

Agenda

County of Inyo Board of Supervisors

Board of Supervisors Room
County Administrative Center
224 North Edwards
Independence, California

All members of the public are encouraged to participate in the discussion of any items on the Agenda. Anyone wishing to speak, please obtain a card from the Board Clerk and indicate each item you would like to discuss. Return the completed card to the Board Clerk before the Board considers the item (s) upon which you wish to speak. You will be allowed to speak about each item before the Board takes action on it.

Any member of the public may also make comments during the scheduled "Public Comment" period on this agenda concerning any subject related to the Board of Supervisors or County Government. No card needs to be submitted in order to speak during the "Public Comment" period.

Public Notices: (1) In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact the Clerk of the Board at (760) 878-0373. (28 CFR 35.102-35.104 ADA Title II). Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting. Should you because of a disability require appropriate alternative formatting of this agenda, please notify the Clerk of the Board 72 hours prior to the meeting to enable the County to make the agenda available in a reasonable alternative format. (Government Code Section 54954.2). (2) If a writing, that is a public record relating to an agenda item for an open session of a regular meeting of the Board of Supervisors, is distributed less than 72 hours prior to the meeting, the writing shall be available for public inspection at the Office of the Clerk of the Board of Supervisors, 224 N. Edwards, Independence, California and is available per Government Code § 54957.5(b)(1).

Note: Historically the Board does break for lunch, the timing of a lunch break is made at the discretion of the Chairperson and at the Board's convenience.

February 28, 2012

9:00 a.m. **INVOCATION** by Supervisor Richard Cervantes

PLEDGE OF ALLEGIANCE

COMMENT (Portion of the Agenda when Board takes comment from the public and County staff)

1. **PUBLIC COMMENT**
2. **COUNTY DEPARTMENT REPORTS** (Reports limited to two minutes)

CONSENT AGENDA (Approval recommended by the County Administrator)

COUNTY ADMINISTRATOR

3. **Emergency Services** – Request Board continue the local emergency as a result of the Inyo Complex Oak Creek Mud Flows.
4. **Pioneer Cemetery District** – Request Board re-appoint Ms. Cathy Diane Corsaro to the Pioneer Cemetery District Board of Trustees to complete a four-year term ending December 27, 2015. (Notice of vacancy resulted in one request for appointment being received from Ms. Corsaro.)

CLERK-RECORDER

5. Request approval to pay DFM Associates \$12,840 for the Annual DFM Associates Software License Maintenance and Support Fee, contingent upon the Board's adoption of future Budgets.

HEALTH AND HUMAN SERVICES

6. **Social Services** – Request approval of the Agreement for inter-agency adoption services for the provision of Child Welfare Services Adoption activities in Inyo County through June 30, 2013; and authorize the Director of Health and Human Services to sign.
7. **Behavioral Health Services** – Request approval of the FY 2011/2012 V.1 Amended Negotiated Net Amount contract with the California Department of Alcohol and Drug Programs with the FY 2011-12 Contract amount decreased by \$104,404 for a new amount of \$397,297, and the FY 2012-13 contract amount decreased by \$104,426, for a new total of \$397,297 for a new multi-year contract total of \$1,296,273; and authorize the Chairperson to sign.

SHERIFF'S DEPARTMENT

8. Request approval of a resolution titled "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Authorizing the Submittal of the State of California, Department of Parks and Recreation, Off-Highway Vehicle Grant Application."

DEPARTMENTAL (To be considered at the Board's convenience)

9. **COUNTY ADMINISTRATOR – CITY OF BISHOP** – Request Board A) accept the Inyo County Clerk-Recorder's Report on Cost-Effectiveness of Consolidating City of Bishop Municipal Election with Statewide General Election; B) per California Elections Code §10403.5(a), approve a resolution titled "A Resolution of the Board of Supervisors, County of Inyo, State of California, Approving City of Bishop Ordinance No. 537 Respecting Moving the Date of the City's General Election to the First Tuesday in November of Even-Numbered Years;" and C) authorize the City of Bishop General Election be consolidated with the Statewide General Election scheduled for November 6, 2012.
10. **COUNTY ADMINISTRATOR** – Request Board authorize the County Administrator to execute an amendment to the Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between the County of Inyo and Joseph Enterprises extending the Phase I Expiration Date to June 30, 2012, contingent upon the appropriate signatures being obtained.
11. **COUNTY ADMINISTRATOR – Public Defender** – Request Board approve \$14,170 in expenditures to come from the FY 2011-12 Public Defender Budget for professional services that were performed in 2005, 2007, and 2008.
12. **COUNTY ADMINISTRATOR – Integrated Waste Management** – Request Board A) appoint Supervisor Linda Arcularius as the Delegate and Mr. Jeff Ahlstrom as the Alternate Delegate/Technical Liaison to the regional Council of Rural Counties-Environmental Services Joint Powers Authority (RCRC-ESJPA); and authorize the County Administrator to sign the letter notifying the RCRC-ESJPA of the appointment.
13. **COUNTY ADMINISTRATOR – Parks and Recreation** – Request Board find that consistent with the adopted Authorized Position Review Policy: A) the availability of funding for the requested positions comes from the General Fund as certified by the Deputy County Administrator, and concurred with by the County Administrator and the Auditor-Controller; B) where internal candidates meet the qualifications for the position of Park and Campground Maintenance Helper, the position could possibly be filled through an internal recruitment, however an open recruitment would be more appropriate to ensure a sufficient number of qualified applicants apply; and C) approve the hiring of two seasonal Park and Campground Maintenance Helpers at Range PT42 (\$12.10/hr.), with one position for the period of April 1 through September 30, and the other May 16 through November 15, contingent upon the Board's adoption of future budgets.
14. **HEALTH AND HUMAN SERVICES – Social Services** – Request Board
 - A) change the authorized strength by deleting one full-time Registered Nurse position at Range 78 (\$4,997 - \$6,097) and adding one full-time Social Worker I-IV career ladder position at Range 61 (\$3,345 - \$4,062) to Range 69 (\$4,041 - \$4,904); and
 - B) find that consistent with the adopted Authorized Position Review Policy: (a) the availability of funding for the requested position exists as certified by the Health and Human Services Director, and concurred with by the County Administrator and the Auditor-Controller; (b) where internal candidates meet the qualifications for position of Social Worker, the position could possibly be filled through an internal recruitment, however open recruitments would be more appropriate to ensure a sufficient number of qualified applicants apply; and (c) approve the hiring of one full time Social Worker I at Range 61 (\$3,345 - \$4,062), or II at Range 64 (\$3,590 - \$4,363), depending upon qualifications.
15. **PUBLIC WORKS** – Request Board A) approve a resolution approving the Bishop Senior Center Recreation Committee to remodel the kitchen at the Bishop Senior Center and B) accept the donation of the kitchen equipment.
16. **PUBLIC WORKS** – Request Board A) approve a resolution approving the Electrical Services Upgrade to the Independence Legion Hall; B) accept the donation of the kitchen upgrade; and C) waive Building Permit Fees for Independence electrical services upgrade and electrical connection for electricity to the Locomotive Restoration at Dehy Park.

17. **PUBLIC WORKS** – Request Board appoint Members of the Board of Supervisors to a committee to review proposals to operate or lease Inyo County Water Systems.
18. **PUBLIC WORKS** – Request Board direct and authorize Staff to submit a Whitney Portal Road Rehabilitation Project application for TIGER IV funds.
19. **PUBLIC WORKS** - Request Board award the bid to and approve the Contract with Madera Disposal Systems (dba Bishop Waste Disposal, Inc.) for trash disposal and recycling services at County buildings and facilities, for the period of March 1, 2012 through February 28, 2015, in an amount not to exceed \$35,858.52 annually for a total Contract amount not to exceed \$107,575.56, contingent upon the Board's adoption of future budgets; and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.
20. **PLANNING** – Request Board review draft correspondence regarding the Forest Service Planning Rule, provide input and authorize the Chairperson to sign.

TIMED ITEMS (Items will not be considered before scheduled time)

WORKSHOPS AND PRESENTATIONS (To be considered at the Board's convenience)

CORRESPONDENCE - ACTION

BOARD MEMBERS AND STAFF REPORTS

COMMENT (Portion of the Agenda when the Board takes comment from the public and County staff)

21. **PUBLIC COMMENT**

CLOSED SESSION

22. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Deputy Sheriffs Association (DSA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.
23. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]** – Instructions to Negotiators re: wages, salaries and benefits – Employee Organization: Inyo County Probation Peace Officers Association (ICPPOA) – Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.
24. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Law Enforcement Administrators Association (LEAA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.

REPORT ON CLOSED SESSION AS REQUIRED BY LAW

CORRESPONDENCE - INFORMATIONAL



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
 3

- Consent
 Departmental
 Correspondence Action
 Public Hearing
 Scheduled Time for
 Closed Session
 Informational

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF February 28, 2012

SUBJECT: Continuation of declaration of local emergency

DEPARTMENTAL RECOMMENDATION: - Request Board continue the local emergency as a result of the Inyo Complex Oak Creek Mud Flows.

SUMMARY DISCUSSION: - During your August 5, 2008 Board of Supervisors meeting your Board took action to continue the local emergency, which was a result of the Inyo Complex Oak Creek Mud Flows. Since the circumstances and conditions relating to this emergency persist, your Board directed that the continuation of the declaration be considered on a week-to-week basis. The recommendation is that the emergency be continued until the permanent diversions are in place. LADWP has notified your Board that the completion of the project is expected for sometime this fall. Therefore, it is recommended that your Board continue the emergency.

ALTERNATIVES: N/A

OTHER AGENCY INVOLVEMENT: N/A

FINANCING: N/A

<u>APPROVALS</u>	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i> Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i> Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i> Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)
 (The Original plus 20 copies of this document are required)

Date: _____



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
4

- Consent
 Departmental
 Correspondence Action
 Public Hearing
 Scheduled Time for
 Closed Session
 Informational

FROM: County Administrator
By: Patricia Gunsolley, Assistant Clerk of the Board

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Pioneer Cemetery District Board of Trustees Appointments

DEPARTMENTAL RECOMMENDATION: - Request Board re-appoint Ms. Cathy Diane Corsaro to the Pioneer Cemetery District Board of Trustees to complete four-year terms ending December 27, 2015. (*Notice of Vacancy resulted in one request for appointment being received from Ms. Corsaro.*)

SUMMARY DISCUSSION: Your Board is the appointing authority for the local cemetery districts. The Pioneer Cemetery District notified this office of a scheduled vacancy. The appropriate notice of vacancy was published per your Board's policy. A requests for appointment was received from Ms. Corsaro who is seeking reappointment. Therefore, it is recommended that your Board make the appointment as recommended.

ALTERNATIVES: - Your Board could choose to not make the appointment. This alternative is not recommended in that delays in making the appointment could hinder the District's ability to operate.

OTHER AGENCY INVOLVEMENT: - N/A

FINANCING: - There is no fiscal impact associated with making this appointment.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (<i>Must be reviewed and approved by county counsel prior to submission to the board clerk.</i>) Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (<i>Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.</i>) Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (<i>Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.</i>) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) _____ Date: _____
(The Original plus 20 copies of this document are required)

January 3, 2012

Inyo County Board of Supervisors
P. O. Box N
Independence, CA 93526

RE: Pioneer Cemetery District

Dear Members of the Board:

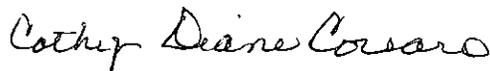
I am applying for the upcoming vacancy on the Board of the Pioneer Cemetery District. I have been a Board member since June 2001.

I feel that the work that we are doing for the cemetery is a very important commitment to current families, long forgotten families and families in the future.

While on the board we have spent a lot of time working on the rules and regulations. Also on employee expectations of what their job entails besides just yard work. Our employees are exceptionally well prepared to deal with a grieving family and all that may entail.

The cemeteries look beautiful, they are well run and we are constantly striving to do an even better job.

Sincerely,



Cathy Diane Corsaro
605 W. Elm St.
Bishop, CA 93514

RECEIVED
2012 JAN -5 PM 4:24
INYO COUNTY
ADMINISTRATIVE
SERVICES



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk=s Use Only:
AGENDA NUMBER

5

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Kammi Foote, Clerk-Recorder and Registrar of Voters

FOR THE BOARD MEETING OF: March 13, 2012

SUBJECT: Approval of annual payment to DFM Associates for Software License Maintenance and Support Fee

DEPARTMENTAL RECOMMENDATION:

Request Board approve payment to DFM Associates in an amount of \$12,840 for the annual DFM Associates Software License Maintenance and Support Fee, contingent upon the Board's adoption of future budgets

SUMMARY DISCUSSION:

On April 24, 2007 the Inyo County Board of Supervisors declared DFM Associates as the sole source provider for voter registration software and approved a contract between the County of Inyo and DFM Associates for use of their EMS voter registration system. Per the Board approved contract, the initial term of the lease was "Sixty (60) months from the installation of the EIMS and continuing thereafter until the next following June 30th". The entire amount to fulfill the financial obligations under the initial lease terms of the contract was encumbered in the 2007-2008 fiscal year. Payments have been made to DFM Associates monthly since July 1, 2007. The initial lease term of the contract is due to expire June 30, 2012.

According to the Article 9 of the contract, "After the expiration of the initial term, this Agreement will automatically continue with respect to such Specified DFM Software or such Specified Consulting Services on a year to year basis, unless either party gives the other written notice..." I am requesting that your Board authorize this payment to comply with the Inyo County Purchasing Policy. If approved, it will allow me to continue the lease with DFM Associates for the term of July 1, 2012 – June 30, 2013. The payment will be made in the 2012-2013 fiscal year and will be reflected in the Department Requested preliminary budget.

ALTERNATIVES:

The DFM system is used to electronically manage voter registration and election administration in Inyo County. The Board can deny the approval of this payment, which would result in the discontinuation of the DFM Associates Voter Registration and Elections Management System and the inability to electronically manage the voter registration database or provide election related services as required by State and Federal law.

FINANCING:

Approval of this payment will not result in a net increase to county cost in the 2011-2012 fiscal year. The payment will be made from the Elections Budget - General Operating Expenses (011000-5311), contingent upon the adoption of the 2012-13 fiscal year budget.

<u>APPROVALS</u>	
COUNTY COUNSEL: 	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)</i> Approved: <u>yes</u> <input checked="" type="checkbox"/> <u>2/17/12</u> Date:
AUDITOR/CONTROLLER: 	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)</i> Approved: <u>2/21/12</u> Date:
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)</i> Approved: _____ Date:

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 2/22/12



DFM Associates
 10 Chrysler, Suite A
 Irvine, CA 92618
 949-859-8700
 949-859-9512 Fax #

Invoice

Date	Invoice #
2/1/2012	35685

Bill To

County of Inyo
 Kammi Foote
 County-Clerk-Recorder
 P.O. Drawer F
 Independence, CA 93526

Ship To

County of Inyo
 Kammi Foote
 County Clerk -Recorder
 P.O. Drawer F
 Indwpendence, CA 93526

P.O. Number		Terms	Ship	S.O. No.	
		Net 30			
Quantity	Item Code	Description	U/M	Price Each	Amount
12	CA - Inyo	EIMS Monthly Lease For the months of July 2012 - June 2013 Annual invoice requested for Fiscal Year July 2012 - June 2013 per request of Kammi Foote in e-mail dated 1/12/2012 Sales Tax Inyo County Combined		1,070.00	12,840.00
				7.75%	0.00
				Total	\$12,840.00



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's use only: AGENDA NUMBER 6
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XConsent Departmental Correspondence Action Public Hearing
Scheduled Time for Closed Session Informational

FROM: HEALTH & HUMAN SERVICES: Children's Social Services Division

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Approval of the Agreement for Inter-County Adoption Services between the County of Inyo and the County of Kern.

DEPARTMENTAL RECOMMENDATION:

Request approval of the Agreement for Inter-Agency Adoption Services for the provision of Child Welfare Services Adoption activities in Inyo County through June 30, 2013, and authorize the Director of Health and Human Services, Jean Turner, to sign the Agreement.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Adoption of a child from the public Child Welfare system can occur when that child's parents have failed to meet all Court requirements for their child to be returned home. As such, provision of Adoption services is a part of the continuum of Child Welfare Services (CWS) across the nation. Historically, Inyo County has had only a very tiny number of children who moved through the CWS system into adoptions. Because of the low numbers of public adoptions in Inyo County, our adoptions-eligible CWS cases have been handled for multiple decades by Kern County's CWS Adoptions staff.

Inyo County's tiny share of the adoptions allocation long has been subvented to Kern County. When the State realigned the State's share of CWS programs in 2011, Adoption Services and the funding allocation for adoptions was included. Of California's smallest, rural counties, all but Inyo previously received their Adoption Services from the State, via the California Department of Social Services. As a result of Realignment 2011, those counties now must develop expertise and programming in CWS Adoption Services. Inyo County HHS chose to contact Kern County to ascertain whether or not Kern County would continue to provide CWS Adoption Services in the context of Realignment 2011. Both counties Agency management and CWS staff agree that our multi-decade relationship in the provision of Adoption Services has been satisfactory for both counties. Therefore, the Department brings this Agreement to you at this time to continue the existing arrangement with Kern County, even though Realignment 2011 has changed but not increased the funding.

ALTERNATIVES

Your Board could choose to have Inyo County Child Welfare Services administer adoption services, resulting in a need for intensive training for social workers, approval by the CA Department of Social Services, and authorization for additional staff.

OTHER AGENCY INVOLVEMENT:

Kern County Human Services, CA Department of Social Services

FINANCING:

No financing involved in this Agreement. The amount of funding for Adoptions Services remains the same; the funds now are included in Realignment 2011 instead of State General Funds.

<u>APPROVALS</u>	
COUNTY COUNSEL: 	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) Approved: <u>yes</u> Date <u>2/14/2012</u>
AUDITOR/CONTROLLER: N/A	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 2-15-12

**AGREEMENT
FOR
INTER-COUNTY ADOPTION SERVICES**

Independent Contractor
(County of Kern – County of Inyo)

THIS AGREEMENT is made and entered into on _____, by and between the COUNTY OF KERN, a political subdivision of the State of California (hereinafter "KERN"), as represented by the Department of Human Services, and the County of Inyo, a political subdivision of the State of California, (hereinafter "INYO"), whose principal place of business is at 163 May Street, Bishop, CA 93514.

WITNESSETH:

WHEREAS:

- a. Government Code Sections 31000 and 53060 permit a county Board of Supervisors to contract for the furnishing of special services with individuals specially trained, experienced and competent to perform those services; and
- b. The Kern County Department of Human Services (hereinafter "DEPARTMENT") is a full-service public adoption agency licensed by the State of California and serves all three (3) members of the adoption triad—the birth parents, adoptive parents, and children; and
- c. Section 408 of the Social Security Act and State regulations in EAS 45-202.614 and 45-203.514 require that a written agreement be in effect between the adoptive agency and the welfare department in order to claim federal and/or State AFDC – FC for costs of care for foster children supervised by an adoption agency; and
- d. DEPARTMENT and INYO wish to provide for cooperation between themselves in the processing of adoptions within Inyo County.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. **TERM**

This Agreement shall be deemed effective as of the date first above written and shall remain in effect until June 30, 2013, unless sooner terminated as hereinafter provided.

2. **ADOPTION SERVICES CRITERIA**

This Agreement shall be applicable to a child who is likely to be freed for adoption placement as a result of the occurrence of one of the following:

- A. The child has been declared free from the care, custody, and control of one or both parents; or
- B. The child, prior to relinquishment by one or both parents, has been accepted for voluntary placement by the welfare department or by a public adoption agency.

3. RESPONSIBILITIES OF INYO

- A. INYO shall place the child in a eligible facility as specified in EAS 45-202.5 or EAS 45-203.4; and
1. If the child is placed in the family home of a relative or the home of a person named in a direct court order, INYO shall document that the home is suited to the child's needs.
 2. If the child is placed in a licensed Foster Family Home or with a certified Foster Family Agency Home, INYO shall document that such placement is necessary to meet the needs of the child, and the current placement is in the best interest of the child.
 3. Fax a completed Adoption Review form to DEPARTMENT for the initial Adoption Assessment a minimum of forty-five (45) days prior to the 366.21 (e) or 366.21 (f) hearing.
 4. Notify DEPARTMENT within five (5) days after the 366.21 (e) or 366.21 (f) hearing that a 366.26 hearing has been calendared. At which time, DEPARTMENT shall assign an adoption social worker as secondary on the case record in CWS/CMS.
 5. Continue to make monthly contacts with the child and substitute care provider and document contacts in the CWS/CMS system.
 6. Provide DEPARTMENT Adoption Social Worker with hard copies of all birth, medical, dental, and educations records for the purpose of writing the child assessment.
 7. Communicate any changes in the child or prospective adoptive parent's status to DEPARTMENT within five (5) days.
- B. INYO shall determine eligibility for AFDC—FC and pay aid as appropriate under application federal and State statutes and regulations.
- C. INYO shall complete the re-determination for ongoing eligibility for the Adoption Assistance Program as appropriate under the application of federal and State statutes and regulations.

4. REPSONSIBILITIES OF KERN/DEPARTMENT

- A. DEPARTMENT shall provide the following services in accordance with 45 CFR 233.110(a)(2) and EAS 45-201.4:
1. Develop a written assessment of the child, determine if freeing the child for adoption is in the child's best interest, and identify the current caretaker(s) of the child as the prospective adoptive parent(s).
 2. Travel to Inyo County to interview and assess the child and current family for the purpose of making a recommendation to the court as to the most

appropriate permanent plan for the child and identifying the current caretaker(s) as the prospective adoptive parent(s).

B. DEPARTMENT shall provide INYO with the following:

1. Completed Child Assessment and an assessment of the prospective adoptive parent(s) with recommendations of adoption, legal guardianship, or long term foster care.
2. Adoption folder containing all educational, medical, dental, and mental health history, and any other necessary documentation for the purposes of completing the adoption.
3. Completion of the Adoption Placement Agreement.
4. Completion of the Adoption Assistance Agreement.
5. Determination of Adoption Assistance Payment level.

5. COMPENSATION

The services conducted pursuant to the terms and conditions of this Agreement shall be performed without the payment of any monetary consideration by either party, one to the other.

6. REPRESENTATIONS

Both DEPARTMENT and INYO understand that federal and State participation in AFDC—FC payments are dependent upon mutual completion of all responsibilities as set forth above in Section 3. RESPONSIBILITIES OF INYO and 4. REPONSIBILITIES OF KERN/DEPARTMENT.

Both parties make the following representations which are agreed to be material to and form a part of the inducement for this Agreement:

- A. Both parties have the expertise, support staff and facilities necessary to provide the services described in this Agreement; and
- B. Neither party has any actual or potential interests adverse to the other, nor does either party represent a person or firm with an interest adverse to the other with reference to the subject of this Agreement; and
- C. Both parties shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions stated in this Agreement.

7. ASSIGNMENT

Neither party shall assign or transfer this Agreement or its obligations hereunder, or any part thereof.

8. NEGATION OF PARTNERSHIP

In the performance of the services under this Agreement, KERN shall be, and acknowledges that INYO is in fact and law, an independent contractor and not an agent or employee of KERN. Both parties have and retain the right to exercise full supervision and control over the manner and methods of providing services under this Agreement. Each party retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting each respective party in the provision of services under this Agreement. Each party shall be solely responsible to their respective employees for the payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, State or local, and compliance with any and all other laws regulating employment.

9. IMMIGRATION REFORM AND CONTROL ACT

Each party acknowledges that they, and all subcontractors hired by them to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Each party shall remain in compliance with IRCA and shall ensure that any subcontractors hired by the party to perform services under this Agreement are in compliance with IRCA. In addition, a party who violates this provision ("violating party") agrees to indemnify, defend and hold harmless the other party, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that the violating party's employees, or the employees of any subcontractor hired by the violating party, are not authorized to work in the United States for the violating party or its subcontractor and/or any other claims based upon alleged IRCA violations committed by the violating party or the violating party's subcontractors.

10. INDEMNIFICATION

Pursuant to Government Code Section 895.4, the parties to this Agreement shall indemnify, defend and hold harmless the other parties hereto and their officers, agents and employees from any and all claims, demands, losses, damages and liabilities of any kind or nature, including attorney's fees, which arise by virtue of its own acts or omissions (either directly or through or by its officers, agents or employees) in connection with its duties and obligations under this Agreement and any amendments hereto.

Each party understands and acknowledges that its assurance is given in consideration of and for the purpose of receiving compensation for service as provided in this Agreement, which compensation is funded through federal and State assistance. In the event a party is subject to any fiscal sanction or other legal remedies as a result of the party's failure to comply with the requirements of this section, that party shall indemnify and hold harmless the other party from any such fiscal sanction or other legal remedy imposed against the other party as provided in the indemnification provisions of this Agreement. The party shall participate in and pay the other party's costs incurred in the other party's defense in any judicial or administrative hearing or process to determine where a violation of this section has occurred.

11. INSURANCE

Both KERN and INYO are self-insured and carry excess insurance to cover the risk of bodily injury and property damage losses caused by the acts and/or omissions of each parties'

respective employees, officers and/or agents in carrying out the activities required under this Agreement.

12. EVALUATION

Services to be provided by a party shall be evaluated by the other party on a continuing basis. Evaluation may be accomplished by written or verbal communication and/or by site visits to view fiscal and/or program processes and information. Any deficiencies noted during an evaluation shall be stated and placed in detailed written form, with a copy submitted to the party. The party shall respond in writing to the deficiencies statement within twenty (20) days from the date of receipt. A plan to remedy these deficiencies, where applicable, shall be implemented within sixty (60) days from the date of the deficiencies statement. Failure to remedy the stated deficiencies may result in termination of the Agreement by the other party.

13. CONTRACT DISPUTE

Should a dispute arise relating to performance under this Agreement, a party shall, prior to exercising any other remedy which may be available, provide the other party with written notice of the particulars of the dispute within thirty (30) calendar days of the dispute. The parties shall meet and review the factors in the dispute, and recommend a means of resolving the dispute.

14. TERMINATION

Either party may terminate this Agreement, with or without cause, upon thirty (30) days prior written notice to the other party. In the event of termination of this Agreement for any reason, neither party shall have any further obligation to perform services pursuant to this Agreement after the effective date of the termination.

15. NON-APPROPRIATION

Either party reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any fiscal year.

16. NOTICES

Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

Notice to KERN shall be addressed as follows:

Director
Kern County Department of Human Services
P.O. Box 511
Bakersfield, CA 93302

Notice to INYO shall be addressed as follows:

Director
Inyo County Health and Human Services
163 May Street
Bishop, CA 93514

Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by personal service.

17. OWNERSHIP OF DOCUMENTS

All reports, documents, and other items generated or gathered in the course of providing services by KERN under this Agreement are and shall remain the property of KERN. All reports, documents, and other items generated or gathered in the course of providing services by INYO under this Agreement are and shall remain the property of INYO.

18. CONFLICT OF INTEREST

The parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. Both parties agree that they are unaware of any financial or economic interest of any public officer or employee relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, either party may immediately terminate this Agreement by giving written notice thereof. Both parties shall comply with the requirements of Government Code Section 87100 et seq. during the term of this Agreement.

19. SOLE AGREEMENT

This document, including all attachments hereto, contains the entire agreement between the parties relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

20. AUTHORITY TO BIND COUNTY

It is understood that neither party in the performance of their respective duties under this Agreement, has any authority to bind the other party to any agreements or undertakings.

21. MODIFICATION OF AGREEMENT

This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

22. NON-WAIVER

No covenant or condition of this Agreement can be waived except by the written consent of both parties. Forbearance or indulgence by a party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by that party. The other party

shall be entitled to invoke any remedy available to the other party under this Agreement or by law or in equity despite said forbearance or indulgence.

23. CHOICE OF LAW

The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.

24. CONFIDENTIALITY

No party to this Agreement shall, without written consent of the other party, communicate confidential information, designated in writing or identified in this Agreement as such to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive.

The parties hereto agree to abide by the Health Insurance Portability and Accountability Act (HIPAA) as applicable and follow confidentiality requirements of 42 CFR Part 2 and other applicable requirements, and to consult and cooperate with one another to assure appropriate and consistent handling of confidential data.

25. ENFORCEMENT OF REMEDIES

No right or remedy herein conferred on or reserved to each party is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

26. SEVERABILITY

Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

27. COMPLIANCE WITH LAW

Both parties shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

28. CAPTIONS AND INTERPRETATION

Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement.

No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

29. TIME OF ESSENCE

Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

30. COUNTERPARTS

This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

31. FORCE MAJEURE

Each party shall exercise every reasonable effort to meet its obligations hereunder and shall not be liable for delays resulting from force majeure or other causes beyond its reasonable control including, but not limited to, compliance with any government law or regulation, acts of God, fires, strikes, lockouts, natural disasters, wars, riots and/or any other cause whatsoever beyond the reasonable control of each party. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

32. NONDISCRIMINATION

Neither party, nor any officer, agent, employee, servant or subcontractor of either party, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of age, sex, color, disability, national origin, race, marital status, sexual orientation, religion, political affiliation, or any other classification protected by law, either directly, indirectly or through contractual or other arrangements as described in CDSS Manual of Policies and Procedures, Chapter 21. Both parties will further adhere to all mandated requirements as described in the CDSS Manual of Policies and Procedures, Chapter 21 which can be found at <http://www.dss.cahwnet.gov/getinfo/pdf/3cfcman.pdf>.

33. AUDIT, INSPECTION, AND RETENTION OF RECORDS

Each party agrees to maintain and make available to the other accurate books and records relative to all its activities under this Agreement. Each party shall permit the other to audit, examine, and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records of personnel or other data related to all other matters covered by this Agreement. Each party shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of final payment under this Agreement, or until after the conclusion of any fiscal audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred herein.

34. NON-COLLUSION COVENANT

Each party represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement. Neither party has received any incentive or special payments or considerations related to the provision of services under this Agreement.

35. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement shall be strictly reserved to KERN and INYO. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of KERN and INYO that any such person or entity, other than KERN or INYO, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

36. SIGNATURE AUTHORITY

Each party represents that they have full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

[Remainder of this page is intentionally left blank.]

IN WITNESS TO WHICH, each party to this Agreement has signed this Agreement upon the date indicated, and agrees, for itself, its employees, officers, partners and successors, to be fully bound by all terms and conditions of this Agreement.

COUNTY OF KERN

Dated: _____

By _____
Chairman, Board of Supervisors
"COUNTY"

COUNTY OF INYO

Dated: _____

By _____
Jean Turner, Director
"INYO"

APPROVED AS TO CONTENT:
Kern County Department of Human Services

Dated: _____

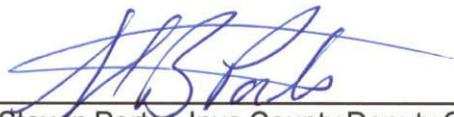
By _____
Pat Cheadle, Director

APPROVED AS TO FORM:
Office of the County Counsel

Dated: _____

By _____
Martin Lee, Kern County Deputy County Counsel

Dated: 2/14/2012

By 
Steven Porter, Inyo County Deputy County Counsel



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

7

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: HEALTH & HUMAN SERVICES – Behavioral Health, Substance Use Disorders Program

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Approval of the FY 2011-2012 V.1 Amended Negotiated Net Amount (NNA) Contract for Alcohol and Drug Services.

DEPARTMENTAL RECOMMENDATION:

Request that your Board approve the FY 2011/2012 V.1 Amended Negotiated Net Amount (NNA) Contract with the California Department of Alcohol and Drug (ADP) Programs with a FY 2011-12 contract amount decreased by \$104,404 for a new total of \$397,297, and a FY 2012-13 contract amount decreased by \$104,426, for a new total of \$397,297 for a new multi-year contract total of \$1,296,273 and authorize the chairperson to sign the amendment forms.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This is the standard V.1 Amendment to our State contract for Inyo County's Substance Use Disorders Program. The State keeps the basic multi-year contract in place and provides amendments to the contract reflecting any changes in the allocation. The total amount of the contract for FY 11/12 is \$397,297. Additionally, there are changes in the contract reflecting the elimination of state funding due to the funds now being a part of 2011 Realignment, and the requirement to adopt the federal Office of Minority Health, Culturally and Linguistically Appropriate Service national standards and the requirement to track HIV early intervention services at levels specified in the contract.

ALTERNATIVES:

Your Board could elect not to approve this amendment, resulting in future delay or loss of funding for the Alcohol and Drug programs.

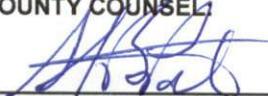
OTHER AGENCY INVOLVEMENT:

California Department of Alcohol and Drug Programs

FINANCING:

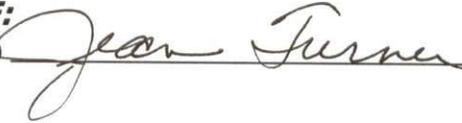
100% Federal and 2011 Realignment Funds. These funds are brought in as revenue to the SUD Budget (045315). No County General Funds.

APPROVALS

COUNTY COUNSEL 	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.) Approved: <u>yes 2/14/2012</u> Date:
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)  Approved: <u>yes 2/15/12</u> Date:
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.) Approved: _____ Date:

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 2-15-12

STANDARD AGREEMENT (Page 1)

STD. 213 (Rev. 6/03)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 102 Pages

AGREEMENT NUMBER

10-NNA14

REGISTRATION NUMBER

V.1 for FY 2011-12

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

STATE AGENCY'S NAME

Department of Alcohol and Drug Programs (ADP)

CONTRACTOR'S NAME

County of Inyo

2. The term of this Agreement July 1, 2010 Through June 30, 2013

3. The maximum amount of this Agreement is:	FY 2010-11	\$ 501,679
	FY 2011-12	\$ 397,297
	FY 2012-13	\$ 397,297
	Total	\$1,296,273

4. a. Per Health and Safety Code Section 11758.46(e)(2), this contract must be approved by the County's Board of Supervisors and ADP.

b. The FY 2011-12 contract amount decreased by \$104,404 for a new total of \$397,297 and the FY 2012-13 contract amount decreased by \$104,426 for a new total of \$397,297 for a new multi-year contract total of \$1,296,273.

- c. Refer to the attached contract documents:

- Standard Agreement Attachment for specific contract changes for Fiscal Year 2011-12 (18 pages)
- Exhibit A1 for Fiscal Year 2011-12 (1 page)
- Exhibit A1 for Fiscal Year 2012-13 (1 page)
- County Contract Boilerplate – Table of Contents (3 pages)
- Exhibit B – General Terms and Conditions (29 pages)
- Exhibit C – Negotiated Net Amount (24 pages)
- Exhibit D – Drug Medi-Cal Alcohol and Other Drug Treatment Services (26 pages)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

County of Inyo

BY (Authorized Signature)

[Signature]

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

STATE OF CALIFORNIA

AGENCY NAME

Department of Alcohol and Drug Programs

BY (Authorized Signature)

[Signature]

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Brian Marshall-Winks, Manager, Fiscal and Administrative Services Branch

ADDRESS

1700 K Street, Sacramento, CA 95811-4037

CALIFORNIA
Department of General Services
Use Only

Exempt per: DGS memo dated 7/10/96 and Welfare and Institutions Code 14087.4

**FISCAL CONTRACT DETAIL
DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS
Fiscal Year 2011-12 Negotiated Net Amount/Drug Medi-Cal Budget V.1**

<u>State General Funds</u>	<u>Amounts</u>	<u>Totals/ PCA/Object Code</u>
<u>Regular State General Funds (July 1, 2011 - August 30, 2011)</u>		
State General Funds - DMC	\$ -	51112/702.10
Total Regular State General Funds		\$ -
<u>Perinatal State General Funds (July 1, 2011 - August 30, 2011)</u>		
State General Funds - DMC	\$ -	51111/702.20
Total Perinatal State General Funds		\$ -
<u>State General Funds (July 1, 2011 - June 30, 2012)</u>		
Parolee Services Network Funds	\$ -	51159/702.18
Total State General Funds		\$ -
TOTAL STATE GENERAL FUNDS		\$ -
<u>Federal Funds</u>		
<u>SAPT Block Grant - 93.959 (FFY 2012 Award) (October 1, 2011 to June 30, 2013 - 21 Months)</u>		
SAPT Female Offender Treatment Services - FFY 2012 Award	\$ -	51163/702.40
SAPT Discretionary - FFY 2012 Award	\$ 317,603	51163/702.30
SAPT Adolescent/Youth Treatment Program - FFY 2012 Award	\$ -	51163/702.49
SAPT Friday Night Live/Club Live - FFY 2012 Award	\$ -	51162/702.32
SAPT Primary Prevention Set-Aside - FFY 2012 Award	\$ 75,194	51162/702.31
SAPT HIV Set-Aside - FFY 2012 Award	\$ 4,500	51163/702.35
SAPT Perinatal Set-Aside - FFY 2012 Award	\$ -	51166/702.36
SAPT Special Projects - FFY 2012 Award	\$ -	Various/702.45
Total SAPT Block Grant - FFY 2012 Award		\$ 397,297
<u>Federal Drug Medi-Cal Funds (Reimbursement) (July 1, 2011 to June 30, 2012) (12 Months)</u>		
Drug Medi-Cal (Federal Share Only)	\$ -	7000/51194/702.10
Perinatal Drug Medi-Cal (Federal Share Only)	\$ -	7000/51195/702.20
Total Federal Drug Medi-Cal Funds		\$ -
TOTAL FEDERAL FUNDS		\$ 397,297
GRAND TOTAL - ALL FUNDS		\$ 397,297

**FISCAL CONTRACT DETAIL
DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS
Fiscal Year 2012-13 Negotiated Net Amount Budget V.1**

<u>State General Funds</u>	<u>Amounts</u>	<u>Totals/ PCA/Object Code</u>
<u>State General Funds (July 1, 2012 - June 30, 2013)</u>		
Parolee Services Network Funds	\$ -	51259/702.18
TOTAL STATE GENERAL FUNDS		\$ -
<u>Federal Funds</u>		
<u>SAPT Block Grant - 93,959 (FFY 2013 Award) (October 1, 2012 to June 30, 2014 - 21 Months)</u>		
SAPT Female Offender Treatment Services - FFY 2013 Award	\$ -	51263/702.40
SAPT Discretionary - FFY 2013 Award	\$ 317,603	51263/702.30
SAPT Adolescent/Youth Treatment Program - FFY 2013 Award	\$ -	51263/702.49
SAPT Friday Night Live/Club Live - FFY 2013 Award	\$ -	51262/702.32
SAPT Primary Prevention Set-Aside - FFY 2013 Award	\$ 75,194	51262/702.31
SAPT HIV Set-Aside - FFY 2013 Award	\$ 4,500	51263/702.35
SAPT Perinatal Set-Aside - FFY 2013 Award	\$ -	51266/702.36
SAPT Special Projects - FFY 2013 Award	\$ -	Various/702.45
Total SAPT Block Grant - FFY 2013 Award		\$ 397,297
TOTAL FEDERAL FUNDS		\$ 397,297
GRAND TOTAL - ALL FUNDS		\$ 397,297

Negotiated Net Amount and Drug Medi-Cal

County Contract Boilerplate

Fiscal Year 2010-11 through FY 2012-13

For Fiscal Year 2011-12

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- O – Union Organizing
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- Control Requirements
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Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Exhibit A1 – Fiscal Contract Detail

Fiscal Year 2011-12 – See Page 17 of this Standard Agreement Attachment for changes

Fiscal Year 2012-13 – See Page 18 of this Standard Agreement Attachment for changes

Exhibit B – General Terms and Conditions

Section B – Contract Term

The term of this Contract shall be from July 1, 2010, through June 30, 2013. Except as provided in Exhibit C, Article III, Sections G and H and I, the expenditure period for the funds available hereunder shall be as stated on Exhibit A1. State is under no obligation to extend or renew this Contract.

Sections E.1. and E.2. - Use of State Funds

4. ~~Contractor may not use SGF DMC funds allocated pursuant to Exhibit D to pay for any non DMC services. Contractor may not transfer DMC funds allocated pursuant to Exhibit D to SGF discretionary funds allocated pursuant to Exhibit C.~~
- 1.2. State General Fund (SGF) provided by the California Department of Corrections and Rehabilitation (CDCR) through an interagency agreement shall be subject to specific expenditure requirements as stated in the "Services to California Department of Corrections and Rehabilitation Parolee Services Network," as identified in Document 1D(a) of Exhibit C, which is incorporated by this reference.

Section F.5. – Contract Amendments

Contractor acknowledges that any newly allocated funds that are in excess of the initial amount for each fiscal year may be forfeited if the State does not receive a fully executable contract amendment on or before June 30, 2012.

