ORDINANCE NO. 3603

AN ORDINANCE ADDING CHAPTER 15 ("PUBLIC WORKS CONTRACTOR DEBARMENT") TO PART V ("PUBLIC WELFARE") OF THE ORDINANCE CODE OF TULARE COUNTY REGARDING PUBLIC WORKS CONTRACTOR DEBARMENT

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. CHAPTER 15 ("PUBLIC WORKS CONTRACTOR DEBARMENT") is hereby added to PART V ("PUBLIC WELFARE") of the Ordinance Code of Tulare County, to read in its entirety as follows:

5-15-1000 PURPOSES:

(a) It is the policy of the County of Tulare to conduct business only with responsible building contractors who possess the trustworthiness, quality, and fitness to satisfactorily perform County contracts. County officials charged with the administration of public works contracts shall investigate with reasonable diligence the responsibility of public works contractors before awarding, or recommending the award of, contracts. To have a contractor debarred from contracting with the County on public works projects, the County shall follow the procedures set forth in this Chapter.

(b) The purposes of debarment under this Chapter are to promote and protect the integrity and efficiency of the County’s public works contracting and the soundness and safety of the County’s public works projects. Debarment is a serious action to be taken only for those purposes.

(c) This Chapter is designed to provide due process before a Contractor is debarred.

(d) Notwithstanding any other provision of this Chapter, the decision whether to seek to have a contractor debarred shall be within the sole discretion of the County.

5-15-1500 DEFINITIONS:

For purposes of this Chapter, the following definitions apply:

(a) "Affiliate" means:

(1) A business entity or association of any form that has the same or similar management or ownership as a debarred Contractor.

(2) The spouse or children of a debarred Contractor or a business entity owned or controlled by the spouse or children of a debarred Contractor.
(3) A business entity or association of any form in which a debarred Contractor owns an interest of 10 percent or more; is a responsible managing officer or responsible managing employee, within the meaning of the Contractors' State License Law; or controls or administers all or a substantial part of the business.

(b) "Bid" means a bid, proposal, or any other response to a solicitation submitted by or on behalf of a contractor seeking an award of a contract.

(c) "Board" means the Board of Supervisors of the County.

(d) "Clerk of the Board" means the Clerk of the Board of Supervisors of the County, or his or her deputy or designee.

(e) "Contract" or "Contracts" means one or more agreements to provide any labor, material, goods or services for the construction, alteration, repair or improvement of any public structure, building, road, or other public improvement of any kind, including any subcontract of such agreement.

(f) "Contractor" means a person that has entered or sought a contract or contracts with the County or a subcontract or subcontracts with a contractor for the County. "Contractor" includes a person that participates or seeks to participate in a County-owned project as a subcontractor, supplier, or vendor. "Contractor" also includes: a person that owns an interest of 10 percent or more in a contractor; a responsible managing officer or responsible managing employee of a contractor within the meaning of the Contractors' State License Law; and a manager of a contractor.

(g) "County" means the County of Tulare, any County of Tulare dependent special district or public entity for which the Tulare County Board of Supervisors is the governing body, any joint powers authority of which the County of Tulare is a member that has adopted County of Tulare contracting procedures, and any non-profit corporation created by the County of Tulare.

(h) "County Hearing Officer" means the person designated to preside over an evidentiary hearing on the grounds for contractor debarment, render findings of fact, and render decisions regarding debarment in accordance with this Chapter.

(i) "Director" means the Director of the County's Resources Management Agency or the Director of the County's General Services Agency, or an associate or deputy director, or another designee of the Director.

(j) "Manager" means a person who is responsible for controlling or administering, or does control or administer, all or part of the business of a Contractor including, without limitation: executing bids, contracts, or amendments to contracts; supervising performance of contracts; receiving payments and keeping accounts; preparing or disbursing payment to employees,
subcontractors, suppliers, vendors, or consultants; or making any certification or submission to the County.

(k) "Person" means any natural person, firm, joint venture, joint-stock company, partnership, association, club, limited liability company, corporation, business trust, organization, or other entity.

(l) "Project" means a project for the construction, alteration, repair or improvement of any public structure, building, road, bridge, or other public improvement of any kind.

(m) "Serve" or "service" means any method of delivery reasonably calculated to ensure receipt, including United States Postal Service regular mail, except that the Contractor must personally serve a request for hearing, written response to a notice of proposed debarment, and appeal of a suspension. In the case of service by regular mail, service is deemed accomplished 5 calendar days after the date of mailing.

