



**AGENDA
SPECIAL MEETING
COUNCIL OF SAN BENITO COUNTY GOVERNMENTS**

DATE: Monday, December 12, 2022
4:00 p.m.

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

DIRECTORS: Chair Ignacio Velazquez, Vice Chair Kollin Kosmicki
Mary Vazquez Edge, Rolan Resendiz, and Peter Hernandez
Alternates: San Benito County: Betsy Dirks
City of San Juan Bautista: Scott Freels; City of Hollister: Rick Perez
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.

4:00 P.M. CALL TO ORDER

- A. Pledge of Allegiance
- B. Roll Call
- C. Verification of Certificate of Posting

CLOSED SESSION:

- 1. **Public Employee Appointment**
Title: COG Executive Director
California Government Code section 54957(b)(1)
- 2. **Conference with Labor Negotiators**
Agency Designated Representatives: Wendy Brown; WBPC, Inc., Henie Ring; San Benito County Human Resources Manager, Barbara Thompson; County of San Benito County Counsel, Shirley L. Murphy; Deputy County Counsel
Employee Position: COG Executive Director
California Government Code section 54957.6

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.)

- 3. **APPROVE** Employment Agreement Between the County of San Benito, the Council of San Benito County Governments, and Binu Abraham for Employment as COG Executive Director – Rivera

Adjourn to COG Regular Meeting on December 15, 2022. Agenda Deadline is Tuesday, November 29, 2022, 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.

Council of San Benito County Governments (COG)

Local Transportation Authority • Airport Land Use Commission • Service Authority for Freeways & Expressways
330 Tres Pinos Road, Suite C7 • Hollister, CA 95023 • Phone: 831-637-7665
sanbenitocog.org

CERTIFICATE OF POSTING

Pursuant to Government Code Section #54954.2(a) the Special Meeting Agenda for the Council of San Benito County Governments on **December 12, 2022**, at **4:00 P.M.** was posted at the following locations freely accessible to the public:


The front entrance of the Old San Benito County Courthouse, Monterey Street, Hollister, CA 95023, and the Council of Governments Office, 330 Tres Pinos Rd., Ste. C7, Hollister, CA 95023 at the following date and time:

On the 8th day of December 2022, on or before 5:00 P.M.

The meeting agenda was also posted on the Council of San Benito County Governments website, www.sanbenitocog.org, under Meetings, COG Board, Meeting Schedule

I, Monica Gomez, swear under penalty of perjury that the foregoing is true and correct.

BY:



Monica Gomez, Secretary II
Council of San Benito County Governments



Closed Session

1. Public Employee Appointment

Title: COG Executive Director
California Government Code section 54957(b)(1)

2. Conference with Labor Negotiators

Agency Designated Representatives: Wendy Brown; WBPC, Inc., Henie Ring; San Benito County Human Resources Manager, Barbara Thompson; County of San Benito County Counsel, Shirley L. Murphy; Deputy County Counsel
Employee Position: COG Executive Director
California Government Code section 54957.6



Staff Report

To: Council of San Benito County Governments
From: Norma Rivera, Administrative Services Specialist Telephone: (831) 637-7665
Date: December 12, 2022
Subject: **Executive Director Employment Agreement**

Recommendation:

APPROVE Employment Agreement Between the County of San Benito, the Council of San Benito County Governments, and Binu Abraham for Employment as the COG Executive Director.

Summary:

The employment agreement appoints Binu Abraham to the Executive Director of COG effective January 12, 2023.

Financial Considerations:

The employment agreement appoints Binu Abraham to the position of Executive Director of COG under the County of San Benito Class Title and Pay Plan at Step F.

Discussion:

The position of Executive Director of COG was vacated on August 11, 2022. The recruitment for the Council of Governments (COG) Executive Director position closed on October 6, 2022. The firm hired to perform recruitment for the position, WBCP, conducted a comprehensive pre-screen of the applications to ensure that they meet the employment requirements. Following the pre-screening, a shortlist review of qualified candidates was conducted by the COG Board appointed subcommittee consisting of the COG Chair and Vice Chair.

