies listed above. It is highly recommended that an individual be designated
whose sole purpose will be to take on all the tasks coordinating the vast amounts of information and data pertaining to overseeing Measure G, to keep all the required items moving forward without delays. As a way to keep this in constant motion, it would seem the most logical agency for this representative to work through is our local COG. The CTC, as well as the State Legislature, recognizes the County COGs as the local decision makers on transportation issues.

As Measure G moves forward, the COG Board will be required to take action on a number of issues and must be fully informed and ready to take action in a timely and concise way. In order for this to take place the COG should have all the current, pertinent information from the SBC Board of Supervisors and Hollister and San Juan Bautista City Councils. This would require Measure G to be a standing agenda item at every meeting so the Board and Councils can concurrently process the ongoing status of the road projects. It will also provide residents more opportunities to observe the progress and transparency of carrying out Measure G.

The SBC COG must immediately reach out to the CTC, Caltrans District 5 Director, Caltrans District 4 Director, the Santa Clara County Board of Supervisors to open channels and begin planning to move forward in an expeditious manner.

Thank you for your consideration of the points outlined in this letter.
# CONSTRUCTION PROJECTS

<table>
<thead>
<tr>
<th>Project</th>
<th>Location/Post Mile (PM)</th>
<th>Description</th>
<th>Construction Timeline</th>
<th>Construction Cost</th>
<th>Funding Source</th>
<th>Project Manager (Resident Engineer)</th>
<th>Contractor</th>
<th>Comments</th>
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<tbody>
<tr>
<td>2.</td>
<td>Highway 25 Roadway Safety Improvements 1F4304</td>
<td>In Hollister from Sunnyslope/Tres Pinos Road to San Felipe Road (PM R49.9/R52.2)</td>
<td>Route deficiency corrections</td>
<td>Spring 2019</td>
<td>$6.9 million</td>
<td>SHOPP</td>
<td>Brandy Rider (BB)</td>
<td>Granite Rock Company, San Jose, CA</td>
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# PROJECTS IN DEVELOPMENT

<table>
<thead>
<tr>
<th>Project</th>
<th>Location/Post Mile (PM)</th>
<th>Description</th>
<th>Construction Timeline</th>
<th>Construction Cost</th>
<th>Funding Source</th>
<th>Project Manager</th>
<th>Phase</th>
<th>Comments</th>
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<tr>
<td>3.</td>
<td>Highway 25 Curve Restoration Project (1H810)</td>
<td>Near Hollister, just north of San Benito (PM 18.8/19.1)</td>
<td>Curve restoration</td>
<td>Begin in Fall 2020</td>
<td>$4.3 million</td>
<td>SHOPP</td>
<td>Brandy Rider</td>
<td>PA&amp;ED</td>
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<td>4.</td>
<td>Highway 25 Repair and Replace Culverts Project (1K340)</td>
<td>From south of San Benito River to south of Murphy Road in the town of Paicines (PM 29.9-32.0.5)</td>
<td>Drainage project to repair and replace 2 culverts</td>
<td>Summer 2019 - Fall 2019</td>
<td>$120K</td>
<td>Highway Maintenance SB1</td>
<td>Kelly McClain (TBD)</td>
<td>TBA</td>
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<td>Project</td>
<td>Location/Post Mile (PM)</td>
<td>Description</td>
<td>Construction Timeline</td>
<td>Construction Cost</td>
<td>Funding Source</td>
<td>Project Manager</td>
<td>Phase</td>
<td>Comments</td>
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<td>5.</td>
<td>Highway 25 Widening Project and Route Adoption Hollister to Gilroy (48540)</td>
<td>Near Hollister and Gilroy in SBt &amp; SCL Counties (PM SBt 51.5 to SCL 2.6)</td>
<td>Route adoption</td>
<td>N/A</td>
<td>N/A</td>
<td>Local</td>
<td>Brandy Rider</td>
<td>PA&amp;ED</td>
</tr>
<tr>
<td>7.</td>
<td>Highway 156 Improvement Project (34490)</td>
<td>In and near San Juan Bautista, from The Alameda to slightly east of Fourth Street (PM 3.0/R8.2)</td>
<td>Construct four-lane expressway</td>
<td>Summer 2020 - Summer 2022</td>
<td>$57.4 million</td>
<td>STIP/Local</td>
<td>Brandy Rider</td>
<td>PS&amp;E/RW</td>
</tr>
</tbody>
</table>

ACRONYMS USED IN THIS REPORT:

- PA&ED: Project Approval and Environmental Document
- PS&E: Plans, Specifications, and Estimate
- ROW: Right of way
- SB1: Senate Bill 1
- SBt: San Benito County
- SCL: Santa Clara County
- SR: State Route
- SHOPP: Statewide Highway Operation and Protection Program
- STIP: Statewide Transportation and Improvement Program
Staff Report

To: Council of Governments  
From: Kathy Postigo, Administrative Services Specialist  
Date: January 24, 2018  
Subject: Triennial Performance Audit for Period ending June 2018

Recommendation:


Summary:

The Council of Governments is required by the Transportation Development Act to complete a Triennial Performance Audit every three years. The last performance audit was completed in June 2016 for the period ending June 30, 2015.

Financial Impact:

The Contract is for a total amount not to exceed $20,865. This item is included in the 2018/2019 Fiscal Year Council of Governments' and the Local Transportation Authority's budget.

Discussion:

In October, the Council of Governments' Board approved the issuance of a Request for Proposals for the performance audit. After evaluating the proposals received, the review panel recommends Michael Baker International as the preferred consultant.

Staff recommends that the Board APPROVE the contract with Michael Baker International.

Executive Director Review: _______  
Counsel Review: Yes

Attachment: Contract between COG and Michael Baker International.
CONTRACT

The COUNCIL OF SAN BENITO COUNTY GOVERNMENTS ("COG") and Michael Baker International ("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 __January 24, 2019__, and end on __August 31, 2019__, unless sooner terminated as specified herein.

2. **Scope of Services.**
   CONTRACTOR, for COG'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, COG 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: $1,000,000

6. **Termination.**
   The number of days of advance written notice required for termination of this contract is __thirty (30)__ days__.