Section H.3. – Audit

All expenditures of county realignment funds, state and federal funds furnished to the Contractor and its Subcontractors pursuant to this Contract are subject to audit by the State. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 (Revised June 27, 2003). Objectives of such audits may include, but not be limited to, the following:

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Section FF - Health Insurance Portability and Accountability Act (HIPAA) of 1996

All DMC claims shall be submitted in electronic HIPAA compliant format (837P) and shall be submitted through the Department of Mental Health's Information Technology Web Service (ITWS) system for adjudication in the Short-Doyle Medi-Cal System. Refer to Document 2Y (Companion Guide for HIPAA 837P Transactions) for HIPAA compliant format of the 837P. All DMC adjudicated claim information must be retrieved by the Contractor via an 835 format (Health Care Claim Payment/Advice) from ITWS. Refer to Document 3P (Companion Guide for HIPAA 835 Transaction) for HIPAA compliant format for 835. All DMC claim status inquiries must be processed through the 276 (Request for Claim Status). Refer to Document 3Q (Companion Guide for 276 HIPAA Transactions) for HIPAA compliant format for 276. Results of the 276 inquiry will be generated via a 277 format from ITWS. Refer to Document 3R (Companion Guide for HIPAA 277 Transaction) for HIPAA compliant format.

~~The Department will return all non-HIPAA-compliant DMC claims to the submitter. Returned claims will not be processed until submitted in the HIPAA compliant format; therefore, reimbursement will not be issued.~~

~~The Short-Doyle Medi-Cal system has been replaced by a HIPAA-compliant system. All new requirements for submitting DMC claims and obtaining adjudicated DMC claim information must be met through the replaced Short-Doyle Medi-Cal system. Documentation will be issued for all new requirements.~~

Section PP – Cultural and Linguistic Proficiency (formerly called Limited English Proficiency)

Limited-English Proficiency Cultural and Linguistic Proficiency

To ensure equal access to quality care by diverse populations, each service provider receiving funds from this contract shall adopt the federal Office of Minority Health (OMH) Culturally and Linguistically Appropriate Service (CLAS) national standards. The OMH CLAS standards (referenced as Document 3U) are located at:
<http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=15>

~~To ensure equal access to quality care by diverse populations, every treatment provider receiving funds from this contract shall:~~

- ~~1. Promote and support the attitudes, behaviors, knowledge, and skills necessary for staff to work respectfully and effectively with clients and each other in a culturally diverse work environment.~~

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

- ~~2. Have a comprehensive management strategy to address culturally and linguistically appropriate services, including strategic goals, plans, policies, procedures, and designated staff responsible for implementation.~~
- ~~3. Develop and implement a strategy to recruit, retain and promote qualified, diverse and culturally competent administrative, clinical, and support staff that are trained and qualified to address the needs of the racial and ethnic communities being served.~~
- ~~4. Require and arrange for ongoing education and training for administrative, clinical, and support staff in culturally and linguistically competent service delivery.~~
- ~~5. Provide all clients with limited English proficiency access to bilingual staff or interpretation services.~~
- ~~6. Provide oral and written notices, including translated signage at key points of contact, to clients in their primary language informing them of their right to receive no-cost interpreter services.~~
- ~~7. Translate and make available signage and commonly used written client educational material and other materials for members of the predominant language groups in the service area.~~
- ~~8. Ensure that interpreters and bilingual staff can demonstrate bilingual proficiency and receive training that includes the skills and ethics of interpreting, and knowledge in both languages of the terms and concepts relevant to clinical or non-clinical encounters. Family or friends are not considered adequate substitutes because they usually lack these abilities.~~
- ~~9. Ensure that the clients' primary spoken language and self-identified race/ethnicity are included in the provider's management information system as well as any client records used by provider staff.~~
- ~~10. Implement the Limited English Proficiency (LEP) Policy Guidance for recipients of funds from the federal Health and Human Services Agency at <http://www.usdoj.gov/crt/cor/lep/hhsrevisedlepguidance.html>. Additional information and resources for serving persons with LEP can be accessed at <http://www.lep.gov/>.~~

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Exhibit C – Negotiated Net Amount Changes

Article I – Section B.8. – Control Requirements (old)

~~In accordance with the Fiscal Year 2009-10 State Budget Act, contractors that receive Women and Children's Residential Treatment Perinatal State General funds shall comply with the program requirements (Section 2.5, Required Supplemental/Recovery Support Services) of the Substance Abuse and Mental Health Services Administration's Grant Program for Residential Treatment for Pregnant and Postpartum Women, RFA found at http://www.samhsa.gov/Grants/2008/ti_08_009.doc.~~

Article I – Section B.8. - Control Requirements (new)

In accordance with the Fiscal Year 2011-12 State Budget Act and accompanying law (Chapter 40, Statutes of 2011 and Chapter 13, Statutes of 2011, First Extraordinary Session), contractors that provide Women and Children's Residential Treatment Services shall comply with the program requirements (Section 2.5, Required Supplemental/Recovery Support Services) of the Substance Abuse and Mental Health Services Administration's Grant Program for Residential Treatment for Pregnant and Postpartum Women, RFA found at http://www.samhsa.gov/Grants/2008/ti_08_009.doc.

Article II – Section A – Definitions

The words and terms of this Contract are intended to have their usual meanings unless a particular or more limited meaning is associated with their usage pursuant to Division 10.5 of HSC, Section 11750 et seq., and Title 9, CCR, Section 9000 et seq. ~~The following definitions shall apply to Exhibit C:~~

Article II – Section A.2. – Definitions

"Contractor" means (a) the county identified in the Standard Agreement or (b) the department authorized by the County Board of Supervisors to administer alcohol and drug programs.

Article II – Section A.3. – Definitions

"County Realignment Funds" means funds received by the county based on FY 2011-12 State Budget and accompanying law (Chapter 40, Statutes of 2011 [Assembly Bill (AB) 118] and Chapter 13, Statutes of 2011, First Extraordinary Session [ABX1 16]).

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Article II – Section A.10. – Definitions (formerly A.9.)

“Negotiated Net Amount” means the contracted amount of SAPT Block Grant funds and Parolee Services Network funds for services agreed to by the State and the Contractor, less federal funds budgeted for DMC. The net amount reflects only those funds allocated to the Contractor by the State. ~~and the required county match for State General Funds (SGF).~~ The NNA does not include other revenue budgeted by the Contractor such as client fees or revenue. ~~in excess of the required match for SGF.~~ The cost per unit for the dedicated capacity to be provided for each service modality identified in the Contract will be based on the net amount of the contract.

Article II – Section A.12. – Definitions (formerly A.11.)

“Preliminary Settlement” means the settlement of only SAPT ~~and SGF discretionary~~ funding.

Article III – Section B.2. – Payment Provisions

In the event a contract amendment is required pursuant to the preceding paragraph, Contractor shall submit to the State information as identified in Exhibit B, Section ~~F(3)(a)~~ ~~F(4)(a)~~. To the extent the Contractor is notified of the State Budget Act allocation prior to the execution of the Contract, the State and the Contractor may agree to amend the contract after the issuance of the first revised allocation.

Article III – Section B.3. – Payment Provisions

State shall reimburse the Contractor monthly in arrears an amount equal to one-twelfth of the amount encumbered ~~pursuant to for the NNA portion of the approved contract (Exhibit C of the contract)~~ or the most recent allocation based on the Budget Act Allocation, whichever is less, with the exception of Parolee Services Network (PSN) funding. Payments for PSN services shall be made pursuant to will be managed through an invoice process as described in Document 1Da.

Article III – Section B.4. – Payment Provisions

Final allocations will reflect any increases or reductions in the appropriations as reflected in the State Budget Act allocation and any subsequent allocation revisions. To the extent that any amendment encumbers an amount that is less than the State Budget Act allocation, the monthly disbursements will reflect the lesser amount.

Article III – Section C – Accrual of Interest

Any interest accrued from State-allocated funds SGF and retained by the Contractor must be used for the same purpose as the State-allocated funds SGF from which the interest was accrued.

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Article III – Section G – County Match Requirements

~~Section G. County Match Requirements~~

~~Contractor shall comply with the following requirements pursuant to HSC, Sections 11840 and 11840.1.~~

~~1. Counties with populations over 100,000:~~

~~(a) Non-DMC-SGF allocations shall be funded on the basis of 90 percent SGF and 10 percent county funds, except local hospital inpatient costs to the extent there are allocations made for local hospital inpatient costs, which shall be funded on a basis of 85 percent SGF and 15 percent county funds; and;~~

~~(b) State Hospital programs shall be funded on the basis of 85 percent SGF and 15 percent County funds.~~

~~2. Perinatal Services Network counties with populations over 100,000:~~

~~Perinatal Services Network programs shall be funded on the basis of 90 percent Perinatal State General Fund (PSGF) and 10 percent county funds. The 10 percent county funds match to PSGF funds must be used for perinatal related activities. The 10 percent county match requirement does not apply to the Women and Children's Residential Treatment Services funds.~~

~~3. Counties with populations under 100,000:~~

~~Non-DMC-SGF, non-DMC-PSGF, and Women and Children's Residential Treatment SGF allocations do not require a county fund match, with the exception of State Hospital programs, which shall be funded on the basis of 90 percent SGF and 10 percent county funds to the extent that allocations of SGF are made available for such programs.~~

Article III – Section G.2.(a)(b) and (c) – Cost Efficiencies (formerly H)

~~2. Pursuant to HSC, Sections 11758.12 (e), unexpended discretionary SGF provided through this Contract shall be treated as follows:~~

~~(a) Contractor shall include any non-DMC-SGF, non-DMC-PSGF, and Women and Children's Residential Treatment SGF funds redirected from the current fiscal year to the next fiscal year plus any accrued interest, (see Article III, Section C) on the identified lines on the subsequent fiscal year cost report.~~

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

- (b) ~~Unspent non-DMC SGF, non-DMC PSGF, and Women and Children's Residential Treatment SGF funds may be retained by the Contractor, less:~~
 - i ~~Amounts reimbursable to the CDCR pursuant to Document 1D(a);~~
 - ii ~~Amounts deemed necessary by the Contractor to fund allowable DMC costs that exceed DMC maximum rates.~~

- (e) ~~Retained non-DMC SGF, non-DMC PSGF, and Women and Children's Residential Treatment SGF funds shall only be spent on identified drug and alcohol service priorities in accordance with this Contract and shall be included on the identified lines on the subsequent fiscal year cost report.~~

Article III – Section G.2. – Cost Efficiencies (New G.2)

Funds payable to the County Amounts reimbursable from the CDCR pursuant to Document 1D(a) that are not spent cannot be retained by the Contractor. and must be returned to the State.

Article III – Section H.1. – Expenditure of SAPT Block Grant Funds (formerly I)

- (a) ~~For SFY 2009-10, the expenditure period of the FFY 2009 award is October 1, 2008, through June 30, 2010.~~

- (a)(b) ~~For SFY 2010-11, The expenditure period of the FFY 2010 award is October 1, 2009, through June 30, 2011.~~

- (b)(e) ~~For SFY 2011-12, The expenditure period of the FFY 2011 award is October 1, 2010 through June 30, 2012.~~

- (c) ~~For SFY 2012-13, The expenditure period of the FFY 2012 award is October 1, 2011 through June 30, 2013.~~

- (d) ~~For SFY 2013-14, The expenditure period of the FFY 2013 award is October 1, 2012 through June 30, 2014.~~

Article III – Section H.4. – Expenditure of SAPT Block Grant Funds (formerly I.4)

Contractors receiving SAPT Block Grant funds shall track obligations and expenditures by individual SAPT Block Grant award, including, but not limited to, obligations and expenditures for primary prevention, services to pregnant women and women with dependent children. "Obligation" shall have the same meaning as used in Title 45, CFR, Part 92, Section 92.3." In addition, Contractor shall comply with the following fiscal reporting instructions:

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

- a. The tracking of the HIV early intervention services shall be at the following level:
- i. Pre- and/or Post HIV test counseling;
 - ii. Testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease; and,
 - iii. Providing the therapeutic measures for preventing and treating conditions arising from HIV.

Article III – Section H.5 – Expenditure of SAPT Block Grant Funds

~~Contractors and Subcontractors receiving Substance Abuse Treatment Trust Fund (SATTFF) funds shall comply with the financial management standards Contained in Title 9, CCR, Sections 9535(e), (d), (e), and (f).~~

Article VI – Section C – Negotiated Net Amount Limitations

Pursuant to HSC Section 11818, Contractor shall reimburse its Subcontractors that receive a combination of Medi-Cal funding and other federal or county realignment state funding for the same service element and location based on the Subcontractor's actual costs in accordance with Medicaid reimbursement requirements as specified in Title XIX of the Social Security Act; Title 22, and the State's Medicaid Plan. Payments at negotiated rates shall be settled to actual cost at year-end.

List of Exhibit C Documents Incorporated by Reference

Fiscal Year: ~~2009-10~~ 2011-12

Document 3O: Quarterly Federal Financial Management Report (QFFMR) ~~2008-09~~ 2011-12

http://www.adp.ca.gov/NNA/support_files.shtml

Document 3V Culturally and Linguistically Appropriate Services (CLAS) National Standards

<http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=15>

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Exhibit D – Drug Medi-Cal Alcohol and Other Drug Treatment Services

Article II - Definitions

The words and terms of this Contract are intended to have their usual meaning unless a specific or more limited meaning is associated with their usage pursuant to the HSC, Title 9, and/or Title 22. Definitions of covered treatment modalities and services are found in Title 22 (Document 2C) and are incorporated by this reference. ~~The following definitions shall apply to Exhibit D of this Contract:~~

Article II – Item E - Definitions

"County" means the county in which the Contractor physically provides covered substance use treatment services.

Article II – Item F – Definitions

"County Realignment Funds" means the funds received by the county based on FY 2011-12 State Budget and accompanying law (Chapter 40, Statutes of 2011 [Assembly Bill (AB 118)] and Chapter 13, Statutes of 2011, First Extraordinary Session [ABX1 16]).

Article II – Item G – Definitions

"Direct Provider Contract" means a contract established between the State and a Drug Medi-Cal certified provider entered into pursuant to this Agreement for the provision of Drug Medi-Cal services.

Article II – Item H – Definitions (formerly E)

"Drug Medi-Cal Program" means the state system wherein beneficiaries receive covered services from DMC-certified AOD treatment providers. ~~who are reimbursed for these services with a combination State General Fund (SGF) and federal Medicaid funds.~~

Article II – Item S – Definitions (formerly O)

"Postservice Postpayment (PSPP) Utilization Review" means the review for program compliance and medical necessity conducted by the State after service was rendered and the claim paid. State may recover prior payments of Federal funds if such review determines that the services did not comply with the applicable statutes, regulations, or standards.

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Article II – Item Y – Definitions (formerly U)

“Statewide Maximum Allowances (SMA)” means the maximum amount authorized to be paid by DMC for each covered unit of service for outpatient drug free, day care rehabilitative, perinatal residential, and Naltrexone treatment services. Rates are subject to change annually. The SMA for FY 2011-12 ~~2009-10~~ is listed in the “Unit of Service” table in this Article II, Section Y.

Article II – Item AA – Definitions (formerly W)

“Subcontractor” means an individual or entity that is DMC certified and has entered into an agreement with the Contractor to be a direct provider of covered services. It may also mean a vendor who has entered into a procurement agreement with the Contractor to provide any of the administrative functions related to fulfilling the Contractor’s obligations under the terms of this Exhibit D.

Article II – Item BB – Definitions (formerly X)

“Uniform Statewide Daily Reimbursement (USDR) Rate” means the rate for NTP services based on a unit of service that is a daily treatment service provided pursuant to Title 22, Sections 51341.1 and 51516.1 and Title 9, commencing with Section 10000 (Document 3G), or the rate for individual or group counseling. The following table shows the Fiscal Year (FY) 2011-12 ~~2009-10~~ USDR rates. ~~This table will be updated upon the approval of the FY 2010 rates.~~

Service	Type of UOS	Non-perinatal UOS (*)	Perinatal UOS (*)
NTP-Methadone Dosing	Daily	\$11.34 <u>\$11.86</u>	\$12.21 <u>\$12.77</u>
		\$1.03(*) <u>\$1.08</u>	\$1.11(*) <u>\$1.16</u>
NTP-Individual Counseling (**)	One 10-minute increment	\$13.30 <u>\$13.91</u>	\$19.04 <u>\$19.92</u>
		\$1.22(*) <u>\$1.28</u>	\$1.74(*) <u>\$1.82</u>
NTP Group Counseling (**)	One 10-minute increment	\$3.14 <u>\$3.28</u>	\$6.36 <u>\$5.98</u>
		\$0.29(*) <u>\$0.30</u>	\$0.58(*) <u>\$0.54</u>

(*) Administrative Costs incorporated within the rate.

(**) The NTP Subcontractors may be reimbursed for up to 200 minutes (20 10-minute increments) of individual and/or group counseling per calendar month per beneficiary.

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Reimbursement for covered NTP services shall be limited to the lower of the NTP's usual and customary charge to the general public for the same or similar services or the USDR rate. However, reimbursement paid by a county to an NTP provider for services provided to any person subject to Penal Code Sections 1210.1 or 3063.1 and for which the individual patient/client is not liable to pay, does not constitute a usual or customary charge to the general public. (HSC Section 11758.42(h)(2)(A)).

Article II – Item CC – Definitions (formerly Y)

"Unit of Service" means a face-to-face contact on a calendar day for outpatient drug free, day care rehabilitative, perinatal residential, and Naltrexone treatment services. Only one face-to-face service contact per day is covered by DMC except in the case of emergencies when an additional face-to-face contact may be covered for intake crisis intervention or collateral service. To count as a unit of service, the second contact shall not duplicate the services provided on the first contact, and each contact shall be clearly documented in the beneficiary's record. Units of service and SMA for FY ~~2011-12~~ ~~2009-10~~ are identified in the following table. ~~This table will be updated upon the approval of the FY 2010 rates.~~

Service	Type of Unit of Service (UOS)	Non-Perinatal (Regular) UOS	Perinatal UOS
Day Care Rehabilitative	Face-to-Face Visit	\$61.05 <u>\$63.86</u> (for EPSDT only or pregnant/postpartum)	\$73.04 <u>\$76.40</u>
Naltrexone Treatment	Face-to-Face Visit	\$19.07	NA
Outpatient Drug Free	Face-to Face Visit – Individual (per person)	\$66.53 <u>\$69.59</u>	\$95.23 <u>\$99.61</u>
	Face-to-Face Visit – Group (per person)	\$28.27 <u>\$29.57</u>	\$57.26 <u>\$53.80</u>
Perinatal Residential	Daily – Residential Day	NA	\$89.90 <u>\$92.45</u>

Article III – Section B.4. – Federal and State Mandates

If Drug Medi-Cal services are provided to Minor Consent beneficiaries, Contractor shall comply with California Family Code Section 6929. in the provision of Drug Medi-Cal Services for minors.

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Article III – Section B.9. – Federal and State Mandates

Contractor shall amend its subcontracts for covered services in order to provide sufficient funds ~~DMC-SGF~~ to match allowable federal Medicaid reimbursements for any increase in provider DMC services to beneficiaries.

Article III – Section B.11. – Federal and State Mandates

In the event that the Contractor fails to provide covered services in accordance with the provisions of this Contract, at the discretion of the State, Contractor may be required to forfeit its county realignment funds from the Drug Medi-Cal subaccount ~~DMC-SGF~~ allocation and surrender its authority to function as the administrator of covered services in its service area.

Article IV – Section A. – Reimbursement

To the extent that the Contractor provides the covered services in a satisfactory manner and in accordance with the terms and conditions of this Contract, the State agrees to pay the Contractor ~~DMC-SGF~~ and federal Medicaid funds according to Article V. Subject to the availability of such funds, Contractor shall receive federal Medicaid funds for allowable expenditures as established by the federal government and approved by DHCS, for the cost of services rendered to beneficiaries.

Article IV – Section A.2. – Reimbursement

It is understood and agreed that failure by the Contractor or its Subcontractors to comply with applicable federal and state requirements in rendering covered services shall be sufficient cause for the State to deny payments to and/or recover payments from the Contractor. If the State, DHCS, or the Department of Health and Human Services (DHHS) disallows or denies payments for any claim, Contractor shall repay to the State the federal Medicaid funds ~~and SGF~~ it received for all claims so disallowed or denied. The overpayment shall be recovered by any of the methods allowed in Title 22, CCR, Sections 51047(a) and (b).

Article IV – Section A.3. – Reimbursement

~~This Contract encumbers a specific amount of DMC-SGF to be used in accordance with the Contractor's allocation as described in the State's final allocation notice. This amount is intended to cover all anticipated need for DMC-SGF covered services. If the need for allowable DMC services is less than anticipated in any particular fiscal year, the State may reduce the contract amount of DMC-SGF through a contract amendment, the cost settlement process, or other available processes. If, during the term of this Contract, Contractor's cost for allowable DMC services is anticipated to exceed the maximum amount allowed for services described in Exhibit D, and the Contractor anticipates utilizing~~

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

~~all available DMC-SGF allocated for the State match, Contractor shall submit a written request with justification to the State for additional DMC funding.~~

Article IV – Section A.4. – Reimbursement

~~Contractor shall use DMC-SGF without DMC-FFP to fund Drug Medi-Cal services to clients eligible for those services but not eligible for federal funding under Title XIX of the Social Security Act (42 U.S.C. Ch. 7, Subch. XIX).~~

Article IV – Section B - Return of Unexpended Funds

Contractor assumes the total cost of providing covered services on the basis of the payments delineated in this Exhibit D. Any federal Medicaid funds and DMC-SGF paid to the Contractor, but not expended for DMC services shall be returned to the State.

Article IV – Section G.2. – Payment for Covered Services

Pursuant to HSC Section 11818(b)(2), Contractor shall reimburse providers that receive a combination of Medi-Cal funding and other federal or state funding for the same service element and location based on the provider's actual costs in accordance with Medi-Cal reimbursement requirements as specified in Title XIX of the Social Security Act; Title 22, and the state's Medicaid Plan. Payments at negotiated rates shall be settled to actual cost at year-end.

Article IV – Section J – Direct Provider Contracts

Pursuant to Exhibit B, Section G.1., and in accordance with Government Code section 30029.3, effective December 1, 2011, the State shall, through the use of county-approved subcontractors, provide specified DMC services on the Contractor's behalf.

The State will invoice the Contractor for approved DMC claims received by the State from the State's subcontractor. Contractor shall reimburse the State for the approved DMC claims within 30 days of receipt of the invoice. If Contractor does not reimburse the State within 30 days of receipt of the invoice, the State may offset the amount owed from any other funding owed to Contractor by the State or any other State agency. The State shall seek federal Medicaid reimbursement for funds paid by the State to its subcontractor and, upon receipt, will provide to Contractor said reimbursement. The parties acknowledge that the State's subcontractor shall be responsible for repayment of any disallowed claims. However, in no event shall the State be liable for Medicaid reimbursement for any disallowed claims

Effective December 1, 2011, any Contractor contracting with the State for the provision of services through NTP providers may receive reimbursement of the NTP administrative rate.

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Article V – Section A.1.(a) and (b) - Payments

State shall reimburse the Contractor:

- ~~(a) — The federal Medicaid amount and the DMC SGF upon approval by DHCS of the DMC claims and reports/documents submitted in accordance with Article 5 of Section B, below:~~
- ~~(b) — The federal Medicaid and DMC SGF:~~
- (a) For the July 2011 and August 2011 service period:
 - i. the federal Medicaid amount and the DMC non-Federal share amount upon approval by DHCS of the DMC claims and documents submitted in accordance with Article V of Section B, below:
 - ii. the federal Medicaid and DMC non-Federal share:
 - 1. At either the USDR or the provider's usual or customary charge to the general public for NTP's; or,
 - 1. At a rate that is the lesser of the projected cost or the maximum rate allowance for other DMC modalities.
- (b) For the September 2011 through June 2012 service period:
 - i. the federal Medicaid amount upon approval by DHCS of the DMC claims and documents submitted in accordance with Article V of Section B, below:
 - ii. the federal Medicaid share:
 - 1. At either the USDR or the provider's usual or customary charge to the general public for NTP's; or,
 - 2. At a rate that is the lesser of the projected cost or the maximum rate allowance for other DMC modalities.

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

Article IV – Section B.1.(b) - Drug Medi-Cal Claims and Reports

Contractor shall submit to ADP a Drug Medi-Cal Certification Form developed by ADP for each claim file submitted, starting with September 2011 services, for reimbursement of the federal Medicaid funds.

Article IV – Section B.1.(c) - Drug Medi-Cal Claims and Reports (old c)

When applicable, claims shall be accompanied by Provider Report of Drug Medi-Cal Claims Adjustment (ADP 5035C), Document 2J.

Article IV – Section B.1.(c) - Drug Medi-Cal Claims and Reports (new c)

Note: The following forms shall be prepared as needed and retained by the provider for review by State staff:

Article IV – Section B.4 - Drug Medi-Cal Claims and Reports

Contractor shall utilize the Companion Guides for HIPAA 837P and 835 Transactions (Document 2Y and 3P), and HIPAA 837P Companion Guide Appendix V.4 (Document 3U) and for understanding and obtaining instructions for the DMC billing process and obtaining adjudicated claim information. Contractor shall also utilize the Companion Guides for 276 (Document 3Q) and 277 (Document 3R) for checking status of claims.

Article IV – Section C.1. – Year-End Cost Settlement Reports

~~State will not accept year-end cost settlement reports from the Subcontractor(e) directly.~~ Pursuant to HSC Section 11758.46 (j)(2) Contractor shall submit to the State, on November 1 of each year, the following year-end cost settlement documents by paper or electronic submission for the previous fiscal year:

- (b) Document 2P(a) and 2P(b), Drug Medi-Cal Cost Report Forms for Day Care Rehabilitative for Non-Perinatal Alcohol and Drug or Perinatal (if applicable)
- (c) Document 2P(c) and 2P(d), Drug Medi-Cal Cost Report Forms for Outpatient Drug Free Individual Counseling for Non-Perinatal Alcohol and Drug or Perinatal (if applicable)
- (d) Document 2P(e) and 2P(f), Drug Medi-Cal Cost Report Forms for Outpatient Drug Free Group Counseling for Non-Perinatal Alcohol and Drug or Perinatal (if applicable)

Standard Agreement Attachment for Counties

Contract Changes for FY 2011-12

- (f) Document 2P(h) and 2P(i), Drug Medi-Cal Expenditure Forms for Narcotic Treatment Programs for Non-Perinatal Alcohol and Drug or Perinatal (if applicable)

Article IV – Section C.2 – Year End Cost Settlement Reports (new 2)

Cost reports for direct contract providers will be settled prior to the settlement of the Contractor's cost report. As a result of the direct contract provider's settled cost report, any County Realignment funds owed to the direct contract provider will be handled through an invoice process to the Contractor. Additionally, as a result of the direct contract provider's settled cost report, any County Realignment funds owed to the State will be returned to the Contractor.

List of Exhibit D Documents Incorporated by Reference

Fiscal Year ~~2009-10~~ 11-12

~~Document 2J: Provider Report of Drug Medi-Cal Claims Adjustments (ADP 5035C) Form/Instructions~~

Document 2L(a): Good Cause Certification (ADP 6065A)

Document 2L(b): Good Cause Certification (ADP 6065B)

Document 2P(a): Drug Medi-Cal Cost Report Forms – Day Care Rehabilitative – Non-Perinatal Alcohol and Drug (form and instructions)

Document 2P(c): Drug Medi-Cal Cost Report Forms – Outpatient Drug Free Individual Counseling – Non-Perinatal Alcohol and Drug (form and instructions)

Document 2P(e): Drug Medi-Cal Cost Report Forms – Outpatient Drug Free Group Counseling – Non-Perinatal Alcohol and Drug (form and instructions)

Document 2P(h): Drug Medi-Cal Cost Report Forms – Narcotic Treatment Program – County – Non-Perinatal Alcohol and Drug (form and instructions)

Document 3U ADP Companion Guide Appendix

[http://www.adp.ca.gov/hp/pdf/ADP Companion Guide Appendix v4.4.pdf](http://www.adp.ca.gov/hp/pdf/ADP_Companion_Guide_Appendix_v4.4.pdf)

Document 3V Culturally and Linguistically Appropriate Services (CLAS) National Standards

<http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=15>

County of _____

Exhibit A1

**FISCAL CONTRACT DETAIL
DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS
Fiscal Year 2011-12 Negotiated Net Amount/Drug Medi-Cal Budget**

<u>Non Federal State Funds (July 1, 2011 to June 30, 2012) (12 Months)</u>	<u>Amounts</u>	<u>Totals/ PCA/Object Code</u>
Regular Non Federal State General Funds (July 1, 2011 - August 30, 2011)		
State General Funds - NNA	\$ _____	51110/702.11
Non Federal State General Funds - DMC	\$ -	51112/702.10
Total Regular Non Federal State General Funds		\$ -
Perinatal Non Federal State General Funds (July 1, 2011 - August 30, 2011)		
State General Funds - NNA	\$ _____	51113/702.24
Non Federal State General Funds - DMC	\$ -	51111/702.20
Total Perinatal Non Federal State General Funds		\$ -
Other State General Funds (July 1, 2011 - June 30, 2012)		
Women and Children's Residential Treatment Services Funds	\$ _____	51113/702.22
Parolee Services Network Funds	\$ -	51159/702.18
Total Other State General Funds		\$ -
TOTAL NON FEDERAL AND STATE GENERAL FUNDS		\$ -
Federal Funds		
SAPT Block Grant - 93.959 (FFY 2012 Award) (October 1, 2011 to June 30, 2013 - 21 Months)		
SAPT Female Offender Treatment Services - FFY 2012 Award	\$ -	51163/702.40
SAPT Discretionary - FFY 2012 Award	\$ -	51163/702.30
SAPT Adolescent/Youth Treatment Program - FFY 2012 Award	\$ -	51163/702.49
SAPT Friday Night Live/Club Live - FFY 2012 Award	\$ -	51162/702.32
SAPT Primary Prevention Set-Aside - FFY 2012 Award	\$ -	51162/702.31
SAPT HIV Set-Aside - FFY 2012 Award	\$ -	51163/702.35
SAPT Perinatal Set-Aside - FFY 2012 Award	\$ -	51166/702.36
SAPT Special Projects - FFY 2012 Award	\$ -	Various/702.45
Total SAPT Block Grant - FFY 2012 Award		\$ -
Federal Drug Medi-Cal Funds (Reimbursement) (July 1, 2011 to June 30, 2012) (12 Months)		
Drug Medi-Cal (Federal Share Only)	\$ -	7000/51194/702.10
Perinatal Drug Medi-Cal (Federal Share Only)	\$ -	7000/51195/702.20
Total Federal Drug Medi-Cal Funds		\$ -
TOTAL FEDERAL FUNDS		\$ -
GRAND TOTAL - ALL FUNDS		\$ -

County of _____

Exhibit A1

**FISCAL CONTRACT DETAIL
DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS
Fiscal Year 2012-13 Negotiated Net Amount/Drug Medi-Cal Budget**

<u>State Funds (July 1, 2012 to June 30, 2013) (12 Months)</u>	<u>Amounts</u>	<u>Totals/ PCA/Object Code</u>
<u>Regular State General Funds</u>		
State General Funds—NNA	\$ _____	51210/702.11
State General Funds—DMC	\$ _____	51212/702.10
Total Regular State General Funds		\$ _____
<u>Perinatal State General Funds</u>		
State General Funds—NNA	\$ _____	51213/702.21
State General Funds—DMC	\$ _____	51211/702.20
Total Perinatal State General Funds		\$ _____
<u>Other State General Funds</u>		
Women and Children's Residential Treatment Services Funds	\$ _____	51213/702.22
Parolee Services Network Funds	\$ -	51259/702.18
Total Other State General Funds		\$ _____
TOTAL STATE GENERAL FUNDS		\$ -

Federal Funds

SAPT Block Grant - 93.959 (FFY 2013 Award) (October 1, 2012 to June 30, 2014 - 21 Months)

SAPT Female Offender Treatment Services - FFY 2013 Award	\$ -	51263/702.40
SAPT Discretionary - FFY 2013 Award	\$ -	51263/702.30
SAPT Adolescent/Youth Treatment Program - FFY 2013 Award	\$ -	51263/702.49
SAPT Friday Night Live/Club Live - FFY 2013 Award	\$ -	51262/702.32
SAPT Primary Prevention Set-Aside - FFY 2013 Award	\$ -	51262/702.31
SAPT HIV Set-Aside - FFY 2013 Award	\$ -	51263/702.35
SAPT Perinatal Set-Aside - FFY 2013 Award	\$ -	51266/702.36
SAPT Special Projects - FFY 2013 Award	\$ -	Various/702.45
Total SAPT Block Grant - FFY 2013 Award		\$ -

Federal Drug Medi-Cal Funds (Reimbursement) (July 1, 2012 to June 30, 2013) (12 Months)

Drug Medi-Cal (Federal Share Only)	\$ _____	7000/51294/702.10
Perinatal Drug Medi-Cal (Federal Share Only)	\$ _____	7000/51295/702.20
Total Federal Drug Medi-Cal Funds		\$ _____
TOTAL FEDERAL FUNDS		\$ -

GRAND TOTAL - ALL FUNDS

\$ -

GENERAL TERMS AND CONDITIONS

A. Contract Exhibits

This Contract between the Department of Alcohol and Drug Programs (State) and the county named in the Standard Agreement attached hereto (Contractor) consists of the Standard Agreement; Exhibit A1, listing of ADP allocated funding sources; Exhibit B, entitled "General Terms and Conditions," which contains Contract provisions applicable to all of the Contractors; Exhibit C, which defines the rights and obligations of the parties regarding Negotiated Net Amount (NNA) funds; and Exhibit D (if applicable), which defines the rights and obligations of the parties regarding Medicaid/Medi-Cal funds, as expended through the Drug Medi-Cal (DMC) Program.

B. Contract Term

The term of this Contract shall be from July 1, 2010, through June 30, 2013. Except as provided in Exhibit C, Article III, Sections G and H, the expenditure period for the funds available hereunder shall be as stated on Exhibit A1. State is under no obligation to extend or renew this Contract.

C. Nullification of Exhibit D (if applicable)

The parties agree that if the Contractor fails to comply with the provisions of Health and Safety Code (hereinafter referred to as HSC) Section 11758.46, Exhibit D shall be null and void and severed from the remainder of this Contract.

In the event Exhibit D becomes null and void, an updated Exhibit A1 will take effect reflecting the removal federal Medicaid funds from this Contract. Exhibit C of this Contract will remain in effect until amended or terminated.

D. Unenforceable Provisions

In the event any provision of this Contract is held invalid or unenforceable by any court of competent jurisdiction, the holding will not invalidate or render unenforceable any other provision hereof.

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E. Use of State Funds

1. State General Fund (SGF) provided by the California Department of Corrections and Rehabilitation (CDCR) through an interagency agreement shall be subject to specific expenditure requirements as stated in the "Services to California Department of Corrections and Rehabilitation Parolee Services Network," as identified in Document 1D(a) of Exhibit C, which is incorporated by this reference.

F. Contract Amendments

1. Both the Contractor and the State may agree to amend or renegotiate the Contract.
2. Contract amendments will be required to change encumbered amounts for each year of a multi-year contract period, of which the first amendment will be based on the Governor's Budget Act allocation of that specific fiscal year. The signed contract from the Contractor will be due to the Department of Alcohol and Drug Programs within 90 days from the Department's issuance to the County. If the signed Contract from the Contractor is not received within 90 days from the Department's issuance to the County, the State may withhold all NNA payments under Exhibit C of this Contract until the required amendment is received by the State.
3. Contract amendments may be requested by the Contractor until May 1 of each of the contract's fiscal years. An amendment proposed by either party shall be forwarded in writing to the other party.
 - (a) The proposed amendment submitted by Contractor shall include the proposed changes, and a statement of the reason and basis for the proposed change.
 - (b) Amendments shall be duly approved by the County Board of Supervisors or its authorized designee, and signed by a duly authorized representative.
4. No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
5. Contractor acknowledges that any newly allocated funds that are in excess of the initial amount for each fiscal year may be forfeited if the State does not receive a fully executable contract amendment on or before June 30, 2012.

G. Termination

- 1. This Contract may be terminated by either party by delivering written notice of termination to the other party at least 30 days prior to the effective date of termination. The notice shall state the effective date of and reason for the termination. In the event of changes in law that affect provisions of this Contract, the parties agree to amend the affected provisions to conform to the changes in law retroactive to the effective date of such changes in law. The parties further agree that the terms of this Contract are severable and in the event that changes in law render provisions of the Contract void, the unaffected provisions and obligations of this Contract will remain in full force and effect.**

- 2. State may terminate this Contract immediately for cause. The term “for cause” means that the Contractor failed to meet the terms, conditions, and/or responsibilities of the Contract. State shall provide the Contractor with written notice of the termination, including the effective date and reason for the termination. The termination of the Contract shall be effective as of the date indicated in the written notice.**

- 3. The following additional provisions regarding termination apply only to Exhibit D of this Contract:**
 - (a) In the event the federal Department of Health and Human Services (hereinafter referred to as DHHS), the California Department of Health Care Services (hereinafter referred to as DHCS), or State determines Contractor does not meet the requirements for participation in the DMC Program, State will terminate payments for services provided pursuant to Exhibit D of this Contract for cause.**

 - (b) All obligations to provide covered services under this Contract will automatically terminate on the effective date of any termination of this Contract. Contractor will be responsible for providing or arranging for covered services to beneficiaries until the effective date of termination or expiration of the Contract.**

Contractor will remain liable for processing and paying invoices and statements for covered services and utilization review requirements prior to the expiration or termination until all obligations have been met.

 - (c) In the event Exhibit D of this Contract is nullified, Contractor shall refer DMC clients to providers who are certified to provide the type(s) of services the client has been receiving.**

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4. In the event this Contract is terminated, Contractor shall deliver its entire fiscal and program records pertaining to the performance of this Contract to the State, which will retain the records for the required retention period.

H. Audit

1. In addition to the audit requirements in Exhibits C and D, this Contract, and any Subcontracts, shall be subject to the examination and audit by the California Bureau of State Audits for a period of three years from the date that final payment is made pursuant to the Contract (Government Code, Section 10527).
2. Contractor agrees that the State, the Comptroller General of the United States, and any authorized representatives have the right to review, obtain, and copy all records pertaining to the performance of this Contract. Contractor agrees to provide the State with any and all relevant information requested.
3. All expenditures of county realignment funds, state and federal funds furnished to the Contractor and its Subcontractors pursuant to this Contract are subject to audit by the State. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 (Revised June 27, 2003). Objectives of such audits may include, but not be limited to, the following:
 - (a) To determine whether units of service claimed/reported are properly documented by service records and accurately accumulated for claiming/reporting;
 - (b) To validate data reported by the Contractor for prospective contract negotiations;
 - (c) To provide technical assistance in addressing current year activities and providing recommendations on internal controls, accounting procedures, financial records, and compliance with laws and regulations;
 - (d) To determine the cost of services, net of related patient and participant fees, third-party payments, and other related revenues and funds;
 - (e) To determine that expenditures are made in accordance with applicable state and federal laws and regulations and contract requirements; and/or,

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(f) To determine the facts in relation to analysis of data, complaints, or allegations, which may be indicative of fraud, abuse, willful misrepresentation, or failure to achieve the Contract objectives of Exhibit C or Exhibit D.

4. Contractor shall comply, and shall require that its Subcontractors comply, with all terms and conditions of this Contract and all pertinent state and federal statutes and regulations. Contractor and its Subcontractors shall permit the State, DHCS, DHHS, Comptroller General of the United States, or other authorized state or federal agencies and representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract. Contractor shall allow the State, DHCS, DHHS, the Comptroller General of the United States, and other authorized state or federal agencies and representatives to review and copy any and all books and records maintained by the Contractor and its Subcontractors related to these services at any time during normal business hours. Unannounced visits may be made at the discretion of the State. Employees who might reasonably have information related to such records may be interviewed.
5. The refusal of the Contractor or its Subcontractors to permit access to and inspection of electronic or print books and records, physical facilities, and/or refusal to permit interviews with employees, as described in this part constitutes an express and immediate material breach of this Contract and will be sufficient basis to terminate the Contract for cause or default.

I. Debarment and Suspension Certification

1. By signing this agreement, Contractor agrees to comply with federal suspension and debarment regulations found in 45 CFR Part 76. "Debarred" means excluded or disqualified from contracting with the federal, State or local government.
2. By signing this agreement, Contractor certifies to the best of his or her knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - (b) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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3. If the Contractor is unable to certify to any statements in this certification, Contractor shall submit an explanation to the State.
4. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, State may terminate this contract for cause or default.

J. Lobbying and Restrictions and Disclosure Certification

Applicable to any federally funded grant or contract in excess of \$100,000 per Title 31, USC, Section 1352 and 45 CFR Part 93:

1. Certification and Disclosure Requirements

- (a) Each person (or recipient) who requests or receives a contract, subcontract, grant, or subgrant, which is subject to Title 31, USC, Section 1352, and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Exhibit C, Document 1W, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph 2 of this provision.
- (b) Each recipient shall file a disclosure (in the form set forth in Exhibit C, Document 1X, entitled "Disclosure of Lobbying Activities - Standard Form – LLL") if any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant.
- (c) Each recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- (d) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph 1(b) of this provision herein. An event that materially affects the accuracy of the information reported includes:
 - i A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;

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- ii A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action;
- iii A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action;
- iv Each person (or recipient) who requests or receives from a person referred to in Paragraph 1(a) of this provision a contract, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above; and,
- v All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph 1(a) of this provision. That person shall forward all disclosure forms to AOD program contract manager.