5-15-2000 AUTHORITY AND GROUNDS FOR DEBARMEN T OF CONTRACTORS:

(a) In accordance with the procedures set forth in section 5-15-2500 of this Chapter, the County may debar a Contractor that the County determines generally lacks the trustworthiness, quality, or fitness to satisfactorily perform County contracts.

(b) Circumstances that warrant debarment include, without limitation:

(1) Making or submission of a false statement or claim in connection with any bid or proposal for, or the administration or performance of, any contract (as defined herein) or any other contract or agreement for the erection, construction, alteration, or repair of any public or private structure, facility, or improvement of any kind.

(2) Any act of fraud, forgery, perjury, theft, intimidation, embezzlement, or other misconduct demonstrating a lack of business integrity.

(3) A serious or repeated failure to comply with laws or contract terms related to labor standards, worker health and safety, public health and safety, or environmental protection.

(4) A serious or repeated failure to satisfactorily perform contracts.

(c) The County may select an appropriate period of debarment, up to and including permanent debarment, in light of the grounds shown for debarment and the purposes of this Chapter. Relevant considerations in choosing the appropriate period of and the extent of the debarment include, without limitation: how likely the debarred Contractor is to correct the conduct that led to debarment and satisfactorily perform County contracts in the future; and the extent to which the conduct that forms the grounds for debarment undermines the purposes of this Chapter.
5-15-2500 PROCEDURE FOR DEBARMENT OF CONTRACTORS:

(a) Any Director who obtains substantial evidence that grounds exist under this Chapter to debar a Contractor may refer the matter to the County Hearing Officer for the purpose of a debarment determination. The County Hearing Officer shall proceed to make such determination in accordance with this Chapter and Chapter 31 of Part I of this Code to the extent not inconsistent with this Chapter.

(b) Following the Director’s referral of the matter to the County Hearing Officer, the Director will serve the Contractor and the County Hearing Officer with a written notice of proposed debarment that includes the following:

(1) The evidence on which the County intends to rely to support debarment in the form of copies of exhibits and written testimony of witnesses in the form of affidavits signed by the witnesses under penalty of perjury and acknowledged pursuant to Civil Code section 1180 et seq.

(2) The period of the debarment proposed.

(3) The names of, and information on how to serve, the County Hearing Officer and the Director; and

(4) Notice that in order to contest the proposed debarment, the Contractor must serve a request for a hearing on the Director and County Hearing Officer within 10 calendar days of service of the notice of proposed debarment, and that the 10 calendar day time limit is jurisdictional and cannot be waived or extended.

(c) Upon receiving a request for a hearing served no later than 10 calendar days after service of the notice of proposed debarment, the County Hearing Officer will set a hearing for a date no sooner than 30 calendar days after the service of the notice of proposed debarment. No later than 10 calendar days before the date set for the hearing, the Contractor must serve a written response to the notice of proposed debarment on the County Hearing Officer and the Director that includes the evidence on which the Contractor intends to rely in the form of copies of exhibits, and written testimony of witnesses in the form of affidavits signed by the witnesses under penalty of perjury and acknowledged pursuant to Civil Code section 1180 et seq.

(d) If a party wishes to cross-examine a witness whose written testimony has been submitted by another party, then the requesting party must serve a written request on the County Hearing Officer and the other party no later than 10 calendar days before the date set for the hearing.

(e) If the Contractor fails to serve a request for a hearing no later than 10 calendar days after service of the notice of proposed debarment, or fails to serve a written response to the proposed debarment no later than 10 calendar days before the date set for the hearing, or fails to appear at
the scheduled hearing, then the Director may cancel the hearing if a hearing was set, the notice of proposed debarment and the evidence attached thereto shall be deemed uncontested, the Contractor shall be deemed to have waived all rights of appeal, and the Contractor shall be debarred in accordance with the notice of proposed debarment and this Chapter.

(f) If the Contractor serves a request for hearing within 10 calendar days after service of the notice of debarment and serves a written response within 10 calendar days of the date set for hearing, then a hearing will be conducted.

(g) The parties may be represented by legal counsel at the hearing. The County Hearing Officer is authorized to conduct the hearing; issue subpoenas; receive evidence; administer oaths; rule on questions of law and the admissibility of evidence; question witnesses; grant continuances for good cause shown; make findings of fact and legal conclusions; prepare final written decisions and orders; and prepare a record of the proceedings. The Clerk of the Board shall provide clerical and administrative support for the County Hearing Officer and shall arrange for a certified court reporter to record all testimony. Hearings shall be open to the public. However, either party may request that the County Hearing Officer close portions of the hearing where sensitive, confidential, or sensational material may be presented or discussed.