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 COG:**

Name: Mary Gilbert
Title: Executive Director
Address: 330 Tree Pinos Rd., Suite C7
Hollister, California 95023
Telephone No.: (831) 637-7655
Fax No.: (831) 638-4160

**Contract Administrator for CONTRACTOR:**

Name: Thomas G. Tracy
Title: Associate Vice President
Address: 2729 Prospect Park Drive, Suite 220
Rancho Cordova, CA 95670
Telephone No.: (916) 361-8384

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**SIGNATURES**

**APPROVED BY COG:**

Name: ___________________________

Chirr, Council of Governments

Date: ___________________________

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel’s Office

Shirley L. Murphy

By: Shirley L. Murphy, Deputy County Counsel

Date: Jan. 18, 2019

**APPROVED BY CONTRACTOR:**

[Signature]

Name: Thomas G. Tracy
Title: Associate Vice President

Date: 1-18-2019
ATTACHMENT A
Scope of Work

On behalf of COG, CONTRACTOR shall perform the following services:

CONTRACTOR for COG's benefit, shall perform a triennial performance audit of the Council of San Benito County Governments and of the Local Transportation Authority and contract transit operators, for the fiscal year ending June 30, 2018, consisting of the following tasks:

A. **Performance Audit of Council of San Benito County Governments**

Task 1: Kickoff Meeting and Data Collection

**Objective:** Conduct initial kickoff meeting with COG to communicate work scope and schedule, understand project expectations, and answer questions. Develop list of specific documents to be provided by COG.

**Approach:** The CONTRACTOR will coordinate the kickoff meeting to introduce the CONTRACTOR'S team; review overall performance audit objectives; clarify any aspects of the work plan, schedule, or approach; clarify the roles and responsibilities of COG and the CONTRACTOR'S team; discuss the study schedule and progress reporting; and initiate the data collection effort.

During the meeting, the CONTRACTOR will discuss the audit steps and schedule, as well as gain an understanding of some of the issues through discussion with COG as the regional transportation funding agency.

As part of the initial communication, the CONTRACTOR will create a list of data needs and documents that traditionally have been used to help create a background assessment of COG'S performance and compliance over the past three years. Additional items may be identified as a result of the kickoff discussion. The CONTRACTOR will coordinate with COG on the request for specific information and documents necessary to complete the audit requirements. The CONTRACTOR will follow up with telephone calls to answer questions and clarify data needs. At a minimum, the types of information required will include the following:

1. Annual Transportation Development Act (TDA) apportionments
2. Annual budgets and financial and compliance audits
3. Transportation Development Act (TDA) and State Transit Assistance (STA) claims
4. Organizational chart, goals, objectives, policies, and procedures
5. Transit unmet needs documentation

6. Transportation Improvement Program (TIP) documentation

7. Overall work plan

8. Response to prior performance audit recommendations

Task 2: Evaluate Compliance with TDA Administrative Processes

Objective: Evaluate the way in which COG complies with requirements under the TDA.

Approach: The Caltrans Guidebook identifies a series of compliance requirements which must be met by regional transportation planning agencies, such as COG. These comprise 14 specific requirements found in the Public Utilities Code (PUC) and in the California Code of Regulations. Conformance with these requirements will be ascertained during this task.

The CONTRACTOR will review COG’s previous performance audit, relevant accounting records, internal documents such as Board of Directors meeting minutes and meeting minutes from relevant policy and technical advisory committees, and other pertinent information.

The CONTRACTOR will also interview COG staff such as finance administrative staff and transit planning staff to gain an understanding of the three-year trends in TDA funds. As part of this evaluation, the CONTRACTOR will conduct reviews to ensure that adequate documentation and instructions to claimants are available and that accurate records exist regarding apportionments and allocations to the claimants.

The CONTRACTOR will develop a matrix table of the 14 compliance requirements and document COG’s effort to meet each requirement.

Task 3: Evaluate TDA Claim Approval Process and Transit Performance Oversight

Objective: Review the TDA claims process and transit monitoring program.

Approach: The CONTRACTOR will review the claims process and COG’s role in administrating the funds. Sample completed claims packets and accompanying documentation to substantiate the claims for TDA and STA funds will be collected and reviewed. Compliance checklists and/or other documents typically attached to the claims forms will be evaluated and reviewed with staff.

The CONTRACTOR will also review the transit performance reporting and monitoring system employed by COG including technical and managerial assistance provided by the COG to the Transit operators.

The CONTRACTOR will confirm or verify that the data provided by the transit operators is “adequate” for basing decisions on claim allocations and for monitoring progress on previous allocations. In performing this evaluation, the CONTRACTOR will select certain data provided by the systems and verify through independent confirmations that the data is materially correct.
The evaluation will also review the usefulness of the performance indicator monitoring system as a means to monitor trends in transit operator performance and to provide a focus for the performance audit process.

**Task 4: Conduct Interviews and Detailed Review of Regional Transportation Planning Authority (RTPA) Functions**

**Objective:** Determine operational and structural efficiencies and institutional relationships.

**Approach:** The CONTRACTOR will review COG’s organizational effectiveness through an analysis of the following specific areas:

- *San Benito COG Administration and Management.* This will include examining the general management of the agency, identifying achievements and challenges, policies and goals, Governing Board activities, roles and staff functions, and overall work programs. The CONTRACTOR will interview COG staff to identify any administrative and management issues of concern. The CONTRACTOR will investigate potential issues and make findings and possibly recommendations as part of the audit. Topics to be covered include:
  - General administration
  - Internal planning and achievement
  - Governing Board activities
  - Personnel

- *Planning and Regional Coordination.* This will include evaluating COG’s regional functions as an RTPA. It will include the practices and methods in which COG prepares transportation and related planning documents. The CONTRACTOR will also examine the process COG follows in managing transit plans and other transit projects in its area of jurisdiction. Topics to be covered include:
  - Regional Transportation Plan development and adoption
  - Regional Transportation Plan topics and implementation
  - Transportation and transit planning and programming
  - Information collection, generation, and distribution for use in the planning process

- *Relationship with Related Agencies.* The CONTRACTOR will interview COG staff on its role in working with allied planning organizations such as neighboring regional transportation planning agencies and Caltrans, as well as other local governmental agencies in COG’s jurisdiction and in adjacent areas where travel and development may have an impact on COG’s related responsibilities. The CONTRACTOR will contact these other agencies as necessary.

- *Marketing and Transportation Alternatives.* The CONTRACTOR will review the marketing and communication efforts provided by COG of its regional transportation planning
activities. The CONTRACTOR will review COG’s efforts to keep the public informed about transportation issues and external events that influence travel and transportation choices.

- **Grant Management.** This will include gaining an understanding of the level of grant administration and assistance provided by COG for transportation revenue sources such as state and federal programs. The CONTRACTOR will review COG’s ability to secure discretionary funding sources that enhance and increase the availability and quality of transportation in the county. Topics to be covered include:
  
  - Grant application coordination and assistance
  - Grant management and compliance

As necessary and if warranted, the CONTRACTOR will also conduct interviews with select individuals from COG’s standing committees or external agencies on the local, regional, state, and/or federal level to gauge their perspectives regarding agency activities. This task may include interviews with public members and/or board members.