2. Prohibition

Title 31, USC, Section 1352, provides in part that no Federally appropriated funds may be expended, have been paid, or will be paid by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

K. Restrictions on Grantee Lobbying – Appropriations Act Section 503

- 1. No part of any appropriation contained in this Act shall be used, other than for formal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself or any State legislature, except in presentation to the Congress or any State legislative body itself.
- 2. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

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L. Hatch Act

Contractor agrees to comply with the provisions of the Hatch Act (Title 5 USC, Sections 1501-1508), which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

M. Restrictions on Salaries

Contractor agrees that no part of any federal funds provided under this Contract shall be used by the Contractor or its Subcontractors to pay the salary and wages of an individual at a rate in excess of Level I of the Executive Schedule. Salary and wages schedules may be found at <http://www.opm.gov/oca>. SAPT Block Grant funds used to pay a salary in excess of the rate of basic pay for Level I of the Executive Schedule shall be subject to disallowance. The amount disallowed shall be determined by subtracting the individual's actual salary from the Level I rate of basic pay and multiplying the result by the percentage of the individual's salary that was paid with SAPT Block Grant funds (Reference: Terms and Conditions of the SAPT Block Grant award.)

N. Child Support Compliance Act

Contractor acknowledges that it:

1. Recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code; and,
2. To the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

O. Union Organizing

Contractor, by signing this Agreement, hereby acknowledges the applicability of California Government Code Sections 16645 through 16649 to this Contract.

1. Contractor will not assist, promote, or deter union organizing by employees performing work on a state service contract, including a public works contract.

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2. No state funds received under this Contract will be used to assist, promote, or deter union organizing.
3. Contractor will not, for any business conducted under this Contract, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing unless the state property is equally available to the general public for holding meetings.
4. If the Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and the Contractor shall provide those records to the Attorney General upon request.

P. Primary Prevention

The SAPT Block Grant regulation defines “Primary Prevention Programs” as those programs directed at “individuals who have not been determined to require treatment for substance abuse” (45 CFR 96.121). Primary Prevention includes strategies, programs and initiatives which reduce both direct and indirect adverse personal, social, health, and economic consequences resulting from problematic alcohol and other drug (AOD) availability, manufacture, distribution, promotion, sales, and use. The desired result of primary prevention is to promote safe and healthy behaviors and environments for individuals, families and communities. The Contractor shall expend not less than its allocated amount of the Substance Abuse Prevention and Treatment (SAPT) Block Grant on primary prevention as described in the SAPT Block Grant requirements (45 CFR 96.125). Inappropriate use of these funds for non-primary prevention services will require repayment of SAPT Block Grant funds.

This contract and any subcontract shall meet data reporting requirements for capacity, process and outcome as required by federal grant requirements. In addition to the six Center for Substance Abuse Prevention (CSAP) strategies of Information Dissemination, Education, Alternative, Problem Identification and Referral, Community-Based Process, and Environmental, the data for the Institute of Medicine prevention categories of Universal, Selective and Indicated must be reported.

Use of the Strategic Prevention Framework (SPF) is mandatory for all counties, which became effective FY 2007-2008 and SPF-required data must be submitted via CalOMS Prevention as evidence of engagement and use of the practices. Adherence to the SPF by subcontractors is at the discretion of the subcontracting county.

Q. Confidentiality and Security of Information

- 1. Contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of all confidential information that it creates, receives, maintains or transmits. Contractor will provide the State with information concerning such safeguards upon request.**

- 2. Contractor and its Subcontractors that provide services covered by this Contract shall comply with all applicable state and federal statutes and regulations regarding confidentiality, including, but not limited to, the confidentiality and security of information requirements in the following:**
 - Title 42 USC Section 290 dd-2
 - Title 42, CFR Part 2
 - Title 42, CFR Part 96, Sec. 96.132(e)
 - Title 42, USC 1320d through 1320d-8
 - Title 45, CFR Parts 160, 162, and 164 - the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules
 - Welfare and Institutions Code (hereinafter referred to W&IC), Section 14100.2, which is specific to Medi-Cal
 - HSC Sections 11812 and 11845.5
 - HSC Sections 123110 through 123149.5 – Patient Access to Health Records
 - Title 22, California Code of Regulations (hereinafter referred to as Title 22), Section 51009, which is specific to Medi-Cal
 - Civil Code Sections 56 through 56.37 – Confidentiality of Medical Information Act
 - Civil Code Section 1798.80 through 1798.82 – Customer Records (breach of security)
 - Civil Code Section 1798.85 – Confidentiality of Social Security Numbers

- 3. Contractor shall monitor compliance with the above provisions on confidentiality and security and shall include them in all subcontracts.**

- 4. Contractor shall notify the Information Security Officer, Executive Branch, of the State within twenty-four (24) hours during a work week of any suspected or actual breach of computer system security impacting persons served by the contract, if the security breach would require notification under Civil Code Section 1798.82. Contractor agrees to materially assist the State in any action pertaining to such unauthorized disclosure required by applicable Federal or state laws.**

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R. Nondiscrimination in Employment and Services

1. By signing this Contract, Contractor certifies that under the laws of the United States and the State of California, incorporated into this Contract by reference and made a part hereof as if set forth in full, Contractor will not unlawfully discriminate against any person.

Federal Law Requirements:

- Titles VI of the Civil Rights Act of 1964, as amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.
- Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.) prohibiting discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in the sale or rental of housing.
- Age Discrimination Act of 1975 (45 CFR Part 90), as amended (42 UC Sections 6101 - 6107), which prohibits discrimination on the basis of age.
- Age Discrimination in Employment Act (29 CFR Part 1625).
- Title I of the Americans with Disabilities Act (29 CFR Part 1630) prohibiting discrimination against the disabled in employment.
- Title II of the Americans with Disabilities Act (28 CFR Part 35) prohibiting discrimination against the disabled by public entities
- Title III of the Americans with Disabilities Act (28 CFR Part 36) regarding access
- Section 504 of the Rehabilitation Act of 1973, as amended (29 USC Section 794), prohibiting discrimination on the basis of handicap
- Executive Order 11246 (42 USC 2000(e) et seq. and 41 CFR Part 60) regarding nondiscrimination in employment under federal contracts and construction contracts greater than \$10,000 funded by federal financial assistance
- Executive Order 13166 (67 FR 41455) to improve access to federal services for those with limited English proficiency
- The Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse
- The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism

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State Law Requirements:

- Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.)
- Title 2, Division 3, Article 9.5 of the Government Code, commencing with Section 11135
- Title 9, Division 4, Chapter 6 of the CCR, commencing with Section 10800

Contractor agrees to post, and further agrees to require its Subcontractors to post, in conspicuous places, notices available to all employees and applicants for employment setting forth the provisions of the Equal Employment Opportunity Act in conformance with Federal Executive Order No. 11246; and Section 503 of the Rehabilitation Act of 1973 (as amended). Contractor agrees to comply with provisions of the Rehabilitation Act of 1973.

For the purpose of this Contract, discrimination on the basis of race, color, creed, national origin, sex, age, or physical, sensory, cognitive, or mental disability includes, but is not limited to, the following: denying an otherwise eligible individual any service or providing a benefit which is different, or is provided in a different manner or at a different time, from that provided to others under this Contract; subjecting any otherwise eligible individual to segregation or separate treatment in any matter related to the receipt of any service; restricting an otherwise eligible individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and/or treating any individual differently from others in determining whether such individual satisfied any admission, enrollment, eligibility, membership, or other requirement or condition which individuals shall meet in order to be provided any service or benefit.

2. Contractor shall, on a cycle of at least every three years, assess, monitor, and document each Subcontractor's compliance with Section 504 of the Rehabilitation Act of 1973 (as amended) and Americans with Disabilities Act of 1990 to ensure that recipients/beneficiaries and intended recipients/beneficiaries of services are provided services without regard to physical or mental disability. Contractor shall also monitor to ensure that beneficiaries and intended beneficiaries of service are provided services without regard to race, color, creed, national origin, sex, or age.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract. Contractor shall include nondiscrimination and compliance provisions in all subcontracts. Contractor shall establish written procedures under which service participants are informed of their rights including their right to file a complaint alleging discrimination or a violation of their civil rights. Participants in

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programs funded hereunder shall be provided a copy of their rights that shall include the right of appeal and the right to be free from sexual harassment and sexual contact by members of the treatment, recovery, advisory, or consultant staff.

3. No state or federal funds shall be used by the Contractor or its Subcontractors for sectarian worship, instruction, or proselytization. No state funds shall be used by the Contractor or its Subcontractors to provide direct, immediate, or substantial support to any religious activity.
4. Noncompliance with the requirements of nondiscrimination in services shall constitute grounds for state to withhold payments under this Contract or terminate all, or any type, of funding provided hereunder.

S. Drug-Free Workplace

Contractor shall comply, and require that its Subcontractors comply, with Government Code Section 8355 et seq. also known as Drug-Free Workplace Act of 1990. Every person or organization awarded a contract or a grant for the procurement of any property or services shall certify to the contracting or granting agency that it will provide a drug-free workplace in accordance with Government Code Section 8355.

T. No Unlawful Use or Unlawful Use Messages Regarding Drugs

Contractor agrees that information produced through these funds, and which pertains to drug- and alcohol-related programs, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program. Additionally, no aspect of a drug- or alcohol-related program shall include any message on the responsible use, if the use is unlawful, of drugs or alcohol (HSC Section 11999). By signing this Contract, Contractor agrees that it will enforce, and will require its Subcontractors to enforce, these requirements.

U. Smoking Prohibition Requirements

Contractor shall comply, and require that its Subcontractors comply, with Public Law 103-227, also known as the Pro-Children Act of 1994 (20 USC Section 6081, et seq.), and with California Labor Code Section 6404.5, the California Smoke-Free Workplace Law, which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education, or library services to children under the age of 18 if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not

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apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, and Children (WIC) coupons are redeemed.

V. Adherence to Computer Software Copyright Laws

Contractor certifies that it has appropriate systems and controls in place to ensure that state or federal funds available under this Contract will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws. (Reference: Executive Order D-10-99 and Department of General Services Management Memo 00-02).

W. Noncompliance with Reporting Requirements

Contractor agrees that the State has the right to withhold payments until Contractor has submitted any required data and reports to the State, as identified in Exhibit C, Document 1F, "Reporting Requirement Matrix - County Submission Requirements for the Department of Alcohol and Drug Programs."

X. Conflict of Interest

Contractor acknowledges that state laws on conflict of interest, found in the Political Reform Act, Public Contract Code Section 10365.5, and Government Code Section 1090, apply to this Contract.

Y. Disputes

Contractor shall continue to carry out its responsibilities under this Contract during any disputes.

Z. Assignment

This Contract is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written agreement.

AA. Indemnification

Contractor agrees to indemnify, defend and save harmless the Department and the State of California, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Contract and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Contract.

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BB. Independent Contractor

Contractor, and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of State.

CC. Timeliness

Time is of the essence in this Contract.

DD. Limitation on Use of Funds for Promotion of Legalization of Controlled Substances

None of the funds made available through this Contract may be used for any activity that promotes the legalization of any drug or other substance included in Schedule I of Section 202 of the Controlled Substances Act (21 USC 812).

EE. Restriction on Distribution of Sterile Needles

No funds made available through this Contract shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

FF. Health Insurance Portability and Accountability Act (HIPAA) of 1996

All DMC claims shall be submitted in electronic HIPAA compliant format (837P) and shall be submitted through the Department of Mental Health's Information Technology Web Service (ITWS) system for adjudication in the Short-Doyle Medical System. Refer to Document 2Y (Companion Guide for HIPAA 837P Transactions) for HIPAA compliant format of the 837P. All DMC adjudicated claim information must be retrieved by the Contractor via an 835 format (Health Care Claim Payment/Advice) from ITWS. Refer to Document 3P (Companion Guide for HIPAA 835 Transaction) for HIPAA compliant format for 835. All DMC claim status inquiries must be processed through the 276 (Request for Claim Status). Refer to Document 3Q (Companion Guide for 276 HIPAA Transactions) for HIPAA compliant format for 276. Results of the 276 inquiry will be generated via a 277 format from ITWS. Refer to Document 3R (Companion Guide for HIPAA 277 Transaction) for HIPAA compliant format.

If any of the work performed under this Contract is subject to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), then Contractor shall perform the work in compliance with all applicable provisions of HIPAA. As identified in Document 3K which is referenced in Exhibit C, ADP and County shall cooperate to assure mutual agreement as to those transactions between them, to which this Provision applies. Refer to Document 3K for additional information.

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1. **Trading Partner Requirements**
 - (a) **No Changes.** Contractor hereby agrees that for the personal health information (Information), it will not change any definition, data condition or use of a data element or segment as proscribed in the federal HHS Transaction Standard Regulation. (45 CFR Part 162.915 (a))
 - (b) **No additions.** Contractor hereby agrees that for the Information, it will not add any data elements or segments to the maximum data set as proscribed in the HHS Transaction Standard Regulation. (45 CFR Part 162.915 (b))
 - (c) **No Unauthorized Uses.** Contractor hereby agrees that for the Information, it will not use any code or data elements that either are marked “not used” in the HHS Transaction’s Implementation specification or are not in the HHS Transaction Standard’s implementation specifications. (45 CFR Part 162.915 (c))
 - (d) **No Changes to Meaning or Intent.** Contractor hereby agrees that for the Information, it will not change the meaning or intent of any of the HHS Transaction Standard’s implementation specification. (45 CFR Part 162.915 (d))
2. **Concurrence for Test Modifications to HHS Transaction Standards.** Contractor agrees and understands that there exists the possibility that ADP or others may request an extension from the uses of a standard in the HHS Transaction Standards. If this occurs, Contractor agrees that it will participate in such test modifications.
3. **Adequate Testing.** Contractor is responsible to adequately test all business rules appropriate to their types and specialties. If the Contractor is acting as a clearinghouse for enrolled providers, Contractor has obligations to adequately test all business rules appropriate to each and every provider type and specialty for which they provide clearinghouse services.
4. **Deficiencies.** Contractor agrees to cure transactions errors or deficiencies identified by the State, and transactions errors or deficiencies identified by an enrolled provider if the Contractor is acting as a clearinghouse for that provider. When County is a clearinghouse, Contractor agrees to properly communicate deficiencies and other pertinent information regarding electronic transactions to enrolled providers for which they provide clearinghouse services.

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5. **Code Set Retention.** Both Parties understand and agree to keep open code sets being processed or used in this Agreement for at least the current billing period or any appeal period, whichever is longer.
6. **Data Transmission Log.** Both Parties shall establish and maintain a Data Transmission Log, which shall record any and all Data Transmission taking place between the Parties during the term of this Contract. Each Party will take necessary and reasonable steps to ensure that such Data Transmission Logs constitute a current, accurate, complete, and unaltered record of any and all Data Transmissions between the Parties, and shall be retained by each Party for no less than twenty-four (24) months following the date of the Data Transmission. The Data Transmission Log may be maintained on computer media or other suitable means provided that, if it is necessary to do so, the information contained in the Data Transmission Log may be retrieved in a timely manner and presented in readable form.

GG. Procurement Rules

This section is applicable to all Contracts in which equipment, miscellaneous property, commodities and/or supplies are furnished by the State or expenses for said items are reimbursed with state or federal funds.

1. Equipment definitions

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

- (a) **Major equipment:** A tangible or intangible item having a base unit cost of \$5,000 or more and greater than the Contractor's or Subcontractor's capitalization level with a life expectancy of one (1) year or more and is either furnished by ADP or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition. Major equipment shall be recovered only through straight line depreciation over the class life of the property, as specified in the "Table of Class Lives and Recovery Periods" in federal IRS Publication 946, "How to Depreciate Property," which is available from any office of the IRS.
- (b) **Minor equipment:** A tangible item having a base unit cost of less than \$5,000 and less than the Contractor's or Subcontractor's capitalization level, with a life expectancy of one (1) year or more, and is either furnished by the State or the cost is reimbursed through this Contract. Minor equipment may be reimbursed as allowable costs in the fiscal year incurred.

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- (c) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by the State or the cost is reimbursed through this Contract. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.

- 2. Government and public entities (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Contract. Said procurements are subject to Paragraphs 4 through 8 of this provision. Paragraph 3 of this provision shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.**

- 3. Nonprofit organizations and commercial businesses, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Contract.**
 - (a) **Equipment purchases shall not exceed \$50,000 annually.**

 - (b) **All equipment purchases are subject to Paragraphs 4 through 8 of this provision. Paragraph 2 of this provision shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.**

 - (c) **Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:**
 - i **Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to the best of their knowledge, they have a financial interest.**

 - ii **Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.**

 - iii **Procurements shall be conducted in a manner that provides for all of the following:**
 - [1a] **Avoid purchasing unnecessary or duplicate items.**

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- [2a] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3a] Take positive steps to utilize small and veteran owned businesses.
- 4. Unless waived or otherwise stipulated in writing by the State, prior written authorization from the appropriate AOD program contract manager will be required before the Contractor or Subcontractor may make a purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. Contractor shall provide in its request for authorization all particulars necessary, as specified by the State, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from its Subcontractors and public utility services at rates established for uniform applicability to the general public.
- 5. In special circumstances, determined by the State (e.g., when the State has a need to monitor certain purchases, etc.), the State may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. The State reserves the right to request repayment for any Contractor and/or its Subcontractors purchase that the State determines to be unnecessary in carrying out performance under this agreement.
- 6. Contractor and/or its Subcontractors shall maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or its Subcontractors at any time.
- 7. For all purchases, Contractor and/or its Subcontractors shall maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. All records shall be sufficient to determine the reasonableness of costs incurred by the Contractor and/or its Subcontractors and must be capable of verification by qualified auditors. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or its Subcontractors for inspection or audit.
- 8. The State may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs 2 and/or 3 of this provision by giving the Contractor no less than thirty (30) calendar days written notice.

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HH. Equipment Ownership / Inventory / Disposition

This section is applicable to Contracts in which equipment and/or miscellaneous property is furnished by the State and/or when said items are purchased or reimbursed with state or federal funds. Items shall also include leased equipment, where there is an option to purchase.

1. Wherever the term equipment and/or miscellaneous property is used in this provision, the definitions in the provision for Procurement Rules, Paragraph 1 shall apply.

All equipment and/or miscellaneous property that are purchased/reimbursed with Contract funds or furnished by the State under the terms of this agreement and not fully consumed in performance of this Contract shall be considered State equipment and the property of the State.

- (a) The State requires the reporting, tagging, and annual inventorying of all equipment and/or miscellaneous property that is furnished by the State or purchased/reimbursed with funds provided through this Contract.

Upon receipt of equipment and/or miscellaneous property, Contractor shall report the receipt to the AOD program contract manager and receive State property tags.

- (b) If the Contractor enters into an agreement with a term of more than twelve months, Contractor shall submit an annual inventory of State equipment and/or miscellaneous property to the AOD program contract manager. Contractor shall:
 - i Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of its Subcontractor (including independent consultants).
 - ii Contact the AOD program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy.
 - iii When replacing equipment, the equipment to be replaced shall be used as a trade-in or the equipment shall be sold and the proceeds shall be used to offset the cost of the replacement equipment. "Replacement equipment" means equipment acquired to take the place of other equipment. To qualify as

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replacement equipment, the equipment shall serve the same or similar functions as the equipment replaced and must be of the same or similar nature or character, although not necessarily the same model, grade, or quality.

2. Title to State equipment and/or miscellaneous property shall not be affected by its incorporation or attachment to any property now owned by the State.
3. Unless otherwise stipulated, in writing, the State shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractors and/or its Subcontractors' facility, which may be affected by the removal of any State equipment and/or miscellaneous property.
4. Contractor and/or its Subcontractors shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of State equipment and/or miscellaneous property.

In administering this provision, the State may require the Contractor and/or its Subcontractors to repair or replace, to the State's satisfaction, any damaged, lost or stolen state equipment and/or miscellaneous property. Should a theft occur, Contractor and/or its Subcontractors shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and the Contractor shall promptly submit one copy of the theft report to the AOD program contract manager.

5. Unless otherwise stipulated by the program funding this Contract, equipment and/or miscellaneous property purchased/reimbursed with Contract funds or furnished by the State under the terms of this Contract, shall only be used for performance of this Contract or another State Contract.
6. Within sixty (60) calendar days prior to the termination or end of this agreement, Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the AOD program contract manager and shall, at that time, query the State as to the requirements, including the manner and method, of returning State equipment and/or miscellaneous property to the State. Final disposition of equipment and/or miscellaneous property shall be at the State expense and according to the State instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by the State immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, the State may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different State agreement.

7. Motor Vehicles

This section is applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by the State under this agreement.

- (a) If motor vehicles are purchased/reimbursed with agreement funds or furnished by the State under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, Contractor and/or its Subcontractors shall return such vehicles to the State and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to the State.
- (b) If motor vehicles are purchased/reimbursed with agreement funds or furnished by the State under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. Contractor and/or its Subcontractors may only use said vehicles for performance and under the terms of this agreement.
- (c) Contractor and/or its Subcontractors agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by ADP under the terms of this agreement, shall hold a valid state of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (d) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by the State under the terms of this agreement, Contractor and/or its Subcontractors, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or its Subcontractor's possession.

8. Automobile Liability Insurance

- (a) Contractor, by signing this Contract, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined or has a program of adequate self-insurance. Said insurance shall be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by the State under the terms of this agreement to the Contractor and/or its Subcontractors.

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- (b) Contractor shall maintain a copy of the certificate of insurance or a letter of self-insurance which must be made available to the State upon request. Subcontractors shall maintain a copy of the certificate of insurance which shall be made available to the State upon request.
- (c) Contractor agrees that bodily injury and property damage liability insurance or a program of self-insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to the State. Subcontractors agree that bodily injury and property damage liability insurance as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to the State.
- (d) Contractor and/or its Subcontractors agree to provide, at least thirty (30 days) prior to the expiration date of said insurance coverage, a copy of a new certificate or insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) Contractor and/or its Subcontractors, if not a self-insured government and/or public entity, shall provide evidence, that any required certificates of insurance contain the following provisions:
 - i The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State.
 - ii The State of California, it's officers, agents, employees, and servants are included as additional insured's, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.
 - iii The insurance carrier shall notify the State of California Department of Alcohol and Drug Programs, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the Contract number for which the insurance was obtained.

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- (f) Contractor and/or its Subcontractors are hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by the State, in writing, if this provision is applicable to this agreement. If DGS approval of the certificate of insurance is required, Contractor agrees that no work or services involving the motor vehicle shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or its Subcontractors fail to keep insurance coverage, as required herein, in effect at all times during vehicle possession, the State may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

II. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or its Subcontractors, the Contractor shall provide and shall require its Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

JJ. California Outcomes Measurement System (CalOMS) for Treatment (CalOMS Tx) and for Prevention (CalOMS Pv).

- 1. The Contractor shall:
 - (a) Conduct information technology (IT) systems testing and pass State certification testing before commencing submission of CalOMS Tx data. If the Contractor subcontracts with vendor for IT services, Contractor is responsible for ensuring that the subcontracted IT system is tested and certified by the State prior to submitting CalOMS Tx data. If contractor changes or modifies the CalOMS Tx IT system, then contractor shall re-test and pass state certification prior to submitting data from new or modified system. Contractor must comply with ADP compliance requirements for data content, data quality, data completeness, reporting frequency, reporting deadlines, and report method.

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- (b) Participate in CalOMS informational meetings, training, and readiness meetings for both CalOMS Tx and CalOMS Pv.
 - (c) Implement and maintain a system for collecting and electronically submitting data for CalOMS Tx.
 - (d) Meet the requirements in the Privacy, Confidentiality and Information Security Provisions as outlined in Document 3K (as identified in Exhibit C).
2. The following business rules for the electronic submission of CalOMS Tx and CalOMS Pv data are:
- (a) Prevention service/activity data is to be reported via CalOMS Pv by all funded primary prevention providers. Services are to be reported by the date of occurrence on a weekly basis. No more than one week's data shall be aggregated into one reported service.
 - (b) All CalOMS Pv service/activity data shall be reviewed by each county and released to the State no later than the end of the first month following the close of each quarter. The reporting quarters are: July through September, October through December, January through March, and April through June.
 - (c) Reporting progress on prevention goals and objectives via the Evaluation Module within CalOMS Pv shall be done on an annual basis. This information is due no later than August 31 of each fiscal year.
 - (d) Electronic submission of CalOMS Tx data is due 45 days from the end of the last day of the report month.
 - (e) If the Contractor cannot submit CalOMS Pv data by the established due dates, the Contractor shall submit a written request for an extension. The written request shall be approved by the State prior to the established due date.

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- (f) If the Contractor experiences system or service failure or other extraordinary circumstances that affect its ability to timely submit CalOMS Tx and/or CalOMS Pv data, and/or to meet other CalOMS Tx and CalOMS Pv data compliance requirements, the Contractor shall report the problem in writing before the established data submission deadlines. The written notice shall include a remediation plan that is subject to review and approval by the State. A grace period of up to sixty (60) days may be granted, at the State's sole discretion, for the Contractor to resolve the problem before NNA payments are withheld.
- (g) If the State experiences system or service failure, no penalties will be assessed to Contractor for late data submission.
- (h) Contractor shall comply with the treatment and prevention data quality standards established by the State. Failure to meet these standards on an ongoing basis may result in withholding NNA funds.
- (i) If the Contractor submits data after the established deadlines, due to a delay or problem, Contractor is still responsible for collecting and reporting data from time of delay or problem.

KK. Drug and Treatment Access Report (DATAR)

- 1. The Contractor shall:
 - (a) Be responsible for ensuring that all treatment providers with whom Contractor makes a contract or otherwise pays for the services, and who are required to report CalOMS Treatment client data, submit a monthly DATAR report in an electronic copy format as provided by the State.
 - (b) Ensure that all DATAR reports are submitted to the State by the 10th of the month following the report activity month.
 - (c) Ensure that all applicable providers are enrolled in the State's web-based DATARWeb program for submission of data, accessible on the ADP website.
 - (d) In those instances where the Contractor maintains, either directly or indirectly, a central intake unit or equivalent which provides intake services including a waiting list, the Contractor shall identify and begin submitting monthly DATAR reports for the central intake unit by a date to be specified by the State.

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- (e) If the Contractor experiences system or service failure or other extraordinary circumstances that affect its ability to timely submit a monthly DATAR report, and/or to meet data compliance requirements, the Contractor shall report the problem in writing before the established data submission deadlines. The written notice shall include a remediation plan that is subject to review and approval by the State. A grace period of up to sixty (60) days may be granted, at the State's sole discretion, for the Contractor to resolve the problem before NNA payments are withheld.
- (f) If the State experiences system or service failure, no penalties will be assessed to Contractor for late data submission.

2. Noncompliance Provision

The Contractor shall be considered compliant if a minimum of 95% of required DATAR reports from the Contractor's treatment providers are received by the due date.

LL. Domestic Partners Act

Pursuant to Public Contract Code 10295.3, no state agency may enter into any contract executed or amended after January 1, 2007, for the acquisition of goods or services in the amount of \$100,000 or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between domestic partners and spouses of those employees.

MM. Nondiscrimination and Institutional Safeguards for Religious Providers

Contractor shall establish such processes and procedures as necessary to comply with the provisions of Title 42, USC, Section 300x-65 and Title 42, CFR, Part 54, (Reference Document 1B).

NN. Force Majeure

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but not be limited to acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight, embargo, public related utility, or governmental statutes or regulations super-imposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its Subcontractor, and if such default of its Subcontractor, arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless

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the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

OO. Counselor Certification

Any individual providing intake, assessment of need for services, treatment or recovery planning, individual or group counseling to participants, patients, or residents in an ADP licensed or certified program is required to be certified as defined in Title 9, CCR, Division 4, Chapter 8. (Document 3H)

PP. Cultural and Linguistic Proficiency

To ensure equal access to quality care by diverse populations, each service provider receiving funds from this contract shall adopt the federal Office of Minority Health (OMH) Culturally and Linguistically Appropriate Service (CLAS) national standards. The OMH CLAS standards (referenced as Document 3U) are located at: <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=15>

QQ. Intravenous Drug Use (IVDU) Treatment

Contractor shall ensure that individuals in need of IVDU treatment shall be encouraged to undergo AOD treatment (42 USC 300x-23(b) of PHS Act).

RR. Tuberculosis Treatment

Contractor shall ensure the following related to Tuberculosis (TB):

1. Routinely make available TB services to each individual receiving treatment for alcohol and other drug use and/or abuse;
2. Reduce barriers to patients' accepting TB treatment; and,
3. Develop strategies to improve follow-up monitoring, particularly after patients leave treatment, by disseminating information through educational bulletins and technical assistance.

SS. Trafficking Victims Protection Act of 2000

Contractor and its Subcontractors that provide services covered by this Contract shall comply with Section 106(g) of the Trafficking Victims Protection Act of 2000 as amended (22 U.S.C. 7104). For full text of the award term, go to: <http://www.samhsa.gov/grants/trafficking.aspx>

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TT. Subcontract Provisions

Contractor shall include all the foregoing provisions in all of its subcontracts.

UU. Participation of County Alcohol and Drug Program Administrators Association of California (CADPAAC) Members

Pursuant to HSC Section 11801(k), the alcohol and drug program administrator shall participate and represent the county in meetings of the CADPAAC for the purposes of representing the counties in their relationship with the state with respect to policies, standards, and administration for alcohol and other drug abuse services.

Pursuant to HSC Section 11811.6(b), the county alcohol and drug program administrator shall attend any special meetings called by the Director of ADP.

NEGOTIATED NET AMOUNT

ARTICLE I. FORMATION AND PURPOSE

A. Authority

State and the Contractor enter into Exhibit C by authority of Chapter 3 of Part 1, Division 10.5 of the Health and Safety Code (HSC) and with approval of Contractor's County Board of Supervisors (or designee) for the purpose of providing alcohol and drug services, which will be reimbursed pursuant to Exhibit C. State and the Contractor identified in the Standard Agreement are the only parties to this Contract. This Contract is not intended, nor shall it be construed, to confer rights on any third party.

B. Control Requirements

1. Performance under the terms of Exhibit C is subject to all applicable federal and state laws, regulations, and standards. In accepting the State drug and alcohol combined program allocation pursuant to HSC Sections 11814(a) and (b), Contractor shall: (i) establish, and shall require its Subcontractors to establish, written procedures consistent with the following requirements; (ii) monitor for compliance with the written procedures; and (iii) be held accountable for audit exceptions taken by the State against the Contractor and its Subcontractors for any failure to comply with these requirements:
 - (a) HSC, Division 10.5, commencing with Section 11760;
 - (b) Title 9, California Code of Regulations (CCR) (herein referred to as Title 9), Division 4, commencing with Section 9000;
 - (c) Government Code Section 16367.8;
 - (d) Government Code, Article 7, Federally Mandated Audits of Block Grant Funds Allocated to Local Agencies, Chapter 1, Part 1, Division 2, Title 5, commencing at Section 53130;
 - (e) Title 42 United State Code (USC), Sections 300x-21 through 300x-31, 300x-34, 300x-53, 300x-57, and 330x-65 and 66;
 - (f) The Single Audit Act Amendments of 1996 (Title 31, USC Sections 7501-7507) and the Office of Management and Budget (OMB) Circular A-133 revised June 27, 2003;

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- (g) Title 45, Code of Federal Regulations (CFR), Sections 96.30 through 96.33 and Sections 96.120 through 96.137;
- (h) Title 42, CFR, Sections 8.1 through 8.34;
- (i) Title 21, CFR, Sections 1301.01 through 1301.93, Department of Justice, Controlled Substances; and,
- (j) State Administrative Manual (SAM), Chapter 7200 (General Outline of Procedures).

Contractor shall be familiar with the above laws, regulations, and guidance and shall assure that its Subcontractors are also familiar with such requirements.

- 2. The provisions of Exhibit C are not intended to abrogate any provisions of law or regulation, or any standards existing or enacted during the term of this Contract.
- 3. Contractor shall adhere to the applicable provisions of Title 45, CFR, Part 96, Subparts C and L, as applicable, in the expenditure of the Substance Abuse Prevention and Treatment (SAPT) Block Grant funds. Document 1A, 45 CFR 96, Subparts C and L, is incorporated by reference.
- 4. This Contract is subject to any additional restrictions, limitations, or conditions enacted by the federal or state government that affect the provisions, terms, or funding of this Contract in any manner.
- 5. Documents 1C, 1D(a), and 1D(b), incorporated by this reference, contain additional requirements that shall be adhered to by those Contractors that receive the types of funds specified by each document. These exhibits and documents are:
 - (a) Exhibit A1;
 - (b) Document 1C, Driving-Under-the-Influence Program Requirements;
 - (c) Document 1D(a), Services to California Department of Corrections and Rehabilitation (CDCR) - Parolee Services Network (PSN); and,
 - (d) Document 1D(b), SAPT Female Offender Treatment Project (FOTP).

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6. Contractor shall comply with the requirements contained in Document 1F, incorporated by this reference, "Reporting Requirement Matrix" – County Submission Requirements for the Department of Alcohol and Drug Programs."
7. Contractor shall comply with the requirements for perinatal programs funded under Exhibit C contained in Document 1G, incorporated by this reference, "Perinatal Services Network Guidelines 2009" until such time new Perinatal Services Network Guidelines are established and adopted. No formal amendment of this contract is required for new guidelines to apply.
8. In accordance with the Fiscal Year 2011-12 State Budget Act and accompanying law (Chapter 40, Statutes of 2011 and Chapter 13, Statutes of 2011, First Extraordinary Session), contractors that provide Women and Children's Residential Treatment Services shall comply with the program requirements (Section 2.5, Required Supplemental/Recovery Support Services) of the Substance Abuse and Mental Health Services Administration's Grant Program for Residential Treatment for Pregnant and Postpartum Women, RFA found at http://www.samhsa.gov/Grants/2008/ti_08_009.doc.
9. Contractor should follow the guidelines in Document 1V, incorporated by this reference, "Youth Treatment Guidelines," in developing and implementing youth treatment programs funded under Exhibit C, until such time new Youth Treatment Guidelines are established and adopted. No formal amendment of this contract is required for new guidelines to apply.

C. Contract Negotiation

Contract negotiations may be conducted between the Contractor and the State through their authorized representative(s) each year of the multi-year contract period. Negotiations may be conducted at ADP, 1700 K Street, Sacramento, California, 95811 once during the multi-year contract period. In the alternative, negotiations may be conducted by correspondence.

ARTICLE II. DEFINITIONS

- A. The words and terms of this Contract are intended to have their usual meanings unless a particular or more limited meaning is associated with their usage pursuant to Division 10.5 of HSC, Section 11750 et seq., and Title 9, CCR, Section 9000 et seq.
1. **"Available Capacity"** means the total number of units of service (bed days, hours, slots, etc.) that a Contractor actually makes available in the current fiscal year.
 2. **"Contractor"** means the county identified in the Standard Agreement or the department authorized by the County Board of Supervisors to administer alcohol and drug programs.
 3. **"County Realignment Funds"** means funds received by the county based on FY 2011-12 State Budget and accompanying law (Chapter 40, Statutes of 2011 [Assembly Bill (AB) 118] and Chapter 13, Statutes of 2011, First Extraordinary Session [ABX1 16]).
 4. **"Dedicated Capacity"** means the historically calculated service capacity, by modality, adjusted for the projected expansion or reduction in services, which the Contractor agrees to make available to provide non-Drug Medi-Cal (DMC) drug and alcohol services to persons eligible for Contractor services.
 5. **"Encumbered Amount"** means the amount reflected on the Standard Agreement of this Contract and supported by Exhibit A1 as the Negotiated Net Amount (NNA).
 6. **"Final Allocation"** means the amount of funds identified in the last allocation letter issued by State for the current fiscal year.
 7. **"Final Settlement"** means permanent settlement of the Contractor's actual allowable costs or expenditures as determined at the time of audit, which shall be completed within three years of the date the year-end cost settlement report was accepted for interim settlement by the State. If the audit is not completed within three years, the interim settlement shall be considered as the final settlement.
 8. **"Interim Settlement"** means temporary settlement of actual allowable costs or expenditures reflected in the Contractor's year-end cost settlement report.

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9. **"Modality"** means those necessary overall general service activities to provide alcohol and/or drug prevention or treatment that conform to the services described in Division 10.5 of the HSC.
10. **"Negotiated Net Amount"** means the contracted amount of SAPT Block Grant funds and Parolee Services Network funds for services agreed to by the State and the Contractor, less federal funds budgeted for DMC. The net amount reflects only those funds allocated to the Contractor by the State. The NNA does not include other revenue budgeted by the Contractor such as client fees or revenue. The cost per unit for the dedicated capacity to be provided for each service modality identified in the Contract will be based on the net amount of the contract.
11. **"Performance"** means providing the dedicated capacity in accordance with Exhibit A1 and abiding by the terms of Exhibits B and C of this Contract, including all applicable state and federal statutes, regulations, and standards, including Alcohol and/or Other Drug Certification Standards (Document 1P), in expending funds for the provision of alcohol and drug services hereunder.
12. **"Preliminary Settlement"** means the settlement of only SAPT funding.
13. **"Revenue"** means Contractor's income from sources other than the State allocation and the required county match.
14. **"Service Element"** is the specific type of service performed within the more general service modalities. A list of the service modalities and service elements and service elements codes is incorporated into this Contract as Document 1H(a) "Service Code Descriptions," and Document 1H(b), "Program Code Listing."
15. **"State"** means the California Department of Alcohol and Drug Programs.
16. **"Unit of Service"** means the type of unit used to quantify the service modalities/elements in the dedicated capacity reports. The units of services are listed below:

Support Services	staff hours
Primary Prevention Services	N/A
Secondary Prevention Services	staff hours
Nonresidential Services (Outpatient and Aftercare)	staff hours
Intensive Outpatient Services (Day Care Rehabilitative)	visit days
Residential Treatment Services	bed days
Narcotic Treatment Program	

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Inpatient Detoxification	bed days
Outpatient Detoxification	slot days
Narcotic Replacement Therapy Methadone	slot days
Ancillary Services	staff hours
Driving Under-the-Influence	persons served

17. **"Utilization"** means the total actual units of service used by clients and participants.

ARTICLE III. FISCAL PROVISIONS

A. Funding Authorization

1. Exhibit C is valid and enforceable subject to sufficient funds being made available to the State by the United States Government and subject to authorization and appropriation of sufficient funds pursuant to the State's Budget Act.
2. In the event the United States Government and/or the State Government do not authorize and appropriate sufficient funds for the State to allocate amounts pursuant to the Payment Provisions of Exhibit C, it is mutually agreed that the Contract shall be amended to reflect any reduction in the Payment Provisions and the Performance Provisions.
3. Contractor shall bear the financial risk in providing any alcohol and/or drug services covered by this Exhibit C.

B. Payment Provisions

1. For each fiscal year, the total amount payable by the State to the Contractor under Exhibit C shall not exceed the encumbered amount. The funds identified for the fiscal years covered by Exhibit C are subject to change depending on the availability and amount of funds appropriated by the Legislature and the Federal Government. The amount of funds available for expenditure by the Contractor shall be limited to the amount identified in the final allocations issued by the State for that fiscal year or the NNA, whichever is less. Changes to encumbered funds will require written amendment to the Contract. State may settle costs for NNA services based on the year-end cost settlement report as the final amendment to the approved single state/county contract.
2. In the event a contract amendment is required pursuant to the preceding paragraph, Contractor shall submit to the State information as identified in Exhibit B, Section F(3)(a). To the extent the Contractor is notified of the State Budget Act allocation prior to the execution of the Contract, the State and the Contractor may agree to amend the contract after the issuance of the first revised allocation.
3. State shall reimburse the Contractor monthly in arrears an amount equal to one-twelfth of the amount encumbered pursuant to Exhibit C of the contract or the most recent allocation based on the Budget Act Allocation, whichever is less, with the exception of Parolee Services Network (PSN) funding. Payments for PSN services shall be made pursuant to Document 1Da.

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However, based on the expenditure information submitted by the counties in the Quarterly Federal Financial Management Report (QFFMR), State may adjust monthly payments of encumbered federal funds to extend the length of time (not to exceed 21 months) over which payments of federal funds will be made.

4. Monthly disbursements to the Contractor at the beginning of each fiscal year of the Contract shall be based on the preliminary allocation of funds, as detailed in Exhibit A1.

Final allocations will reflect any increases or reductions in the appropriations as reflected in the State Budget Act allocation and any subsequent allocation revisions. To the extent that any amendment encumbers an amount that is less than the State Budget Act allocation, the monthly disbursements will reflect the lesser amount.

5. State may withhold monthly payments if the Contractor fails to timely submit reports and data required by the State, including but not limited to, reports required pursuant to Exhibit C, Article V. Upon the State's receipt of the complete and accurate reports, or data, Contractor's monthly payment shall commence with the next scheduled monthly payment, and shall include any funds withheld due to late submission of reports or data.

State may withhold monthly payments if the Contractor fails to submit the contract amendment, within 90 days from issuance from the State to the Contractor.