(h) The Director shall bear the burden of proving that sufficient grounds exist under this Chapter for the proposed debarment of the Contractor. The standard of proof shall be by a preponderance of the evidence. The County Hearing Officer shall consider all relevant documents and testimony, and such other relevant evidence as shall be presented. Testimony shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness; and, to rebut evidence. All witnesses who are not parties may be excluded from the hearing by the County Hearing Officer except when testifying.

(i) The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence that reasonable persons are accustomed to relying upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions in this state. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but may be rejected if deemed to be unreliable. The rules of privileges shall be effective to the extent that they are otherwise required by statute to be recognized at an administrative hearing. Irrelevant and unduly repetitious evidence shall be excluded. The proponent of any evidence is responsible to obtain and present clean and legible evidence in sufficient copies for all parties, including the County Hearing Officer and for the court reporter. The County Hearing Officer may take official notice of any matter that may be judicially noticed.
(j) At the hearing:

(1) The notice of proposed debarment and the Contractor's written response will be received into evidence.

(2) If a written request has been timely served, then the Contractor will have the opportunity to examine the County's witnesses upon issues raised by their written testimony.

(3) If a written request has been timely served, the Director will have the opportunity to examine the Contractor's witnesses upon issues raised by their written testimony.

(4) If a party fails to produce a witness at the hearing for examination after a timely request by the other party, then that witness's written testimony shall be excluded from evidence.

(5) If no timely written request has been made to produce a witness at the hearing, then that witness's written testimony shall be admitted and considered as if the witness had testified under oath at the hearing.

(6) The Director may present oral witness testimony not included in the initial submittal to the County Hearing Officer and Contractor, but such testimony shall be limited solely to rebuttal to, or impeachment of evidence presented by the Contractor; and

(7) The Contractor and Director will each have the opportunity to make a statement after all the evidence has been presented and questioning is complete.

(k) The fraudulent, criminal, or other seriously improper conduct of any officer, director, partner, shareholder, employee, or other individual associated with a person may be imputed to the person when the conduct occurred in connection with the individual's performance of duties for, or on behalf of the person, or with the person's knowledge, approval, or acquiescence. The person's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence. The fraudulent, criminal, or other seriously improper conduct of one person participating in a joint venture or similar arrangement may be imputed to other participating persons if the conduct occurred with the knowledge of, approval of, or acquiescence of same by these persons. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(l) Within 30 calendar days after the hearing is closed, the County Hearing Officer will prepare and serve upon the Contractor, the Director, and their respective legal counsel, a written decision on debarment that contains a determination regarding whether the Contractor shall be debarred, the appropriate period of such debarment, and a statement of the reasons for the County Hearing Officer's decision. The County Hearing Officer may increase, decrease, or accept the Director's
recommendation of the length of the debarment, if any. Except as provided in section 5-15-3000, the decision of the County Hearing Officer shall be final and not subject to reconsideration or rehearing.

(m) Notwithstanding section 5-15-2500 (l), the Director and the Contractor may agree in writing to accept the decision of the County Hearing Officer as final, with or without modification. Upon such agreement, the decision of the County Hearing Officer, including any modification agreed upon by the Director and the Contractor, shall become the final decision of the County under this Chapter. Alternatively, at any time the Director may offer a Contractor the opportunity to execute an enforceable written agreement not to bid or submit proposals or perform any work on County contracts for an agreed-upon period of time, in lieu of the County’s pursuing debarment or suspension under this Chapter. Any such agreement does not constitute a debarment or suspension under this Chapter but shall be enforceable according to its terms.

5-15-3000 JUDICIAL REVIEW:

Judicial review of a final decision made under this Chapter may be had by filing a petition for a writ of mandate with the superior court of the County in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition must be filed within 90 calendar days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6, which shall be applicable for such actions.

5-15-3500 SUSPENSION OF CONTRACTORS:

(a) The Director may immediately suspend a Contractor pending completion of an active investigation and any ensuing administrative or legal proceedings involving grounds for debarment of the Contractor, if the Director has probable cause to suspect that grounds for debarment of the Contractor exist. The Director shall only suspend a Contractor if and so long as the Director determines such action is necessary to protect the public interest. In no event may a suspension continue for more than 3 months without the commencement of administrative or legal proceedings against the Contractor involving grounds for debarment.