**Task 5: Follow Up on Prior Performance Audit Recommendations**

**Objective:** Review prior performance audit recommendations and actions taken by COG to implement the recommendations.

**Approach:** CONTRACTOR’S prior performance audit made four recommendations which will be reviewed with COG staff as to their implementation status, in the following specific areas:

- **Obtain and Review Key Documents.** The CONTRACTOR will collect documents that contain prior recommendations and review the status of these recommendations. Possible key literature includes prior performance audits, recommendations submitted in management memoranda, and other performance evaluation documents.

- **Document Implementation of Recommendation.** The CONTRACTOR will follow up on the course of action taken by COG to implement prior recommendations. If COG has implemented a recommendation, the CONTRACTOR will seek data to confirm implementation, discuss the effectiveness and benefits from the recommendation, and discuss difficulties and costs associated with the recommendation. If COG is currently implementing a recommendation, the CONTRACTOR will address the current status of implementation, as well as any difficulties and costs of implementation. If a recommendation has not been implemented, the CONTRACTOR will make a determination as to whether the recommendation is (a) no longer applicable due to changes in circumstances, (b) infeasible, or (c) still valid and should still be implemented. For each determination, the CONTRACTOR will draw conclusions on the implementation status of these recommendations. If the prior recommendation still deserves merit, the CONTRACTOR will include the recommendation in the current audit report.

The CONTRACTOR will document evidence of implementation. Evidence may be contained in operator reports, memoranda, and other documents or may be obtained by direct observation.
Task 6: Identify Improvements and Develop Recommendations

Objective: Identify the specific improvements and issues that have been identified in each of the previous tasks and develop recommendations that would assist in implementing the improvements.

Approach: Based on work done earlier during the study, recommendations could be developed for the following principal areas:

- The TDA administrative process, including the institutional arrangements, the organizational structure, allocation process, prioritization, detailed RTPA review, and how the previous performance audit recommendations have been implemented.

- The monitoring of performance indicators and how the data can be used for claim review, analysis, and monitoring performance.

- The adequacy of the monitoring system including the validity of the data and whether the most appropriate data are being collected and utilized. Data consistency and comparability will be reviewed in developing recommendations for improvement.

- Effectiveness of administrative controls.

The task will highlight both accomplishments and any areas where COG might not be in compliance with TDA regulations; the impact of noncompliance will be identified. The CONTRACTOR will provide recommendations in sufficient detail to address the issue or concern found. In addition, all recommendations will identify the priority and responsible party for implementing the recommendations.

Task 7: Prepare Audit Report and Presentation

Objective: Prepare an administrative draft for review and then finalize the audit report.

Approach: The draft and final report will contain the detailed review, findings, and recommendations from the audit process. An executive summary will also be provided recapping the audit findings and recommendations.

The CONTRACTOR will provide COG an electronic PDF copy of the draft audit report for distribution, review, and comment. After the CONTRACTOR has received comments, the CONTRACTOR will prepare the final report and deliver 8 bound copies, one loose leaf copy, and an electronic PDF copy of the final report. The CONTRACTOR will also be available for a presentation to the COG Board.

B. Performance Audit of Local Transportation Authority

The County's public transit provider is the San Benito County Local Transportation Authority (LTA). The LTA administers and operates County Express, comprising fixed-route transit service that serves the City of Hollister, a complementary ADA paratransit service, general
public dial-a-ride service, and intercounty services to the City of Gilroy in Santa Clara County. The LTA also contracts with Jovenes de Antaño, a small nonprofit organization that provides specialized transportation services to the elderly and to persons with disabilities.

Task 1: Kickoff and Data Collection

Objective: Coordinate the kickoff with the LTA to communicate work scope and schedule, understanding of some of the issues through discussion with the agencies and private contractors’ project expectations, and answer questions. Develop list of specific documents to be provided by each operator.

Approach: The CONTRACTOR will coordinate the kickoff to discuss the audit steps and schedule and to gain an understanding of some of the issues through discussion with the agencies and private contractors.

As part of the initial communication, the CONTRACTOR will create a list of data needs and documents that traditionally have been used to help create a background assessment of the transit operator’s performance and compliance over the past three years. Additional items may be identified as a result of the kickoff discussion. The CONTRACTOR will coordinate on the request for specific information and documents necessary to be provided by the operators to complete the audit requirements. The CONTRACTOR will follow up with telephone calls to answer questions and clarify data needs. At a minimum, the types of information required will include the following:

- State Controller’s Transit Operator Reports
- National Transit Database Reports
- Annual budgets and financial and compliance audits
- CHP Safety Compliance Report/Terminal Record Update, Carrier Inspection, and Equipment Inspection Report
- MOUs/service provider agreements with other operators and agencies
- Performance productivity reports (e.g., monthly and end-of-year summary)
- Vehicle operations data such as on-time performance, road calls, vehicle failures, and customer complaints
- Organizational charts, goals, objectives, policies, and procedures
- Short- and Long-Range Transit Plans
- Response to prior performance audit recommendations

Upon receipt of the data, the CONTRACTOR will compile performance profiles using numeric data and initiate compliance reviews. The CONTRACTOR will begin to identify areas of compliance as well as potential noncompliance. The CONTRACTOR will also compile the TDA-mandated performance indicators, farebox recovery ratios, and other indicators relevant to functional area performance. The CONTRACTOR will document the values used for the statistics and indicators, note the amount of change, and determine whether this change
represents a positive or negative trend. Causal factors for all observed trends will be determined in subsequent tasks.

Task 2: Conduct Site Visits and Interviews

Objective: Conduct in-person site visits for County Express and Jovenes de Antaño.

Approach: Prior to conducting site interviews and fieldwork, the CONTRACTOR will review the materials provided from the list under Task 1 and generate a list of follow-up questions to ask during the meetings and other materials to obtain, if needed. The background data and preliminary analysis as described in the prior task will serve as a basis for the audit process and site visits.

Performance trend results will be discussed with the operator in major functional areas such as operations, maintenance, and administration in order to focus the site visit interviews. Interview guides will be developed and utilized to help focus discussions and maximize the effectiveness of time spent in discussions with transit staff. Potential topics for discussion include data collection and reporting processes; performance trends and factors influencing trends; accomplishments and challenges; and actions taken to implement prior audit recommendations, the resources required for implementation, and the results of those actions.