6. Adjustments may be made to the total NNA of the Contract and amounts may be withheld from payments otherwise due to the Contractor hereunder, for nonperformance to the extent that nonperformance involves fraud, abuse, or failure to achieve the objectives of the provisions of Exhibit C.

C. Accrual of Interest

Any interest accrued from State-allocated funds and retained by the Contractor must be used for the same purpose as the State-allocated funds from which the interest was accrued.

D. Additional Audit Requirements

1. Pursuant to OMB Circular A-133, Contractor shall require and ensure that, effective January 1, 2004, its non-profit Subcontractors expending \$500,000 or more in federal funds in a fiscal year, have a single or program-specific audit performed with respect to the funds covered by Exhibit C.

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- (a) The audit shall be performed in accordance with OMB Circular A-133 (Revised June 2003), entitled "Audits of States, Local Governments, and Non-Profit Organizations." OMB Circulars can be obtained from the Office of Management and Budget, Washington, D.C. 20503, or www.whitehouse.gov/omb/circulars/index.html.
- (b) The audit shall be conducted in accordance with generally accepted auditing standards and Government Auditing Standards, 2007 Revision, issued by the Comptroller General of the United States. The Government Auditing Standards can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or www.gao.gov.
- (c) A copy of the audit performed in accordance with OMB Circular A-133 (Revised June 2003) shall be submitted to the State within 30 days of completion, but no later than nine months following the end of the Subcontractor's fiscal year.
- (d) The cost of the audit made in accordance with the provisions of the most recent version of OMB Circular A-133 can be charged to applicable federal awards. Where apportionment of the audit cost is necessary, such apportionment shall be made in accordance with generally accepted accounting principles, but shall not exceed the proportionate amount that the award represents of the Subcontractor's total revenue.
- (e) The work papers and the audit reports shall be retained for a minimum of three years from the date of the audit reports, and longer if the independent auditor is notified in writing by the State to extend the retention period.
- (f) Audit work papers shall be made available upon request to the State, and copies shall be made as is reasonable and necessary.
- (g) Contractor, in coordination with the State, shall ensure that its Subcontractor's follow-up and take all necessary corrective action on any audit findings in the single or program-specific audit report.

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2. Pursuant to OMB Circular A-133, State may impose sanctions against the Contractor for not submitting required single or program-specific audit reports, or failure to comply with all other audit requirements. The sanctions shall include:
 - (a) Withholding a percentage of federal awards until the audit is completed satisfactorily;
 - (b) Withholding or disallowing overhead costs;
 - (c) Suspending federal awards until the audit is conducted; or,
 - (d) Terminating the federal award.

E. Contractor Monitoring Requirements

1. Pursuant to OMB Circular A-133 §____.400(d)(3), Contractor shall monitor the activities of all its non-profit Subcontractors to ensure that:
 - Subcontractors are complying with program requirements and achieving performance goals.
 - Subcontractors are complying with fiscal requirements, such as having appropriate fiscal controls in place, and are using awards for authorized purposes.

Contractor can use a variety of monitoring mechanisms, including limited scope audits, on-site visits, progress reports, financial reports, and reviews of documentation supporting requests for reimbursement, to meet the Contractor's monitoring objectives. The Contractor may charge federal awards for the cost of these monitoring procedures as outlined in OMB Circular A-133.

The Contractor shall submit to the State a copy of the procedures and any other monitoring mechanism used to monitor non-profit Subcontractors at the time of the County's annual site visit or within 60 days thereafter. Contractor shall state the frequency that non-profit Subcontractors are monitored.

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- (a) Limited scope audits, as defined in the OMB Circular A-133, only include agreed-upon engagements that are (1) conducted in accordance with either the American Institute of Certified Public Accountant's generally accepted auditing standards or attestation standards; (2) paid for and arranged by pass-through entities (counties); and (3) address one or more of the following types of compliance requirements: (i) activities allowed or unallowed; (ii) allowable costs/cost principles; (iii) eligibility; (iv) matching, level of effort and earmarking; and (v) reporting.
 - (b) On-site visits focus on compliance and controls over compliance areas. The reviewer must make site visits to the subcontractor location(s), and can use a variety of monitoring mechanisms to document compliance requirements. The findings and the corrective action will require follow-up by the Contractor.
2. Reports of audits conducted by the State shall reflect all findings, recommendations, adjustments, and corrective action as a result of its findings in any areas.
3. Contractor shall be responsible for any disallowance taken by the Federal Government, the State, or the Bureau of State Audits, as a result of any audit exception that is related to the Contractor's responsibilities herein. Contractor shall not use funds administered by the State to repay one federal funding source with funds provided by another federal funding source, to repay federal funds with state funds, or to repay state funds with federal funds. State shall invoice Contractor 60 days after issuing the final audit report or upon resolution of an audit appeal. Contractor agrees to develop and implement any corrective action plans in a manner acceptable to State in order to comply with recommendations contained in any audit report. Such corrective action plans shall include time-specific objectives to allow for measurement of progress and are subject to verification by the State within one year from the date of the plan.

If differences cannot be resolved between the State and the Contractor regarding the terms of the final financial audit settlements for funds expended under Exhibit C, Contractor may request an appeal in accordance with the appeal process described in Document 1J(a), "NNA Audit Appeal Process," incorporated by this reference. When a financial audit is conducted by the Federal Government, the State, or the Bureau of State Audits directly with a Subcontractor of the Contractor, and if the Subcontractor disagrees with audit disallowances related to its programs, claims or services, Contractor shall, at the Subcontractor's request, request an appeal to the State in accordance with Document 1J(a). Contractor shall include a provision in its

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subcontracts regarding the process by which its Subcontractors may file an audit appeal via the Contractor.

Contractors that conduct financial audits of Subcontractors, other than a Subcontractor whose funding consists entirely of non-Department funds, shall develop a process to resolve disputed financial findings and notify Subcontractors of their appeal rights pursuant to that process. This section shall not apply to those grievances or complaints arising from the financial findings of an audit or examination made by or on behalf of the State pursuant to Article IV of this Contract.

F. Revenue Collection

Contractor shall conform to revenue collection requirements in Division 10.5 of the HSC, Sections 11841, by raising revenues in addition to the funds allocated by the State. These revenues include, but are not limited to, fees for services, private contributions, grants, or other governmental funds. These revenues shall be used in support of additional alcohol and other drug services or facilities. Each alcohol and drug program shall set and collect client fees based on the client's ability to pay. The fee requirement shall not apply to prevention and early intervention services. Contractor shall identify in its annual cost report the types and amounts of revenues collected.

G. Cost Efficiencies

1. It is intended that the cost to the Contractor in maintaining the dedicated capacity and units of service shall be met by the NNA allocated to the Contractor and other Contractor or Subcontractor revenues. Amounts awarded pursuant to Exhibit C shall not be used for services where payment has been made, or can reasonably be expected to be made under any other state or federal compensation or benefits program, or where services can be paid for from revenues.
2. Funds payable to the County from the CDCR pursuant to Document 1D(a) that are not spent cannot be retained by the Contractor.

H. Expenditure of SAPT Block Grant Funds

1. SAPT Block Grant funds are allocated based upon the Federal Grant award period. These funds must be expended for activities authorized pursuant to 42 USC Sections 300x-21(b) through 300x-66; and Title 45, CFR, Subpart L, within the availability period of the grant award. Any SAPT Block Grant funds that have not been expended by a Contractor at the end of the expenditure period identified below shall be returned to the State for subsequent return to the Federal government.

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- (a) The expenditure period of the FFY 2010 award is October 1, 2009, through June 30, 2011.
 - (b) The expenditure period of the FFY 2011 award is October 1, 2010 through June 30, 2012.
 - (c) The expenditure period of the FFY 2012 award is October 1, 2011 through June 30, 2013.
 - (d) The expenditure period of the FFY 2013 award is October 1, 2012 through June 30, 2014.
2. Contractors receiving SAPT Block Grant funds shall comply with the financial management standards contained in Title 45, CFR, Part 92, Sections 92.20(b)(1) through (6), and Title 45, CFR, Part 96, Section 96.30.
3. Non-profit Subcontractors receiving SAPT Block Grant funds shall comply with the financial management standards contained in Title 45, CFR, Part 74, Sections 74.21(b)(1) through (4) and (b)(7), and Part 96, Section 96.30.
4. Contractors receiving SAPT Block Grant funds shall track obligations and expenditures by individual SAPT Block Grant award, including, but not limited to, obligations and expenditures for primary prevention, services to pregnant women and women with dependent children. "Obligation" shall have the same meaning as used in Title 45, CFR, Part 92, Section 92.3." In addition, Contractor shall comply with the following fiscal reporting instructions:
- a. The tracking of the HIV early intervention services shall be at the following level:
 - i. Pre- and/or Post HIV test counseling;
 - ii. Testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease; and,
 - iii. Providing the therapeutic measures for preventing and treating conditions arising from HIV.

ARTICLE IV. PERFORMANCE PROVISIONS

A. Monitoring

1. Contractor's performance under Exhibit C shall be monitored by the State during the term of this Contract. Monitoring criteria shall include, but not be limited to:
 - (a) Whether the quantity of work or services being performed conforms to Exhibit A1;
 - (b) Whether the Contractor has established and is monitoring appropriate quality standards;
 - (c) Whether the Contractor is abiding by all the terms and requirements of this Contract; and,
 - (d) Whether the Contractor is abiding by the terms of the Perinatal Services Network Guidelines (Document 1G), until such time new Perinatal Services Network Guidelines are established and adopted.
2. Failure to comply with the above provisions shall constitute grounds for the State to suspend or recover payments, subject to the Contractor's right of appeal, or may result in termination of the Contract or both.

B. Performance Requirements

1. Contractor shall provide services based on funding set forth in Exhibit A1 and under the terms of this Contract.
2. Contractor shall provide services to all eligible persons in accordance with federal and state statutes and regulations. Contractor shall assure that in planning for the provision of services, the following barriers to services are considered and addressed:
 - (a) Lack of educational materials or other resources for the provision of services;
 - (b) Geographic isolation and transportation needs of persons seeking services or remoteness of services;
 - (c) Institutional, cultural, and/or ethnicity barriers;
 - (d) Language differences;

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- (e) Lack of service advocates; and,
 - (f) Failure to survey or otherwise identify the barriers to service accessibility.
 - (g) Needs of persons with a disability.
3. Contractor shall comply with any additional requirements of the documents that have been incorporated herein by reference, including, but not limited to, those on the "List of Exhibit C Documents" which is attached to Exhibit C.
 4. Amounts awarded pursuant to Exhibit C shall be used exclusively for providing alcohol and/or drug program services consistent with the purpose of the funding.

ARTICLE V. REPORTING REQUIREMENTS

A. Financial Reports

1. Contractor agrees to submit the Exhibit A1 with the original contract and with each contract amendment.
2. Contractor shall submit timely the Quarterly Federal Financial Management Report (QFFMR) and end-of-year cost data in the form of year-end cost settlement reports, including Document 2P, "County Certification Cost Report Year-End Claim for Reimbursement" with the original signature of the Contractor's authorized designee in accordance with Document 1F, "Reporting Requirement Matrix - County Submission Requirements for the Department of Alcohol and Drug Programs."

B. Additional Reports

1. In accordance with HSC, Section 11758.12(c), Contractor shall submit, and shall require its Subcontractors to submit, information required by the State. The information shall include, but is not limited to, utilization reports, compliance reports, financial reports, treatment and prevention services reports, demographic characteristics of service recipients, and data as required pursuant to the following:

Document 1K: Drug and Alcohol Treatment Access Report (DATAR) records in an electronic format as provided and/or approved by the State, and which complies with ADP compliance requirements for data content, data quality, data completeness, reporting frequency, reporting deadlines, and reporting method. The format for submission shall be limited to electronic format only.

Document 1T: CalOMS Prevention User Manual – Submit CalOMS Prevention data in the format prescribed in the CalOMS Prevention User Manual.

Contractor shall comply with the requirements which address the collection of information required in the SAPT Block Grant contained in Document 1T, incorporated by this reference ("CalOMS Prevention User Manual"). Refer to the List of Exhibits for the web site location of the manual, in which the manual is updated on a quarterly basis. Prevention service/activity data is to be reported via CalOMS Pv by all funded

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primary prevention providers. Services are to be reported by the date of occurrence on a weekly basis. No more than one week's data shall be aggregated into one reported service. All CalOMS Pv data shall be reviewed by each county and released to the State no later than the end of the first month following the close of each quarter. The reporting quarters are: July through September, October through December, January through March, and April through June.

Document 3J: CalOMS Treatment Data Collection Guide – Submit CalOMS Treatment admission, discharge, annual update, resubmission and “provider no activity report” records in an electronic format approved by the State, which complies with ADP compliance requirements for data content, data quality, data completeness, reporting frequency, reporting deadlines, and report method. When contractor obtains a new software vendor or when there are changes to the Contractor's CalOMS Treatment software, or changes to Contractors vendors CalOMS Treatment software, ADP's Information Management Services Division must be contacted and re-certification and testing of the new or changed software must be completed before Contractor can submit data.

Contractor shall follow the CalOMS Treatment Data Compliance Standards for submission of CalOMS treatment data (reference Document 3S).

2. Contractor agrees that it shall submit all data requested pursuant to Article V in a manner identified, or on forms provided, by the State by the applicable due dates or the dates in Document 1F, “Reporting Requirement Matrix - County Submission Requirements for the Department of Alcohol and Drug Programs.”

3. Charitable Choice

Contractor shall submit annually the total number of referrals necessitated by religious objection to other alternative substance abuse providers. This information must be submitted to ADP in a format prescribed by ADP and at time required by ADP. (Reference is ADP Bulletin 04-5).

C. Subcontractor Documentation

Contractor shall require its Subcontractors that are not licensed or certified by the State to submit organizational documents to the State within thirty (30) days of its execution of an initial subcontract, within ninety (90) days of the renewal or continuation of an existing subcontract or when there has been a change in Subcontractor name or ownership. Organizational documents shall include the Subcontractor's Articles of Incorporation or Partnership Agreements (as applicable), and business licenses, fictitious name permits, and such other information and documentation as may be requested by the State.

ARTICLE VI. GENERAL PROVISIONS

A. Records

Contractor shall maintain sufficient books, records, documents, and other evidence necessary for the State to audit contract performance and contract compliance. Contractor shall make these records available to the State, upon request, to evaluate the quality and quantity of services, accessibility and appropriateness of services, and to ensure fiscal accountability. Regardless of the location or ownership of such records, they shall be sufficient to determine if costs incurred by contractor are reasonable, allowable and allocated appropriately. All records must be capable of verification by qualified auditors.

1. Contractor shall include in any contract with an audit firm a clause to permit access by the State to the working papers of the external independent auditor, and require that copies of the working papers shall be made for the State at its request.
2. Contractor shall keep adequate and sufficient financial records and statistical data to support the year-end documents filed with the State. All records must be capable of verification by qualified auditors.
3. Accounting records and supporting documents shall be retained for a three-year period from the date the year-end cost settlement report was approved by the State for interim settlement. When an audit by the Federal Government, the State, or the Bureau of State Audits has been started before the expiration of the three-year period, the records shall be retained until completion of the audit and final resolution of all issues that arise in the audit. Final settlement shall be made at the end of the audit and appeal process. If an audit has not been completed within three years, the interim settlement shall be considered as the final settlement.
4. Financial records shall be kept so that they clearly reflect the source of funding for each type of service for which reimbursement is claimed. These documents include, but are not limited to, all ledgers, books, vouchers, time sheets, payrolls, appointment schedules, client data cards, and schedules for allocating costs. All records must be capable of verification by qualified auditors.
5. Contractor's subcontracts shall require that all Subcontractors comply with the requirements of Article III, Section A.

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6. Should a Subcontractor discontinue its contractual agreement with the Contractor, or cease to conduct business in its entirety, Contractor shall be responsible for retaining the Subcontractor's fiscal and program records for the required retention period. The SAM contains statutory requirements governing the retention, storage, and disposal of records pertaining to state funds. Contractor shall follow SAM requirements.

If the Contractor cannot physically maintain the fiscal and program records of the Subcontractor, then arrangements shall be made with the State to take possession and maintain all records.

7. In the expenditure of funds hereunder, and as required by 45 CFR Part 96, Contractor shall comply with the requirements of SAM and the laws and procedures applicable to the obligation and expenditure of federal and state funds.
8. In the event this Contract is terminated, Contractor shall deliver all of its fiscal and program records pertaining to the performance of this Contract to the State, which will retain the records for the required retention period.

B. Dispute Resolution Process

1. In the event of a dispute under this Exhibit C, other than an audit dispute, Contractor shall provide written notice of the particulars of the dispute to the State before exercising any other available remedy. Written notice shall include the contract number. The Director (or designee) of the State and the County Drug or Alcohol Program Administrator (or designee) shall meet to discuss the means by which they can effect an equitable resolution to the dispute. Contractor shall receive a written response from the State within sixty (60) days of the notice of dispute. The written response shall reflect the issues discussed at the meeting and state how the dispute will be resolved.
2. In the event of a dispute over financial audit findings between the State and the Contractor, Contractor may appeal the audit in accordance with the "NNA Audit Appeal Process" (Document 1J(a)). When a financial audit by the Federal Government, the State, or the Bureau of State Audits is conducted directly with a Subcontractor of the Contractor, and if the Subcontractor disagrees with audit disallowances related to its programs, claims or services, Contractor shall, at the Subcontractor's request, request an appeal to the State in accordance with Document 1J(a). Contractor shall include a provision in its subcontracts regarding the process by which a Subcontractor may file an audit appeal via the Contractor.

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Contractors that conduct financial audits of Subcontractors, other than a Subcontractor whose funding consists entirely of non-Department funds, shall develop a process to resolve disputed financial findings and notify Subcontractors of their appeal rights pursuant to that process. This section shall not apply to those grievances or complaints arising from the financial findings of an audit or examination made by or on behalf of the State pursuant to Article IV of this Contract.

3. To ensure that necessary corrective actions are taken, financial audit findings are either uncontested or upheld after appeal may be used by the State during prospective contract negotiations.

C. Negotiated Net Amount Limitations

Pursuant to HSC Section 11818, Contractor shall reimburse its Subcontractors that receive a combination of Medi-Cal funding and other federal or county realignment state funding for the same service element and location based on the Subcontractor's actual costs in accordance with Medicaid reimbursement requirements as specified in Title XIX of the Social Security Act; Title 22, and the State's Medicaid Plan. Payments at negotiated rates shall be settled to actual cost at year-end.

**LIST OF EXHIBIT C DOCUMENTS INCORPORATED BY REFERENCE
FISCAL YEAR 2011-12**

The following documents are hereby incorporated by reference into Exhibit C and, as applicable, into Exhibit D regardless of whether or not they are actually attached to the Contract.

- Document 1A: Title 45, Code of Federal Regulations 96, Subparts C and L, Substance Abuse Prevention and Treatment Block Grant Requirements
http://www.access.gpo.gov/nara/cfr/waisidx_04/45cfr96_04.html
- Document 1B: Title 42, Code of Federal Regulations, Charitable Choice Regulations
http://www.access.gpo.gov/nara/cfr/waisidx_04/42cfr54_04.html
- Document 1C: Driving-Under-the-Influence Program Requirements
- Document 1D(a): Services to California Department of Corrections and Rehabilitation (CDCR) – Parolee Services Network (PSN)
- Document 1D(b): SAPT Female Offender Treatment Project (FOTP)
- Document 1F: Reporting Requirement Matrix – County Submission Requirements for the Department of Alcohol and Drug Programs
- Document 1G: Perinatal Services Network Guidelines 2009 (for Non-DMC Perinatal Programs)
http://www.adp.ca.gov/perinatal/pdf/guidelines_09.pdf
- Document 1H(a): Service Code Descriptions
- Document 1H(b): Program Code Listing
- Document 1J(a): NNA Audit Appeals Process
- Document 1K: Drug and Alcohol Treatment Access Report (DATAR)
http://www.adp.ca.gov/datar/manuals/DATARWeb_manual.pdf

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- Document 1P: Alcohol and/or Other Drug Program Certification Standards
(March 15, 2004)

[http://www.adp.ca.gov/Licensing/doc/Alcohol andor Other Drug Program Certification Standards.doc](http://www.adp.ca.gov/Licensing/doc/Alcohol_andor_Other_Drug_Program_Certification_Standards.doc)
- Document 1T: CalOMS Prevention User Manual

[http://www.kitsco.com/casupport/WebHelp/CalOMS Manual.htm](http://www.kitsco.com/casupport/WebHelp/CalOMS_Manual.htm)
- Document 1V: Youth Treatment Guidelines

[http://www.adp.ca.gov/youth/pdf/Youth Treatment Guidelines.pdf](http://www.adp.ca.gov/youth/pdf/Youth_Treatment_Guidelines.pdf)
- Document 1W: Certification Regarding Lobbying
- Document 1X: Disclosure of Lobbying Activities – Standard Form LLL

<http://www.whitehouse.gov/omb/grants/sfillin.pdf>
- Document 2F: Standards for Drug Treatment Programs (October 21, 1981)

[http://www.adp.ca.gov/dmc/pdf/DMCA Standards for Drug Treatment Programs.pdf](http://www.adp.ca.gov/dmc/pdf/DMCA_Standards_for_Drug_Treatment_Programs.pdf)
- Document 2P: County Certification - Cost Report Year-End Claim For Reimbursement
- Document 3G: California Code of Regulations, Title 9 – Rehabilitation and Developmental Services, Division 4 – Department of Alcohol and Drug Programs, Chapter 4 – Narcotic Treatment Programs

<http://www.calregs.com>
- Document 3H: California Code of Regulations, Title 9 – Rehabilitation and Developmental Services, Division 4 – Department of Alcohol and Drug Programs, Chapter 8 – Certification of Alcohol and Other Drug Counselors

<http://www.calregs.com>

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- Document 3J: CalOMS Treatment Data Collection Guide
http://www.adp.ca.gov/CalOMS/pdf/CalOMS_Data_Collection_Guide.pdf
- Document 3K: Privacy, Confidentiality and Information Security Provisions
http://www.adp.ca.gov/NNA/files/Document_3K-Privacy_Confidentiality_and_Information_Security_Provisions.doc
- Document 3O: Quarterly Federal Financial Management Report (QFFMR) 2008-09
2011-12
http://www.adp.ca.gov/NNA/support_files.shtml
- Document 3S CalOMS Treatment Data Compliance Standards
http://www.adp.ca.gov/CalOMS/pdf/CalOMS_Data_Compliance.pdf
- Document 3T ADP Local Assistance Funding Matrix
- Document 3V Culturally and Linguistically Appropriate Services (CLAS) National Standards
<http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=15>



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

8

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Sheriff's Department

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Off-Highway Vehicle Grant Application

DEPARTMENTAL RECOMMENDATION: Request Board approve a resolution entitled "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Authorizing the Submittal of the State of California, Department of Parks and Recreation, Off-Highway Vehicle Grant Application."

SUMMARY DISCUSSION: The Department of Parks and Recreation is offering the Off-Highway Vehicle (OHV) grant program, to provide for well-managed OHV recreation by providing financial assistance to eligible agencies that develop, maintain, operate, expand, support, or contribute to well managed, high quality, OHV recreation areas, roads, and trails; and to responsibly maintain the wildlife, soils, and habitat of Project Areas in a manner that will sustain long-term OHV recreation in accordance with the legislative provisions and intent of the Act commencing at PRC section 5090.01.

If awarded, these monies would be used to provide maintenance on equipment that was purchased with prior OHV funds, additional safety gear for OHV Patrol Deputies, assist with costs associated with overtime for OHV Patrol Deputies, supplement and provide training to strengthen the Sheriff Department's Enforcement Detail for private and government owned property that is already in use, and enforce where it is not zoned and planned for.

This will be the fourth year that the Inyo County Sheriff's Department applies for the OHV competitive grant. The prior years have proven to be very successful. Both South-County and North-County are equipped with necessary OHV Enforcement equipment, and training has been provided yearly for Patrol Deputies.

This is a competitive grant, therefore we will not know what we are awarded until the Intent to Award is posted on the State Parks OHV Division website. The OHV grant requires a twenty-five percent (25%) in-kind match. Any item that is eligible as a Project cost is also eligible as a match. The Sheriff's Department anticipates applying for a maximum of \$150,000, however historically law enforcement applications state-wide rarely are awarded more than 50 percent of the total requested, and are often reduced significantly more than 50 percent of the total requested amount.

ALTERNATIVES: Your Board could choose not to approve the Resolution, but this alternative is not recommended. The OHV monies would be a valuable resource to Inyo County.

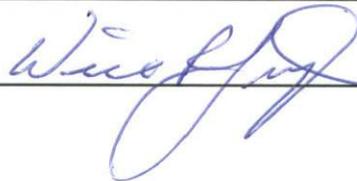
OTHER AGENCY INVOLVEMENT: Bureau of Land Management (BLM), Forest Service

FINANCING: If the grant application were approved, then a budget will be created – budget number to be determined by the Auditor's Office. The in-kind match will met through staff salaries and equipment dedicated to the enforcement detail as well as administrative duties associated with managing the OHV grant.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) R. Allen Approved: _____ Date <u>2-14-12</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Keta Luby Approved: <u>Yes</u> Date <u>2/15/12</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) N/A Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 2-16-12

RESOLUTION NO. 2012-_____

**A RESOLUTION OF THE BOARD OF SUPERVISORS,
COUNTY OF INYO, STATE OF CALIFORNIA, AUTHORIZING THE
SUBMITTAL OF THE STATE OF CALIFORNIA, DEPARTMENT OF PARKS
AND RECREATION, OFF-HIGHWAY VEHICLE GRANT APPLICATION**

WHEREAS, the people of the State of California have enacted the Off-Highway Motor Vehicle Recreation Act of 2003, which provides funds to the State of California and its political subdivisions for Operation and Maintenance, Restoration, Law Enforcement, and Education and Safety for off-highway vehicle recreation; and

WHEREAS, the Off-Highway Motor Vehicle Recreation Division with the California Department of Parks and Recreation has been delegated the responsibility to administer the program; and

WHEREAS, procedures established by the California Department of Parks and Recreation require the Applicant's Governing Body to certify by resolution the approval of the Application to apply for Off-Highway Motor Vehicle Grant funds; and

WHEREAS, this Project appears on, or is in conformance with this jurisdiction's adopted general or master plan and is compatible with the land use plans of those jurisdictions immediately surrounding the Project; and

WHEREAS this Board finds that the County's receipt of such funding would be beneficial to the residents of Inyo County.

NOW, THEREFORE, BE IT RESOLVED that the Inyo County Board of Supervisors hereby:

- (a) Approves the filing of an Application(s) for an Off-Highway Vehicle Grant or Cooperative Agreement; and
- (b) Certifies that this agency understands its legal obligations to the State upon approval of the Grant; and
- (c) Certifies that this agency understands the California Public Resources Code requirement that Acquisition and Development of Projects be maintained to specific conservation standards; and
- (d) Certifies that the Project will be well-maintained during its useful life; and
- (e) Certifies that this agency will implement the Project with diligence once funds are available and the Applicant has reviewed, understands, and agrees with the Project Agreement; and
- (f) Certifies that this agency will provide the required matching funds; and
- (g) Certifies that the public and adjacent property owners have been notified of this Project (as applicable); and
- (h) Appoints the Inyo County Sheriff as agent to conduct all negotiations, execute and submit all documents including, but not limited to Applications, agreements, amendments, payment requests and so on, which may be necessary for completion of the Project.

PASSED AND ADOPTED by the Board of Supervisors of the County of Inyo, State of California, this 28th day of February 2012, by the following role call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chairperson
Inyo County Board of Supervisors

ATTEST: Kevin D. Carunchio
Clerk of the Board

By: _____
Patricia Gunsolley, Assistant

CALIFORNIA STATE PARKS
Off-Highway Motor Vehicle Recreation Division

2008 GRANTS AND COOPERATIVE AGREEMENTS
PROGRAM REGULATIONS
(Rev.12/11)

GRANTS AND COOPERATIVE AGREEMENTS PROGRAM REGULATIONS

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ADOPT (2008)

Chapter 15

OFF-HIGHWAY MOTOR VEHICLE RECREATION GRANTS AND COOPERATIVE AGREEMENTS PROGRAM REGULATIONS

ARTICLE 1 – GENERAL PROVISIONS

4970.00. APPLICATION OF CHAPTER

California Code of Regulations (CCR), Title 14, Division 3, Chapter 15 applies only to Grant and Cooperative Agreement Applications received by the Off-Highway Motor Vehicle Recreation (OHMVR) Division on or after January 9, 2012.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.01-5090.70, Public Resources Code.

4970.01. DEFINITIONS

The words used in this chapter have the following meanings whenever the words are capitalized:

- (a) "Act" means the Off-Highway Motor Vehicle Recreation Act of 2003, as amended, commencing at PRC Section 5090.01, or any subsequent amended versions.
- (b) "Applicant" means any entity identified in Section 4970.03.
- (c) "Application" means a compilation of required information submitted in conformance with these regulations to support a request for funding from the OHMVR Division's Grants program for proposed Project(s).
- (d) "Audit" means a comprehensive review in accordance with Generally Accepted Auditing Standards (GAAS), developed by the American Institute of Certified Public Accountants (AICPA) and the Government Auditing Standards issued by the United States (U.S.) General Accounting Office. The Audit is a review of the Grantee's relevant financial records by the Department of Parks and Recreation Audit Office staff or other Department designee to determine that they support the expenditures authorized in the Project Agreement.
- (e) "CEQA" means the California Environmental Quality Act, Public Resource Code (PRC) Section 21000 et seq.; Title 14, CCR, Division 6, Chapter 3, Article 20.
- (f) "Conservation" means activities, practices, and programs developed and/or implemented in connection with ongoing OHV Recreation that sustain and preserve soils, plants, wildlife and their habitat, and natural and Cultural Resources as referenced in or required by PRC Sections 5090.10, 5090.35, 5090.50, and 5090.53.
- (g) "Cooperative Agreement" means an agreement between the OHMVR Division and a federal agency or a Federally Recognized Native American Tribe for the purposes authorized and defined in PRC Section 5090.50 and these regulations.

- (h) "Cultural Resources" are associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage; are associated with the lives of persons important in our past; embody the distinctive characteristics of a type, period, region, or method of construction, or represent the work of an important creative individual, or possess high artistic values; or have yielded, or may be likely to yield, information important in prehistory or history. Cultural Resources also include historical resources. Historical resources include, but are not limited to, any object, building, structure, site, area, place, record, or manuscript that is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California. A resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (PRC Section 5024.1, Title 14 CCR, Section 4852).
- (i) "Deliverables" means the specific tangible outcomes or work products to be provided, acquired, or produced with the funds made available pursuant to the Project Agreement. Examples include the purchase of a specified property, installation of specified erosion control measures, construction of a restroom, construction of a specified length of fencing, production of a specified number of maps, purchase of specified Equipment, Restoration of a specific area, maintenance of a specific length of trail, completion of research resulting in a written report, and planning that results in a report or reports including any related specified documents.
- (j) "Development" means the construction of new, and/or improvement of existing Facilities to improve existing or provide additional opportunities, experiences, or services for OHV Recreation.
- (k) "District" means a public or quasi-public governmental entity formed according to law whose mission includes clear legal responsibility for open space, recreation, parks, and resource-related activities that are land based.
- (l) "Division Website" means the internet page of the OHMVR Division located at www.ohv.parks.ca.gov.
- (m) "Due Diligence" means to conduct or cause to be conducted an investigation of all aspects of property proposed to be acquired and/or developed using OHV Trust Funds, including investigating the suitability of the property for the intended use, and all critical facts and assumptions used in developing the proposed Project that would assist in evaluating the success of the Project in providing OHV Recreational opportunities and to avoid and/or minimize potential risks that could impair the future sustainability of OHV Recreation.
- (n) "Ecological" means the interdependence of living organisms within the ecosystem in which the OHV use exists, including the interrelationship and interactions between and among the natural and Cultural Resources and the human activities relating to or affected by OHV use.
- (o) "Ecological Restoration" means an intentional activity that initiates or accelerates the recovery of an ecosystem with respect to its health, integrity and sustainability.
- (p) "Education" means comprehensive programs that teach OHV safety, environmental responsibility, and respect for private property.

- (q) "Educational Institution" means a public or private preschool, elementary, or secondary school, college or university, or institution; the governing board of a school district; or any combination of school districts or counties recognized as the administrative agency for public elementary or secondary schools.
- (r) "Equipment" means tangible property that has a normal useful life of at least one year and has a unit acquisition cost of at least \$1,000 (e.g., four identical assets which cost \$400 each, for a \$1,600 total, would not meet the requirement). Equipment does not include expendable items such as personal safety gear, or tires.
- (s) "Facility" means the assets of an organization that include: buildings, trails, roads, grounds, parking facilities, and structures such as shade structures, fences, trash enclosures, cattle guards, etc., and includes the systems that support facilities (fuel, electrical, sewer, water, waste, etc.).
- (t) "Federally Recognized Native American Tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Village pursuant to Title 25, Code of Federal Regulations (CFR) Section 83.5(a).
- (u) "Grant" means a local agency grant between the OHMVR Division and a city, county, District, State Agency, Educational Institution, or Nonprofit organization for the purposes as authorized and defined in PRC Section 5090.50 and these regulations or a Cooperative Agreement between a federal agency, or a Federally Recognized Native American Tribe, and the OHMVR Division.
- (v) "Grantee" means a recipient of a Grant.
- (w) "Ground Disturbing Activity" means any earth moving Project-related activity.
- (x) "Habitat Management Program (HMP)" means an animal and plant wildlife habitat protection program designed to sustain a Viable Species Composition for the Project Area, pursuant to PRC Sections 5090.35, 5090.50, and 5090.53.
- (y) "Inconsequential Defect" means a defect that, when corrected, does not provide the Applicant an unfair advantage.
- (z) "Indirect Costs" means expenses incurred for the management and administration of a project (e.g., utility costs, accounting services, contract administration, postage, management personnel, telephone bills, etc.)
- (aa) "Land Manager" means the public agency legally responsible for the proposed Project Area.
- (bb) "Medical" means a person requested medical aid and was treated by emergency service personnel.
- (cc) "NEPA" means the National Environmental Policy Act pursuant to United States Code Title 42, Section 4371; 40 CFR part 1500.1 et seq.
- (dd) "Nonprofit" means an organization having tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code (IRC).
- (ee) "OHV" means an off-highway motor vehicle as specified in California Vehicle Code (CVC) Section 38006.
- (ff) "OHV Opportunities" means roads, trails, or areas on lands that are open to legal OHV Recreation.
- (gg) "OHV Recreation" means the activity of driving or riding motorized vehicles, on lands to which CVC Division 16.5 applies, for leisure purposes including motorized off-highway access to non-motorized recreation activities.
- (hh) "On-line Grant Application (OLGA)" means the OHMVR Division's web-based application system.

- (ii) "Project" means the activities and Deliverables described in the Project Application to be accomplished with funding through a Project Agreement.
- (jj) "Project Agreement" means a contract executed to formally implement a Project.
- (kk) "Project Area" means the physical boundaries within which the activities will be performed and Deliverables will be accomplished as described in the Project Agreement.
- (ll) "Project Description" means the work plan that details the activities to be conducted by the Applicant.
- (mm) "Repair" means to fix, mend, make new, or revitalize to the condition of the habitat that existed prior to authorized or unauthorized OHV use and related damage.
- (nn) "Restoration" means upon closure of the unit or any portion thereof, the return of land to the contours, the plant communities, and the plant covers comparable to those on surrounding lands or at least those which existed prior to OHV use.
- (oo) "Restoration Planning" means identifying appropriate restoration techniques, strategies, and Project implementation, including environmental review associated with the Project.
- (pp) "Viable Species Composition" means that species found in the Project Area have populations with the estimated numbers and distribution of reproductive individuals to enable their continued existence.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5020.1(j), 5024.1, 5090.07, 5090.10, 5090.11, 5090.32, 5090.35, 5090.50, 5090.53, Public Resources Code; Sections 38001 and 38006, Vehicle Code, 25 CFR Section 83.5(a); Sections 210.3 and 66010.4, Education Code; and U. S. IRC Section 501(c)(3).

4970.02. PROGRAM PURPOSE

The purpose of the Grants program is to provide for well managed OHV Recreation by providing financial assistance to eligible agencies and organizations that develop, maintain, operate, expand, support, or contribute to well managed, high-quality, OHV Recreation areas, roads, and trails, and to responsibly maintain the wildlife, soils, and habitat of Project Areas in a manner that will sustain long-term OHV Recreation in accordance with the legislative provisions and intent of the Act commencing at PRC Section 5090.01.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.01-5090.70, Public Resources Code.

4970.03. DETERMINING APPLICANT ELIGIBILITY

- (a) Eligibility to apply for funding under the OHMVR Grants program requires the Applicant to meet one (1) of the following organizational definitions:
 - (1) For a city or county: a department or comparable subdivision,
 - (2) A District,
 - (3) For the U.S. Forest Service: a Forest or Regional Office, except for law enforcement Projects for which the Applicant is defined as a Patrol District,
 - (4) For the U.S. Bureau of Land Management: a Field, District, or State Office,

- (5) For other Federal Agencies: a Field, District, Regional or State Office, or similar subdivision,
 - (6) A Federally Recognized Native American Tribe,
 - (7) An Educational Institution,
 - (8) A Nonprofit organization,
 - (9) A State Agency or department, Commission, Conservancy, Board or other comparable subdivision within the government of the State of California.
- (b) Applicants are limited to certain Project types. Applications received from entities that do not comply with this requirement will not be considered. See Table 1 for a list of eligible Project types by Applicant.

Table 1 – Eligible Applicants by Project Types

	Acquisition	Development	Education & Safety	Ground Operations	Law Enforcement	Planning	Restoration
Cities and Counties	X	X	X	X	X	X	X
U.S. Forest Service	X	X	X	X	X	X	X
U.S. Bureau of Land Management	X	X	X	X	X	X	X
Other Federal Agencies	X	X	X	X		X	X
Federally Recognized Native American Tribes	X	X	X	X		X	X
Educational Institutions			X	X			X
Nonprofit organizations			X	X			X
State Agencies							X
Districts	X	X	X	X		X	X

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
 Reference: Section 5090.32 and 5090.50, Public Resources Code.

4970.04. GRANTS PROGRAM CYCLE

- (a) Grants shall be awarded on an annual basis provided funding is appropriated by the Legislature. The awarding of a Grant does not guarantee ongoing or future funding in any Project category.
- (b) Prior to the start of each Grants program cycle (Grants Cycle), the OHMVR Commission shall conduct a public meeting to collect public input concerning the Grants program. The OHMVR Commission may provide general guidance to the OHMVR Division prior to the start of each Grants Cycle. See Table 2 for an overview of the Grants Cycle.

Table 2 – Grants Cycle

Activity	Date
Application materials available on the Division Website.	The second Monday in January
Application workshops	May be held for potential Applicants. Information will be posted annually on the Division Website.
Preliminary Application filing	The first Monday in March. Applications due no later than 5:00 pm local time.
Public review and comment period: (1) The OHMVR Division shall post preliminary Applications on the Division Website. (2) Applicants shall notice the public.	The first Tuesday following the first Monday in March through the first Monday in April.
Application final filing date	The first Monday in May. Applications due no later than 5:00 pm local time.
OHMVR Division final Application review	May
Application Results Intent to Award will be posted on the Division Website.	The first Monday in June
Appeal Period Applicants have the right to appeal the OHMVR Division's Intent to Award.	Thirty (30) calendar days from the Intent to Award posting of the notice on the OHMVR Division Website.
OHMVR Division and Grantees Execute Project Agreements	Upon resolution of any appeals

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.24(b), 5090.32, and 5090.50, Public Resources Code.

4970.05. GENERAL APPLICATION REQUIREMENTS

- (a) The 2008 Grants and Cooperative Agreements Program Regulations – Appendix (Rev. 1/11) (hereinafter Appendix) and all of its contents and subsequent revisions adopted through the rulemaking process are hereby incorporated by reference.
- (b) Applications shall establish how each proposed Project is directly related to OHV Recreation in the Project Area specified in the Application. Proposed Projects will be screened by the OHMVR Division prior to scoring. Those Applications that do not establish a direct relation to OHV Recreation shall be rejected.