The Executive Director recruitment interview component consisted of a multiday process. Day one of virtual interviews were held on November 2, 2022, with an interview panel consisting of transportation experts and COG agency partners. Day two of virtual interviews were held on November 4, 2022, with the COG Chair and Vice Chair. The COG Board interviewed the final candidates in-person on November 14, 2022, via a special meeting that was held at the County Board of Supervisors Chambers.

The Agreement between the County of San Benito, the Council of San Benito County Governments, and Binu Abraham is for a two-year term. The contract will renew annually unless otherwise terminated by the employee or employer.

Council of San Benito County Governments (COG)

Reviewed By: NR

Counsel Review: Yes

Supporting Attachment(s):

1. Employment Agreement between the County of San Benito, the Council of San Benito County Governments, and Binu Abraham.

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into on this 13th day of December 2022, by and between the BOARD OF DIRECTORS on behalf of the COUNCIL OF SAN BENITO COUNTY GOVERNMENTS, a joint powers agency formed under the joint exercise of powers provisions of California Government Code section 6500 to 6522 (hereinafter referred to as the “Council of Governments”); the BOARD OF SUPERVISORS on behalf of the COUNTY OF SAN BENITO, a political subdivision of the State of California (hereinafter referred to as the “County”) (hereinafter collectively referred to as “Employer”); and Binu Abraham (hereinafter referred to as “Employee”), (hereinafter collectively referred to as “Parties”), pursuant to the following terms and conditions:

WHEREAS, the parties mutually desire to set forth herein certain procedures, benefits, and requirements regarding the employment of Employee by the Employer; and,

WHEREAS, the Employer desires to employ the services of Employee as Executive Director of the Council of San Benito County Governments under the terms and conditions recited herein; and,

WHEREAS, Employee desires to accept employment as the Executive Director of the Council of San Benito County Governments under the terms and conditions recited herein.

NOW, THEREFORE, the Parties hereby mutually covenant and agree to the following:

1. EFFECTIVE DATE: The Employer hereby hires Employee and Employee hereby accepts employment with Employer beginning January 12, 2023, which date shall hereby be the “Effective Date” of this Agreement.
2. INITIAL TERM AND ROLLOVER: The Employer hereby hires Employee and Employee hereby accepts employment with Employer beginning upon the Effective Date for an initial term of two (2) years (hereinafter the “Initial Term”). The terms and conditions of this Agreement shall continue in full force and effect and “rollover” on an annual basis unless a written Notice of Intent to Terminate this Agreement is

received by the Employee from the Employer, one hundred eighty (180) calendar days before the expiration of the Initial Term. Any rollover after the expiration of the Initial Term shall be for a period of one (1) year and shall continue to rollover on an annual basis unless written Notice of Intent to Terminate this Agreement is received by the Employee from the Employer prior to one hundred eighty (180) calendar days before the expiration of the Initial Term's anniversary date.

3. TITLE AND DESCRIPTION OF DUTIES:

- A. The Employee shall serve as Executive Director of the Council of San Benito County Governments. In that capacity, Employee shall do and perform all duties, services, acts, or things necessary or advisable to fulfill the duties of Executive Director of the Council of San Benito County Governments, as specified by law and the County's job description, as may be amended from time to time. Employee shall at all times be subject to the direction of the Board of Directors and to the policies established by the Board of Directors.
- B. The Board of Directors and Employee will establish an initial set of specific goals and performance objectives to be accomplished by Employee and the Council of San Benito County Governments.
- C. At least annually, the Board of Directors and Employee shall review and further define those goals and performance objectives, which they determine necessary for attainment of the Board of Director's policy objectives. The Board of Directors will annually review and evaluate the performance of Employee based upon the Employee's accomplishments. Employee shall be responsible for agendizing the annual performance evaluations for a closed session meeting of the Board of Directors.

4. LOYAL AND CONSCIENTIOUS PERFORMANCE OF DUTIES: Employee agrees that to the best of her ability and experience, Employee will at all times loyally and conscientiously perform all of the duties and obligations required of her either expressly or implicitly by the terms of this Agreement. Employee is expected to work on-site, with remote work consistent with remote work allowed for other Council of Governments employees, if approved by the Council of Governments Chair. Employee shall notify the Council of Governments Chair of all absences from the office one (1) day or more.