Task 3: Determine Compliance with Statutory and Regulatory Requirements

Objective: Review and make a determination as to the operator’s compliance with the TDA and related sections of the California Code of Regulations.

Approach: During this task, the CONTRACTOR will focus on the following specific areas.

- **Discuss Compliance Requirements with the Operator.** This first step involves meeting with operator staff, including transit management, and discussing the compliance described in the Caltrans Guidebook. Approximately 11 operator compliance requirements are listed in the guidebook, which the CONTRACTOR will discuss with operator staff.

- **Investigate Evidence of Compliance.** Based upon the interviews and discussions with transit staff, the CONTRACTOR will investigate evidence of compliance by collecting pertinent documents and records demonstrating sufficient objective evidence to meet each of the minimum 11 compliance requirements. Some of the documents will be from the initial data list provided during the kickoff. Staff assistance from the LTA and Jovenes de Antaño will be utilized to obtain the most relevant data. Evidence of compliance may also be produced from CONTRACTOR’S direct observation of the compliance requirement.

- **Disclose Results of the Compliance Review.** The CONTRACTOR will document the methodology and results of the compliance review. The review will ensure that the evidence collected is objective and representative of the activities of the transit operators for the past three years. If the CONTRACTOR finds an indication of noncompliance with any of the requirements, the CONTRACTOR will make a finding in the audit report, draw conclusions, and make appropriate recommendations.
Task 4: Follow Up on Prior Performance Audit Recommendations

Objective: Review prior performance audit recommendations and actions taken by the operator to implement the recommendations.

Approach: The prior performance audit identified three recommendations for the County Express transit system. During this task the CONTRACTOR will focus on the following areas.

Review Prior Recommendations and Evidence of Compliance. The CONTRACTOR will review the prior audit recommendations with respective transit staff and review the status of implementation. The CONTRACTOR will work with staff to determine the validity of each recommendation in light of the evolving nature of transit operations. Evidence may be obtained via operator reports, memoranda and other documents, performance evaluation documents or through direct observation.

- Document Implementation of Recommendation. The CONTRACTOR will follow up on the course of action taken by the operator to implement the recommendations. If the operator has implemented a recommendation, the CONTRACTOR will seek data to confirm implementation, discuss the effectiveness and benefits from the recommendation, and discuss difficulties and costs associated with the recommendation. If the operator is currently implementing a recommendation, the CONTRACTOR will address the current status of implementation, as well as any difficulties and costs of implementation. If a recommendation has not been implemented, the CONTRACTOR will make a determination as to whether the recommendation is (a) no longer applicable, with a clear statement as to why, (b) infeasible, with a clear statement as to why, or (c) still valid and should be implemented and the benefits that are likely to result. For each determination, the CONTRACTOR will draw conclusions on the implementation status of these recommendations. If the prior recommendation still deserves merit, the CONTRACTOR will include the recommendation in the current audit report, either as stated or modified to account for any changes in conditions.

- Disclose Results of Follow-Up Review. The CONTRACTOR will document the results of the review and report the status of prior recommendations. For those recommendations that have been implemented, significant accomplishments from these prior recommendations will be recognized as well as difficulties and costs of implementation. The evidence used to confirm implementation will meet the standards for performance audit fieldwork evidence described in the Comptroller General’s revised Government Auditing Standards.

Task 5: Verify Performance Indicators

Objective: Quantify and review the efficiency and effectiveness of the transit operator’s activities, TDA-required performance measures, and other potential performance indicators if warranted.

Approach:
Subtask A: The CONTRACTOR will first review and validate the operator’s collection methods of basic data needed to calculate these indicators. The basic data include operating cost, passenger counts, vehicle service hours, vehicle service miles, employee hours, and fare revenue. This task will be accomplished by tracing and evaluating the steps taken by the operator to report the data. The CONTRACTOR will review sample driver logs, driver manifests, daily and monthly operator reports, and other pertinent materials where actual performance data is recorded to determine their compliance with the TDA definitions (PUC 99247).

Additional operations data such as on-time arrival, missed trips, and number of road calls and preventable accidents will be included in the review. The CONTRACTOR will discuss this process with the transit operator and identify any issues discovered from the review of the data. If warranted, the CONTRACTOR will then suggest corrective actions to ensure compliance with the statute.

Subtask B: A triennial performance audit must include the verification of a minimum of five performance measures. Section 99246(d) of the California Public Utilities Code requires that the performance indicators are:

- Operator’s operating cost per passenger;
- Operating cost per vehicle service hour;
- Passengers per vehicle service hour;
- Passengers per vehicle service mile; and
- Vehicle service hours per employee as defined in Section 99247 of the California Public Utilities Code.

Though the farebox recovery ratio is not a required performance indicator under Section 99246(d), Section 99268 et seq. requires calculation of the farebox ratio so that an operator’s eligibility for funding can be determined. The CONTRACTOR will be attentive to how each operator calculates its farebox ratios, as reflected in documents such as the State Controller’s Report, TDA claims, and annual fiscal audits. Farebox adjustments made effective by the passage of SB508 in October 2015 will also be reviewed to determine what if any, impacts the legislation has had on the farebox ratio.

The CONTRACTOR will create user-friendly tables to depict the trends over the recent three-year period on a system-wide basis and by mode/type (i.e., fixed route, dial-a-ride). The CONTRACTOR will contrast these performance trends with other three-year trends that influence transit performance (e.g., Consumer Price Index). The CONTRACTOR will document the values used for the statistics and indicators, note the amount of change, and determine whether this change represents a positive or negative trend. The CONTRACTOR will document causal factors for all observed performance trends based on the numerical information and information from the site visits.
The CONTRACTOR will also provide visual graphic representation via bar/line charts and data labels. The performance trends will provide the symptoms of potential issues that will be reviewed in depth during the functional review audit, as well as changes in efficiencies and effectiveness.

Other performance indicators will be calculated if the analysis warrants further examination of a particular performance area of concern which is not covered by any of the five indicators. Any additional performance measures to be developed are intended to be useful and help determine trends in service. Example of additional performance indicators include complaints per 100,000 passengers, on-time performance, and vehicle breakdowns per 100,000 revenue miles.

The CONTRACTOR will consult the Transit Cooperative Research Program document entitled *A Guidebook for Developing a Transit Performance-Measurement System* for a comprehensive listing of performance indicators relative to various transit functional areas. Additional functional area performance indicators pertaining directly to service efficiency and effectiveness during the audit period will be developed as necessary.