- (c) Subject to the discretion of the OHMVR Division as specified in Section 4970.07.2, any Application determined by the OHMVR Division to be non-compliant with these requirements may be disqualified.
- (d) Each Applicant may submit only one (1) Application for each Grants Cycle. The Application may contain multiple Projects.
- (e) Applicants shall undertake a public review process of their Application.
 - (1) All preliminary Applications shall be available on the Division Website the day following the preliminary Application deadline for public review and comment.
 - (2) Applicant shall notify the public of the opportunity to review and comment on the Preliminary Application no later than the first Tuesday following the first Monday in March. The notice shall include instructions for accessing the Division Website for Application review and public comments. Public notification efforts shall include at least one of the following:
 - (A) Notice mailed and/or emailed to those persons the Applicant determines most likely to have an interest in or be affected by the Application, and to those who have requested notice,
 - (B) Publication on Applicant's website,
 - (C) Publication in local newspaper,
 - (D) News release,
 - (E) Public meeting or hearing conducted by the Applicant.
 - (3) Public comments shall be submitted to the Applicant and the OHMVR Division.
 - (4) Public comments shall be submitted no later than the first Monday in April.
- (f) All Applicants shall provide matching funds or the equivalent value of services, or material, in an amount not less than twenty-five percent (25%) of the total Project cost as identified on the Project Cost Estimate (rev.1/11).
 - (1) All items of expense applied towards matching funds shall be applicable to the Project and shall be documented the same as any other item of expense.
 - (2) The same match expenses shall not be duplicated for multiple Projects.
 - (3) Cash value for volunteer time shall be determined using the agency's hourly reimbursement rate for the paid classification that most closely matches the duties performed by the volunteer. Cash value for salaried employee time shall be based on the agency's hourly reimbursement rate for the classification.
 - (4) Any item of expense that would be eligible as a Project cost is also eligible as a match.
- (g) All Applicants shall provide a Project Cost Estimate (see Appendix) for each requested Project.
- (h) All Applicants shall complete an inventory of Equipment for items purchased with OHV Trust Funds within the last five years.
- (i) All Applicants except those applying solely for law enforcement shall complete the Applicant Certifications.
- (j) Additional requirements within the Appendix, incorporated by reference, shall be completed as applicable.

- (k) Nonprofit organizations shall provide documentation, in the form of an Internal Revenue Service (IRS) letter of determination or publication on the official IRS website, verifying current IRC, Section 501(c)(3) status.
- (l) Educational Institutions and Nonprofit organizations applying for a Grant involving activities on any public lands shall include written permission from the Land Manager authorizing the Applicant to conduct the proposed Project and a description of how the Project fits with the land management goals of the area.
 - (1) The written permission must be on Land Manager's letterhead and signed by the authorized representative of the Land Manager.
 - (2) The written permission shall contain a current signature and date.
 - (3) The written permission must specifically identify the proposed Project(s) and a description of how the Project(s) fits with the land management goals of the area.
- (m) All city, county and District Applicants shall submit a governing body resolution providing approval to apply for grant funding from the OHV Trust Fund.
- (n) All Applicants shall comply with the environmental application requirements contained in Section 4970.06.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
 Reference: Sections 5090.32 and 5090.50, Public Resources Code.

Subarticle 1. ENVIRONMENTAL REQUIREMENTS

4970.06.1. California Environmental Quality Act (CEQA) Requirements

- (a) The OHMVR Division is required to comply with CEQA before approving each Grant.
- (b) When a Project request is for funding both CEQA and/or NEPA requirements and actual Project Deliverables, the Project shall be undertaken and funded in two phases as follows:
 - (1) The first phase funds the CEQA and/or NEPA activities, and
 - (2) The second phase will fund the deliverables, as approved and conditioned by the outcome of the CEQA and/or NEPA document, once the CEQA and/or NEPA conclusions result in a decision to proceed with the Project Deliverables and the Division gives approval .
- (c) For city, county, District, State Agency, Educational Institution, and Nonprofit organization Applicants only:
 - (1) All city, county, District, State Agency, Educational Institution and Nonprofit organization Applicants shall provide the required documentation for the OHMVR Division to determine that CEQA compliance has been met for each Project. CEQA compliance shall be determined by submitting one of the following for each Project:
 - (A) An Environmental Review Data Sheet (ERDS) documenting the Project is phased pursuant to 4970.06.1(b). A subsequent ERDS shall be prepared prior to Division approval of the second Project phase if a Notice of Determination (NOD) has not been filed at that time, or
 - (B) A Notice of Exemption (NOE) finding that the Project is exempt from CEQA that has been filed for the Project consistent with CEQA

- Guidelines Section 15062, together with responses to questions required in the ERDS, or
- (C) An Initial Study/Negative Declaration (IS/ND) or an Initial Study/Mitigated Negative Declaration (IS/MND) for activities that are not categorically exempt, but fit within the definition of activities that may be covered by a Negative Declaration (ND) under CEQA, together with a copy of the NOD filed for the Project, or
 - (D) An Environmental Impact Report (EIR) if the proposed activity poses a potentially significant impact as defined in an IS/ND checklist, or meets any of the tests for mandatory findings of significance under CEQA (PRC Section 21083; CEQA Guidelines Section 15065), together with a copy of the NOD filed for the Project, or
 - (E) Other documentation indicating the requirements of CEQA have been satisfied or the reasons the Applicant believes the Project is categorically exempt or not subject to the CEQA review (CEQA Guidelines Sections 15061(b)(3) or 15378).
- (2) Within 45 calendar days of the final Application submission, the OHMVR Division shall review the Application for environmental compliance.
- (A) If the OHMVR Division needs to clarify information provided pursuant to 4970.06(c)(1), the OHMVR Division shall submit in writing a request for such information from the Applicant. The OHMVR Division shall request the Applicant provide the additional information in writing to the OHMVR Division within ten (10) calendar days of receipt of the request.
 - (B) Applicants that do not return the requested additional information within the ten (10) calendar day limit may have their Applications returned without further processing.
- (3) Notwithstanding 4970.06.1(b)(1), where the Applicant is not a lead agency and CEQA compliance has not otherwise been met, the Applicant shall provide responses to questions required in the ERDS for each Project, and shall also provide adequate information to the OHMVR Division to make a sufficient Project review to determine the appropriate level of CEQA compliance and any additional environmental documentation required.
- (A) Within 45 calendar days of the final Application submission, the OHMVR Division shall review all Projects to determine what additional documentation or information is required for the OHMVR Division to complete the requirements for CEQA, with an assessment of the amount of further CEQA analysis and compliance that may be required. The OHMVR Division cannot commit to completing the added CEQA work needed if the time and resources required exceed the time and resources available to complete the Application selection process.
 - (B) If the OHMVR Division determines that it cannot complete the necessary additional CEQA work, it reserves the right to inform the Applicant in writing and return the Application and supporting materials.

- (C) If the OHMVR Division determines that additional information is required for the Project to comply with CEQA and that such work may be completed with existing resources and within the timeframe for the Application process, it will request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.

 - (1) Applicants who do not return the requested additional information within the ten (10) day time limit may have their Applications returned without further processing.
 - (2) For those Applications that are accepted for further CEQA compliance, the OHMVR Division shall use its best efforts to cause the CEQA compliance work to be completed. However, the OHMVR Division cannot guarantee the Project will be certified as CEQA compliant. Also, the OHMVR Division reserves the right to cease CEQA compliance work if it determines the Project may not be funded in light of the Project evaluation and scoring process and submission of the Project to the OHMVR Division for review and approval.
- (d) For federal agencies or Federally Recognized Native American Tribe Applicants only:
 - (1) All federal agencies and Federally Recognized Native American Tribe Applicants shall submit an analysis of the environmental impacts of the proposed Project comparable with the requirements of CEQA.
 - (A) This analysis may be in the form of completed Project-related NEPA compliance documentation for each Project or other comparable documentation prepared by the Applicant. If documentation covers a larger project, the Applicant should reference sections of the document that specifically address the proposed Project. In addition, the Applicant shall submit responses to the ERDS for each Project to allow the OHMVR Division to make a sufficient Project review to determine the appropriate level of CEQA compliance and any additional environmental documentation required from the Applicant to conform the Applicant's environmental analysis to CEQA.
 - (B) If the Applicant is requesting funding for NEPA or other comparable document preparation per Section 4970.06.1(b) prior to implementing the remaining Project Deliverables, the Applicant shall submit an ERDS documenting the Project is phased pursuant to 4970.06.1(b). A subsequent ERDS shall be prepared prior to OHMVR Division approval of the second Project phase if a NOD has not been filed, by the OHMVR Division or other CEQA lead agency, at that time.
 - (2) Within 45 calendar days of the final Application submission, the OHMVR Division shall review all Projects to determine what additional documentation or information is required for the OHMVR Division to complete the requirements for CEQA, with an assessment of the amount of further CEQA analysis and compliance that may be required. The OHMVR Division cannot commit to completing the added CEQA work

needed if the time and resources required exceed the time and resources available to complete the Application selection process.

- (A) If the OHMVR Division determines that it cannot complete the necessary additional CEQA work, it reserves the right to inform the Applicant in writing and return the Application and supporting materials.
 - (B) If the OHMVR Division determines that additional information is required for the Project to comply with CEQA and such work may be completed with existing resources and within the timeframe for the Application process, it will request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.
 - (C) Applicants who do not return the requested additional information within the ten (10) day time limit may have their Applications returned without further processing.
 - (D) For those Applications that are accepted for further CEQA compliance, the OHMVR Division will use its best efforts to cause the CEQA compliance work to be completed. However, the OHMVR Division cannot guarantee the Project will be certified as CEQA compliant. Also, the OHMVR Division reserves the right to cease CEQA compliance work if it determines the Project may not be funded in light of the Project evaluation and scoring process and submission of the Project to the OHMVR Division for review and approval.
- (e) An agency may not rely on mitigation measures as a basis for concluding a Project is categorically exempt.
 - (f) When an ERDS is required, one ERDS shall be provided for each individual Project, even if more than one (1) Project falls under the same Project type. If an individual Project addresses more than one (1) site, every site under that Project shall be clearly addressed in the ERDS.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.02, 5090.32, 5090.35, 5090.50(d)(4), 5090.53, and 21000 et seq., Public Resources Code; USC Title 42, Section 4371; and 40 CFR part 1500.1 et seq.

4970.06.2. Habitat Management Program (HMP)

- (a) In order to qualify for consideration of its Application, all Applicants submitting a proposed Project involving Ground Disturbing Activity shall submit a HMP.
- (b) Applicants shall submit only one HMP for each Application. The HMP shall encompass all Project Areas for every Project with Ground Disturbing Activities for which funding is requested.
- (c) Within 45 calendar days of the final Application submission, the OHMVR Division shall review all Applications to ensure that all required HMP components are addressed.
 - (1) If the OHMVR Division needs to clarify information provided and has determined that such clarification may be completed within the timeframe for the Application process, it shall request such additional documentation

from the Applicant be returned within ten (10) calendar days of the written request.

- (2) Applicants who do not return the requested additional information within the ten (10) day time limit may have their Applications returned without further processing.
- (d) When a HMP implementation is required, the Grantee shall implement the HMP regardless of whether the Grantee received funds specifically for HMP implementation.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.02, 5090.32, 5090.35, 5090.50(d)(4), 5090.53, Public Resource Code.

4970.06.3. Soil Conservation

- (a) The 2008 Soil Conservation Standard and supporting 2008 Soil Conservation Guidelines are by this reference incorporated into and adopted as a part of these Regulations. Definitions governing soil conservation are contained in the Soil Standard and Guidelines.
- (b) In accordance with the Soil Conservation Standard, "Off-highway vehicle (OHV) recreation facilities [receiving grant funding] shall be managed for sustainable long-term prescribed use without generating soil loss that exceeds restorability, and without causing erosion or sedimentation which significantly affects resource values beyond the facilities. Management of OHV facilities shall occur in accordance with PRC, Sections 5090.02, 5090.35, and 5090.53."
- (c) In order to qualify for consideration of its Application, all Applicants submitting proposed Project(s) involving Ground Disturbing Activity shall submit a Soil Conservation Plan that achieves the Soil Conservation Standard with regard to the proposed Project(s). Applicants shall submit only one Soil Conservation Plan for each Application. The Soil Conservation Plan shall encompass all Project Areas for every Project with Ground Disturbing Activities for which funding is requested.
- (d) The Soil Conservation Plan shall reference, adopt, and utilize the methods, considerations, and other suggestions contained in the Soil Guidelines or other comparable methods or considerations that demonstrate how the Soil Conservation Standard is being or will be met in the Project Area.
- (e) The Soil Conservation Plan shall include the following components:
 - (1) Protocol for assessment and maintenance
To receive funding all OHV Projects involving Ground Disturbing Activities shall have a protocol for assessment and maintenance which considers:
 - (A) Water, wind, and mechanical erosion,
 - (B) Water and sediment control,
 - (C) Tread condition,
 - (D) Off-site impacts, and
 - (E) Watercourse crossings.
 - (2) Protocol for monitoring
 - (A) To receive funding Applicants shall have a protocol for monitoring change detection of features, trails, and facilities which describes:
 - 1. Objectives,

2. Monitoring parameters,
 3. Monitoring site selection,
 4. Monitoring schedule,
 5. Data collection, including Quality Assurance/Quality Control measures, and
 6. Data management.
- (B) The plan shall also incorporate one or more of the following:
1. Photography (ground based and/or aerial),
 2. Field Control Plots,
 3. Transects, and
 4. Sampling Points.
- (3) Monitoring and soil conservation standard compliance report
- (A) The compliance report provides information, gathered using the methodologies outlined in the Applicant's answers to (2) above, that demonstrates the Applicant has sufficient knowledge of the Project Area to plan and implement activities that will result in sustainable practices and compliance with the Soil Conservation Standard.
- (B) The compliance report shall address the following:
1. Historical conditions,
 2. Change analysis,
 3. Findings,
 4. Conclusions, and
 5. A compliance action plan describing activities to be implemented and a schedule of those activities.
 - a. Upon determination that the Soil Conservation Standard is not being met in any Project Area, the compliance action plan shall describe the steps taken to temporarily close and repair that area or portion thereof funded from the OHV Trust Fund in order to meet the Soil Conservation Standard.
 - b. If the OHV Opportunity has not been repaired, the Applicant will explain the reasons therefore and its plan to repair or close the OHV Opportunity, including any current or future request for OHV funding to meet the Soil Conservation Standard.
- (4) Development Projects for new facilities
The Soil Conservation documentation for Development Projects resulting in new facilities shall also include the following components:
- (A) A Project Description that includes the Project purpose, documentation of the proposed Project design, and proposed construction methods.
- (B) A review of the Project's potential effects on local hydrology and adjacent infrastructure.
- (f) Within 45 calendar days of the final Application submission, the OHMVR Division shall review all Applications to ensure all required Soil Conservation components are addressed.
- (1) If the OHMVR Division needs to clarify information provided and has determined that such clarification may be completed within the timeframe

for the Application process, it shall request such additional documentation from the Applicant be returned within ten (10) calendar days of the written request.

- (2) Applicants who do not return the requested additional information within the ten (10) day time limit may have their Applications returned without further processing.
- (g) When Soil Conservation Plan implementation is required, the Grantee shall implement the Soil Conservation Plan regardless of whether the Grantee received funds specifically for Soil Conservation Plan implementation.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.02, 5090.32, 5090.35, 5090.50(d)(4), 5090.53, Public Resources Code.

4970.07. APPLICATION SUBMISSION

- (a) Applications shall be submitted via the internet through the OHMVR Division's OLGA. The OHMVR Division will not accept Applications after the published deadlines pursuant to Table 2 in Section 4970.04.
 - (1) The OLGA is an interactive database that will guide Applicants through the Application process. OHMVR Division staff will provide additional support for Applicants as needed.
 - (2) All Applications shall be submitted via the OLGA.
- (b) All Applicants shall submit preliminary and final Applications by the due date pursuant to Table 2, Section 4970.04. Applicants shall submit a preliminary and final Application to be considered for Grant award. The preliminary Application, shall include for each Project, with the exception of law enforcement Projects, at a minimum:
 - (1) Project description,
 - (2) Project Cost Estimate,
 - (3) Evaluation criteria,
 - (4) For Nonprofit organizations, verification of 501(c)(3) status pursuant to Section 4970.05(k), and
 - (5) For Nonprofit organizations and Educational Institutions, a written agreement pursuant to Section 4970.05(l).
- (c) Applicants for law enforcement Projects shall submit the following preliminary Application items:
 - (1) Project Cost Estimate,
 - (2) Law Enforcement Needs Assessment, and
 - (3) Law Enforcement Project Certification.
- (d) Preliminary Applications will be reviewed by the OHMVR Division. The OHMVR Division may provide comments to the Applicants, relative to compliance with the Application requirements. Comments submitted by the OHMVR Division to Applicants do not guarantee success within the competitive process and are not a commitment of funding. Additionally, the OHMVR Division, at its sole discretion, may choose to perform a preliminary Application site visit.
- (e) All Applicants shall comply with Section 4970.05(d).

- (f) Prior to the final Application submittal, Applicants may only modify their Application as a result of OHMVR Division preliminary review and/or public comments.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32, and 5090.50, Public Resources Code.

4970.07.1. Application Process – Question and Answers

- (a) Questions concerning the Application process and the interpretation of these regulations may be directed to a Grant Administrator. Contact may be by phone, or by email to the OHMVR Division. Refer to Section 4970.26 for contact information.
- (b) Responses to these questions will be posted via the Division Website within seven (7) calendar days of submission. The last date for submitting questions to the OHMVR Division is eight (8) calendar days prior to the final Application deadline.
- (c) Applicants shall not rely on answers to questions unless placed on the Division Website, Questions and Answers section, by the OHMVR Division.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32, and 5090.50, Public Resources Code.

4970.07.2. Final Application Defects

- (a) The OHMVR Division may, but has no obligation, to waive or correct Inconsequential Defects in the final Application.
- (b) The OHMVR Division may contact an Applicant in order to clarify Inconsequential Defects submitted in the Application.
- (c) Projects submitted as the incorrect Project type shall be rejected. Applicants unsure of the correct Project type should contact the OHMVR Division for assistance.
- (d) If duplicate Projects are submitted, the Project(s) with the lower evaluation criteria score will be rejected.
- (e) Applications or Projects not in compliance with applicable statute and/or these regulations will be rejected by the OHMVR Division.
- (f) The OHMVR Division shall review the Application and may, at its sole discretion, decrease the requested amount and eliminate activities based on the following considerations:
 - (1) Comparable activities from previous OHV grant projects,
 - (2) Proposed project activities or cost items not compliant with these regulations,
 - (3) Comparisons with similar proposed Project activities, and
 - (4) Generally accepted Equipment purchase/lease costs.
 - (5) Any element(s) of the Application the OHMVR Division is unable to determine as eligible.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32, and 5090.50, Public Resources Code.

4970.08. ELIGIBLE PROJECT COSTS

- (a) Eligible Project costs are the costs directly related to the work identified in the Project Description. Additionally, the Applicant may receive reimbursement up to fifteen percent (15%) of the requested amount for Indirect Costs.
- (b) Examples of eligible costs include but are not limited to:
 - (1) For acquisition projects only, preliminary acquisition costs for contract preparation, acquisition appraisal, and negotiation,
 - (2) Costs for an employee directly engaged in OHV Project implementation, or the first level supervisor of said employee, subject to the following:
 - (A) Costs shall be computed according to the prevailing wage (for contracted services) or salary scale (for Applicant's staff), and may include benefits (i.e., vacation, sick leave, and social security contribution) that are customarily charged by the Grantee or contractor. Personnel benefit charges shall be calculated in proportion to the actual time worked on an OHV Project.
 - (B) Costs charged to an OHV Project shall be computed on actual time worked on the Project and supported by timesheets and attendance records or comparable documentation describing the work performed on the OHV Project.
 - (C) Costs for overtime are allowed under the Grantee's established overtime policy.
 - (D) Costs for direct Project supervision.
 - (3) Stipends paid to volunteers according to the Grantee's normal practice or policy,
 - (4) Travel expenses and per diem for federal agencies shall not exceed the established federal rates. All non-federal agency Applicants shall not exceed the rates paid to Exempt, Excluded, and Represented State of California employees. The rates are posted at <http://www.dpa.ca.gov/personnel-policies/travel/hr-staff.htm>.
 - (5) Costs associated with Equipment acquired with Grantee's funds and used for an OHV Project shall be charged on a use basis in accordance with the Applicant's local fair market rental rates but shall never exceed the Grantee's actual cost. The Grantee may not charge a use fee for vehicles or Equipment purchased with OHV Trust Funds, except for fuel and minor maintenance costs,
 - (6) Supplies and materials, including personal safety items, may be purchased for a specific OHV Project or may be drawn from a central stock, provided the items are claimed at a cost no higher than the original purchase price paid by the Grantee,
 - (7) Construction activities, from site preparation (e.g., demolition, excavation, grading, etc.) through completion of the structure or Facility,
 - (8) Relocation costs that result from the displacement of a person and/or business, in accordance with California Government Code Sections 7260-7277 or the agency's applicable law if different from California law,
 - (9) Grantee insurance premiums for hazard and liability insurance for an OHV Facility,

- (10) Transportation costs for moving Equipment, material, and personnel (excluding moving and relocation expenses resulting from changes in assignments),
- (11) Preparation and publication of maps, videos, and/or handouts may be included as part of any related Project. Maps, videos and/or handouts that display the OHV trust fund logo shall be reviewed by the OHMVR Division prior to publication,
- (12) Rent or lease of facilities or Equipment to complete the Project, provided that the lease shall be fair market value or Grantee's actual cost, whichever is less and shall be proportionate to the area of the facility used for the Project. Utilities to operate these facilities are eligible provided the utilities are documented separately from any rent or lease costs,
- (13) Equipment:
 - (A) Equipment purchase or repair shall be requested as part of the Application for a specific Project.
 - (B) Equipment repair shall be due to normal wear and tear and may include major mechanical overhaul or replacement of parts if it is shown by a financial analysis in the Application that repair is more cost effective than the purchase of a new piece of Equipment.
 - (C) Equipment shall be used for OHV related purposes unless the Applicant is funding the portion of the purchase price not dedicated to OHV purposes, and
 - (D) For Nonprofit Applicants, the maximum grant request for Equipment purchases shall not exceed \$15,000 per item and the cumulative Equipment purchase total shall not exceed \$30,000 per Applicant.
- (14) Costs associated with site-specific Project planning such as design, permitting, or CEQA or NEPA analysis.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
 Reference: Sections 5090.32, 5090.50, Public Resources Code.

4970.09. INELIGIBLE PROJECT COSTS

- (a) Costs not associated with the Project Description are not eligible for reimbursement.
- (b) Examples of ineligible Project costs include but are not limited to:
 - (1) Expenditures outside the Project performance period as specified in the Project Agreement,
 - (2) Work or services performed outside of the Project Description in the Project Agreement,
 - (3) Any interest expense, discount not taken, deficit or overdraft, or bonus payment,
 - (4) Charges for a contingency reserve or other similar reserve,
 - (5) A damage judgment against the Grantee,
 - (6) Workers' compensation claims,
 - (7) Travel claims not related to the Project,
 - (8) Employee relocation (moving expenses resulting from duty station or assignment change),
 - (9) Charges incurred contrary to the policies and practices of the Grantee,

- (10) Any Project cost more appropriately funded by other Division programs or reimbursed by any other funding source,
 - (11) Awards, trophies, or plaques,
 - (12) Replacement or repair of Equipment not properly secured or maintained,
 - (13) Use fee for Equipment purchased with moneys from the OHV Trust Fund and,
 - (14) Restoration Project funds shall not be used for the Development or maintenance of trails for motorized use.
- (c) If costs are in question, the Applicant should seek clarification from the OHMVR Division.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
 Reference: Sections 5090.32 and 5090.50, Public Resources Code.

ARTICLE 2 – TYPES OF PROJECTS AND SPECIFIC APPLICATION REQUIREMENTS

4970.10. OPERATION AND MAINTENANCE (O&M)

- (a) Purpose
 Operation and maintenance of Facilities; Conservation; Development; planning; or acquisition associated with the use of OHVs for Recreation or motorized access to non-motorized recreation.
- (b) Available Funding
 Fifty percent (50%) of the funds appropriated by the Legislature for the Grants program shall be expended for Projects within the O&M category.
- (c) The minimum and maximum funding requests are as follows:
 - (1) The minimum Project request is \$10,000,
 - (2) The maximum amount requested per Project type is \$1,000,000, and
 - (3) The maximum Applicant request in this category is \$1,500,000.
- (d) Projects that affect lands identified as inventoried roadless areas by the U.S. Forest Service shall certify that the Project complies with PRC Section 5090.50(b)(1)(C).
- (e) Project Types
 The O&M category is divided into the following four sub-categories:
 - (1) Ground Operations,
 - (2) Development,
 - (3) Planning, and
 - (4) Acquisition.
- (f) Eligible Applicants
 Applicants may apply for Project types as shown in Table 3:

Table 3 – Eligible Applicant by Project Type

	Ground Operations	Development	Planning	Acquisition
Cities, Counties, and Districts	X	X	X	X
Federal Agencies	X	X	X	X
Federally Recognized Native American Tribes	X	X	X	X
Educational Institutions	X			
Nonprofit organizations	X			

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
 Reference: Sections 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

4970.10.1 Ground Operations (GO)

- (a) Purpose
 Maintenance and/or Conservation of Facilities; compliance with soil standards and HMP; and protection of natural and/or Cultural Resources.
- (b) Available Funding
 From the O&M category, at least seventy percent (70%) of the funds will be available for GO Projects.
- (c) Examples of Deliverables
 GO Deliverables include, but are not limited to the following:
 - (1) Maintenance of OHV Opportunity including necessary rerouting of roads and trails to address operational concerns,
 - (2) Facility servicing, including, but not limited to painting, cleaning restrooms, re-roofing, repairing of electrical systems, and maintaining kiosks,
 - (3) Regulatory and directional/trail signs,
 - (4) Repaving existing parking lots,
 - (5) Implementation of best management practices including erosion and/or sediment control measures and stream crossing improvements,
 - (6) HMP implementation including monitoring the effectiveness of prior and ongoing Conservation activities, and
 - (7) Soil Conservation Plan implementation.
- (d) Project-Specific Application Requirements
 In addition to the common requirements listed in Section 4970.05, Applications for GO Projects shall include:
 - (1) Project Description
 The Project Description shall provide sufficient clarity such that those not familiar with the Applicant or Project can understand what the Applicant intends to do. The Project Description shall include:

- (A) A statement of the GO activity the Applicant proposes to undertake such as scraping, grading, planting; erosion control; irrigation system installation and maintenance or other follow-up,
 - (B) How the proposed Project relates to OHV Recreation and will add to, enhance, or otherwise sustain OHV Recreation or OHV Opportunity in the Project Area,
 - (C) The size of the specific Project Area(s) in acres and/or miles, and
 - (D) The locations and descriptions of existing OHV Opportunities in and around the Project Area.
- (2) Necessary rerouting of roads and trails to address operational concerns requires submission of a Project timeline, conceptual drawings and site plans. See Section 4970.10.2(d)(2) for instructions.
 - (3) Project-Specific Maps
Project-specific maps shall include:
A map(s) showing the location of trails and other Facilities along with related OHV Opportunities, or other lands being served by the facilities.
 - (e) Optional Project-Specific Application Documents
If Applicants deem it helpful to support their specific Project Application, they may submit up to two (2) pages of Project-specific photos.
 - (f) Evaluation Criteria
See Appendix, incorporated by reference, for GO evaluation criteria.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

4970.10.2 Development

- (a) Purpose
Construction of, or improvements to, Facilities to sustain or enhance OHV recreational opportunity and experiences.
- (b) Available Funding
From the O&M category, up to ten percent (10%) of the funds will be available for Development Projects.
- (c) Examples of Deliverables
Development Deliverables include, but are not limited to the following:
 - (1) Trail and trailhead/staging area construction,
 - (2) Access road and parking lot construction,
 - (3) Picnic, restrooms, kiosks, and camping facilities construction,
 - (4) Infrastructure for OHV related Facilities such as electricity, water, sewage treatment,
 - (5) Conservation practices with regard to environmental protection, and
 - (6) Discretionary rerouting of roads or trails.
- (d) Project-Specific Application Requirements
In addition to the common requirements listed in Section 4970.05, Applications for Development Projects shall include:
 - (1) Project Description

The Project Description shall provide sufficient clarity such that those not familiar with the Applicant or Project can understand what the Applicant intends to do. The Project Description shall include:

- (A) A statement of the Development activity the Applicant proposes to undertake such as trail building, erosion control, construction, irrigation system installation, and maintenance or other follow-up,
 - (B) How the proposed Project relates to OHV Recreation and will add to, enhance, or otherwise sustain OHV Recreation or OHV Opportunity in the Project Area,
 - (C) The size of the proposed development ,
 - (D) The timeline for Project completion, and
 - (E) The location(s) of existing OHV Opportunities in and around the Development and how the Project will affect or relate to those opportunities.
- (2) **Conceptual Drawings and Site Plans**
Provide conceptual drawings of the site depicting proposed improvements and the location of those improvements. If the Project includes construction of a building, indicate floor plans and square footage.
- (3) **Land Tenure Certification**
Local agencies shall certify to the OHMVR Division that they have adequate tenure to, and site control of, the properties to be improved.
Tenure includes:
 - (A) Ownership,
 - (B) Lease,
 - (C) Easement, and
 - (D) Joint powers (or similar agreement).
- (4) **Project-Specific Maps**
Project-specific maps shall include:
A map(s) containing enough detail to provide someone unfamiliar with the area the ability to locate the site. Map(s) shall show existing Facilities and proposed Facilities as part of this Project or other existing plans.
- (e) **Optional Project-Specific Application Documents**
If Applicants deem it helpful to support their specific Project Application, they may submit up to two (2) pages of Project-specific photos.
- (f) **Evaluation Criteria**
See Appendix, incorporated by reference, for Development evaluation criteria.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

4970.10.3. Planning

- (a) **Purpose**
Development and preparation of plans for future Projects which propose organization, Development, operation, Conservation and/or maintenance to sustain long-term OHV Recreational use.

- (b) **Available Funding**
From the O&M category, up to ten percent (10%) of the funds will be available for planning Projects.
- (c) **Examples of Deliverables**
Planning Deliverables include, but are not limited to the following:
 - (1) Identifying trails or other Facilities for OHV Recreation, including inventories and mapping of roads, trails, and areas,
 - (2) Developing a plan to protect and conserve soils, water, plants, animals, and/or Cultural or other natural resources affected by OHV Recreation, and
 - (3) Preparing an OHV component of a recreation management plan, OHV Plan, or the OHV portion of a general plan.
- (d) **Project-Specific Application Requirements**
In addition to the common requirements listed in Section 4970.05, Applications for planning Projects shall include a Project Description. The Project Description shall provide sufficient clarity such that those not familiar with the Applicant or Project can understand what the Applicant intends to do. The Project Description shall include:
 - (1) A statement of the planning objective(s),
 - (2) How the proposed Project relates to OHV Recreation and will add to, enhance, or otherwise sustain OHV Recreation or OHV Opportunity in the Project Area,
 - (3) A statement of the activity(ies) the Applicant proposes to undertake,
 - (4) A list of all reports, interim or final, or other documents to be produced, and
 - (5) A timeline for completion of all planning activities.
- (e) **Optional Project-Specific Application Documents**
If Applicants deem it helpful to support their specific Project Application, the following documents may be submitted:
 - (1) Project-specific photos – up to two (2) pages, and/or
 - (2) Project-specific map(s).
- (f) **Evaluation Criteria**
See Appendix, incorporated by reference, for planning evaluation criteria.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

4970.10.4 Acquisition

- (a) **Purpose**
Secure interests in land to sustain and/or expand OHV Recreation access and OHV Opportunities.
- (b) **Available Funding**
From the O&M category, up to ten percent (10%) of the funds will be available for acquisition Projects.
- (c) **Examples of Deliverables**
Acquisition Deliverables include, but are not limited to the following:
 - (1) Purchase of right-of-way or easement,

- (2) Lease of twenty-five (25) years or more,
 - (3) Purchase of land in fee title,
 - (4) Purchase of an option, and
 - (5) Rights to use real property, such as permits or licenses.
- (d) **Project-Specific Application Requirements**

In addition to the common requirements listed in Section 4970.05, Applications for acquisition Projects shall include:

- (1) **Project Description**
 The Project Description shall provide sufficient clarity such that those not familiar with the Applicant or Project can understand what the Applicant intends to do. The Project Description shall include:
 - (A) A statement of the procurement activity the Applicant proposes to undertake,
 - (B) How the proposed Project relates to OHV Recreation and will add to, enhance, or otherwise sustain OHV Recreation or OHV Opportunity in the Project Area,
 - (C) Identification of the needs the Project will address,
 - (D) Location of the land to be acquired,
 - (E) The total acreage to be acquired,
 - (F) The easements affecting the property,
 - (G) The number of parcels,
 - (H) The location(s) of existing OHV Opportunities in and around the acquisition property and how the Project will affect or relate to that existing OHV Recreation,
 - (I) The total estimated cost of land to be acquired. The estimate shall be based on an appraisal by a certified appraiser to substantiate the value of the property, and
 - (J) The status of Due Diligence.
- (2) **Acquisition Plan**
 The plan shall describe the process for accomplishing the acquisition Project. An acquisition plan shall include the following:
 - (A) Acquisition timeline, which shows the steps and timeline for completing the Project, including the preparation and delivery of any reports to be prepared with the funds as a Deliverable,
 - (B) Discussion of the Applicant's ability to accomplish the acquisition Project. The Applicant shall demonstrate the ability to complete the acquisition within the proposed Applicant's timeline, and
 - (C) The Due Diligence undertaken, or to be undertaken, to determine the property is usable for its intended purpose (e.g., preliminary title report and underlying documents under Schedule B, zoning information, Phase 1 Environmental Site Assessment, biotic assessment).
- (3) **Project-Specific Maps**
 Project-specific maps shall include:
 - (A) A map(s) identifying the specific roads, trails, areas, and/or related Facilities to be acquired under the Project. The map(s) shall contain enough detail to provide someone unfamiliar with the area the ability to locate the site, and

- (B) Assessors parcel maps, including Assessor Parcel Number (APN), of each parcel to be purchased.
- (e) Warranty for OHV use:
 - (1) The Applicant shall warrant that the acquired property will be used for OHV Recreation,
 - (2) With the exception of federal agencies, the Applicant shall cause to be inserted in the acquisition deed or other recorded transfer of title document a condition that the property shall be used for OHV Recreation purposes as defined in these Regulations and that the State of California is granted Power of Termination pursuant to California Civil Code Section 885.010 et seq. providing that, in the event the property is not used for OHV Recreation, title to the property shall be transferred to the State of California. Federal agencies shall agree to use the property for OHV Recreation purposes for a minimum of 25 years; if the property is not used for the purpose of OHV Recreation for 25 years, title of the property shall transfer to the State.
 - (3) Funds awarded for acquisition shall only be released into an escrow account established for the acquisition. Applicant shall submit all acquisition documentation, including the escrow instructions, to the OHMVR Division for review. OHMVR Division shall have no obligation to release grant funds unless the acquisition transaction conforms to these regulations.
- (f) Optional Project-Specific Application Documents
If Applicants deem it helpful to support their specific Project Application, they may submit up to two (2) pages of Project-specific photos.
- (g) Evaluation Criteria
See Appendix, incorporated by reference, for acquisition evaluation criteria.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5024.1, 5090.32, 5090.35, 5090.50 and 5090.53, Public Resources Code.

4970.11. RESTORATION

- (a) Purpose
 - (1) To provide Ecological Restoration or Repair to habitat damaged by authorized or unauthorized OHV use.
 - (2) The goal of the Restoration Program is to aid the return of natural resource systems to their natural state when:
 - (A) Unauthorized motor vehicle use has damaged an area off limits to OHV Recreation;
 - (B) It is determined that areas shall be closed because soil or HMP standards cannot be achieved while sustaining OHV use;
 - (C) Areas formerly used by motor vehicles for OHV Recreation have not been designated and authorized for OHV use or;
 - (D) Natural resource systems in areas affected by ongoing OHV Recreation require restoration to sustain viable plant and wildlife species populations or other systems such as watersheds.

- (3) Restoration Projects also include scientific and cultural studies regarding OHV impacts and Restoration Planning efforts.
- (b) **Available Funding**
Twenty-five percent (25%) of the funds appropriated by the Legislature for the Grants program shall be expended for Projects within the Restoration category.
- (c) **The minimum and maximum funding requests are as follows:**
 - (1) The minimum Project request shall be no less than \$10,000, and
 - (2) No maximum request amount within the Restoration category.
- (d) **Eligible Applicants**
Refer to Table 1 in Section 4970.03(b).
- (e) **Examples of Deliverables**
Restoration Deliverables include, but are not limited to the following:
 - (1) Restoring a closed trail including stabilizing land contours and revegetation,
 - (2) Removal of roads or trails and the Restoration of damaged habitats in areas not designated for motorized vehicle use,
 - (3) The removal of closed roads or trails, or a portion of a closed road or trail, that will help to prevent OHV access to closed areas,
 - (4) Restoration Projects that generally improve and restore the function of natural resource systems damaged by recreational motorized activities,
 - (5) Protection of restored areas through the placement of physical barriers, patrols, and vertical mulching,
 - (6) Scientific study not otherwise required by state or federal laws that addresses the impact of OHV Recreation on natural and Cultural Resources,
 - (7) Mitigation measures required by CEQA or NEPA for the Restoration Project, and
 - (8) Site specific Project planning such as a Restoration design or an initial study.
- (f) **Project-Specific Application Requirements**
In addition to the common requirements listed in Section 4970.05, Applications for Restoration Projects shall include:
 - (1) **A Project Description**
The Project Description shall provide sufficient clarity such that those not familiar with the Applicant or Project can understand what the Applicant intends to do. The Project Description shall include:
 - (A) Restoration activity(ies) the Applicant proposes to undertake such as grading, planting, and vertical mulching,
 - (B) How the proposed Project relates to OHV Recreation and how OHV Recreation caused the damage,
 - (C) The size of the specific Project Area(s) in acres and/or miles,
 - (D) Except for scientific and cultural studies or planning Projects, the monitoring that will be implemented, including the methodology that will be used to determine the successful outcome of the Restoration Project,
 - (E) If the Project involves planning for Restoration, a list of all reports, interim or final, or other documents to be produced, and

- (F) Restoration Projects involving scientific and cultural studies shall include in the description:
 - (i) Goals, objectives, and methodologies to be employed, and
 - (ii) Peer reviews conducted by at least three (3) qualified experts from the scientific discipline or field related to the proposed Project.
 - (G) Except for scientific and cultural studies or planning Projects, a plan to insure the restored area will be protected. This may include law enforcement patrols to prevent intrusion into the Project Area, signs, barriers, or other proactive measures to prevent damage to restored lands.
 - (H) Except for scientific and cultural studies or planning Projects, erosion control efforts that will be utilized to prevent erosion or sedimentation that significantly affects resource values beyond the Project Area.
- (2) **Project-Specific Maps**
 Project-specific maps shall include:
 A map(s) containing enough detail to provide someone unfamiliar with the area the ability to locate the site(s). The map(s) shall contain the Global Positioning System (GPS) coordinates for the project site(s).
- (3) **Project-Specific Photos**
 Project-specific photos shall include:
 "Before" photos of the site(s) to be restored. Photos are limited to five (5) pages. "After" photos are required Deliverables for Restoration Projects which include on-the-ground work.
- (g) **Evaluation Criteria**
 See Appendix, incorporated by reference, for Restoration evaluation criteria.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
 Reference: Sections 5024.1, 5090.32, 5090.50, Public Resource Code

4970.12. LAW ENFORCEMENT

- (a) **Purpose**
 Law enforcement Projects provide financial assistance to local and federal agencies for protection of life and property, including natural and Cultural Resources, related to OHV Recreation and motorized access to non-motorized recreation.
- (b) **Available Funding and Eligible Applicants**
 Twenty percent (20%) of the funds appropriated by the Legislature for the Grants program shall be expended for law enforcement Projects. These funds shall be allocated as follows:
 - (1) Forty percent (40%) for local law enforcement Applicants,
 - (2) Thirty percent (30%) for the U.S. Bureau of Land Management Applicants, and
 - (3) Thirty percent (30%) for the Patrol Districts of the U.S. Forest Service.
- (c) Law Enforcement Projects have a minimum request amount of \$10,000. The maximum request amount is \$600,000 per Applicant within the law enforcement category.

- (d) **Eligible Project Costs**
Eligible Project costs include, but are not limited to the following:
 - (1) Law enforcement patrol, including aircraft support,
 - (2) OHV training,
 - (3) Purchase of Equipment for OHV law enforcement, and
 - (4) Purchase and installation of signs (e.g. regulatory, educational), placement of barriers, and other means of traffic control.
- (e) **Project-Specific Application Requirements**
In addition to the common requirements listed in Section 4970.05, Applicants for law enforcement Projects shall complete the following:
 - (1) Law Enforcement Needs Assessment, and
 - (2) Law Enforcement Project Certification.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5024.1, 5090.32, and 5090.50, Public Resources Code.