5. DEVOTION OF ENTIRE TIME TO EMPLOYER'S BUSINESS:

- A. Employee shall devote Employee's entire professional productive time, ability, and attention to the business of Employer during the term of this Agreement.
- B. During the term of this Agreement, Employee shall not engage in any other business duties or pursuits whatsoever. Furthermore, during the term of this Agreement, Employee shall not, whether directly or indirectly, render any services of a commercial or professional nature to any other person or organization without the prior written consent of the Board of Directors. However, the expenditure of reasonable amounts of time for educational, charitable, or professional activities performed on Employee's time off shall not be deemed a breach of this Agreement if those activities do not materially interfere with the services required under this Agreement and shall not require the prior written consent of the Board of Directors.
- C. This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those

activities do not materially interfere with the services required under this Agreement or present a conflict of interest.

- D. Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract or which may create an incompatibility of office as defined under California law, and agrees that she will not take any position, paid or otherwise, which may in any degree conflict or appear to conflict with the duties inherent in her position. Prior to performing any services under this Agreement, and on an annual basis, Employee must complete all disclosure forms required by law.

6. COMPENSATION OF EMPLOYEE:

- A. Annual Salary: As compensation for the services to be rendered by Employee hereunder, Employer shall pay Employee an annual salary at the rate as set forth in the San Benito County current Class Title and Pay Plan at Step “ F ,” for the Executive Director of the Council of San Benito County Governments and payable in pro rata installments at the same time as other employees of San Benito County are paid. Cost of living and step increases will follow the same rules as those for other County Appointed Department Heads and in accordance with the County’s Personnel Rules and Regulations. Employee will be eligible for a step increase to Step G, currently the highest available step, after one (1) year of service pursuant to County personnel rules. Employee understands that the position is that of an exempt employee under the Fair Labor Standards Act, and she shall not be entitled to receive any overtime pay, compensatory time, or other premium pay or compensation, except as may be provided for by County policies.

- B. Performance Evaluations: The Board of Directors shall engage in a performance review no later than December 2023, and at least annually thereafter. Cost of Living and Step increases will follow the same rules as those for other County Appointed Department Heads and in accordance with the County's Personnel Rules and Regulations.
- C. Cost of Living Increase: Employee shall receive a cost of living increase when Appointed Department Head level personnel in San Benito County are afforded one and in the same proportion.
- D. Tax Withholding: Employer shall have the right to deduct or withhold from the compensation due to Employee hereunder any and all sums required for federal income and all state or local taxes now applicable or that may be enacted and become applicable in the future.
- E. County Benefits: Employee shall be provided with all other County benefits, including, but not limited to, vacation accrual, sick leave, administrative leave (eighty (80) hours), medical, dental, life insurance, severance in accordance with Section 9.A. below, and retirement plans, at the same rates and in the same amounts as typically provided to other Appointed Department Heads, except as otherwise specified in this Agreement. In addition to the County benefits provided to other Appointed Department Heads, Employee shall be provided the following additional benefits:
 - i. One-Time Moving Allowance: Employee shall be provided a one-time moving allowance of up to \$6,000.00, to be applied towards moving expenses and/or the costs of temporary housing. Employee shall submit receipts for reimbursement.

- ii. Administrative Leave: Employee shall be provided an additional forty (40) hours of administrative leave annually, in addition to the normal eighty (80) hours provided to Appointed Department Heads, for a total of one hundred twenty (120) hours of administrative leave on an annual basis.
- iii. Retirement Formula: Employee has been a member of CalPERS for a period of approximately twelve and one-half (12½) years. Accordingly, she qualifies as a “classic” employee under Paragraph 7.A. of Attachment A to the County Board of Supervisors’ Resolution No. 2020-97, providing the terms of compensation and benefits for Appointed Department Heads, and is eligible for the classic retirement plan (two percent (2%) at 55 PERS retirement program for Miscellaneous Employees). Employee is responsible for the Employee’s full share of retirement contribution, currently at seven percent (7%).
- iv. Employee may utilize the Council of Governments’ vehicle for business-related travel purposes. Employee shall receive a work cell phone if requested, for reasonable and normal expenses for work related business.