**Task 6: Operator Functional Reviews**

**Objective:** Review the various functions and investigate potential functional concerns, problems, and possible improvements, while also highlighting recent accomplishments.

**Approach:** The review of operator functions can be divided into two parts—an initial review and a detailed review. The initial review will provide an understanding of the operator’s characteristics and the functions performed. Operator characteristics include general data such as a description of the entity providing service, legal status (e.g., local jurisdiction, JPA), mode of service (bus, van, general public, specialized, etc.), type of service (fixed route, dial-a-ride), and size of operations. The CONTRACTOR will review pertinent documents such as transit plans and staff reports in addition to discussions with appropriate transit staff to obtain a clear view of the general functions of the audited transit system.

For the detailed review of operator functions, San Benito COG identified several functions including the system’s organizational structure, vehicle maintenance program, and driver training program. The various functions are consistent with the Caltrans Guidebook.

Each function, in turn, can be broken into several sub-functional areas as described by the following:

- **General Management and Organization.** The CONTRACTOR will review the management and structure of the operator including an assessment of:
  - Administrative oversight
  - Organizational structure and reporting
  - Recent program changes and innovations
  - Areas of interest to management and board
Scheduling, Dispatch, and Operations. The daily scheduling and coordination of routes, drivers, and vehicles will be reviewed including:

- Assignment of drivers and vehicles to specific routes
- Driver absence and sick leave
- Part-time and cover drivers
- Dispatch procedures and communication

Service Planning. The CONTRACTOR will review how short-range transit plan recommendations, public input through surveys, and other planning and evaluation techniques have been implemented, and assess their results on operations. Topics that will be covered include:

- Strategic planning
- Short-range planning
- Evaluation of routes
- Planning for special transportation needs
- Surveys of riders/non-riders

Maintenance. The CONTRACTOR will review maintenance records, CHP terminal and vehicle inspections, and other maintenance-related documentation on the condition of the vehicles and other capital facility assets. The sub-functions in this area include:

- Preventive maintenance
- Sufficiency of facility
- Vehicle condition and maintenance schedules
- Parts and inventory management
- Communications with dispatch
- Maintenance outsourcing

Personnel Management and Training. The CONTRACTOR will review personnel policies, driver recruitment practices, turnover trends, and management of human resources. Topics that will be covered include:

- Recruitment and motivation
- Training and safety
- Discipline
- Benefits

Administration and Financial Controls. Business and support services necessary for the operations of the agency will be assessed. The CONTRACTOR will examine adopted policy
documents guiding financial management and procurement practices. Administrative activities include:

- Budgeting, financial, and grants management
- Revenue collection and cash management
- Payroll
- Risk management

*Marketing and Public Information.* Efforts to make information available to the public, market the service to the community, and communicate with social service agencies and other governmental entities will be reviewed. The assessment will include:

- Marketing programs and objectives
- Communications strategies with the public
- Intergovernmental communications

The CONTRACTOR will use various data means to perform the assessment, including interviews with transit staff and management, in-house data collection, annual productivity reports, surveys and public input, transit plans, and other materials presented to the governing board.

The CONTRACTOR will describe the improvements and changes made over the past three years in each function. The CONTRACTOR will also review events and/or activities that may have occurred either before or after the audit period, as necessary, to digest the impacts during the audit period. The CONTRACTOR will also identify and evaluate any functional concerns using such methods as calculating additional performance indicators that would be applicable to said concern. The CONTRACTOR’S site visits and interviews, and documents such as board and advisory committee reports and agendas, and internal documentation, will help with describing the service changes or performance concerns.

From the functional review, the CONTRACTOR will then provide a set of clear and concise recommendations for improvement with a clear timeline for implementation and identify the potential cost savings/benefit and responsible party for follow up. Depending on the operator function, the recommendations may vary from managerial improvements to operational efficiencies to financial controls. The CONTRACTOR is prepared to bring a fresh, objective approach to the audits and conduct the work as prescribed by state law.

**Task 7: Prepare Audit Report and Presentation**

**Objective:** Prepare administrative drafts for review and finalize the audit reports.

**Approach:** The CONTRACTOR will prepare a draft report encompassing all aspects of the audit process and meeting state TDA requirements. The report will also serve as a detailed actions plan for recommended improvements, thereby providing a useful management tool for the transit operator. The report will include a discussion of:
Audit scope, approach, methodologies used to test compliance and internal controls, interviews conducted, and documents reviewed;

- Agency accomplishments during the audit period as well as particular challenges;

- Performance trends, audit findings, and conclusions for the TDA indicators;

- Causal factors contributing to performance results; and

- Specific recommendations for improvement as warranted by findings and conclusions with a suggested action plan for implementation.

The CONTRACTOR will provide COG an electronic PDF copy of the draft audit report for distribution, review, and comment. After the CONTRACTOR has received comments, the CONTRACTOR will prepare the final report and deliver 8 bound copies, one loose leaf copy, and an electronic PDF copy of the final report. The CONTRACTOR will also be available for a presentation to the COG Board.
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: (check one)

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

B-2. PAYMENT

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

B-3. COMPENSATION

COUNCIL OF GOVERNMENTS shall pay to CONTRACTOR: (check one)

[ ] a total lump sum payment of $ ________________________________, or

[ X] a total sum not to exceed $ 20,865

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.
[ X] The following specific terms of compensation shall apply:

CONTRACTOR shall invoice monthly at an hourly rate for services rendered pursuant to Attachment B-I of this Contract. CONTRACTOR shall provide a monthly progress report as a part of the monthly invoice which tracks tasks specified in Attachment A, Scope of Services, with services completed by Contractor. The monthly progress report shall include the following:

- Description of the tasks in progress or achieved
- Description of the tasks still to be achieved
- Percentage of work still anticipated for each task for the completion of the project

The COG shall have the right to retain 10% of the total contracted amount until the project is deemed completed by the CONTRACTOR and the COG.

END OF ATTACHMENT B.
## Attachment B-1

### FEE SCHEDULE

**Council of San Benito County Governments Budget**

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## Local Transportation Authority Budget

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ATTACHMENT C
General Terms and Conditions

C-1. INDEMNIFICATION.

CONTRACTOR and COG 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 COG, 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 COG 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 COG, CONTRACTOR shall file certificates of insurance with COG, 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 COG as the insurance required herein. CONTRACTOR further agrees to notify COG 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 COG or its authorized representative, Federal Transit Administration (FTA), or any duly authorized representative of the Federal Government or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COG, 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 COG
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 COG, 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 COG is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COG and not officers or employees of COG. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COG. 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 COG 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.