4970.13. EDUCATION AND SAFETY

- (a) **Purpose**
Provide public awareness for responsible OHV Recreation and/or provide safety programs.
- (b) **Available Funding**
Five percent (5%) of the funds appropriated by the Legislature for the Grants program shall be expended for Projects within the Education and safety category.
- (c) **The minimum and maximum funding requests are as follows:**
 - (1) The minimum Project request shall be no less than \$10,000, and
 - (2) The maximum request per Applicant is \$200,000 within the Education and safety category.
- (d) **Eligible Applicants**
Refer to Table 1 in Section 4970.03(b).
- (e) **Examples of Deliverables**
 - (1) Education program Deliverables may include, but are not limited to the following:
 - (A) Classroom or field training,
 - (B) Maps and brochures,
 - (C) Internet website, trail and interpretive signage, and
 - (D) Voluntary sound testing station.
 - (2) Safety program Deliverables may include, but are not limited to the following:
 - (A) Search and rescue,
 - (B) Safety equipment loan program, and
 - (C) First aid stations.
- (f) **Project-Specific Application Requirements**
In addition to the common requirements listed in Section 4970.05, Applications for Education and safety Projects shall include a Project Description. The Project Description shall provide sufficient clarity such that those not familiar with the Applicant or Project can understand what the Applicant intends to do. The description shall include:

- (1) A statement of the activity or product the Applicant proposes to create or undertake, including the primary message of Education projects,
 - (2) How the proposed Project relates to OHV Recreation and will add to, enhance, or otherwise sustain OHV Recreation or OHV Opportunity in the Project Area,
 - (3) Identification of the needs the Project will address,
 - (4) Location where training/services will be conducted, and
 - (5) If the proposed Project contains an Education element, a description of how the Project teaches OHV safety, environmental responsibility, and respect for private property.
- (g) **Optional Project-Specific Application Documents**
If Applicants deem it helpful to support their specific Project Application, the following documents may be submitted:
- (1) Project-specific photos – up to two (2) pages, and/or
 - (2) Project-specific maps.
- (h) **Evaluation Criteria**
See Appendix, incorporated by reference, for Education and safety evaluation criteria.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50, Public Resources Code.

ARTICLE 3 – APPLICATION EVALUATION SYSTEM AND FUNDING

4970.14. EVALUATION CRITERIA

Each Application, other than those solely for law enforcement and/or Education and safety, shall answer general criteria found in the Appendix, incorporated by reference. In addition, all Project types, except law enforcement, shall have Project-specific criteria.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5024.1, 5090.32, and 5090.50, Public Resources Code.

4970.14.1. General Criteria

- (a) If general criteria are required as part of the Application, only one (1) set shall be completed. General criteria measure the quality of the Land Manager's overall OHV program. The Applicants shall answer these questions with respect to the entirety of the OHV operation, including all trails and areas available for OHV Recreation, not just specific Projects or Project Areas.
- (b) General criteria includes but are not limited to the following:
 - (1) OHV Opportunity and services provided,
 - (2) Agency contribution to the overall cost of managing and delivering the OHV Opportunity,
 - (3) Management of natural and Cultural Resources,
 - (4) Effective education of rules/regulations, and
 - (5) Past performance in completing and administering Grant funded Projects.
- (c) Non-land manager Applicants required to complete the general criteria shall cooperate with the Land Manager(s) to obtain the information necessary to complete the general criteria section of the Application.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5024.1, 5090.32, and 5090.50, Public Resources Code.

4970.14.2 Project-Specific Criteria

Applicants shall complete Project-specific criteria for each Project, except law enforcement Projects, contained within the Application. Each Project within the Application will be given a score based on the specific benefits of the individual Project. The responses in the Project-specific criteria section of the Application shall be specific to the particular Project proposed for funding.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5024.1, 5090.32, and 5090.50, Public Resources Code.

4970.14.3 Factual Documentation

- (a) The responses shall be based on and reference factual conditions or statistics documented by information contained in documents officially published, maintained, and/or used in the ordinary course of the Applicant's operations. Published, for purposes of this requirement, means issued in report or other form officially prepared, maintained, and/or used in the ordinary course of the Applicants' administration of its programs. Examples of factual documentation include, without limitation, management reports, general or management plans, environmental documents, visitor counts, or other documentation the Applicant has officially adopted for use in its operations.
- (b) Members of the evaluation panel may investigate referenced documents or other documents on file at the OHMVR Division to check the accuracy of the information provided. If the evaluation panel concludes the information provided is incorrect or the conclusions stated are not supported, the panel shall use its discretion to clarify the response, reduce the points accordingly, or reject the Project Application. If points are reduced or the Application is rejected, the panel will cite the documents used to support its actions.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5024.1, 5090.32, and 5090.50, Public Resources Code.

4970.15. FUNDING DISTRIBUTION

Funds appropriated by the Legislature for the Grants program are identified in PRC Section 5090.50 as the following percentages:

- (a) Fifty percent (50%) for O&M,
- (b) Twenty-five percent (25%) for Restoration,
- (c) Twenty percent (20%) for Law Enforcement, and
- (d) Five percent (5%) for Education and Safety.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.15.1. Operation and Maintenance (O&M)

- (a) Within the O&M category, the funds shall be distributed as follows, except as provided in Sections 4970.15.1(c):
- (1) At least seventy percent (70%) for GO,
 - (2) Up to ten percent (10%) for Development,
 - (3) Up to ten percent (10%) for planning, and
 - (4) Up to ten percent (10%) for acquisition.
- (b) A panel of not less than three (3) individuals shall score each Application deemed compliant with these regulations. The panel shall use the Applicant's responses to general criteria and Project-specific criteria to determine a Project score. The steps for determining the final score are as follows (see Table 4 for an example):
- (1) Calculate the sum of the points received on the general criteria and the points received on the Project-specific criteria. Divide that number by the sum of the total possible points for the general criteria and the total possible points for the Project specific criteria, and
 - (2) Convert the result of the calculation to a percentage which is the final score.

Table 4 – Example of Score Calculation for GO Projects

Final Score = Actual Score/ Possible Score	
General Criteria	90 of 115
Project-specific Criteria	52 of 59
 (90 + 52) / (115 + 59) = 0.8161	
0.8161 x 100 = 81.61% = Final Score	

- (c) Eligible Projects shall be ranked by score. Projects shall be funded in order of score from highest to lowest until available funds are exhausted, taking into account the Project type funding restrictions in Section 4970.15.1(a). If there are not sufficient GO Project funding requests to consume 70% of the available O&M funding category, the other O&M sub-category Projects shall receive funding in order of score.
- (d) In the event Projects have the same score, Projects will be funded in the order of request amount starting with the smallest request amount. If more than one Project has the same request amount, the OHMVR Division will utilize a "random selection" method to break ties and determine which Project will receive funding.
- (e) Projects at the funding cut-off line may require modifications to the Project Description and Project Cost Estimate to reflect reduced available funding. The modification shall be completed prior to the OHMVR Division preparing and executing the Project Agreement.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
 Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.15.2. Restoration

- (a) A panel of not less than three (3) individuals shall score Applications deemed compliant with these regulations. The panel shall use the Applicant's responses to general criteria and Project-specific criteria to determine a Project score. The steps for determining the final score are as follows (see Table 5 for an example):
 - (1) Calculate the sum of the points received on the general criteria and the points received on the Project-specific criteria. Divide that number by the sum of the total possible points for the general criteria and the total possible points for the Project specific criteria, and
 - (2) Convert the result of the calculation to a percentage which is the final score.

Table 5 – Example of Score Calculation for Restoration Projects

Final Score = Actual Score/ Possible Score	
General Criteria	90 of 115
Project-specific Criteria	78 of 83
$(90 + 78) / (115 + 83) = 0.8485$	
$0.8485 \times 100 = 84.85\% = \text{Final Score}$	

- (b) Eligible Projects shall be ranked by score. Projects shall be funded in order of score from highest to lowest until available funds are exhausted.
- (c) In the event Projects have the same score, Projects will be funded in the order of request amount starting with the smallest request amount. If more than one Project has the same request amount, the OHMVR Division will utilize a "random selection" method to break ties and determine which Project will receive funding.
- (d) Projects at the funding cut-off line may require modifications to the Project Description and Project Cost Estimate to reflect reduced available funding. The modification shall be completed prior to the OHMVR Division preparing and executing the Project Agreement.
- (e) The OHMVR Division will consult with staff from the Wildlife Conservation Board during the evaluation and scoring process.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.15.3. Law Enforcement

- (a) Law enforcement Grants funding shall be distributed in the following entity categories:
 - (1) Forty percent (40%) for local law enforcement,
 - (2) Thirty percent (30%) for U.S. Bureau of Land Management, and
 - (3) Thirty percent (30%) for Patrol Districts of the U.S. Forest Service.
- (b) Law enforcement Projects are awarded on a non-competitive basis. The relative need of an Applicant is established by the Project request amount identified on

the Project Cost Estimate and the Applicant's responses to the Law Enforcement Needs Assessment. The OHMVR Division shall review the Project request amounts and may, at its sole discretion, increase or decrease the requested amount based on the following conditions:

- (1) Failure to follow program regulations,
 - (2) The Applicant has remaining funds from previous OHV law enforcement Grants,
 - (3) Comparisons with similar jurisdictions,
 - (4) Law Enforcement Needs Assessment, and
 - (5) Applicant's historical law enforcement Grant request amounts.
- (c) All compliant law enforcement Applicants will receive base funding in the amount of \$10,000 per Application. The remaining funds in each entity category will be distributed on a proportional basis. The proportional funding is determined by dividing the total funding available within the entity category (less base funding) by the total request amounts within each entity category (less base funding). The resulting percentage is applied to the individual Project request amounts (less base funding) to determine the additional award amount. The total of the base award and additional award, if applicable, is the final Project award amount.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.15.4. Education and Safety

- (a) A panel of not less than three (3) individuals shall score each Application deemed compliant with these regulations. The panel shall use the Applicant's responses to the Project-specific criteria to determine a Project score.
- (b) Eligible Projects shall be ranked by score. Projects shall be funded in order of score from highest to lowest until available funds are exhausted.
- (c) In the event Projects have the same score, Projects will be funded in the order of request amount starting with the smallest request amount. If more than one Project has the same request amount, the OHMVR Division will utilize a "random selection" method to break ties and determine which Project will receive funding.
- (d) Projects at the funding cut-off line may require modifications to the Project Description and Project Cost Estimate to reflect reduced available funding. The modification shall be completed prior to the OHMVR Division preparing and executing the Project Agreement.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.16. NOTICE OF INTENT TO AWARD

Upon completion of the evaluation and scoring process, the OHMVR Division shall post a notice of Intent to Award on the Division Website pursuant to Table 2 in Section 4970.04.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Section 5090.32, Public Resources Code.

4970.17. APPEAL PROCESS

- (a) Applicants have the right to appeal the Intent to Award. The grounds for appeal are limited to the following:
 - (1) The OHMVR Division failed to follow these regulations, and/or
 - (2) The OHMVR Division lacked sufficient evidence to support or deny the award of a Grant(s).
- (b) The steps for submitting an appeal are outlined in Table 6.
- (c) Applicants may not seek legal remedies through the courts until this appeal process has been completed.
- (d) The receipt of an appeal by the OHMVR Division may delay the execution of Project Agreements within all project categories until the appeal is resolved.

Table 6 - Appeal Process

Action	Timeframe
<p>An Applicant may file an appeal of the Intent to Award by submitting a detailed narrative that clearly articulates the reason(s) for the appeal including referencing the applicable statute and/or regulation section(s), and other documentation that supports the appeal and how the Intent to Award should be modified.</p> <p>The appeal shall be submitted to the OHMVR Division Deputy Director by email to ohvinfo@parks.ca.gov.</p>	<p>Within thirty (30) calendar days from the posting of the Intent to Award on the OHMVR Division Web site.</p>
<p>The OHMVR Division Deputy Director shall respond to the Applicant in writing with a decision to uphold or deny the appeal.</p>	<p>Within sixty (60) calendar days following the filing of an appeal.</p>
<p>The Applicant may file a second appeal by submitting a detailed narrative that articulates the reason for the appeal and addresses the reason(s) why the OHMVR Division Deputy Director's denial shall be vacated. No new documentation or issues may be introduced during this second appeal.</p> <p>The appeal shall be sent to the Director of the Department of Parks and Recreation by email to ohvinfo@parks.ca.gov.</p>	<p>Within seven (7) calendar days of receipt of written notification denying the appeal.</p>
<p>The Director of the Department of Parks and Recreation shall respond to the Applicant in writing with a decision to uphold or deny the appeal.</p>	<p>Within thirty (30) calendar days following the filing of a second appeal.</p>

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50(i), Public Resources Code.

4970.18. AWARD OF GRANTS

Upon approval by the Director of the Department of Parks and Recreation, the OHMVR Division shall prepare and execute Grant Agreements.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50(j), Public Resources Code.

ARTICLE 4 – PROJECT ADMINISTRATION PROCEDURES

4970.19. PROJECT AGREEMENT

- (a) Upon approval of Projects by the Director of the Department of Parks and Recreation, the OHMVR Division shall prepare and execute the Project Agreement with the Grantee. The Project Agreement sets forth the terms and conditions of the Project. With consent of the OHMVR Division and the Grantee, Project Agreements may be amended as necessary, to comply with law.
- (b) The Grantee may not submit claims for reimbursement or for advance payments until a fully executed Project Agreement is on file.
- (c) Project Agreements may not be executed for Grantees that have refunds due to the State from previous Grant Project(s).
- (d) Project Agreements will not be executed for Grantees that are delinquent in closing out previous Projects pursuant to Section 4970.24.
- (e) With consent of the OHMVR Division and the Grantee, the Project Agreement may be executed using electronic signatures permissible under the Uniform Electronic Transactions Act(Civil Code section 1633.1, et seq.).

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.19.1. Project Performance Period

- (a) The Project performance period is the time between the start date and the end date in which the work under the Project Agreement shall be completed. The Grantee shall not charge expenditures prior to the start date or subsequent to the end date. The start date shall be no later than January 1 of the year following the year of the Intent to Award posting, except for Projects identified as needing additional documentation or information to complete CEQA requirements.
- (b) The Project performance period shall be as follows:
 - (1) Three (3) years for acquisition, Development, planning, and Restoration Projects, and
 - (2) One (1) year for GO, law enforcement, and Education and safety Projects.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.19.2. Project Amendments

An amendment is required if a modification to the Project Description or extension of the Project performance period (time extension) is needed to accomplish the intent of the original Project Agreement. Time extensions for programmatic Project Agreements (e.g., GO, law enforcement, and Education and safety) may be denied. Requests may be approved when circumstances exist beyond the Grantee's control that would otherwise result in the Project not being completed.

- (a) Modifications to the Project Description may include but are not limited to:
 - (1) Different techniques are employed to achieve the original outcome, and
 - (2) Acquisition of a different type of equipment.
- (b) Reasons for time extensions may include but are not limited to:
 - (1) Fires,
 - (2) Earthquakes, and
 - (3) Floods.
- (c) Grantees requesting a Project amendment shall submit to the OHMVR Division in writing the following:
 - (1) An explanation of the reasons/circumstances that justify the change,
 - (2) A description of the potential implications if the amendment is not approved,
 - (3) A progress/status report of the Project to date, and
 - (4) If the Amendment requires an extension of the Project performance period, specification of the length of additional time required to complete the Project.
- (d) A written request shall be submitted to the OHMVR Division at least thirty (30) calendar days prior to the end date specified in the Project Agreement.
- (e) Unspent funds that remain at the end of the Project performance period are not in themselves sufficient justification for time extensions.
- (f) The OHMVR Division shall review the requested amendment and make a determination for approval/disapproval. If the amendment is disapproved, the OHMVR Division will provide written notification to the Grantee with an explanation why the request was denied. If the amendment is approved, the OHMVR Division will process an amendment to the Project Agreement specifying modifications and the revised Project performance period (if applicable). The amendment becomes effective when the OHMVR Division returns the executed amendment to Project Agreement to the Grantee. The OHMVR Division and the Grantee shall retain copies of the amendment to the Project Agreement on file.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.19.3. Project Withdrawal

- (a) An Applicant or Grantee may at any time unilaterally cancel or withdraw an approved Project by written notification to the OHMVR Division.
- (b) If the Project work has not commenced and the Grantee received advanced funds for the cancelled Project, the Grantee shall return the advanced funds plus accrued interest to the State.
- (c) If the Grantee has commenced the Project, eligible costs will be allowed to the date the Grantee ceases work on the Project. The cost of goods purchased on a reimbursement basis, but not consumed for the Project as of the date of work

cessation, shall not be reimbursed, or shall be returned if advance payment was made. The Project shall be subject to all record keeping and Audit requirements contained in these regulations.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.19.4. Project Breach-Termination

Failure of a Grantee to comply with the terms and conditions of the Project Agreement may be treated by the OHMVR Division as a breach of contract. If the OHMVR Division determines there is a breach of the Project Agreement, the OHMVR Division shall give the Grantee written notification that the Grantee has thirty (30) calendar days to cure the breach. If the Grantee does not cure the breach or commence actions to cure the breach within thirty (30) calendar days or show diligent progress to cure the breach, the OHMVR Division may terminate the Project Agreement and void the OHMVR Division's obligations. If the OHMVR Division determines breach was due to no fault of the Grantee, the OHMVR Division may waive reimbursement of funds paid or advanced or make payment for any work performed up to the date of termination. In the event of a breach that the OHMVR Division waives, such waiver shall not serve to excuse the future performance of the breached term that was waived or performance of any other term of the Project Agreement. The Project shall remain subject to all record keeping and Audit requirements contained in these regulations.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.19.5. Failure to Perform

If a Grantee does not complete a Project within the Project performance period specified in the Project Agreement, the Grantee shall:

- (a) Provide written notification to the OHMVR Division describing the issues, reasons, or problems that prevent the Grantee from completing the Project and return any remaining OHV Trust Funds, or
- (b) Request an amendment pursuant to Section 4970.19.2.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.19.6. Financial Responsibilities

The acceptance of a Project Agreement creates a legal duty on the part of the Grantee's organization to use the funds made available in accordance with the terms and conditions of the Grant.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.20. EQUIPMENT MANAGEMENT REQUIREMENTS

The following requirements apply to all Equipment purchased with OHV Trust Funds:

- (a) Equipment shall be used for OHV related purposes unless the Grantee is funding the portion of the purchase price not dedicated to OHV purposes,
- (b) Grantees shall keep Equipment purchased with OHV Trust Funds stored securely and maintained in safe working order,
- (c) Equipment shall display an approved version of the OHMVR Division "OHV Trust Funds at Work" insignia. Grantees may obtain insignias free of charge from the OHMVR Division,
- (d) Equipment that is no longer in useable condition may be used as a trade-in for replacement Equipment to be used for OHV purposes,
- (e) Surplus Equipment may be transferred or traded within the agency, giving preference to those areas that provide OHV Opportunities or disposed of via the agency's standard equipment disposition procedures, and
- (f) Ownership and title belongs to the Grantee.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.21. DEVELOPMENT PROJECT PROCEDURES

- (a) Plans and specifications shall be prepared for each Development Project as identified in the Project Agreement. A registered civil or structural engineer or a licensed architect shall sign plans for structural items. Prior to the start of the Project, the OHMVR Division may choose to review plans, specifications, and bid documents for each component of the Project.
- (b) The Grantee shall follow all laws that pertain to public works projects, including the Americans with Disabilities Act and Title 24 Disability Codes (for local agencies), prevailing wages, and local health and safety requirements. For all sub-contracted work, a Notice of Completion is required.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32, and 5090.50, Public Resource Code;

4970.22. ACCOUNTING PRACTICES

- (a) Record Keeping
Grantees are responsible for maintaining fiscal controls and fund accounting procedures based on Generally Accepted Accounting Principles approved by the AICPA, the Securities and Exchange Commission, the Financial Accounting Standards Board, and the American Accounting Association. Bill of Sale, Bill of Lading, or Collection Agreements are some examples of proof that materials or Equipment was received. Invoices are also considered valid proof that materials or Equipment was received. Purchase orders are not considered valid proof that materials or Equipment have been received.
- (b) Labor Costs
The Grantee shall document all labor, including all force account, match and volunteer time, on time sheets, or reports produced by an electronic timekeeping system.
- (c) Equipment Use

Costs associated with Equipment used for a Project will be paid on a use basis in accordance with the Applicant's local fair market rental rates, but shall never exceed the Grantee's actual cost. The Grantee may not charge a use fee for vehicles or Equipment purchased with OHV Trust Funds, except for fuel and minor maintenance costs. A logbook or source document shall identify the operator, work performed, and hours or miles charged to the Project.

(d) **Record Retention**

The Grantee shall retain all financial accounts, documents, and records pertinent to the Project:

- (1) For three (3) years from the expiration date of the Project Agreement, or
- (2) Until an Audit started during the three (3) years following the expiration of the Project Agreement has been completed; a report is published; and any Audit findings are resolved and/or payment or other correction made with regard to any Audit findings contained in the final Audit report.

(e) **Advances**

Advances shall be placed in a separate interest-bearing account (if the Grantee is legally able to do so). The interest accrued from this account shall be documented and shall only be expended in accordance with the Project Agreement. The unspent interest earned on the OHV Trust Funds shall be returned to the OHMVR Division at the end of the Project.

(f) **Matching Funds**

- (1) Matching funds may include actual cash contributions toward the Project, cash value for volunteers or salaried employee hours, Indirect Costs, grants from sources other than this Grant Program, and expenditures of the OHV in-lieu of property tax funds. The match shall be directly related to the Project and must occur within the project performance period. The same match may not be used for more than one (1) Project.
- (2) Project costs identified as match shall be documented the same way as other Project expenditures. Volunteer hours of work and salaried employees shall be documented through a log or report identifying dates, hours worked, and duties performed.
- (3) Cash value for volunteer time may be determined using the hourly reimbursement rate for the paid classification that most closely matches the duties performed by the volunteer. Cash value for salaried employee time shall be based on the agency's hourly reimbursement rate for the classification.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.23. PAYMENT REQUESTS

Grantees are required to request payments for advances or reimbursements by submitting a current Payment Request form to the OHMVR Division. The OHMVR Division is responsible for approving and processing payment requests. Grantees may submit payment requests to the OHMVR Division at any time after the execution of the Project Agreement.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.23.1. Advances

- (a) Generally advances are not allowed, however if extenuating circumstances exist the Division may consider granting an advance. To request an advance, the Grantee shall submit to the OHMVR Division written justification to explain the need for the advance. The OHMVR Division will provide written notification to the Grantee of approval/disapproval for the advance. Requests for an advance typically may not be more than half the total amount of the Grant and shall include a summary list of proposed expenditures, along with GPS coordinates and photos of Project areas where activities will be conducted, as applicable. The sum of the proposed expenditures shall match the amount indicated on the Payment Request form.
- (b) Subsequent requests for advances shall document how previous advance funds were expended as follows:
 - (1) Purchases: paid invoices and/or receipts,
 - (2) Services: paid invoices and/or receipts,
 - (3) Timekeeping and equipment logs: transaction register or other electronically generated reports, and
 - (4) Training and travel: paid invoices and/or receipts.
 - (5) A statement of activities/accomplishments,
 - (6) GPS coordinates and photos of Project areas where activities were conducted, as applicable, and
 - (7) Maps and/or any electronic data (such as .shp, .gpx or .kml files) of Project areas where activities were conducted, as applicable.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.23.2. Reimbursements

Requests for reimbursement shall include the following documentation:

- (a) Purchases: paid invoices and/or receipts,
- (b) Services: paid invoices and/or receipts,
- (c) Timekeeping and equipment logs: transaction register or other electronically generated reports,
- (d) Training and Travel: paid invoices and/or receipts.
- NEW (e) A statement of activities/accomplishments,
- NEW (f) GPS coordinates and photos of Project area(s) where activities were conducted, as applicable, and
- NEW (g) Maps and/or any electronic data (such as .shp, .gpx or .kml files) of Project area(s) where activities were conducted, as applicable.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.24. PROJECT CLOSEOUT

4970.24.1 Project Documentation

- (a) The Grantee shall submit a payment request form marked "FINAL" to the OHMVR Division within one hundred twenty (120) calendar days after the completion of the Project, or the end date as specified in the Project Agreement or amendment to the Project Agreement, whichever comes first. The Grantee shall include the following documentation with the final payment request:
 - (1) A report of deliverables completed,
 - (2) All documents supporting the expenditures claimed under the payment request,
 - (3) A summary of costs, including match requirements, that provides detailed information regarding staff, contracts, materials/supplies, Equipment purchases, Equipment use expenses, and other expenses,
 - (4) Two (2) copies of all reports as indicated in the Project Agreement for any Project that requires a report or reports as part of its Project Description. Monitoring results shall be reported to the OHMVR Division at the end of the Project,
 - (5) For all sub-contracted work, a Notice of Completion,
 - (6) Photos of Equipment purchased through the Project, and
 - (7) Photos of completed Projects, as applicable.
- (b) Final payment requests cannot be processed until the OHMVR Division has received all supporting documentation to support expenditures claimed, including documentation that the Grantee has fulfilled its match commitment. An amount equal to any unmet match commitment will be withheld from the final payment.
- (c) Any request for final payment received after one hundred twenty (120) calendar days, may be ineligible for payment or result in suspension of future payments and reimbursement to the State of any advances or other payments made. The OHMVR Division may also deem the Project closed and forward the Project file to the Department's Audits Office for an Audit.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32 and 5090.50, Public Resources Code.

4970.24.2 Project Performance Review

- (a) OHMVR Division staff shall conduct a project performance review. Project performance reviews may include, but are not limited to, review of a Project to determine progress toward its completion, review of the implementation of HMP and Soil Conservation Plan, or other requirements contained in the Project Agreement.
- (b) Project performance reviews may be accomplished by, but are not limited to, desk reviews, questionnaires and other standards of inquiry, site visits, and other means consistent with these regulations.
- (c) Project performance reviews may be conducted prior to the end of the Project performance period.
- (d) Failure to cooperate with performance review requests made pursuant to these regulations may result in denial of payment requests and/or refund to the State of amounts already paid or advanced.

- (e) OHMVR Division staff may conduct a site visit to review the Grantee's Project(s). The site visit may include review of progress towards the accomplishment of Deliverables.
- (1) The OHMVR Division shall provide the Grantee adequate notice prior to the visit and the Grantee shall make its Project Areas, applicable documentation, and staff who are knowledgeable about or oversee the Project available to the OHMVR Division for site visits. The Grantee shall also make any reports or plans developed, as a result of a Project Agreement, available for review. In the event the OHMVR Division is not able to provide its own transportation to survey a Project, the Grantee shall make every effort to provide Equipment that may be necessary to conduct the site visit and include a person dedicated to providing a tour of the Project.
 - (2) When the OHMVR Division staff conducts a site visit, staff shall develop a report containing any comments and recommendations with regard to the performance of the Grantee's Project. A copy of the report shall be available to the Grantee upon request.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32 and 5090.50, Public Resources Code.

Subarticle 1.AUDITS

4970.25.1. Financial Audits

- (a) The Department of Parks and Recreation, Audits Office shall conduct an Audit of at least twenty percent (20%) of the Grantees annually. A Project is subject to Audit at any time within three years following the end of the project performance period.
- (b) The OHMVR Division will forward Grant Projects to the Department of Parks and Recreation, Audits Office for a financial Audit as appropriate. The Grantee shall cooperate with the Audits Office during an Audit. Requested records, documents, and files pertaining to the expenditures or other fiscal and/or programmatic elements of the Grant shall be provided.
- (c) Failure to fully complete Project Deliverables as agreed in the Project Agreement; and/or to maintain records supporting the expenditures made pursuant to the Project Agreement, these regulations, and any other applicable law; and/or failure of such records to support expenditures claimed and payments received, shall be grounds for an Audit exception requiring refund of amounts paid.
- (d) The Department of parks and Recreation, Audits Office will coordinate with the OHMVR Division in order to confirm the completion of Deliverables. The Department may inspect and/or make copies of any books, records, or reports of the Grantee pertaining to all Projects.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.
Reference: Sections 5090.32, 5090.35, 5090.50, and 5090.53, Public Resources Code.

4970.25.2. Final Audit Report

- (a) Upon completion of the Audit, the OHMVR Division shall provide the Grantee a copy of the final Audit report that shall contain the results of the Audit including all Audit exceptions and any refunds found to be due.
- (b) If the Audit results identify exceptions resulting in refunds due to the State, the Grantee shall have sixty (60) calendar days from receipt of the Audit report to refund the overpayment to the State unless the Grantee elects to request review of the Audit results.
- (c) A Grantee may request review of the Audit report. The Grantee shall request the review in writing to the OHMVR Division within thirty (30) calendar days of receipt of the Audit report. When a Grantee requests such review the OHMVR Division will have final authority to determine what, if any, amount is due back to the State. The OHMVR Division will have thirty (30) calendar days to respond to the request. If the OHMVR Division does not provide a response within thirty (30) calendar days, the final Audit report will be deemed accepted.
- (d) The Grantee shall have sixty (60) calendar days from the date Audit results are deemed final to remit payment. Failure to remit payment within the sixty (60) calendar days may result in the withholding or commensurate reduction of future reimbursement payments or advances on other Grantee Projects or such other remedies to collect the money as may be available by law.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Sections 5090.32, 5090.35, 5090.50, and 5090.53, Public Resources Code.

ARTICLE 5 – CONTACTING THE OHMVR DIVISION

4970.26. HOW TO CONTACT THE OHMVR DIVISION

- (a) All inquiries and correspondence related to the Grant program shall be addressed to:

Mailing Address:

(Name), Grant Administrator
California Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation (OHMVR) Division
1725 23rd Street, Suite 200
Sacramento, CA 95816-7100

- (b) Inquiries may also be made directly by phone or e-mail to a Grant Administrator. Consult the Division Website at <http://www.ohv.parks.ca.gov> for a list of Grant Administrators.
- (c) General inquiries should be directed to:
Phone: (916) 324-4442 or
Fax (916) 324-1610 or
E-mail: ohvinfo@parks.ca.gov.

Note: Authority cited: Sections 5001.5 and 5003, Public Resources Code.

Reference: Section 5090.32, Public Resources Code.



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
 9

- Consent
 Departmental
 Correspondence Action
 Public Hearing
 Scheduled Time for
 Closed Session
 Informational

FROM: County Administrator
 By: Patricia Gunsolley, Assistant Clerk of the Board

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Change in Date of the City of Bishop General Election

DEPARTMENTAL RECOMMENDATION: - Request Board A) accept the Inyo County Clerk-Recorder's report on Cost-Effectiveness of Consolidating City of Bishop Municipal Election with Statewide General Election; B) per California Elections Code §10403.5(a), approve a resolution titled "A Resolution of the Board of Supervisors, County of Inyo, State of California, Approving City of Bishop Ordinance No. 537 Respecting Moving the Date of the City's General Election to the First Tuesday in November of Even-Numbered Years;" and C) authorize the City of Bishop General Election be consolidated with the Statewide General Election scheduled for November 6, 2012

SUMMARY DISCUSSION: The City of Bishop has taken the necessary steps to change the date of its General Elections to the first Tuesday in November of even-numbered years which coincides with the Statewide General Election. In order for this change to take effect California Elections Code §10403.5(a) requires that the County Board of Supervisors approve the City's ordinance via a Resolution. The resolution is submitted for your Board's consideration. The Inyo County Clerk-Recorder, Ms. Kammi Foote has provided your Board the prerequisite Cost Analysis for consolidating the City's elections with the Statewide General Election recommending that the City's request be approved. The report is presented for your Board's acceptance. The City has also requested that the County consolidate its General Election with the Statewide General Election scheduled for November 6, 2012. In order for the City of Bishop's request to be authorized the Board is requested to take the steps recommended in the Departmental Recommendation.

ALTERNATIVES: - N/A

OTHER AGENCY INVOLVEMENT: - City of Bishop, Inyo County Clerk-Recorder

FINANCING: - There is no fiscal impact associated with this action. Per City of Bishop Resolution No. 12-05 the City is obligated to reimburse the County for costs for providing the election services requested.

APPROVALS

BUDGET OFFICER:	BUDGET AMENDMENTS (Must be reviewed and approved by Budget Officer prior to being approved by others, as needed, and submission to the As Approved: _____ Date _____ Assistant Clerk of the Board.)
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the Assistant Clerk of the Board.) Approved: <i>[Signature]</i> Date <u>2-22-12</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the Assistant Clerk of the Board.) Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the Assistant Clerk of the Board.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
 (Not to be signed until all approvals are received) _____ Date: _____
 (The Original plus 20 copies of this document are required)

REPORT ON COST-EFFECTIVENESS OF
CONSOLIDATING CITY OF BISHOP MUNICIPAL ELECTION
WITH STATEWIDE GENERAL ELECTION

PREPARED BY;

KAMMI FOOTE
INYO COUNTY REGISTRAR OF VOTERS
FOR
INYO COUNTY BOARD OF SUPERVISORS
PURSUANT TO ELECTIONS CODE 10403.5 (a)(1)

BACKGROUND AND DISCUSSION

Historically the City of Bishop had conducted its General Municipal Elections in April of even-numbered years and the State of California had conducted its Direct Primary Election in June of even-numbered years. In 1995 California enacted legislation that moved the Direct Primary Election to March of even numbered years; just weeks before the General Municipal Election. In order to eliminate the possibility of potential conflicts, the Bishop City Council adopted Ordinance 475 which moved the date of the General Municipal Election to March of each *odd-numbered* year. For the past 16 years, the City of Bishop has held its General Municipal Election on the first Tuesday after the first Monday in March of odd-numbered years. Recently, the City of Bishop adopted Ordinance No. 537, Resolution No. 12-04 and Resolution No. 12-05 which moved the date of the General Municipal Election to the first Tuesday after the first Monday in November of each even-numbered year and requested consolidation with the Statewide General Election conducted by the Inyo County Registrar of Voters.

APPROVAL CRITERIA

The consolidation is permitted procedurally under Elections Code Sections 1301, 10002 & 10403.5. In addition, Elections Code section 10403.5 specifies that requests of this type shall be approved, unless the consolidation would have an adverse effect on the ballot styles, voting equipment or computer capacity, or that increased duties or processing caused by additional elections cannot be adequately or properly managed by the department.

The Inyo County Board of Supervisors has previously approved the consolidation of six school districts, one resource district and two hospital districts with the Statewide General Election held on the first Tuesday after the first Monday in November of each even-numbered year. Inyo County utilizes Dominion Voting Optech Insights, Edge II electronic voting machines and the WinEds system to tabulate vote results. All of these systems have the capability to manage and process the addition of the Bishop General Municipal Election contest. The Elections staff has the knowledge and ability to

adequately and properly manage the administration of the Bishop General Municipal Election.

COST EFFECTIVENESS

There is no question that the consolidation will save money for the City of Bishop. There are currently 9,351 registered voters in Inyo County, of which 16% (1,512) are within the City of Bishop Boundaries. The estimated cost for the City of Bishop to conduct a stand-alone election, based on the cost estimate provided by the Bishop City Clerk, is \$19.02 per voter. The actual charge to consolidate a measure for the City of Bishop with the November 2, 2010 Statewide General Election was \$0.58 per voter.

Consolidating a General Municipal Election with a Statewide General Election is cost-effective for the following reasons:

- 1) Costs of preparing and mailing sample ballot pamphlets and vote-by-mail ballots are reduced if they share the overall costs with other districts and entities holding an election on the same date.
- 2) Costs of conducting the polling place portion of the election are also shared with other district and entities holding an election on the same date.
- 3) Finally, overhead costs of the Elections Department for various functions such as preparing notices, proofing ballots, processing vote-by-mail ballots, programming computer software and proofing electronic tabulating equipment and preparing the canvass are also spread more broadly in a statewide general election.

There would be no additional cost to the County of Inyo to approve the consolidation because any charges incurred would be billed to the City of Bishop for services rendered.

CONCLUSION

The request to consolidate the General Municipal Election with the Statewide General Election in November of even-numbered years with election services provided by the Inyo County Registrar of Voters would have no foreseeable adverse effect on ballot styles, voting equipment, computer capacity or processing for the Inyo County Elections Department. Based on the above information and rationale, I recommend that the Board of Supervisors approve the request.

RESOLUTION No.

A RESOLUTION OF THE BOARD OF SUPERVISORS, COUNTY OF INYO, STATE OF CALIFORNIA, APPROVING CITY OF BISHOP ORDINANCE NO. 537 RESPECTING MOVING THE DATE OF THE CITY'S GENERAL ELECTION TO THE FIRST TUESDAY IN NOVEMBER OF EVEN-NUMBERED YEARS

WHEREAS, on February 13, 2012 the City Council of the City of Bishop adopted Ordinance No. 537 respecting moving the date of the City's general municipal election from the first Tuesday after the first Monday in March in odd-numbered years to the first Tuesday in November in even-numbered years; and

WHEREAS, the City of Bishop has, by resolution, requested the Inyo County Board of Supervisors approve said Ordinance pursuant to the provisions of California Elections Code §10403.5(a); and

WHEREAS, the Inyo County Board of Supervisors has received and considered a report from Kammi Foote, Inyo County Clerk and Chief Elections Official regarding the cost-effectiveness of the proposed action as required by California Elections Code §10403.5(a); and

WHEREAS, the Inyo County Board of Supervisors finds and determines that its ballot style, voting equipment and computer capability is such that the City of Bishop's request can be handled.

NOW THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Inyo that (a) the City of Bishop Ordinance No. 537 respecting moving the date of the City's general municipal election from the first Tuesday after the first Monday in March of odd-numbered years to the first Tuesday in November of even-numbered years is hereby APPROVED pursuant to the provisions of California Elections Code §10403.5(a); (b) the Clerk of the Board Supervisors is authorized, directed and instructed to transmit a certified copy of this Resolution to the City Clerk of the City of Bishop forthwith; and (c) this Resolution shall be in full force and effect immediately.

PASSED AND ADOPTED this 28th day of February by the Inyo County Board of Supervisors by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Chairperson, Inyo County Board of Supervisor

*Attest: KEVIN D. CARUNCHIO
Clerk of the Board*

by: _____
Patricia Gunsolley, Assistant



CITY OF BISHOP

377 West Line Street - Bishop, California 93514

P. O. Box 1236 - Bishop, California 93515

City Hall (760) 873-5863 - Fax (760) 873-4873

February 14, 2012

Inyo County Board of Supervisors
P. O. Drawer N
Independence, CA 93526

Dear Supervisors:

SUBJECT: ELECTION CONSOLIDATION REQUEST

At the regular meeting of the Bishop City Council held February 13, 2012, action was taken to adopt Ordinance No. 537 and appropriate resolutions to request County approval to consolidate the City's General Municipal Elections with Statewide General Elections held in November of even-numbered years.

Enclosed are the following certified documents:

1. Ordinance No. 537 respecting moving the date of the City's General Municipal Election from the first Tuesday after the first Monday in March in odd-numbered years to the first Tuesday after the first Monday in November in even-numbered years.
2. Resolution No. 12-04 requesting Inyo County Board of Supervisors approval of City of Bishop Ordinance No. 537 respecting moving the date of the City's General Municipal Election.
3. Resolution No. 12-05 requesting Inyo County Board of Supervisors to consolidate a General Municipal Election to be held on November 6, 2012 with the Statewide General Election to be held on that date; requesting election services from the County Election Department; and the City's commitment to reimburse the County for costs.

If approved by the Supervisors, pursuant to Elections Code § 10403.5(e) the City is required to mail notices to all registered voters within the City of Bishop to inform them of the election date change. The notice is required to be mailed within 30 days after the effective date of Ordinance No. 537 (March 16-April 15, 2012).

The City would like to thank the Board of Supervisors for their consideration of our request to consolidate our elections. If any further information is needed, please do not hesitate to contact our offices.

Respectfully,

A handwritten signature in blue ink that reads "Denise Gillespie". The signature is written in a cursive style with a small dot above the 'i' in Gillespie.

Denise Gillespie
Assistant City Clerk

Enclosures

cc: Kammi Foote, Inyo County Clerk/Recorder

CITY OF BISHOP

ORDINANCE NO. 537

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BISHOP, STATE OF CALIFORNIA RESPECTING MOVING THE DATE OF THE CITY'S GENERAL MUNICIPAL ELECTION FROM THE FIRST TUESDAY AFTER THE FIRST MONDAY IN MARCH IN ODD-NUMBERED YEARS TO THE FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER IN EVEN-NUMBERED YEARS, REPEALING ORDINANCE NUMBER 475, AND AMENDING SECTION 1.12.030 OF CHAPTER 1.12 OF THE BISHOP MUNICIPAL CODE

WHEREAS, the City's General Municipal Election is now scheduled for the first Tuesday after the first Monday in March of odd-numbered years;

WHEREAS, Election Code § 1301 and § 10403.5 authorize the City to reschedule its General Municipal Election;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BISHOP DOES ORDAIN AS FOLLOWS:

SECTION 1. Pursuant to §1301 and § 10403.5 of the California Elections Code, the date of the General Municipal Election of the City is moved from the first Tuesday after the first Monday in March of each odd-numbered year to the first Tuesday after the first Monday in November in each even-numbered year.

SECTION 2. In accordance with the change of election date, the terms of office of those members of the City Council presently serving shall be shortened for a period of approximately four (4) months until election results are declared by the City Council.

SECTION 3. Section 1.12.030 of Chapter 1.12 of the Bishop Municipal Code is amended to read, in its entirety, as follows:

"1.12.030 General municipal election date—Terms of city council members.

A. Pursuant to § 1301 and 10403.5 of the California Elections Code, the date of the General Municipal Election of the City is moved from the first Tuesday after the first Monday in March in each odd-numbered year to the first Tuesday after the first Monday in November in each even-numbered year.

B. In accordance with the change in election date, the terms of office of those members of the City Council presently serving shall be shortened for a period of approximately four (4) months until election results are declared by the City Council."

SECTION 4. Ordinance Number 475 of Ordinances of the City is hereby repealed.