(b) Upon suspension, the Director shall serve the Contractor with notice of the suspension including the reasons therefor and the evidence constituting probable cause to the extent disclosure of such evidence does not compromise an active investigation or any ensuing administrative or legal proceedings.

(c) Within 30 calendar days of service of such a notice of suspension, the Contractor may appeal the suspension by serving argument, information, and evidence, in writing, on the Director in response to the notice of suspension. Within 10 calendar days of receipt of a written appeal of suspension, the Director shall serve a written decision on the Contractor whether to continue or terminate the suspension based upon the notice of suspension and the Contractor’s response. The Director’s written decision is final and not subject to reconsideration or administrative appeal.
The written decision shall include a description of the parties’ right to appeal the decision as provided in Code of Civil Procedure section 1094.5 and section 5-15-3000.

(d) A decision to suspend, not to suspend, to continue a suspension or to terminate a suspension is without prejudice as to any ensuing proceedings to debar the Contractor.

5-15-4000 EFFECTS OF SUSPENSION OR DEBARMENT:

(a) Suspension or debarment disqualifies a Contractor and its affiliates from bidding on or being awarded a contract with the County; participating in bidding on a contract with the County as a subcontractor or vendor; participating in a County-owned project as a subcontractor, supplier, or vendor; or acting as a manager for any Contractor, subcontractor, supplier, or vendor on a County-owned project, for the applicable time period that the debarment and/or suspension remains in effect.

(b) Notwithstanding the debarment or suspension of a person, the County may elect to continue contracts or subcontracts it has with that person that were in existence at the time the person was debarred or suspended if the Director determines that such continuation is in the best interests of the County.

(c) If a Director believes that termination of contracts with a person that are in existence at the time the person is debarred or suspended is in the best interests of the County, then the Director may take actions necessary to terminate those contracts in accordance with the terms of those contracts.

(d) The County shall not renew or otherwise extend the duration of contracts in existence at the time of debarment or suspension with debarred or suspended persons unless the Board determines that such renewal or extension is in the best interests of the County.

5-15-4500 CREATION OF LIST OF DEBARRED AND SUSPENDED PERSONS:

(a) The Directors shall create, maintain, and make publicly available a list of the names, addresses, and applicable debarment or suspension commencement and expiration dates of all debarred or suspended Contractors.

(b) The Directors shall establish procedures to provide for the effective use of the list to ensure that the County does not do business with Contractors who have been debarred or suspended.

5-15-5000 DOING BUSINESS WITH DEBARRED OR SUSPENDED PERSON:

(a) A contractor who is awarded a contract with the County shall not knowingly employ, subcontract with, or purchase materials or services from a person who is currently debarred or suspended pursuant to this Chapter. Violation of this subsection may result in rejection of the bid
or proposal, nonpayment by the County for work performed, annulment of award or termination of an award of contract, issuance of a stop work order, disqualification from submitting future bids or proposals on County contracts, or any other remedy provided by law.

(b) A person who uses or lists a debarred or suspended Contractor as a subcontractor, supplier, insurer, or surety without having actual or constructive knowledge of such disqualification shall be allowed to substitute another subcontractor, supplier, insurer, or surety for the debarred Contractor in accordance with state law or, if not applicable, the provisions of the contract governing contract changes.

Section 2. The provisions of this Ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. This Ordinance shall take effect 30 calendar days from and after its final passage. Prior to the expiration of 15 calendar days from the final passage hereof, a summary of this Ordinance shall be published in the Sun Gazette, a newspaper printed and published in the County of Tulare, State of California, together with the names of the members of the Board of Supervisors voting for and against the same. A certified copy of this Ordinance, together with said names, shall be posted in the office of the Clerk of the Board of Supervisors, all in accordance with Government Code section 25124.
THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on March 29, 2022 at a regular meeting of said Board duly and regularly convened on said day, by the following vote:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN, VALERO AND TOWNSEND
NOES: NONE
ABSENT: NONE

Chair, Board of Supervisors

ATTEST: JASON T. BRITT, County Administrative Officer/
        Clerk of the Board of Supervisors/

By: /s/ Jeffrey Britt
        Deputy

Approved as to Legal Form:
COUNTY COUNSEL

By: /s/ Jeffrey L. Kuhn
        Chief Deputy County Counsel

Matter No. 2017753