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 COG 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 COG, 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, COG 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. COG'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 COG shall have the right to deduct from any payments specified in Attachment B any amount owed to COG by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COG exercises the right to reduce the consideration specified in Attachment B, COG, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.
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.
Staff Report
To: Council of San Benito County Governments
From: Mary Gilbert, Executive Director  Phone Number: (831) 637-7665 x.207
Date: January 24, 2018
Subject: San Benito County Measure G

Recommendation:

   a. **RECEIVE** Update on Measure G Outreach and Implementation  
   b. **ADOPT** Resolution 2019-01 Authorizing Execution of Agreements with the State Department of Tax and Fee Administration 
   c. **ADOPT** Resolution 2019-02 Authorizing the Examination of Transactions and Use Tax Records

Background:

COG approved a Transportation Safety and Investment Plan and Adopted Ordinance 2018-01, the Roads, Transportation, Safety and Investment Plan Ordinance in July 2018. The Ordinance and Investment Plan were put before voters for approval in the November 6, 2018 General Election. Measure G received approval of 69.77% of voters, well above the 2/3 approval required by law.

Financial Impact:

The amount to be paid by COG for the DTFA’s preparatory costs shall not exceed one hundred seventy-five thousand dollars ($175,000). This amount will be paid from sales tax revenues collected for Measure G, as directed by the approved ordinance (COG Ordinance 2018-01) for the Transportation Safety & Investment Plan.

Staff Analysis

Staff is continuing steps for implementation of Measure G. The tax will begin to be collected April 1, 2019 and first distributions of funds to COG will begin in July 2019. Staff prepared and distributed a news release detailing the efforts completed to date and the next steps that will be followed (Attachment 1). Staff will provide a presentation of the work plan and next steps to the Board at the meeting.

During the first Quarter of 2019, staff will continue to:

   ➢ Work with the State and Federal governments to ensure maximum investments in our region.
Coordinate with our local governments - San Benito County, the City of Hollister, and the City of San Juan Bautista - for implementation of their Pavement Management Plans and other projects outlined in the Investment Plan.

Address the needs outlined in the detailed Measure G Investment Plan built with community input.

Convene a Measure G Citizens Oversight Committee.

Updates on specific projects in the Transportation Safety and Investment Plan priority order are provided below:

- **Route 25 4-Lane Expressway Project**: Staff is working closely with the State and Federal government to ensure maximum investments in the Route 25 project. Our first step is to prepare a work plan to most efficiently conduct an environmental study and design, formulate timely benchmark goals, and prepare a timeline.

- **Maintain local roads, repair potholes, and improve traffic**: Staff is in the process of coordinating with the State and Federal Government to ensure maximum matching funds, and coordinating with local jurisdictions to implement their needs.

- **Mobility and More**: Improve transit options for seniors, youth, and people with disabilities, Pedestrian and bicycle safety and traffic flow, Administration, and Future Planning & Contingency: Staff is in the process of outlining next steps in this category that are aligned with the needs in our Regional Transportation Plan.

In order to implement Measure G (the Transportation Safety & Investment Plan), COG is required to enter into agreements with the California State Department of Tax and Fee Administration regarding the collection and distribution of revenues for the measure, and payment of the Department of Tax and Fee Administration's staff time in setting up the measure.

With Resolution 2019-01, COG is agreeing to pay to the Department of Tax and Fee Administration for all of the Board's costs for preparatory work necessary to administer the transactions and use tax ordinance. The Department of Tax and Fee Administration's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Board's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance.

Preparatory costs incurred by the Department of Tax and Fee Administration shall be billed by the Board periodically, with the final billing within a reasonable time after the operative date of the ordinance.
The amount to be paid by C O G for the Department of Tax and Fee Administration's preparatory costs shall not exceed one hundred seventy-five thousand dollars ($175,000) as directed by Revenue and Taxation Code Section 7272. These costs were expected in the preparation of the Transportation Safety & Investment Plan and provisions for payment of these costs are included in the adopted ordinance for Measure G. These preparatory costs would be paid by C O G from the collected San Benito County sales tax revenues from Measure G.

In addition, with Resolution 2019-02, the C O G Board of Directors would authorize representatives of C O G to examine confidential transactions and use tax records of the State Department of Tax and Fee Administration pertaining to transactions and use taxes collected by the Board for Measure G. This resolution would designate the Executive Director as the representative with authority to examine transactions and use tax records.

Executive Director Review: ________________ Counsel Review: __Yes__

Supporting Attachments:
2. Resolution 2019-01 Authorizing Execution of Agreements
3. Resolution 2019-02 Authorizing Examination of Sales Tax Records
FOR IMMEDIATE RELEASE

Subject - Transportation Improvements: Council of San Benito County Governments Update to the Community

For the past three years, the Council of San Benito County Governments (COG), San Benito County’s Regional Transportation Planning Agency, has been involved in a community conversation regarding our regional transportation needs. We appreciate the community feedback received - from public meetings, stakeholder conversations, online, paper, and bilingual phone surveys, and more.

As a result of these conversations, we are proud to have adopted two guiding documents to support our regional transportation needs for years to come. Both the Regional Transportation Plan and the Roads and Transportation Safety Investment Plan, can be viewed on our website at SanBenitoCOG.org. Both plans are equally important in guiding the steps we must take to improve our transportation system, while the Investment Plan is especially critical in helping us close our funding gap.

Last year, the Roads and Transportation Safety Investment Plan was unanimously approved by the County of San Benito, the City of Hollister, and the City of San Juan Bautista. As a result, it was placed on the November 2018 ballot as Measure G, where a super-majority of the community approved implementing the Plan over the next 30 years. The community support for Measure G now allows us to make critical investments in our transportation needs.

As we begin 2019, we are dedicated to keeping the community updated regarding our transportation planning and progress, including Measure G updates. Our commitment is to:

- Work with the State and Federal governments to ensure maximum investments in our region.
- Coordinate with our local governments – San Benito County, the City of Hollister, and the City of San Juan Bautista - for implementation of their Pavement Management Plans and other projects outlined in the Investment Plan.

- Address the needs outlined in the detailed Measure G Investment Plan built with community input.

- Convene a Measure G Citizens Oversight Committee.

Please see our current Measure G updates below on projects in Plan priority order. As we continue to plan with maximum efficiencies, our commitment is to keep you updated.

- **Route 25 4-Lane Expressway Project:** We are now in the process of working closely with the State and Federal government to ensure maximum investments in the Route 25 project. Our first step is to conduct an environmental study and design, formulate timely benchmark goals, and prepare a timeline.