7. CUMULATIVE VACATION LEAVE UPON TERMINATION:

- A. Upon termination for any reason whatsoever, Employer shall compensate Employee for all accrued vacation leave and said compensation shall be based upon Employee’s salary as of the date of employment termination and in accordance with applicable County policy.

B. In the event the Employee voluntarily resigns or dies while employed by the County under this Agreement or any renewals thereof, the Employee or Employee's beneficiaries or those entitled to Employee's estate, shall be entitled to Employee's earned salary and any other benefits as allowed by current applicable County policy.

8. SEMINARS AND CONFERENCES. Employee may attend official or professional meetings and occasions necessary and consistent with the performance of Employee's official functions for the Employer, and such other regional and local governmental groups and committees thereof on which Employee may serve as a member. These conferences shall be consistent with the type and number of conferences customarily attended by an Appointed Department Head serving as the Executive Director of the Council of San Benito County Governments and shall be based on the annual amount budgeted for training and travel. Employee shall be reimbursed for all travel and registration expenses in accordance with the County's adopted travel policies.

9. TERMINATION OF EMPLOYMENT:

A. Termination by Employer: Employee is an “at will” employee and serves at the pleasure of Employer. There is no express or implied promise made to Employee for any form of continued employment, nor any vested right in said position. Employer may immediately terminate Employee at any time without cause upon written notice to Employee, as set forth below. The parties hereby expressly waive any County Code provisions to the contrary, and/or any other County rules relating to notice of dismissal and to any rights to hearing or appeal thereon. Should Employer decide to terminate Employee without cause, Employee shall be entitled to receive Notice of Intent to Terminate, according to the following schedule, and if directed by the Employer, with the applicable notice period to be served on paid leave:

- i. January 3, 2023 – January 31, 2023: 15 months’ notice;
- ii. February 1, 2023 – February 28, 2023: 14 months’ notice;
- iii. March 1, 2023 – March 31, 2023: 13 months’ notice;
- iv. April 1, 2023 – April 30, 2023: 12 months’ notice;
- v. May 1, 2023 – May 31, 2023: 11 months’ notice;
- vi. June 1, 2023 – June 30, 2023: 10 months’ notice;
- vii. July 1, 2023 – July 31, 2023: 9 months’ notice;
- viii. August 1, 2023 – August 31, 2023: 8 months’ notice;
- ix. September 1, 2023 – September 30, 2023: 7 months’ notice;
- x. After October 1, 2023, and thereafter, Employee shall be entitled to six (6) months’ prior written notice of termination.

Any Notice of Intent to Terminate given under Section 2 above shall be deemed sufficient for any notice required under this Section.

B. Termination by Employee: Employee may, at any time, for any reason, terminate Employee’s employment with the Employer by providing ninety (90) days advance written notice of termination to Employer by certified or registered mail, return receipt requested. In the event of such termination, Employee shall not receive severance pay, or pay for the notice period set forth

in Section 9.A., or unemployment compensation through the State of California. In the event of Employee's death or permanent disability when such disability prevents Employee from performing the essential functions of her job, this Agreement shall automatically terminate on the date of Employee's death or permanent disability, and any pay-out owed to Employee or Employee's estate, as applicable, shall not include any severance payment or the notice period set forth in Section 9.A. above.

C. Temporary Incapacity and Unpaid Leave: Subject to all applicable provisions of the Family Medical Leave Act (FMLA), California Family Rights Act (CFRA), and any other statute or regulation pertaining to leaves or disability, if Employee is temporarily disabled and cannot be reasonably accommodated, or is otherwise unable to perform her duties because of sickness, accident, injury, or physical or mental incapacity, Employer shall have the option to terminate this Agreement. In the event of such termination, Employer shall not be required to provide the Notice set forth in Section 9.A., but rather may terminate Employee upon ninety (90) days prior written notice. Employee may utilize unpaid leave in accordance with County personnel rules and state law if she exhausts other accrued leave while on temporary disability, or in cases of sickness, accident, injury, or physical or mental incapacity.