SECTION 5. This ordinance shall take effect thirty (30) days after its final passage. Within 30 days of the effective date of this ordinance, the City Clerk shall cause a notice to be mailed to all registered voters of the city informing them of the change in the election date.

SECTION 6. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to law.

PASSED, APPROVED AND ADOPTED February 13, 2012.



LAURA SMITH, MAYOR

ATTEST: Keith Caldwell, City Clerk

By: Denise Gillespie
Denise Gillespie, Assistant City Clerk



STATE OF CALIFORNIA
COUNTY OF INYO



I, Denise Gillespie, Assistant City Clerk of the City of Bishop, do hereby certify that the whole number of members of the City Council of said City of Bishop is five (5); that the foregoing Ordinance No. 537 was duly passed and adopted by said City Council; approved and signed by the Mayor of said City; and attested by the City Clerk of said City, all at a regular meeting of said City Council, held on the 13th day of February, 2012, and that the same was so passed and adopted by the following roll call vote:

AYES: Stottlemyre, Cullen, Griffiths, Smith

NOES: None

DISQUALIFIED: None

ABSENT: Ellis

WITNESS, my hand and the seal of the City of Bishop this 14th day of February 2012.

Denise Gillespie, Assistant City Clerk
CITY OF BISHOP



The foregoing instrument is a full, true and correct copy of the original on file in this office.

City of Bishop
State of California

ATTEST: KEITH CALDWELL Date: 2-14-12
City Clerk

By: Denise Gillespie
Assistant City Clerk

CITY OF BISHOP
RESOLUTION NO. 12-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BISHOP, STATE OF CALIFORNIA REQUESTING THAT THE INYO COUNTY BOARD OF SUPERVISORS APPROVE CITY OF BISHOP ORDINANCE NO. 537 RESPECTING MOVING THE DATE OF THE CITY'S GENERAL MUNICIPAL ELECTION

WHEREAS, on February 13, 2012 the City Council of the City of Bishop adopted Ordinance No. 537 respecting moving the date of the City's General Municipal Election from the first Tuesday after the first Monday in March in odd-numbered years to the first Tuesday after the first Monday in November in even-numbered years; and

WHEREAS, a certified copy of City Ordinance No. 537 is attached hereto as Exhibit "A"; which is, by reference, incorporated herein and made a part hereof; and

WHEREAS, California Elections Code §10403.5(a) requires approval by the County Board of Supervisors of any city ordinance which sets its General Municipal Election on the first Tuesday after the first Monday in November of even-numbered years, which approval of the County Board of Supervisors shall be by resolution and shall be given unless the ballot style, voting equipment, or computer capability is such that additional elections or materials cannot be handled; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BISHOP RESOLVES AS FOLLOWS:

Section 1: The City Council of the City of Bishop requests that the Inyo County Board of Supervisors approves City of Bishop Ordinance No. 537 pursuant to the provisions of California Elections Code §10403.5(a).

Section 2: The City Clerk is authorized, directed and instructed to transmit a certified copy of the Resolution to the Board Clerk of the Inyo County Board of Supervisors forthwith.

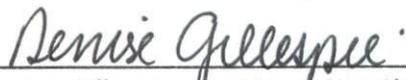
Section 3: This Resolution shall be in full force and effect immediately.

Passed, approved and adopted this 13th day of February, 2012

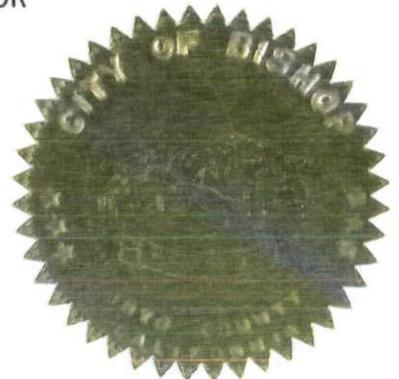


LAURA SMITH, MAYOR

Attest: Keith Caldwell, Interim City Clerk

By: 

Denise Gillespie, Assistant City Clerk



STATE OF CALIFORNIA
COUNTY OF INYO



I, Denise Gillespie, Assistant City Clerk for the City of Bishop, do hereby certify that the whole number of members of the City Council of said City of Bishop is five (5); that the foregoing Resolution No. 12-04 was duly passed and adopted by said City Council; approved and signed by the Mayor of said City; and attested by the City Clerk of said City, all at a regular meeting of said City Council, held on February 13, 2012, and that the same was so passed and adopted by the following roll call vote.

AYES: Cullen, Griffiths, Stottlemyre, Smith

ABSENT: Ellis

NOES: None

ABSTAIN: None

WITNESS, my hand and the seal of the City of Bishop this 14th day of February 2012.

Denise Gillespie

Denise Gillespie, Assistant City Clerk
CITY OF BISHOP



The foregoing instrument is a full, true and correct copy of the original on file in this office.

City of Bishop
State of California

ATTEST: KEITH CALDWELL Date: 2/14/12
City Clerk

By: Denise Gillespie
Assistant City Clerk

CITY OF BISHOP
RESOLUTION NO. 12-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BISHOP REQUESTING THE INYO COUNTY BOARD OF SUPERVISORS TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2012, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO § 10403 OF THE ELECTIONS CODE

WHEREAS, the City Council of the City of Bishop will call a General Municipal Election to be held on November 6, 2012, for the purpose of the election of three Members of the City Council and a City Treasurer for the full term of four years; and

WHEREAS, it is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the city precincts, polling places and election officers of the two elections be the same, and that the County Election Department of the County of Inyo canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BISHOP DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That pursuant to the requirements of § 10403 of the Elections Code, the Board of Supervisors of the County of Inyo is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 6, 2012, for the purpose of the election of three Members of the City Council and a City Treasurer for the full term of four years.

Section 2. That the County Election Department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 3: That the Board of Supervisors is requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the consolidated election.

Section 4. That the City of Bishop recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

Section 5. That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the County Election Department of the County of Inyo.

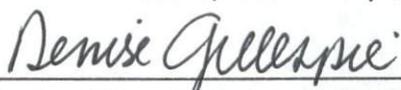
Section 6. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED, APPROVED AND ADOPTED this 13th day of February, 2012



LAURA SMITH, MAYOR

Attest: Keith Caldwell, Interim City Clerk

By: 

Denise Gillespie, Assistant City Clerk



STATE OF CALIFORNIA
COUNTY OF INYO

}

I, Denise Gillespie, Assistant City Clerk for the City of Bishop, do hereby certify that the whole number of members of the City Council of said City of Bishop is five (5); that the foregoing Resolution No. 12-05 was duly passed and adopted by said City Council; approved and signed by the Mayor of said City; and attested by the City Clerk of said City, all at a regular meeting of said City Council, held on February 13, 2012, and that the same was so passed and adopted by the following roll call vote.

AYES: Griffiths, Cullen, Stottlemyre, Smith

ABSENT: Ellis

NOES: None

ABSTAIN: None

WITNESS, my hand and the seal of the City of Bishop this 14th day of February 2012.

Denise Gillespie

Denise Gillespie, Assistant City Clerk
CITY OF BISHOP



The foregoing instrument is a full, true and correct copy of the original on file in this office.

City of Bishop
State of California

ATTEST: KEITH CALDWELL Date: 2/14/12
City Clerk

By: Denise Gillespie
Assistant City Clerk



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

10

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: County Administrator

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Authorizing Amendment to Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between County of Inyo and Joseph Enterprises extending the Phase 1 Expiration Date to June 30, 2012.

DEPARTMENTAL RECOMMENDATION:

Request your Board authorize the County Administrator to execute an amendment to the Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between the County of Inyo and Joseph Enterprises extending the Phase 1 Expiration Date to June 30, 2012 contingent on all appropriate signatures being obtained.

SUMMARY DISCUSSION:

On September 6, 2011, your Board authorized the Chair to sign an Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between the County of Inyo and Joseph Enterprises. The Agreement requires Inyo County to negotiate only with Joseph Enterprises for the development of its consolidated office space project as long as the Agreement remains in effect. Similarly, Joseph Enterprises is prohibited from negotiating with any party, other than Inyo County, for the use of its Wye Road parcel. As a demonstration of good faith, the Agreement required Joseph Enterprises to make a \$10,000 deposit with the County that is refundable at the conclusion of negotiations; either by the County approving the resulting documents, or at the request of Joseph Enterprises after the Exclusive Negotiations Agreement has expired. The Agreement also specifies the phasing and timing of deliverables the negotiations are expected to produce:

Phase IA Term Sheet Agreement. The County and Joseph Enterprises will negotiate key terms of the anticipated Option, Lease and Land Transaction documents that will be summarized in a non-binding, proposed Term Sheet. The Term Sheet will be subject to final approval by the Board of Supervisors acting in public, in open session.

Phase 1B Design Review. Joseph Enterprises will develop a space plan at its sole expense, but in consultation with the County. This space plan is anticipated to identify the specific departments and staff positions that will be located in the consolidated offices, and their associated space needs. The space plan will be used to update architectural planning and produce a more detailed conceptual design. The resulting Concept Plans will be submitted to the Board of Supervisors for approval in open session, in its capacity as prospective tenants only.

The Agreement allocated 60-days to complete Phase 1 A&B, with an option to extend the Phase 1 Expiration Date by another 45-days if the County Administrator determined that the negotiations were proceeding in a reasonable manner.

Phase 1 will consist of sixty (60) days, commencing on the date this Agreement is signed on behalf of the County (the "Phase 1 Effective Date"), and continuing in full force and effect until the sixtieth (60th) day thereafter (the "Phase 1 Expiration Date"). The Phase 1 Expiration Date may be extended for up to forty-five (45) additional days (commencing on the Phase 1 Expiration Date) upon approval in writing by the County CAO, provided that Developer continues to diligently perform its obligations hereunder in a timely manner. If at the Phase 1 Expiration Date or the expiration of any extension thereof, Developer has not signed and submitted a Proposed Term Sheet and Concept Plan approved by the Board (in the Board's sole determination), this Agreement shall automatically terminate, and the County and Developer agree that they shall have no further rights or obligations under this Agreement.

The Agreement was signed on behalf of the County on September 6, 2011. On November 3, 2011, the County Administrator extended the Phase 1 Expiration Date by 45-days, from November 4, 2011, to December 19, 2011, recognizing that the Developer continued to perform its obligations under the Agreement in a timely manner, however, vacations and holidays and scheduling conflicts delayed the ability of the Developer, County staff, and the County's real estate consultant, Allan D. Kotin & Associates, from being able to finalize a Term Sheet Agreement for Consideration by your Board. The Parties attempted to meet the week of December 12th for purposes of finalizing a non-binding Term Sheet, however, scheduling difficulties between representatives of the parties pushed that meeting date back to the first week in January. As a result, on December 19, 2011, your Board considered and approved an amendment to the Exclusive Negotiation Agreement extending the Phase 1 Expiration Date to February 28, 2012.

The non-binding, proposed Term Sheet has been presented to your Board earlier in today's agenda. If your Board approves the non-binding, proposed Term Sheet, it will be necessary to once again extend the Phase 1 Expiration Date to allow completion of the Concept Plans identified for Phase 1B. If, however, your Board elects not to approve the non-binding, proposed Term Sheet, amending the Exclusive Negotiations Agreement will not be necessary (unless your Board directs the Term-Sheet to be revised and brought back for consideration at a later date) because the Agreement will have automatically terminated.

Like the Term Sheet the Concept Plans (identified as part of Phase 1B) must be approved by the Board of Supervisors acting in open session, and your Board's approval of the Concept Plans will be non-binding on the County. (As noted above, if the Term Sheet or Concept Plans are not approved by your Board, in your Board's sole determination, in the specified timeframe, the Exclusive Negotiation Agreement will automatically terminate.)

Should your Board approve the Term Sheet being presented today, and approve the extension of the Phase 1 Expiration Date through this proposed amendment to the Exclusive Negotiation Agreement, the County and Developer will proceed with the Design Review process (e.g., space planning) identified as Phase 1B in the Agreement. Although this process is expected to be completed in four to six weeks, the proposed amendment to the Exclusive Negotiation Agreement extends the Phase 1 Expiration Date to June 30, 2012, to minimize the likelihood of needing to return for a third amendment to the Exclusive Negotiation Agreement.

As discussed with and directed by your Board in September, a tour of County facilities in the Bishop area occurred yesterday. Your Board has also indicated its desire to hold special meetings in various communities to discuss the project. Unless otherwise directed, staff plans to schedule these meetings around the Design Review Process (Phase 1B) to allow the public to review the project in the context of the approved, non-binding Term Sheet and the non-binding, proposed facility design document.

As a reminder, if the Board of Supervisors approve both the non-binding Term Sheet and non-binding Concept Plans required above, the County and Joseph Enterprises will draft any Option, Lease and Land Transaction documents resulting from the approved Term Sheet and Concept Plans. This is identified as Phase 2 Preparation of Final Documents in the Agreement and will need to be completed within 60-days from the date of approval of the Concept Plans, and may be extended by the CAO for up to 45 additional days. The Final Documents will be approved by your Board in public, in open session, and only upon your Board's approval of these documents will the County be bound to the project.

ALTERNATIVES:

Your Board could choose to take no action and/or not execute the amendment to Exclusive Negotiation Agreement with Joseph Enterprises, however, this will terminate the consolidated building project development process. Your Board could also choose to propose amending the Agreement to specify a Phase 1 Expiration Date different from the June 30, 2012, date being recommended.

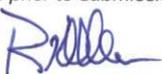
OTHER AGENCY INVOLVEMENT:

Primary assistance in this process has been, and will be provided by Inyo County Office of the County Counsel, and the Inyo County Public Works Department.

FINANCING:

Outside of additional staff time and associated consulting expense, there is no cost or binding obligation to the County associated with amending the Exclusive Negotiation Agreement with Joseph Enterprises.

As indicated above, there will be additional public discussion and actions required of your Board in advance of making any decision that is financially binding upon the County.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>  Approved: _____ Date <u>2-22-12</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i> Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i> Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)
(The Original plus 20 copies of this document are required)



Date: 02-22-2012

**AMENDMENT NUMBER 2 TO
THE EXCLUSIVE NEGOTIATION AGREEMENT BETWEEN
THE COUNTY OF INYO AND JOSEPH ENTERPRISES
FOR CONSTRUCTION AND LEASING OF
INYO COUNTY CONSOLIDATED OFFICE BUILDING**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Joseph Enterprises (hereinafter referred to as "Developer"), have entered into an Exclusive Negotiation Agreement for the construction and leasing of an Inyo County Consolidated Office Building in Bishop dated September 6, 2011.

WHEREAS, the County and Developer do desire and consent to amend such Agreement as set forth below.

WHEREAS, such Agreement provides that the Agreement may be amended with an extension period, by the mutual consent of the parties thereto, if such, amendment or change is in written form, and executed with the same formalities as such Agreement, and attached to the original Agreement to maintain continuity.

County and Developer hereby amend such Agreement as follows:

Section 3.1.1 (Term of Agreement) of the Agreement is amended to read in its entirety as follows:

Phase 1 will continue until June 30, 2012, which is the Phase I Expiration Date. If by the Phase 1 Expiration Date, Developer has not signed and submitted a Proposed Term Sheet and Concept Plan approved by the Board (in the Board's sole determination), this Agreement shall automatically terminate, and the County and Developer agree that they shall have no further rights or obligations under this Agreement.

**AMENDMENT NUMBER 2 TO
THE EXCLUSIVE NEGOTIATION AGREEMENT BETWEEN
THE COUNTY OF INYO AND JOSEPH ENTERPRISES
FOR CONSTRUCTION AND LEASING OF
INYO COUNTY CONSOLIDATED OFFICE BUILDING**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS
__ DAY OF _____, _____.

COUNTY OF INYO

DEVELOPER

By: _____

By: _____

Signature

Dated: _____

Type or Print

Dated: _____

APPROVED AS TO FORM AND LEGALITY:

County Counsel

APPROVED AS TO ACCOUNTING FORM:

County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

Director of Personnel Services

APPROVED AS TO RISK ASSESSMENT:

County Risk Manager

In the Rooms of the Board of Supervisors

County of Inyo, State of California

I, HEREBY CERTIFY, that at a meeting of the Board of Supervisor of the County of Inyo, State of California, held in their rooms at the County Administrative Center in Independence on the 19th day of *December*, 2011 an order was duly made and entered as follows:

CAO-Gen./
Consolidated Office
Building Amendment
Negotiation
Agreement

Mr. Kevin Carunchio, County Administrator, provided the Board with a copy of the proposed amendment to the Exclusive Negotiation Agreement for Construction and Lasing of a consolidated office building in Bishop. He provided additional information regarding the request to extend the Agreement, explaining that because of the holiday's it has been difficult to schedule meetings in order to conclude the first phase of the process and the extension will afford the time needed to conclude the negotiations. Moved by Supervisor Arcularius and seconded by Supervisor Fortney to authorize the County Administrator to execute an amendment to the Exclusive Negotiation Agreement for Construction and Leasing of Inyo County consolidated Office Building between the County of Inyo and Joseph Enterprises, extending the Phase I expiration date to February 28, 2012, contingent upon the appropriate signatures being obtained. Motion passed unanimously, with Supervisor Cervantes absent.

WITNESS my hand and the seal of said Board this 19th

Day of December 2011



KEVIN D. CARUNCHIO
Clerk of the Board of Supervisors

By:

Patricia Gunsolley
Patricia Gunsolley, Assistant

Routing	
CC	_____
Purchasing	_____
Personnel	_____
Auditor	_____
CAO	X _____
Other	_____
DATE: December 21, 2011	



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

2

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: County Administrator

FOR THE BOARD MEETING OF: December 19, 2011

SUBJECT: Authorizing Amendment to Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between County of Inyo and Joseph Enterprises extending the Phase 1 Expiration Date to February 28, 2012.

DEPARTMENTAL RECOMMENDATION:

Request your Board authorize the County Administrator to execute an amendment to the Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between the County of Inyo and Joseph Enterprises extending the Phase 1 Expiration Date to February 28, 2012 contingent on all appropriate signatures being obtained.

SUMMARY DISCUSSION:

On September 6, 2011, your Board authorized the Chair to sign an Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between the County of Inyo and Joseph Enterprises. The Agreement requires Inyo County to negotiate only with Joseph Enterprises for the development of its consolidated office space project as long as the Agreement remains in effect. Similarly, Joseph Enterprises is prohibited from negotiating with any party, other than Inyo County, for the use of its Wye Road parcel. As a demonstration of good faith, the Agreement required Joseph Enterprises to make a \$10,000 deposit with the County that is refundable at the conclusion of negotiations; either by the County approving the resulting documents, or at the request of Joseph Enterprises after the Exclusive Negotiations Agreement has expired. The Agreement also specifies the phasing and timing of deliverables the negotiations are expected to produce:

Phase IA Term Sheet Agreement. The County and Joseph Enterprises will negotiate key terms of the anticipated Option, Lease and Land Transaction documents that will be summarized in a non-binding, proposed Term Sheet. The Term Sheet will be subject to final approval by the Board of Supervisors acting in public, in open session.

Phase 1B Design Review. Joseph Enterprises will develop a space plan at its sole expense, but in consultation with the County. This space plan is anticipated to identify the specific departments and staff positions that will be located in the consolidated offices, and their associated space needs. The space plan will be used to update architectural planning and produce a more detailed conceptual design. The resulting Concept Plans will be submitted to the Board of Supervisors for approval in open session, in its capacity as prospective tenants only.

The Agreement allocates 60-days to complete Phase 1 A&B, with an option to extend the Phase 1 Expiration Date by another 45-days if the County Administrator determines that the negotiations are proceeding in a reasonable manner.

Phase 1 will consist of sixty (60) days, commencing on the date this Agreement is signed on behalf of the County (the "Phase 1 Effective Date"), and continuing in full force and effect until the sixtieth (60th) day thereafter (the "Phase 1 Expiration Date"). The Phase 1 Expiration Date may be extended for up to forty-five (45) additional days (commencing on the Phase 1 Expiration Date) upon approval in writing by the County CAO, provided that Developer continues to diligently perform its obligations hereunder in a timely manner. If at the Phase 1 Expiration Date or the expiration of any extension thereof, Developer has not signed and submitted a Proposed Term Sheet and Concept Plan approved by the Board (in the Board's sole determination), this Agreement shall automatically terminate, and the County and Developer agree that they shall have no further rights or obligations under this Agreement.

The Agreement was signed on behalf of the County on September 6, 2011. On November 3, 2011, the County Administrator extended the Phase 1 Expiration Date by 45-days, from November 4, 2011, to December 19, 2011. The Developer has continued to perform its obligations under the Agreement in a timely manner, however, vacations and holidays and scheduling conflicts have delayed the ability of the Developer, County staff, and the County's real estate consultant, Allan D. Kotin & Associates, from being able to finalize a Term Sheet Agreement for Consideration by your Board. Agreement on a Term Sheet Agreement to present to your Board appears imminent, and the Parties attempted to meet the week of December 12th for purposes of finalizing a term sheet. Scheduling difficulties between representatives of the parties have pushed that meeting date back to the first week in January. Assuming this meeting occurs in early January, and agreement is reached regarding the term sheet, staff would expect to present the Term Sheet Agreement for consideration by your Board in late January or early February.

Both the required Term Sheet and Concept Plans (identified as part of Phase 1B) must be approved by the Board of Supervisors acting in open session, and your Board's approval of either the Term Sheet and/or Concept Plans is non-binding on the County. (If the Term Sheet or Concept Plans are not approved by your Board, in your Board's sole determination, in the specified timeframe, the Exclusive Negotiation Agreement will automatically terminate.) Should your Board approve the Term Sheet Agreement now anticipated to be presented for consideration in late January or early February, the County and Developer will proceed with the Design Review process (e.g., space planning) identified as Phase 1B in the Agreement. If it does not appear feasible to complete the Design Review Process can be completed by the new February 28, 2012, Phase 1 Expiration Date being recommended today as part of this amendment, staff would recommend that your Board consider extending the Phase 1 Expiration Date once again.

As discussed with and directed by your Board in September, staff will be coordinating additional public outreach efforts such as arranging for tours of County facilities and holding special meetings in various communities to discuss the project. Subject to further Board direction, the tours and special meetings are currently contemplated to be held just prior to, during, and/or immediately following the Term Sheet Agreement approval and Design Review processes.

As a reminder, if the Board of Supervisors approve the non-binding Term Sheet and Concept Plans required above, the County and Joseph Enterprises will draft any Option, Lease and Land Transaction documents resulting from the approved Term Sheet and Concept Plans. This is identified as Phase 2 Preparation of Final Documents in the Agreement and will need to be completed within 60-days from the date of approval of the Concept Plans, and may be extended by the CAO for up to 45 additional days. The Final Documents will be approved by your Board in public, in open session, and only upon your Board's approval of these documents will the County be bound to the project.

ALTERNATIVES:

Your Board could choose to take no action and/or not execute the amendment to Exclusive Negotiation Agreement with Joseph Enterprise, however, this is not recommended as considerable time has already been devoted to this process and staff believes that the parties are close to being able to present a Term Sheet Agreement for consideration by your Board. Your Board could also choose to propose amending the Agreement to specify a Phase 1 Expiration Date different from the February 28th date being recommended.

OTHER AGENCY INVOLVEMENT:

Primary assistance in this process has been, and will be provided Inyo County Office of the County Counsel, and the Inyo County Public Works Department.

FINANCING:

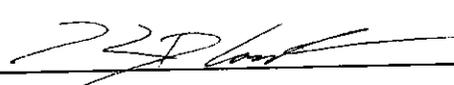
Outside of additional staff time and associated consulting expense, there is no cost or binding obligation to the County associated with amending the Exclusive Negotiation Agreement with Joseph Enterprises.

As indicated above, there will be many more public discussion and actions required of your Board in advance of making any decision that is financially binding upon the County.

<u>APPROVALS</u>	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>  Approved: _____ Date <u>12-15-11</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i> Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i> Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)
(The Original plus 20 copies of this document are required)



Date: 12-14-11

**AMENDMENT NUMBER 1 TO
THE EXCLUSIVE NEGOTIATION AGREEMENT BETWEEN
THE COUNTY OF INYO AND JOSEPH ENTERPRISES
FOR CONSTRUCTION AND LEASING OF
INYO COUNTY CONSOLIDATED OFFICE BUILDING**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Joseph Enterprises (hereinafter referred to as "Developer"), have entered into an Exclusive Negotiation Agreement for the construction and leasing of an Inyo County Consolidated Office Building in Bishop dated September 6, 2011.

WHEREAS, the County and Developer do desire and consent to amend such Agreement as set forth below.

WHEREAS, such Agreement provides that the Agreement may be amended with an extension period, by the mutual consent of the parties thereto, if such, amendment or change is in written form, and executed with the same formalities as such Agreement, and attached to the original Agreement to maintain continuity.

County and Developer hereby amend such Agreement as follows:

Section 3.1.1 (Term of Agreement) of the Agreement is amended to read in its entirety as follows:

Phase 1 will continue until February 28, 2012, which is the Phase I Expiration Date. If by the Phase 1 Expiration Date, Developer has not signed and submitted a Proposed Term Sheet and Concept Plan approved by the Board (in the Board's sole determination), this Agreement shall automatically terminate, and the County and Developer agree that they shall have no further rights or obligations under this Agreement.

AMENDMENT NUMBER 1 TO
THE EXCLUSIVE NEGOTIATION AGREEMENT BETWEEN
THE COUNTY OF INYO AND JOSEPH ENTERPRISES
FOR CONSTRUCTION AND LEASING OF
INYO COUNTY CONSOLIDATED OFFICE BUILDING

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS

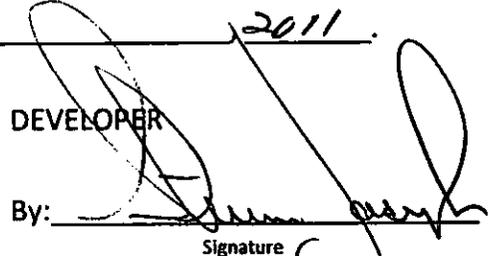
19th DAY OF DECEMBER 2011.

COUNTY OF INYO

By: 

Dated: 12-19-2011

DEVELOPER

By: 

Signature

Steven Joseph

Type or Print

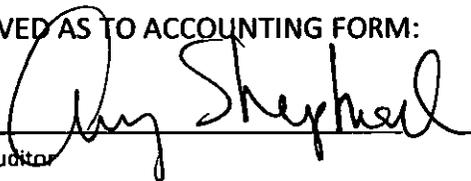
Dated: 12/19/11

APPROVED AS TO FORM AND LEGALITY:



County Counsel

APPROVED AS TO ACCOUNTING FORM:



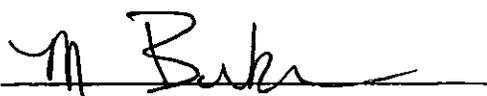
County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:



Director of Personnel Services

APPROVED AS TO RISK ASSESSMENT:



County Risk Manager

In the Rooms of the Board of Supervisors

County of Inyo, State of California

I, HEREBY CERTIFY, that at a meeting of the Board of Supervisor of the County of Inyo, State of California, held in their rooms at the County Administrative Center in Independence on the 6th day of *September*, 2011 an order was duly made and entered as follows:

CAO/Exclusive
Neg. Agreement
For Bishop
Consolidated
Office Building

The County Administrator, Mr. Kevin Carunchio, reviewed the process which had resulted in the request for the Board to enter into an exclusive negotiation agreement for the construction and leasing of an Inyo County Consolidated Office Building in Bishop. He reviewed the agreement in detail and at length, noting the trigger periods for ending the negotiations. He provided information regarding the programs and services that would be provided through this building and how consolidated office space in the Bishop area would improve efficiencies of programs while securing costs for program and department space use for the next twenty years. Supervisor Cervantes said that he was opposed to the County incurring debt in these bad economic times in order to build a new building. He said that he felt the building was being proposed because of complaints that County employees have deplorable working conditions, and said that he had toured the facilities and they were adequate. He suggested that the County save its money and when it had sufficient funds explore a new building at that time. Supervisor Pucci clarified that the only people he has heard complain about the condition of the County's facilities is the public that are served. Supervisor Pucci said that long-term planning for space lease is critical because the County can only forecast costs to the end of a lease period, and then the landlords have the ability to change the terms in a manner in which the County is negatively impacted, citing the Cottonwood Plaza as a prime example of viable businesses being forced to relocate because of lease disputes. Supervisor Fortney noted that a consolidated building would help the public from having to travel all of the Bishop area to get the services they are seeking. He also said that he felt a consolidated office space would help keep utility and maintenance costs under control. Supervisor Arcularius noted as another example of lease costs that cannot be controlled the report made earlier by the Director of Health and Human Services, regarding the Wellness Center lease in Bishop arbitrarily being doubled. Supervisor Cash said that she believes it is better for the County to own its facilities rather than lease them.

CONTINUED ON ATTACHED

WITNESS my hand and the seal of said Board this 6th

Day of September 2011



KEVIN D. CARUNCHIO
Clerk of the Board of Supervisors

By:

Patricia Gunsolley
Patricia Gunsolley, Assistant

Routing

CC _____
Purchasing _____
Personnel _____
Auditor _____
CAO _____
Other _____

DATE: September 14, 2011

CAO/Exclusive
Neg. Agreement
For Bishop
Consolidated
Office Building
Continued

The County Administrator, in response to a remark made by Supervisor Cervantes regarding the cost of this project, reiterated the cost figures of \$15-million for this project, and clarified that the current proposal being considered is to swap County owned land near Jack in the Box for land that is owned by Joseph Enterprises at the Wye. The Board and staff also talked about suggestions regarding existing facilities in the community of Bishop which could be utilized, with the Board noting that the owners of those properties did not respond to the RFP. The Board heard from Jenifer Castaneda of Lone Pine who was opposed to the Board taking action regarding this item because she felt that proper notification for public involvement had been circumvented. Ms. Castaneda expressed concern with the economic impact to the landlords of the leased facilities should the County vacate buildings in the Bishop area. Ms. Mary Roper of Independence, addressed the Board to express her opinion that a needs assessment should be done to determine what type of facilities are required and to encourage public participation in the process. The County Administrator explained that through this Agreement the needs of the County would be assessed further and said he anticipated public meetings on this matter as a result of this Agreement. The County Administrator also suggested that the Board invite the public to join them on a tour of the current County facilities. Moved by Supervisor Arcularius and seconded by Supervisor Fortney to authorize the Chairperson to sign an Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between the County of Inyo and Joseph Enterprises, to schedule a tour of County facilities, and schedule public meetings regarding this matter. Motion carried on a four-to-one vote, with Supervisors Arcularius, Cash, Pucci and Fortney voting yes and with Supervisor Cervantes voting no.



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: County Administrator

FOR THE BOARD MEETING OF: September 6, 2011

SUBJECT: Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between County of Inyo and Joseph Enterprises

DEPARTMENTAL RECOMMENDATION:

Request your Board consider authorizing the Chairperson to sign an Exclusive Negotiation Agreement for Construction and Leasing of Inyo County Consolidated Office Building between the County of Inyo and Joseph Enterprises.

SUMMARY DISCUSSION:

On January 12, 2010, the Board of Supervisors reviewed and directed staff to issue a Request For Proposals (RFP) for Consolidated County Office Space in the Bishop area (a copy of the Agenda Request and resulting Board Order is included here as Attachment A). Exploring the feasibility of developing consolidated County office space as an alternative to leasing seven (7) of the County's eight (8) office buildings in the Bishop area was, and is viewed as a means of:

- Reducing cost to taxpayers by limiting or eliminating lease costs;
- Increasing operating efficiencies by, for example, lowering maintenance expenses, providing for shared clerical support services, and, reducing inter-office travel time and expense; and,
- Improving the coordinated delivery of services to residents and businesses.

Toward meeting these goals, the RFP (Attachment B) stated:

This project is **intended to consolidate County offices that currently operate in and around the City of Bishop.** This includes seven (7) separate leases in seven (7) different locations, as well as one (1) County-owned facility. Consolidating these office locations must result in a savings to the citizens of Inyo County through improved services and increased efficiencies, reduced lease costs, and the County's ultimate ownership of the consolidated facility. [**Emphasis** added.]

Although the RFP was subsequently mailed to hundreds of potential developers, the County received only two (2) proposals by the March 22, 2010 submittal deadline:

- one from the Mitchell Asset Group to develop a building on County-owned property on Jay Street, near Highway 395, in Bishop; and,
- one from Joseph Enterprises to develop the project on privately-owned land at the intersection of Wye Road and Highway 6.

As outlined in the RFP, the County commenced negotiations with both respondents toward the goal of making a recommendation to the Board of Supervisors that the County enter into exclusive negotiations with a sole respondent for the purposes of developing and executing a development agreement. Staff has spent the past year-and-a-half (an admittedly long time) negotiating with both respondents regarding the price and terms of their respective proposals. Today, staff is recommending that your Board enter into exclusive negotiations with Joseph Enterprises, and consider executing an Exclusive Negotiating Agreement for Construction and Leasing of Inyo County Consolidated Office Building as the mechanism for accomplishing this. This is the next step in the process contemplated in the RFP and is not binding on the County.

If executed, the Agreement will require Inyo County to negotiate only with Joseph Enterprises for the development of its consolidated office space project as long as the Agreement remains in effect. Similarly, Joseph Enterprises will be prohibited from negotiating with any party, other than Inyo County, for the use of its Wye Road parcel. As a demonstration of good faith, the Agreement requires Joseph Enterprises to make a \$10,000 deposit with the County that is refundable at the conclusion of negotiations; either by the County approving the resulting documents, or at the request of Joseph Enterprises after the Exclusive Negotiations Agreement has expired. In addition, the Agreement specifies the phasing and timing of deliverables the negotiations are expected to produce:

Phase IA Term Sheet Agreement. The County and Joseph Enterprises will negotiate key terms of the anticipated Option, Lease and Land Transaction documents that will be summarized in a non-binding, proposed Term Sheet. The Term Sheet will be subject to final approval by the Board of Supervisors acting in public, in open session.

Phase 1B Design Review. Joseph Enterprises will develop a space plan at its sole expense, but in consultation with the County. This space plan is anticipated to identify the specific departments and staff positions that will be located in the consolidated offices, and their associated space needs. The space plan will be used to update architectural planning and produce a more detailed conceptual design. The resulting Concept Plans will be submitted to the Board of Supervisors for approval in open session, in its capacity as prospective tenants only.

Phase 1 A& B are allocated 60-days for completion, with an option to extend the Phase 1 Expiration Date by another 45-days if the County Administrator determines that the negotiations are proceeding in a reasonable manner. Both the required Term Sheet and Concept Plans must be approved by the Board of Supervisors acting in open session, and your Board's approval of either the Term Sheet and/or Concept Plans is non-binding on the County. If the Term Sheet or Concept Plans are not approved by your Board, in your Board's sole determination, in the specified timeframe, the Exclusive Negotiation Agreement will automatically terminate.

Phase 2 Preparation of Final Documents. If your Board approves the Term Sheet and Concept Plans required above, the County and Joseph Enterprises will draft any Option, Lease and Land Transaction documents resulting from the approved Term Sheet and Concept Plans. This Phase needs to be completed within 60-days from the date of approval of the Concept Plans, and may be extended by the CAO for up to 45 additional days. The Final Documents will be approved by your Board in public, in open session, and only upon your Board's approval of these documents will the County be bound to the project.

If the Term Sheet and resulting Final Documents contemplate the County purchasing or selling land, the County's Real Property Management Policy (Attachment C) will be adhered to. This Policy contains various public notice and meeting requirements that may be required (depending on the nature of the associated transaction) in addition to those public processes identified above for the approval of the Term Sheet, Concept Plans, and Final Documents described above.

The RFP was written to solicit a broad and creative array of proposals, and identified and encouraged a variety of approaches to proposing consolidated County office space such as: using existing privately-owned buildings; or through new construction on privately-owned, County-owned, or land owned by a third-party. The RFP also sought to encourage a variety of terms for financing the project, including identifying ways in which the County could buy-down costs through grants, public private partnerships, the use of Redevelopment Agency funds, land exchanges, etc.

The RFP indicated that the County was prepared to consider proposed facilities ranging in size from 30,000 square feet to 60,000 square feet. The former area being the amount of office space – leased and owned – the County occupied in January 2010 (29,723 square feet), and the later being the area identified in a 1998 planning analysis conducted by the County which contemplated a County complex including a new animal shelter and Road shop. In order to better compare the proposals submitted by the two respondents to the RFP, during negotiations, staff sought to establish "working" square footage for the proposed building. This was accomplished by submitting building programming surveys to County department heads with offices in the Bishop area. On the basis of the resulting input, 42,000 square feet was used for comparing the two (2) proposals. It should be stressed that this is a working number, and the actual space requirements for County offices in the Bishop area will be determined through the space planning process required by Part 1B of the Exclusive Negotiation Agreement.

The proposal framework upon which the recommendation to proceed in exclusive negotiations with Joseph Enterprises is based includes:

- Developing a 42,000 square foot consolidated office building on the land owned by Joseph Enterprises at the intersection of Wye Road and Highway 6.
- An initial payment of \$2 Million
- Exchange of County and Joseph Enterprise-owned parcels
- \$600,000 in annual, non-escalating lease expense with a 20-year term
- Payments of \$250,000 in years 5, 10 and 15 of the lease
- County ownership of the building after 20-years

In addition to offering lower project costs, other factors have combined to result in staff recommending Joseph Enterprises' proposal as the one most likely to result in a project that meets the County's service, efficiency, and pricing needs.

Prior to undertaking a major re-location of County offices within and from Bishop in 2008, the County was paying over \$460,000 a year in lease expense in the Bishop area. This does not including taxes, maintenance, custodial or utility costs. At the time, it was noted that the County's lease costs had increased by approximately 15% during the past three years, from \$400,000 in Fiscal Year 2007. As a result of moving the Water department from leased office space in Bishop to a County-owned building in Independence, and relocating other Bishop offices to new leased space, the County was able to reduce lease costs to \$378,792 per year in Fiscal Year 2009-2010. However, this last relocation was undertaken at a cost of more than \$200,000 plus staff expense for tenant improvements. At the time, the office moves were viewed as addressing the County's immediate office space needs, with the preparation of an RFP for consolidated office space in the Bishop area being identified as the next step the County's effort to address its long-term office space needs in the northern part of the County.

As indicated above, there are many opportunities for public input and discussion regarding this proposed project built into the Exclusive Negotiations Agreement and, possibly, required by the County Real Property management Policy, including: approval of the non-binding Term Sheet; approval of the non-binding Concept Plans; and, approval of the binding Final Documents. However, your Board may wish to consider undertaking additional public outreach, to garner public input, as (or if) the negotiations process continues. This could include holding a Special Meeting(s) of the Board of Supervisors to tour facilities housing County offices; having regularly scheduled public reports during Regular Meetings of the Board of Supervisor to update the public on the general status of negotiations; as well as holding Special Board Meetings in various communities to garner additional input and listen to any concerns or enthusiasms.

ALTERNATIVES:

Your Board could choose to take no action and not execute the Exclusive Negotiation Agreement with Joseph Enterprise; direct that negotiations continue with both respondents; direct that an Exclusive Negotiation Agreement be developed for Mitchell Asset Group; or, that the County either issue a new Request For Proposals; pay to develop its own architectural plans and specifications for a consolidated building, or quit pursuing consolidated office space in the Bishop area.

In addition, your Board could direct staff to coordinate the additional public outreach efforts described above including arranging for tours of County facilities; holding special meetings in various communities, or directing periodic public reports to your Board in open session of Regular Board meetings.

OTHER AGENCY INVOLVEMENT:

Primary assistance in this process has been, and will be provided by Inyo County Office of the County Counsel, and the Inyo County Public Works Department.

FINANCING:

There is no cost or binding obligation to the County associated with executing the Exclusive Negotiation Agreement with Joseph Enterprises. As indicated above, there will be many more public discussions and actions required of your Board in advance of making any decision that is financially binding upon the County. If your Board elects to execute the Agreement, the County will require consultation with experts in these types of public-private partnership transactions, and \$30,000 is included in the Fiscal Year 2011-2012 Preliminary and Recommended budgets for this purpose.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) R. Hill Approved: _____ Date 8.31.11
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:  Date: 08-31-2011
(Not to be signed until all approvals are received)
(The Original plus 20 copies of this document are required)

ORIGINAL

**EXCLUSIVE NEGOTIATION AGREEMENT
FOR CONSTRUCTION AND LEASING OF
INYO COUNTY CONSOLIDATED OFFICE BUILDING**

This Exclusive Negotiation Agreement (this "Agreement") is entered into as of _____, 2011 by and between the County of Inyo (the "County") and Joseph Enterprises ("Developer") under the terms and provisions set forth below.

WHEREAS, the County and Developer desire to enter into negotiations concerning the development of an Inyo County Consolidated Office Building to house various County operations now based in multiple locations in Bishop, California (the "Consolidated Building") on property now owned by the developer, which building will be leased by the County with an option to purchase the building.

WHEREAS, the County and Developer, in order to provide for construction and lease of the Consolidated Building, may need to also provide for the sale of certain County property immediately south of the City of Bishop on US 395 ("County Jay Street Parcel") and the sale of the property underlying the Consolidated Building as well as future development of any retained portion of the property now owned by Developer ("Josephs' Road Parcel") as more particularly described in the Exhibit A Parcel Maps.