- **Maintain local roads, repair potholes, and improve traffic:** We are now in the process of coordinating with the State and Federal Government to ensure maximum matching funds, and coordinating with local jurisdictions to implement their needs.

- **Mobility and More** - Improve transit options for seniors, youth, and people with disabilities, pedestrian and bicycle safety and traffic flow, Administration, and Future Planning & Contingency: We are in the process of outlining next steps in this category that are aligned with the needs in our Regional Transportation Plan.

This year, please expect to see retailers collecting the Measure G sales tax starting April 1, 2019. Then, by this fall, local road repair funds will be granted to each jurisdiction per the Roads and Transportation Safety Investment Plan, so they can begin implementing the projects outlined in the detailed Plan.

Stay tuned for more updates and visit SanBenitoCOG.org to read both plans. Board meetings are open to the public and community participation is welcome. If you would like to learn more, or are interested in convening a group of community members to learn more, please contact Mary Gilbert, COG Executive Director, by phone at (831) 637-7665 ext. 207 or email at mary@sanbenitocog.org, or visit our website SanBenitoCOG.org.

###

The Council of San Benito County Governments (Council of Governments) is the regional transportation planning agency for the San Benito region. The agency provides a forum for addressing issues of area wide interest and builds consensus on transportation issues facing the region. The Council of Governments Board is comprised of members from the Hollister City Council, San Juan Bautista City Council, and the County Board of Supervisors. Their mission is to improve the mobility of San Benito County travelers by planning for and investing in a multi-modal transportation system that is safe, economically viable, and environmentally friendly.
BEFORE THE COUNCIL OF SAN BENITO COUNTY GOVERNMENTS


Resolution No. COG 19-01

WHEREAS, on July 19, 2018, the Council of San Benito County Governments ("COG") approved Ordinance No.2018-01 providing for a local transactions and use tax; and

WHEREAS, the State Board of Equalization (Board) administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

WHEREAS, the Board will be responsible to administer and collect the transactions and use tax for the County; and

WHEREAS, the Board requires that COG enter into a "Preparatory Agreement" and an "Administration Agreement" prior to implementation of said taxes, and

Whereas, the Board requires that the COG authorize the agreements;

NOW, THEREFORE BE IT RESOLVED by the Council of San Benito County Governments that the "Preparatory Agreement" attached as Exhibit A and the "Administrative Agreement" attached as Exhibit B are hereby approved and the COG Executive Director is hereby authorized to execute each agreement.
PASSED AND ADOPTED BY THE COUNCIL OF SAN BENITO COUNTY GOVERNMENTS THIS 24TH DAY OF JANUARY 2019 BY THE FOLLOWING VOTE:

AYES: 
NOES: 
ABSTAINING: 
ABSENT: 

_________________________________________, Chair

APPROVED AS TO LEGAL FORM:

SAN BENITO COUNTY COUNSEL'S OFFICE

Dated: Jan 17, 2019
By: Shirley L. Murphy, Deputy County Counsel

ATTEST:
Mary Gilbert, Executive Director

Dated: ________________ By: ________________________________
Exhibit A

AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE
COUNCIL OF SAN BENITO COUNTY GOVERNMENTS' TRANSACTIONS AND USE TAX
ORDINANCE

In order to prepare to administer a transactions and use tax ordinance adopted in accordance
with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and
Taxation Code, the Council of San Benito County Governments, hereinafter called COG, and the
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, hereinafter called
Department, do agree as follows:

1. The Department agrees to enter into work to prepare to administer and operate a
transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code
which has been approved by a majority of the electors of the County of San Benito and whose
ordinance has been adopted by the COG.

2. COG agrees to pay to the Department at the times and in the amounts hereinafter specified
all of the Department's costs for preparatory work necessary to administer the COG’s transactions and
use tax ordinance. The Department's costs for preparatory work include costs of developing
procedures, programming for data processing, developing and adopting appropriate regulations,
designing and printing forms, developing instructions for the Department's staff and for taxpayers, and
other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance.
These costs shall include both direct and indirect costs as specified in Section 11256 of the
Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal
accounting and personnel records currently maintained by the Department. The billings for costs may
be presented in summary form. Detailed records of preparatory costs will be retained for audit and
verification by the COG.

4. Any dispute as to the amount of preparatory costs incurred by the Department shall be
referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Department shall be billed by the Department periodically,
with the final billing within a reasonable time after the operative date of the ordinance. COG shall pay
to the Department the amount of such costs on or before the last day of the next succeeding month
following the month when the billing is received.
6. The amount to be paid by COG for the Department’s preparatory costs shall not exceed one hundred seventy-five thousand dollars ($175,000) (Revenue and Taxation Code Section 7272.)

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Department shall be addressed to:

California Department of Tax and Fee Administration  
P.O. Box 942879  
Sacramento, California 94279-0027  
Attention: Supervisor  
Local Revenue Branch

Communications and notices to be sent to COG shall be addressed to:

Council of San Benito County Governments  
330 Tres Pinos Road, Suite C-7  
Hollister, CA 95023  
Attention: Mary Gilbert, Executive Director

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer COG’s transactions and use tax ordinance has been completed and the Department has received all payments due from COG under the terms of this agreement.

Council of San Benito County Governments  
By ________________________________  
(Signature)  
Mary Gilbert  
__________________________________  
Executive Director

CALIFORNIA DEPARTMENT OF TAX  
AND FEE ADMINISTRATION  
By ________________________________  
Administrator

__________________________________  
(Title)

APPROVED AS TO LEGAL FORM  
SAN BENITO COUNTY COUNSEL  
(Rev. 10/17)  
Shirley L. Murphy 1/18/19  
DEPUTY COUNTY COUNSEL DATE
AGREEMENT FOR STATE ADMINISTRATION
OF COUNCIL OF SAN BENITO COUNTY GOVERNMENTS TRANSACTIONS AND USE TAXES

The Council of San Benito County Governments (hereafter called “COG”) has adopted, and the voters of the County of San Benito have approved by the required majority vote, the Council of San Benito County Governments Transactions and Use Tax Ordinance (hereafter called “Ordinance”), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the California Department of Tax and Fee Administration, (hereinafter called the “Department”) and the COG do agree as follows:

ARTICLE I
DEFINITIONS

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7251, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "COG Ordinance" shall mean the COG’s Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No.2018-01, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

ARTICLE II
ADMINISTRATION AND COLLECTION
OF COG TAXES

A. Administration. The Department and County agree that the Department shall perform exclusively all functions incident to the administration and operation of the COG Ordinance.
B. Other Applicable Laws. COG agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the COG Ordinance. COG agrees that money collected pursuant to the COG Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Department pursuant to Article IV of this Agreement, and transmitting to COG the amount to which COG is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the COG Ordinance shall be transmitted to COG periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by COG’s self-imposed limits or by final judgment of any court of the State of California holding that COG’s ordinance is invalid or void, all district taxes collected under the provisions of the COG Ordinance shall be transmitted to COG not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the COG designated and authorized by the COG. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Department shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the COG Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Department shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and COG as their interests appear.
F. Security. The Department agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of COG for district taxes owing to it as its interest appears. The Department shall not be required to change the terms of any security now held by it, and COG shall not participate in any security now held by the Department.