D. Termination for Cause: Employer may immediately terminate this Agreement at any time for cause, upon written notice to Employee, without providing the additional notice period set forth in Section 9.A., if Employee commits any act of gross insubordination, dishonesty, theft, fraud, misrepresentation, inexcusable neglect of duty, inexcusable absence

without leave that exceeds five (5) working days, improper political activity, misuse of Council of Governments' property, failure to maintain exemplary behavior, either during or outside work hours, that becomes a source of discredit to the Board of Directors, embezzlement, bribery, or perjury, or violates conflict of interest laws, or is convicted of a felony or an abuse of her position as defined by Government Code section 53243.4. In the event of termination for cause, as defined above, Employee will not be entitled to any severance pay or a notice period otherwise established by this Agreement. In such event, Employer's total liability to Employee will be limited to payment of Employee's compensation through the effective date of termination, together with cash reimbursement for vacation accrual balances, consistent with County policy.

E. Transition Following Termination: In the event of a Notice of Termination, Employee agrees to assist in the transition process as may be directed by Employer, and shall surrender the position, any and all writings containing information relating to the conduct of Employer's business prepared, owned, used, or retained by Employee regardless of physical form or characteristics, and any and all equipment, tools or other materials of whatever nature provided to Employee by Employer.

10. NOTICES: Notices pursuant to this Agreement shall be given by deposit into the United States Postal Service, postage prepaid, and addressed as follows, or as such address may be changed from time to time, upon the other:

County:	Chair of the Board of Supervisors County of San Benito 481 Fourth St., 1 st Floor Hollister, CA 95023
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Council of Governments: Shall be provided to the mailing address of the current Chair of the Board of Directors.

Employee: Shall be provided to the most recent mailing address on file for Employee.

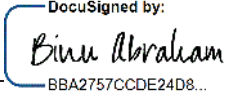
11. COMPLIANCE WITH LAWS AND ORDINANCES: Employee shall perform all services pursuant to this Agreement in accordance with all applicable federal, state, county and local laws, ordinances, regulations, titles and departmental procedures.
12. NON-ASSIGNABLE: This Contract is personal to Employee and is not assignable under any circumstances.
13. ENTIRE AGREEMENT: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Employee by Employer and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.
14. MODIFICATIONS: Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged and approved by the Employer.
15. EFFECT OF WAIVER: The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver of relinquishment of that right or power for all or any other times.
16. PARTIAL INVALIDITY: If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable the remaining provisions

shall nevertheless continue in full force without being impaired or invalidated in any way.

17. INDEMNIFICATION: In accordance with and subject to the California Government Claims Act, Employer shall defend and indemnify Employee against any and all losses sustained by Employee as a direct consequence of the discharge of Employee's duties on Employer's behalf for the period of Employee's employment and beyond such period regardless of whether the notice of filing of a lawsuit occurs during or following employment, to the extent required by law, as set forth below. Employer shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim, demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Executive Director of the Council of San Benito County Governments; the duties and scope of such obligation shall be consistent with Government Code sections 995, 995.2, et. seq.
18. LAW GOVERNING AGREEMENT: This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any suit brought over the terms and conditions of this Agreement shall be in San Benito County.
19. CAPTIONS: The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of the Agreement or in any way affect it.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed and executed in its behalf by the Chair of the Council of Governments and by the Chair of the Board of Supervisors, and duly attested by each party's Board Clerk, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE:

By:  _____
Binu Abraham

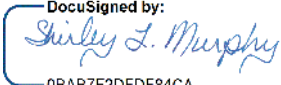
EMPLOYER:
Council of San Benito County Governments:

By: _____
Ignacio Velazquez, Chair
Board of Directors

ATTEST:

By: _____
Monica Gomez, Clerk

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

By:  _____
Shirley L. Murphy, Deputy County Counsel
Counsel for the Council of Governments

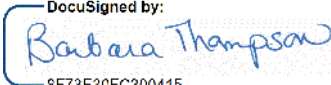
EMPLOYER:
County of San Benito:

By: _____
Peter Hernandez, Chair
Board of Supervisors

ATTEST:

By: _____
Vanessa Delgado, Clerk

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

By:  _____
Barbara J. Thompson, County Counsel
Counsel for the County of San Benito