G. Records of the Department.

When requested by resolution of the legislative body of the COG under section 7056 of the Revenue and Taxation Code, the Department agrees to permit authorized personnel of the COG to examine the records of the Department, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the County of San Benito, pertaining to the ascertainment of transactions and use taxes collected for the COG. Information obtained by the COG from examination of the Department's records shall be used by the COG only for purposes related to the collection of transactions and use taxes by the Department pursuant to this Agreement.

H. Annexation. COG agrees that the Department shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Department. The notice shall include the name of the county or counties annexed to the extended COG boundary. In the event the COG shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the COG showing the area annexed and the location address of the property nearest to the extended COG boundary on each side of every street or road crossing the boundary.

ARTICLE III
ALLOCATION OF TAX

A. Allocation. In the administration of the Department's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:
1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Department, to all districts with which the Department has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Department, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

**B. Vehicles, Vessels, and Aircraft.** For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Department in determining the place of use.

**ARTICLE IV**
**COMPENSATION**

The COG agrees to pay to the Department as the Department's cost of administering the COG Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Department for the COG.

**ARTICLE V**
**MISCELLANEOUS PROVISIONS**

**A. Communications.** Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.
Communications and notices to be sent to the Department shall be addressed to:

California Department of Tax and Fee Administration  
P.O. Box 942879  
Sacramento, California 94279-0027  
Attention: Administrator  
Local Revenue Branch

Communications and notices to be sent to the COG shall be addressed to:

Council of San Benito County Governments  
330 Tres Pinos Rd. Ste. C-7  
Hollister, CA 95023  
Attention: Mary Gilbert, Executive Director

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2019. This Agreement shall continue until December 31 next following the expiration date of the COG Ordinance, and shall thereafter be renewed automatically from year to year until the Department completes all work necessary to the administration of the COG Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. COG shall give the Department written notice of the repeal of the COG Ordinance not less than 110 days prior to the operative date of the repeal.
ARTICLE VI
ADMINISTRATION OF TAXES IF THE
ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the COG shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the COG shall transmit to the Department the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that COG's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Department may retain all payments made by COG to Department to prepare to administer the COG Ordinance.

2. COG will pay to Department and allow Department to retain Department's cost of administering the COG Ordinance in the amounts set forth in Article IV of this Agreement.

3. COG will pay to Department or to the State of California the amount of any taxes plus interest and penalties, if any, that Department or the State of California may be required to rebate or refund to taxpayers.
4. COG will pay to Department its costs for rebating or refunding such taxes, interest, or penalties. Department’s costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Department’s staff for use in making these rebates or refunds and any other costs incurred by Department which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Department's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Department. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by COG.

6. Any dispute as to the amount of costs incurred by Department in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Department in connection with such refunds shall be billed by Department on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding COG’s Ordinance invalid or void becomes final. Thereafter Department shall bill COG on or before the 25th of each month for all costs incurred by Department for the preceding calendar month. COG shall pay to Department the amount of such costs on or before the last day of the succeeding month and shall pay to Department the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Department costs incurred in making those refunds.

Council of San Benito County Governments

By ____________________________
(Signature)
Mary Gilbert

(California Department of Tax and Fee Administration)

By ____________________________
Administrator

Executive Director

(Typed Name)

(Approved as to Legal Form)

Shirley J. Murphy 1/8/19
BEFORE THE COUNCIL OF SAN BENITO COUNTY GOVERNMENTS

A RESOLUTION OF THE COUNCIL OF
SAN BENITO COUNTY GOVERNMENTS
AUTHORIZING THE EXAMINATION OF
TRANSACTIONS AND USE TAX RECORDS

Resolution No. COG 19-02

WHEREAS, pursuant to Ordinance No. 2018-01 of the Council of San Benito County Governments (hereinafter called “COG”) and Section 7270 of the Revenue and Taxation Code, COG entered into a contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of the Transactions and Use Tax Ordinance; and

WHEREAS, COG deems it desirable and necessary for authorized representatives of COG to examine confidential transactions and use tax records of the California Department of Tax and Fee Administration pertaining to transactions and use taxes collected by the Board for the COG pursuant to that contract; and

WHEREAS, Section 7056 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of California Department of Tax and Fee Administration records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from, the transactions and use tax records of the Board;

NOW, THEREFORE IT IS RESOLVED AND ORDERED AS FOLLOWS:

Section 1. That the COG Executive Director or other officer or employee of the COG designated in writing by the COG Board of Directors to the California Department of Tax and Fee Administration (hereafter referred to as “DTFA”) is hereby appointed to represent the COG with authority to examine transactions and use tax records of the DTFA pertaining to transactions and use taxes collected for the COG by the DTFA pursuant to the contract between the COG and the DTFA. The information obtained by examination of DTFA records shall be used only for purposes related to the collection of the COG’s transactions and use taxes by the DTFA pursuant to the contract.

The information obtained by examination of DTFA records shall be used only for those governmental functions of the COG listed above.
BE IT FURTHER RESOLVED that the information obtained by examination of DTFA records shall be used only for purposes related to the collection of COG’s transactions and use taxes by the DTFA pursuant to the contracts between the COG and DTFA.

PASSED AND ADOPTED BY THE COUNCIL OF SAN BENITO COUNTY GOVERNMENTS BOARD OF DIRECTORS THIS 24TH DAY OF JANUARY, 2019, BY THE FOLLOWING VOTE

AYES:

NOES:

ABSTAINING:

ABSENT:

______________________________
, Chair

APPROVED AS TO LEGAL FORM:

SAN BENITO COUNTY COUNSEL’S OFFICE

Dated: Jan. 17, 2019

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

ATTEST:

Mary Gilbert, Executive Director

Dated: ___________________________

By: _______________________________
Closed Session

PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: COG Executive Director
Authority: Government Code Section: 54957 (B)