WHEREAS, the purpose of this Agreement is to provide Developer with an exclusive right to negotiate the terms of an option to lease ("Option"), the office building lease ("Lease"), and, as needed the purchase and sale agreements for land parcels and any agreements as to future use of any portion of the Josephs' Wye Road Parcel not conveyed to the County (collectively the "Land Transaction Documents") to effectuate the development of the Consolidated Building.

NOW, THEREFORE, County and Developer hereby mutually agree as follows:

1. **EXCLUSIVE RIGHT TO NEGOTIATE.** County and Developer hereby agree that, so long as this Agreement is in effect, they will diligently, in good faith, and exclusively negotiate the Option, Lease, and Land Transaction Documents. Nothing in this Agreement shall obligate the County to approve the Option, Lease or Land Transaction Documents. The term of this Agreement commences on the date the Agreement is signed and executed by both parties (the "Effective Date") and shall continue in full force and effect until an Option and Lease are executed by the parties or the earlier termination of this Agreement under Paragraphs 3 or 6. During the term of this Agreement, Developer shall not negotiate or discuss with any other party any other use of the Josephs' Wye Road Parcel and County will not negotiate or discuss with any other party any alternative disposition of the County Jay Street Parcel.
2. **PHASING AND TIMING OF NEGOTIATIONS.** The Option, Lease and Land Transaction Documents shall be negotiated in two phases as follows:
 - 2.1. **Phase 1 – Part A -Term Sheet Agreement.** County and Developer will negotiate key terms of the Option , Lease and Land Transaction Documents, to be summarized in a non-binding proposed term sheet ("Proposed Term Sheet"), subject to approval by the

County Board of Supervisors ("Board"). The Proposed Term Sheet will be prepared as follows:

- 2.1.1. Submission by Developer of initial draft of Proposed Term sheet with supporting financial analysis as more particularly described in Exhibit B, which will serve as guidelines and instructions for subsequent negotiation of final documents.
- 2.1.2. Review by County staff and discussion to complete a document to be submitted for approval by the Board
- 2.1.3. Submission to the Board for approval subject to Design Review

2.2. Phase 1 – Part B -Design Review

- 2.2.1. Developer will submit a conceptual design for the building based on an updated space plan developed in consultation with the County and to be funded by the developer as part of updated architectural planning,, a site plan and other supporting documents including a description of permitted and planned uses for adjacent properties controlled by the developer, (collectively "Concept Plan") as more particularly described in Exhibit C for County staff review
- 2.2.2. County staff will review and comment
- 2.2.3. Submission of Concept Plans to Board for approval in their capacity as prospective tenants only¹

2.3. Phase 2 - Preparation of Final Documents

- 2.3.1 Initial drafting of Option, Lease and Land Transaction Documents
- 2.3.2 Review and revision
- 2.3.2 Approval by Developer and subsequent submission to Board for approval in open session

3. TERM OF AGREEMENT. The term of this Agreement shall be comprised of up to two phases as follows:

- 3.1.1. Phase 1 will consist of sixty (60) days, commencing on the date this Agreement is signed on behalf of the County (the "Phase 1 Effective Date"), and continuing in full force and effect until the sixtieth (60th) day thereafter (the "Phase 1 Expiration Date"). The Phase 1 Expiration Date may be extended for up to forty-five (45) additional days (commencing on the Phase 1 Expiration Date) upon approval in

¹ Nothing in this or any other aspect of approval of the Lease or Land Transaction Documents by the County shall be deemed in any way a regulatory approval by any public entity, including the County in its regulatory capacity, exercising jurisdiction over the approval process for construction of the building nor does any County act in the process relieve the developer from otherwise complying with all applicable land use transportation and building regulations.

writing by the County CAO, provided that Developer continues to diligently perform its obligations hereunder in a timely manner. If at the Phase 1 Expiration Date or the expiration of any extension thereof, Developer has not signed and submitted a Proposed Term Sheet and Concept Plan approved by the Board (in the Board's sole determination), this Agreement shall automatically terminate, and the County and Developer agree that they shall have no further rights or obligations under this Agreement.

- 3.1.2. Phase 2 will consist of sixty (60) days, commencing on the date the Board approves the Concept Plan, having previously approved the Proposed Term Sheet, (the "Phase 2 Effective Date"), and continuing until its expiration upon the sixtieth (60th) day thereafter (the "Phase 2 Expiration Date"). The Phase 2 Expiration Date may be extended for up to forty-five (45) additional days (commencing on the Phase 2 Expiration Date) upon approval in writing by the County CAO, provided that Developer continues to diligently perform its obligations hereunder in a timely manner. If at the Phase 2 Expiration Date or the expiration of any extension thereof, Developer has not signed and submitted an Option, Lease and Land Transaction Documents approved by the Board (in the Board's sole determination), then this Agreement shall automatically terminate, and the County and Developer agree that they shall have no further rights or obligations under this Agreement.
4. DEVELOPER DEPOSIT. The Developer will be required to make a refundable good faith deposit in the amount of \$10,000 which deposit shall be refunded at the conclusion of negotiations either as a matter of County approval of the collective documents or at the Developer's request at the expiration of the ENA except that that if the failure to jointly execute the required documents is solely caused by the Developer's uncured default of its obligations hereunder, the deposit shall be retained by the County.
5. NEGOTIATION OF FINAL DOCUMENTS. During the term of this Agreement, the County and the Developer shall negotiate diligently and in good faith. The County and the Developer shall generally cooperate with each other and supply such documents and information as may be reasonably requested by the other to facilitate the conduct of the negotiations. Both the County and the Developer shall exercise reasonable efforts to complete discussions relating to the terms and conditions of a Term Sheet, Lease, Option and Land Transaction Documents and such other matters as may be mutually acceptable to both the County and the Developer, in their respective sole discretion. Nothing in this Agreement shall be interpreted or construed to be a representation or agreement by either the County or the Developer that a mutually acceptable Term Sheet, Lease and/or Option will be produced from negotiations under this Agreement. Nothing in this Agreement shall impose any obligation on either party to agree to a definitive Term Sheet, Lease and/or Option in the future. Nothing in this Agreement shall be interpreted or construed to be a guaranty, warranty or representation that any proposed Term Sheet, Lease and/or Option, or Land Transaction Document that may be negotiated by County staff and the Developer will be approved by the Board.

6. **LIMITATION ON REMEDIES.** The County and the Developer each acknowledge and agree that the County would not have entered into this Agreement if it were to be liable to the Developer for any monetary damages, monetary recovery or any remedy other than termination of this Agreement and return of Developer's deposit under Section 4. Accordingly, the County and the Developer agree that the Developer's sole and exclusive right and remedy upon the breach of this Agreement by the County is to terminate this Agreement and seek return of its deposit in accordance with Section 4. The Developer acknowledges that it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:
- 6.1.1. **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**
- 6.1.2. California Civil Code Section 1542 notwithstanding, it is the intention of the Developer to be bound by the limitation on damages, recovery and remedies set forth in this Section, and the Developer hereby releases any and all claims against the County for monetary damages, monetary recovery or other legal or equitable relief related to any breach of this Agreement, except receipt of the Developer deposit under Section 4, whether or not any such released claims were known or unknown to the Developer as of the effective date of this Agreement. The Developer specifically waives the benefits of California Civil Code Section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect with regard to the limitations on damages and remedies and waivers of any such damages and remedies contained in this Section.
7. **COUNTY NOT RESPONSIBLE FOR COSTS.** County shall not be liable for any costs of Developer, including costs associated with: (1) Developer's negotiation of this Agreement, the Term Sheet, the Option, the Lease, the Land Transaction Documents, and/or any other related documents; (2) preparation of any due diligence review reports authorized by Developer or other related physical investigation of the Site or arising from this Agreement; and (3), except as may be expressly provided for in the Option, Lease, or Land Transaction Documents, the Consolidated Building design and planning and the development of the Site.
8. **OPTION AND LEASE TO SUPERSEDE THIS AGREEMENT.** This Agreement will be superseded by the Option, the Lease or the Land Transaction Documents, as applicable, if and when the Option, Lease or Land Transaction Documents are executed by Developer, approved by the Board, and executed on behalf of the County in the manner required by law.
9. **CONFLICTS OF INTEREST.** For the term of this Agreement, no member, officer or employee of the County, during the term of his or her service with the County, shall have any direct or indirect interest in this Agreement or obtain any present or anticipated material benefit arising therefrom.

10. CHANGE IN OWNERSHIP OR CONTROL OF DEVELOPER. Developer understands the County is entering into this Agreement based on the prior experience and qualifications of the individuals disclosed by Developer in its response to the County's Request for Proposals for the Site.² , Developer shall not assign a majority interest, sell or otherwise transfer a majority interest or relinquish majority control of its rights under this Agreement to any party not owned in the majority, or controlled by, JOSEPH ENTERPRISES LLP, nor shall Developer effect a change of control resulting in JOSEPH ENTERPRISES, LLP no longer being in control of Developer without prior written consent of County. Any direct or indirect assignment of this agreement in violation of this provision shall be void and shall constitute a default under this agreement entitling the County to immediately terminate this Agreement.

11. GOVERNING LAW AND VENUE. This Agreement shall be interpreted and enforced in accordance with the provisions of California law in effect at the time it is executed, without regard to conflicts of laws provisions. Any legal actions, claims or proceedings brought in connection with or as a result of this Agreement shall be brought in a competent court of jurisdiction in the County of Inyo, State of California.

12. NOTICES.

12.1. Any notice, request, approval or other communication to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage pre-paid, return receipt requested, or by electronic or facsimile transmission followed by a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of County and Developer set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either party may from time to time designate.

12.2. Any notice transmitted by electronic facsimile transmission followed by delivery of a "hard" copy shall be deemed delivered upon its transmission; any notice personally delivered (including by means of professional messenger service, courier service (such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return receipt requested shall be deemed on the date of receipt thereof.

12.2.1. If to County: Kevin Carunchio
County Administrative Officer
County of Inyo
P.O. Box N
224 North Edwards
Independence, CA 93526

² Note that the opinion of Developer's qualifications contained herein does not imply that, in any other respect, the County considers the Developer's response to the Request for Proposal to be complete or in any way defining the current negotiation process.

12.2.2. If to Developer: Steven Joseph
Joseph Enterprises LLP
668 Maple
Bishop, CA 93514

13. **NONDISCRIMINATION.** Developer shall not discriminate against nor segregate any person, or group of persons on account of sex, sexual orientation, race, color, marital status, religion, creed, disability, national origin or ancestry in the development and construction of the Consolidated Building.
14. **NO THIRD PARTY BENEFICIARIES.** County and Developer expressly acknowledge and agree they do not intend, by their execution of this Agreement, to benefit any persons or entities not signatory to this Agreement.
15. **COUNTERPART ORIGINALS.** This Agreement may be executed in counterpart originals which, when taken together, shall constitute but one and the same instrument.
16. **AUTHORITY.** Each party to this Agreement hereby represents to the other party that it has the legal power, right and authority to execute, deliver and enter into this Agreement and any and all other agreements and documents required to be executed and delivered pursuant hereto and to perform and observe the terms and provisions hereof. This Agreement shall not be considered effective unless approved by the County's Board.
17. **ATTORNEYS' FEES.** In any action between the parties to interpret, enforce, award, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, each party in the action shall be responsible for payment of its own costs and attorneys' fees.
18. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to development of the Site. This Agreement may not be amended unless agreed in writing and certified by the signatures of the parties hereunder.
19. **EFFECTIVE DATE.** The effective date of this Agreement shall be the date signed on behalf of the County below.

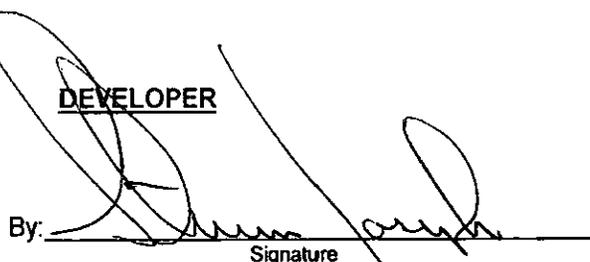
19.1.1.1. **IN WITNESS WHEREOF,** the parties have executed this Agreement as of the respective dates set forth below.

COUNTY OF INYO

By: 

Dated: 9/16/11

DEVELOPER

By: 
Signature

Steven Joseph
Joseph Enterprises LLP
Print or Type Name

Dated: 09/09/11

APPROVED AS TO FORM AND LEGALITY:


County Counsel

APPROVED AS TO ACCOUNTING FORM:


County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:


Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

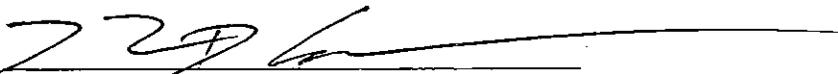

County Risk Manager

EXHIBIT A – PARCEL MAPS
JOSEPHS' WYE ROAD PARCEL

COUNTY JAY STREET PARCEL

**EXHIBIT B – CONTENTS OF TERM SHEET
AND SUPPORTING FINANCIAL DOCUMENTATION**

TERM SHEET

Example items to be included subject to modification and expansion by either party

- Building size measured as both gross building area and rentable area, location, and general construction type, number and type of parking spaces, etc.
- Tenant improvement allowance
- Construction timing; design, plan check, shell construction, TI installation
- Lease term; commencement, term
- Consideration: initial payment, fixed annual payments, special bonus payments
- Continuing obligations of Developer as landlord, e.g. structural maintenance, major repair, property taxes
- Continuing obligations of County as tenant, e.g. regular maintenance, all operating expenses
- Conveyance of ground under building
- Option to buy building
- Right of first refusal if building sold during term
- Conveyance of County Jay Street Parcel as additional consideration
- Description of ownership interest in Developer's parcel

SUPPORTING FINANCIAL DOCUMENTATION

Example items to be included subject to modification and expansion by either party

- Valuation of land properties in transaction – Joseph Wye Road Parcel and County Jay Street
 - Estimates of value
 - Source of estimates

- Estimated construction cost in reasonable detail, i.e. direct costs broken down to onsites, offsites, shell, and T.I. plus indirect costs itemized as between A&E, other consultants, city fees, taxes, financing costs, developer fees and charges (if any), and proposed method of financing
 - For hard costs, provide source of estimate which may be other comparable buildings, contractor estimates, cost manuals, etc.
 - For financing provide description of terms and some indication of the type of confirmation of funding availability to be provided to County prior to execution of documents

- Pro Forma Financial Projections
 - Annual Pro Forma for construction period and term of lease showing both return on cost and return on equity and concluding with exercise of County option to purchase
 - Incorporation within pro forma of estimated values of properties to be conveyed and discussion of why conveyance of County Jay Street Parcel is necessary

EXHIBIT C – CONTENTS OF REQUESTED CONCEPT PLAN DOCUMENTATION

Note: Various documents and graphics have been informally presented to the County in the course of prior discussions, sometimes in multiple versions. While the developer must provide all of the items set forth below as part of his submission, he may, if he thinks it appropriate, re-submit prior drawings, maps etc as his current proposal but fulfillment of the ENA requirements cannot be met simply by reference to previously submitted documents.

BUILDING PLANS

- Illustrative Floor Plan with approximate dimensions
- Floor plans to show locations of various County functions based on updated space plan developed in consultation with the County.
- Elevations (front and side)
- Axonometric drawing showing massing on site and relative to nearby buildings
- Provide architectural program delineating gross and rentable space, number of parking spaces, type of construction, type of roof etc.

SITE PLAN

- Map showing boundaries of site to be conveyed to County
- Parking plan
- Access including demarcation of any easements needed
- If less than entire Joseph Wye Road site to be conveyed to County, provide current and proposed zoning and provide illustration of land use plan and building massing for balance of site

SUSTAINABILITY

- Describe proposed design features and operating systems designed to minimize future operating costs, conserve water and energy and use recyclable materials including insulation, HVAC etc.
- Indicate whether or not LEEDS certification will be sought and at what level
- Describe efforts at sustainability to be made in the construction process.

InyoCounty-Joseph-ENA-071511.docx



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER //

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: County Administrator – Public Defender

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Approval of Payment of Prior Year(s) Expenditure in the amount of \$14,170.00

DEPARTMENTAL RECOMMENDATION

Recommend Board approval of \$14,170.00 in expenditures to come from the FY 2011/2012 Public Defender Budget for professional services that were performed in 2005, 2007 and 2008.

SUMMARY DISCUSSION

The County Administrators office, which oversees the Public Defender Budget, received several Declaration of Payment orders from Superior Court for the total amount of \$14,170.00, payable to the Law Office of David D. Hammon, for Professional Services which were performed in the years of 2005, 2007 and 2008.

Mr. Hammon came before the Court in November, 2011, stating that, as the Court appointed attorney for the said defendants, the invoices for attorney fees provided were incurred and asked the Presiding Judge to approve the "Declarations in Support of Attorney Fees." Court transcripts indicate that the Judge inquired as to why these invoices were so late. Mr. Hammon indicated that they had been sitting on his desk for a long time and was just now getting around to submitting them to the Court for approval. The Judge encouraged Mr. Hammon to please submit future invoices in a timely manner. The Judge further explained that when large, prior year(s) unexpected expenditures from General Fund budgets are submitted for payment, and these expenditures have not been included in current fiscal year budgets, this can have a negative impact on the County's overall budget.

The Public Defender's Budget does have the funds in the FY 2011/2012 budget to cover these prior year(s) expenditures, due mainly to the fact that we now have five full time public defenders under contract, which has helped keep the "out of contract" Professional Services fees to a minimum this year. However, such payments require Board authorization.

ALTERNATIVES:

Your Board could choose not to approve the payment. However, this is not recommended as it would result in violation of a Court Order.

OTHER AGENCY INVOLVEMENT

Superior Court

FINANCING

There are sufficient funds available in the FY 2011/2012 Public Defender Budget #022600, Professional Services Object Code #5265 to pay the \$14,170.00 declarations.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) R. Kelly Approved: _____ Date 2-22-12
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Kata Ludwig Approved: _____ Date 2/22/12
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) _____ Date: 02-23-2012



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

12

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Inyo County Integrated Waste Management

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Consideration of Approval of Appointment of a Delegate and Alternate Delegate/Technical Liaison to the Regional Council of Rural Counties-Environmental Services Joint Powers Authority (RCRC-ESJPA)

DEPARTMENTAL RECOMMENDATION:

That your Board 1) Consider the approval of the appointment of Supervisor Linda Arcularius as the Delegate and Jeff Ahlstrom as the Alternate Delegate/Technical Liaison to the Regional Council of Rural Counties-Environmental Services Joint Powers Authority (RCRC-ESJPA) and, 2) Authorize the County Administrator to sign the attached letter notifying the RCRC-ESJPA of the Inyo County appointment.

SUMMARY DISCUSSION:

Inyo County Integrated Waste Management is requesting your approval of the appointment of a Delegate and one Alternate Delegate/Technical Liaison to the RCRC-ESJPA. The Delegate for the ESJPA would be Third District Supervisor Linda Arcularius and the Alternate Delegate/Technical Liaison would be Jeff Ahlstrom, Managing Landfill Engineer. This appointment is in addition to the regular RCRC appointment already in place.

This is an ESJPA appointment and it is common practice to appoint the current RCRC Delegate to the ESJPA but not mandatory. This delegation is effective until the Delegate is replaced by the Board of Supervisors or is no longer a supervisor.

Background

A local government agency comprised of 22 rural member counties, the ESJPA provides regulatory advocacy and technical assistance to the member counties, supports local public education campaigns and administers grants for recycling and hazardous waste management programs.

Established in 1993, the Rural Counties' Environmental Services Joint Powers Authority (ESJPA) was formed in response to new and costly State and Federal mandates regulating local solid waste management programs. Composed of 22 member counties, ESJPA will advocate on behalf of the member counties and provide ongoing assistance to the counties in their efforts to comply with State and Federal environmental standards, ESJPA's Board of Directors include county Supervisors and technical staff who provide the direction and expertise needed in this critical area.

Relative to more urban areas, the operating and compliance costs associated with waste management programs can be unduly burdensome for rural counties. State law requires all counties to develop programs to achieve a 50% waste diversion or face the possibility of \$10,000 per day fines. Recognizing the challenges facing rural counties the ESJPA has been successful in sponsoring legislation that gives Cal-Recycle the authority to allow a reduction of the 50% waste diversion rate mandate on rural counties. Inyo County was successful in petitioning the State for a 29% annual diversion rate.

ALTERNATIVES:

Your Board could choose not to appoint a delegate and an alternative delegate; however, that is not the recommendation of staff. The ESJPA is a tremendous benefit to the County and gives the county a voice in the State solid waste regulatory arena.

OTHER AGENCY INVOLVEMENT:

ESJPA member counties.

FINANCING: This action, other than annual dues, will have no impact on the General Fund. This action will provide necessary delegates to the ESJPA. There will be associated meeting attendance costs in attending the ESJPA meetings in Sacramento.

APPROVALS

COUNTY COUNSEL: 	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) Approved: <u>yes</u> Date <u>2/14/2012</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) Approved: _____ Date _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:  Date: 2-14-12
(Not to be signed until all approvals are received)
(The Original plus 20 copies of this document are required)

Integrated Waste Management
Parks and Recreation
Motor Pool



TEL. (760) 873-5577
FAX. (760) 873-5599
E-MAIL: chamilton@inyocounty.us

COUNTY OF INYO

Administrative Services
163 May Street
Bishop, California 93514

February 28, 2012

Mary Pitto, Program Manager
Rural Counties' Environmental Services Joint Powers Authority
1215 K Street, Ste 1650
Sacramento, CA 95814

Re: ESJPA Delegate/Alternate Authorization

Dear Ms. Pitto:

On February 28, 2012 the Inyo County Board Clerk affirmed that Third District Supervisor, Linda Arcularius shall serve as the Delegate for the Rural Counties' Environmental Services Joint Powers Authority (ESJPA). Also, please accept this letter as authorization for Jeff Ahlstrom to be the ESJPA Alternative Delegate/Technical Liaison who, in the absence of the Delegate, may exercise all rights and privileges of the Delegate, including the right to be counted in constituting a quorum, to participate in the proceedings of the Board, and to vote upon any and all matters. This authorization shall remain in effect until further notice.

Sincerely,

Kevin Carunchio, Inyo County Administrator



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
 13

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Parks and Recreation

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Request to Hire Two Seasonal Part Time Maintenance Helpers for the Parks and Recreation Dept.

DEPARTMENTAL RECOMMENDATION: Request Board find that consistent with the adopted Authorized Position Review Policy:

- A) The availability of funding for the requested positions come from the General Fund, as certified by the Deputy County Administrator, and concurred with by the County Administrator and Auditor Controller; and
- B) Where internal candidates meet the qualifications for the position of Park and Campground Maintenance Helper, the vacancy could possibly be filled through an internal recruitment, but an open recruitment would be more appropriate to ensure qualified applicants apply, and
- C) Approve the open recruitment and hiring of 2 seasonal Park and Campground Maintenance Helpers, Range PT42 - \$12.10 per hour, one seasonal will begin April 1 and work through September 30 and the other will begin May 16 and work through November 15
- D) Contingent upon Board approval of future budgets.

SUMMARY DISCUSSION:

Staff recommends filling the seasonal park and campground maintenance helper position from an established applicant list developed through an open recruitment.

ALTERNATIVES: Your Board could choose not to authorize filling the vacant position, however, this is not recommended, as the functionality of the Parks and Recreation programs will suffer. When a seasonal maintenance helper position is vacant the park rangers require increased overtime and requires to work their scheduled days off to maintain the general operating of the parks and campgrounds which is very busy at that time of year.

OTHER AGENCY INVOLVEMENT: Personnel

FINANCING: Funding for this position is included in the FY 2011-2012 Parks and Recreation Budget.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) <i>Leslie L. Chapman</i> Approved: <input checked="" type="checkbox"/> Date <u>2/16/12</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) <i>[Signature]</i> Approved: <input checked="" type="checkbox"/> Date <u>02-16-2012</u>

DEPARTMENT HEAD SIGNATURE: *Jeff Altman* Date: 2-22-12
 (Not to be signed until all approvals are received)
 (The Original plus 20 copies of this document are required)



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

14

- Consent Hearing
 Scheduled Time for
- Departmental
 Closed Session
- Correspondence Action
 Public
- Informational

FROM: HEALTH & HUMAN SERVICES – Social Services

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Request to alter the HHS departmental authorized strength, and hire a Social Worker in the Adult Social Services division.

DEPARTMENTAL RECOMMENDATION:

Request your Board:

1. Change the Authorized Strength in the Health and Human Services Adult and Children's Social Services division by:
 - a. Deleting the full time Registered Nurse, Range 78 (\$4,997-\$6,074)
 - b. Adding one full time Social Worker I-IV career ladder at Range 61 (\$3,345-\$4,062) to Range 69 (\$4,041-\$4,904).
2. Find that, consistent with the adopted Authorized Position Review Policy:
 - a. the availability of funding for this requested position exists, as certified by the Health and Human Services Director and concurred with by the County Administrator, and the Auditor-Controller; and
 - b. where internal candidates meet the qualifications for the position, the vacancies could possibly be filled through an internal recruitment, but an open recruitment would be more appropriate to ensure a sufficient number of qualified applicants apply; and
 - c. approve the hiring of one Social Worker, either a I at Range 61 (\$3,345-\$4,062), or a II at Range 64 (\$3,590-\$4,363), contingent upon qualifications.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The Health and Human Services Adult Social Services division, which provides Adult Protective Services (APS), In Home Supportive Services (IHSS), and investigations of referrals for LPS Conservatorships, has historically been staffed with an IHSS Nurse, who conducted IHSS assessments/reassessments, and two social workers, who perform APS mandated functions, LPS investigations, and carry a small IHSS caseload. In addition, one social worker acts as the primary deputy conservator for the LPS program.

The IHSS Nurse retired in December 2011, leaving a vacancy in the Adult Social Services program. Upon notification of the employee's intent to retire, management conducted an assessment of the staffing needs to determine if the program continued to need the skills of a nurse for the program, or if a social worker would be a more appropriate staffing level. Since this is a Social Services-funded position, HHS worked with Merit System Services (MSS) to further evaluate and determine the appropriate classification.

A review of the number of IHSS cases with complex medical issues and/or use of paramedical services was conducted and found to be minimal. In addition, it appeared that assessments/reassessments of these clients' needs

could be conducted by a social worker with input from the treating medical provider and/or consultation from other Health and Human Services nursing staff. Replacing the vacant position with a Social Worker would also allow for better coverage of our APS program, which is charged with investigating and managing reports of abuse/neglect of our elder and dependent adult population, as well as the LPS Conservatorship investigations and case management functions. These functions not only provide a needed safety net for two very vulnerable populations, but also ensure that an effective continuum of services is available of our aging and disabled population.

MSS has determined that, given the level of complexity for the job duties, the position should be classified as a Social Worker I or II. Therefore, HHS is requesting Board authorization to delete the IHSS Nurse position from the authorized strength, and add a Social Worker position. To allow for flexibility, the department is requesting that the position be established as a career ladder, but is only seeking to fill the current vacancy at a Social Worker I or II level, dependent upon qualifications.

ALTERNATIVES:

Denying this request would result in the existing staff, who now are absorbing additional caseloads, being at risk of inadvertent, compromised safety decisions on behalf of elder and dependent adults due to increased workloads.

OTHER AGENCY INVOLVEMENT:

Superior Court, Inyo County Senior Program, Toiyabe Family Services, local Indian tribes, Mental Health, Wild Iris, Sheriff's Office, Bishop Police Department and District Attorney.

FINANCING:

State and Federal funding, along with Social Services Realignment and 2011 Realignment funds will pay for this position. There is funding in Social Services (055800) in salaries and benefits for this requested position. No County General Funds.

<u>APPROVALS</u>	
COUNTY COUNSEL: <p style="text-align: center;">N/A</p>	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)</i> <p style="text-align: right;">Approved: _____ Date: _____</p>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)</i> <p style="text-align: center;"><i>[Signature]</i></p> <p style="text-align: right;">Approved: <u>2/10/12</u> Date: _____</p>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)</i> <p style="text-align: center;"><i>[Signature]</i></p> <p style="text-align: right;">Approved: <u>2/8/12</u> Date: _____</p>

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received) *Jean Turner* Date: 2-14-12



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use
 Only:
AGENDA NUMBER
 15

- Consent Departmental Correspondence Action Public Hearing
 Schedule time for Closed Session Informational

FROM: Public Works Department

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Partial Remodel of Kitchen at Bishop Senior Center

DEPARTMENTAL RECOMMENDATIONS:

1. Approve Resolution Approving the Bishop Senior Center Recreation Committee to remodel the kitchen at the Bishop Senior Center.
2. Accept the donation of the kitchen upgrade.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

On January 22, 2008, Inyo County and the Bishop Senior Recreation Committee (Committee) entered an agreement for the Committee to provide maintenance for the Senior Center building at 506 Park Avenue, Bishop. Since that time, the Committee has collected money and provided the maintenance of the building, and donated funding for the County to make improvements. The Committee has determined that they have a priority to upgrade the kitchen facility. The Committee has contacted a licensed contractor who is interested in completing the kitchen upgrade, and collected adequate funding to pay the contractor to do the work. The Committee or their contractor will obtain building permits and provide liability insurance prior to initiating work on the site. In addition to the inspections provided by the City of Bishop building inspector, Inyo County Facilities staff will verify the work is being done appropriately during construction and upon completion.

ALTERNATIVES:

The Board could direct revisions to the resolution.

The Board could not approve the resolution, which would require the upgrades not be completed or alternative means identified.

OTHER AGENCY INVOLVEMENT:

The City of Bishop for issuance of a building permit and inspections.

HHS

FINANCING:

No financial impacts from the status quo if the recommendation is approved. The financial impacts of a potential agreement with the proposer cannot be estimated prior to resolving the unknowns.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the board clerk.)	Approved: <u>yes</u>	Date: <u>2/1/12</u>
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)	Approved: <u>yes</u>	Date: <u>2/1/12</u>
PERSONNEL DIRECTOR	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)	Approved: _____	Date: _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

[Handwritten Signature]

Date: 2-21-12

RESOLUTION NO. 2012-__

A Resolution of the Inyo County Board of Supervisors Authorizing the Bishop Senior Center Recreation Committee to complete kitchen upgrade construction and Acceptance of the donation of the kitchen upgrades at the Bishop Senior Center completed by the Bishop Senior Recreation Committee

WHEREAS, Inyo County owns the Bishop Senior Center building which is located at 506 Park Avenue, Bishop, California; and

WHEREAS, Inyo County and the Bishop Senior Recreation Committee (Committee) entered into an agreement dated January 22, 2008, for the Committee to provide maintenance of the Bishop Senior Center building;

WHEREAS, the Committee uses and maintains the kitchen at the Bishop Senior Center building; and

WHEREAS, the Committee has determined that the kitchen is in need of work beyond normal maintenance; and

WHEREAS, the Committee has determined that the upgrade of the kitchen is a priority for the Committee; and

WHEREAS, the Committee has collected funding to build the kitchen upgrades as indicated on the attach summary; and

WHEREAS, the Committee desires to upgrade the kitchen at the Bishop Senior Center building at no cost to Inyo County, and to donate the upgraded kitchen equipment and construction to Inyo County; and

WHEREAS, the Committee desires to use a licensed building contractor to install the kitchen upgrades; and

WHEREAS, The Committee understands that the Bishop Senior Center is owned by Inyo County and that Inyo County will own the upgraded kitchen and that the destruction, alteration, demolition, or removal of the kitchen upgrade may become necessary in the future and hereby authorizes Inyo County to engage in such activities as necessary or in the public interest.

WHEREAS, Inyo County desires to give permission for the Committee to install the kitchen upgrades and continue to maintain the building in accordance with the existing agreement; and

WHEREAS, Inyo County desires to accept the donation by Bishop Senior Recreation Committee of kitchen upgrades to the Bishop Senior Center.

NOW THEREFORE, BE IT RESOLVED that Inyo County hereby gives permission to construct improvements to the kitchen at the Bishop Senior Center building located at 506 Park Avenue, Bishop, California subject to the following conditions:

1. Committee shall obtain any and all necessary permits to construct the kitchen upgrades.
2. All construction activities will be open to Inyo County employees to inspect in addition to any inspections required by a building permit issued by the City of Bishop.
3. The Committee shall maintain insurance which may be provided through Committee's contractor, as follows:
 - General Liability insurance in the amount of \$1,000,000.00. The County, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of work or operations performed on the project, including materials, parts or equipment furnished in connection with the project. General liability coverage can be provided in the form of an endorsement to the Society's insurance, or as a separate owner's policy.
 - Workers compensation coverage in accordance with the laws of California for any volunteers working on the project.
 - Any other insurance as required by the Inyo County Risk Manager.
4. The Committee shall defend, indemnify, and hold harmless Inyo County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the Bishop Senior Center Kitchen Upgrade project. The Committee's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. The Committee's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other cost which is caused in whole or in part by any act or omission of the Committee, its agents, employees, suppliers, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable. The Committee's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for the Committee to procure and maintain a policy of insurance.
5. All installation and construction work on the Bishop Senior Center shall be performed by a licensed contractor.
6. Committee shall obtain a notice to proceed from the Inyo County Public Works Director prior to construction. No work shall begin on the Bishop Senior Center until the required insurance is obtained and is approved by the Inyo County Risk Manager.

PASSED AND ADOPTED by the Board of Supervisors of the County of Inyo, State of California, this __ day of February 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

CHAIRPERSON, INYO COUNTY BOARD OF

SUPERVISORS

Attest: Kevin Carunchio
Clerk of the Board

By: _____
Patricia Gunsolley
Assistant Clerk of the Board



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

- Consent Departmental Correspondence Action Public Hearing
 Schedule time for Closed Session Informational

For Clerk's Use Only: AGENDA NUMBER 16
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FROM: Public Works Department

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Upgrade of Electrical Services Independence Legion Hall and Waive Building Permit Fees

DEPARTMENTAL RECOMMENDATIONS:

1. Approve Resolution Approving the Electrical Services Upgrade to the Independence Legion Hall.
2. Accept the donation of the kitchen upgrade.
3. Waive Building Permit Fees for Independence Electrical Services Upgrade and Electrical Connection for electricity to the Locomotive Restoration at Dehy Park.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Deficiencies in the electrical services at the Independence Legion Hall have been identified, including lack of light switches near the doors and a shortage of outlets in the kitchen. Mr. Craig Leck, a licensed contractor has offered to donate materials and labor to correct these deficiencies. Approval of the resolution will allow Mr. Leck to complete the work and accept the completed work as a donation.

The Carson Colorado Group has requested electrical service at Dehy Park from LADWP to assist in the restoration of the Locomotive. LADWP has approved the electrical service but an electrician is required to make the connection. Mr. Leck has offered to donate the materials and labor to the Carson Colorado Group, but has requested the County waive the building permit fee.

ALTERNATIVES:

The Board could direct revisions to the resolution.

The Board could not approve the resolution, which would require the upgrades not be completed or alternative means identified.

OTHER AGENCY INVOLVEMENT:

County Counsel for review of the documents.

FINANCING:

No financial impacts from the status quo if the recommendation is approved.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the board clerk.)	Approved: <u>[Signature]</u>	Date: <u>2/28/12</u>
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)	Approved: <u>[Signature]</u>	Date: <u>3/5/12</u>
PERSONNEL DIRECTOR	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)	Approved: _____	Date: _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

[Signature]

Date: 2-28-12

RESOLUTION NO. 2012-__

A Resolution of the Inyo County Board of Supervisors Authorizing Craig Leck Access to the Independence Legion Hall for the Purpose of Performing Certain Electrical Upgrades and Acceptance of the Donation of the Electrical Upgrade Services Performed by Craig Leck.

WHEREAS, Inyo County owns the Independence Legion Hall which is located at 205 S. Edwards, Independence, California; and

WHEREAS, Craig Leck has generously offered to donate to Inyo County electrical upgrades in the Independence Legion Hall at no cost to the County; and

WHEREAS, Craig Leck is a licensed contractor; and

WHEREAS, Inyo County desires to authorize Craig Leck to access the Independence Legion Hall to install the electrical upgrades, subject to the conditions contained herein; and

WHEREAS, Inyo County, with thanks and appreciation, desires to accept the donation by Craig Leck of the electrical upgrades to the Independence Legion Hall.

NOW THEREFORE, BE IT RESOLVED that Inyo County hereby gives permission to Craig Leck to access the Independence Legion Hall to install light switches near the entrances and an additional 120 volt electrical outlet in the kitchen subject to the following conditions:

1. Mr. Lex will obtain a building permit from Inyo County for the proposed upgrades and all construction activities will be open to Inyo County employees to inspect, including building inspectors and building maintenance personnel. Inyo County will not charge for inspections or any necessary building permit.. Mr. Leck will coordinate with the Inyo County Public Works Director regarding times of access to the building.
2. Mr. Lex shall maintain insurance, including but not limited to General Liability and Worker's Compensation, and provide proof of such insurance to the Inyo County Risk Manager, in the amount, form and manner acceptable to the Inyo County Risk Manager.
3. Mr. Lex shall execute a defense, indemnification and hold harmless agreement, in a form approved by the Inyo County Counsel, in which Mr. Leck agrees to defend, indemnify, and hold harmless Inyo County from any and all claims which may arise as a result of Mr. Leck's donation.
4. Mr. Leck shall assure that all installation and construction work on the Independence Legion Hall shall be performed by a licensed contractor.
5. Inyo County hereby accepts the donation from Mr. Leck of the upgraded kitchen electrical at the Independence Legion Hall.

PASSED AND ADOPTED by the Board of Supervisors of the County of Inyo, State of California, this __ day of January 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

CHAIRPERSON, INYO COUNTY BOARD OF

SUPERVISORS

Attest: Kevin Carunchio
Clerk of the Board

By: _____
Patricia Gunsolley
Assistant Clerk of the Board



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

- Consent Departmental Correspondence Action Public Hearing
 Schedule time for Closed Session Informational

For Clerk's Use Only: AGENDA NUMBER <i>17</i>

FROM: Public Works Department

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Consideration of Appointment of Members of the Board of Supervisors to Review Proposals to Operate/Lease Inyo County Water Systems

DEPARTMENTAL RECOMMENDATIONS: Appoint Members of the Board of Supervisors to a Committee to review proposals to operate or lease Inyo County Water Systems.

CAO RECOMMENDATION:

SUMMARY DISCUSSION: On January 10, 2012, your Board authorized the release of a Request for Proposals for the operation or lease of the three waters systems operated by Inyo County. This request is less specific in the requirements than previous requests and requests proposals to perform all the operations of the systems and will potentially take more effort to evaluate. The proposals are due to the County Public Works Department on March 5, 2012. Public Works staff will be involved in the evaluation process, but also recognize that the Board may want to have Members of the Board of Supervisors to participate in the evaluation. There are three water systems. Each is within the district of a different Member of the Board of Supervisors. One option would be to appoint the two Members of the Board of Supervisors who do not have a County operated water system within their district.

ALTERNATIVES:

The Board could choose to appoint different members to the evaluation committee or choose not to have any Members of the Board of Supervisors to the evaluation committee.

OTHER AGENCY INVOLVEMENT:

FINANCING:

No financial impacts from the status quo if the recommendation is approved. The financial impacts of a potential agreement with the proposer cannot be estimated prior to reviewing proposals and selecting proposer.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Council prior to submission to the board clerk.)	Approved: <i>yes</i> Date: <i>2/22/12</i>
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)	Approved: _____ Date: _____
PERSONNEL DIRECTOR	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)	Approved: _____ Date: _____

DEPARTMENT HEAD SIGNATURE:
 (Not to be signed until all approvals are received) *[Signature]* Date: *2-22-12*



AGENDA REQUEST FORM

BOARD OF SUPERVISORS

COUNTY OF INYO

- Consent Departmental Correspondence Action Public Hearing
 Schedule time for _____ Closed Session Informational

For Clerk's Use
Only:

AGENDA NUMBER

18

FROM: Public Works Department

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Transportation Investment Generating Economic Recovery (TIGER IV) discretionary grant program

DEPARTMENTAL RECOMMENDATIONS:

Direct staff to submit a Whitney Portal Road Rehabilitation Project application for TIGER IV funds.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

A total of \$500 million TIGER IV funding is available to state, tribal, and local governments, transit agencies, port authorities, and multi-jurisdictional entities for surface transportation projects that will have a significant impact on the nation, a metropolitan area, or a region. Approximately 24% of the funds are set aside for rural areas. The minimum grant award in rural areas is for \$1 million. In 2009, the County submitted the South Lake Road Rehabilitation Project for consideration under the first Transportation Investment Generating Economic Recovery discretionary grant program. In 2011, the County submitted the Whitney Portal Road Rehabilitation. Both of these applications were unsuccessful. The first three rounds of this program have been extremely competitive. Only 172 of a total of 3,348 or 5% of the applications have been successful.

Timeline

The application submittal deadline is March 19, 2012. Before the final application is submitted, staff is required to submit a preliminary grant application.

Threshold Criteria Analysis

TIGER IV applications must meet the following criteria in order to advance for consideration:

- The project must meet federal/TIGER eligibility requirements
- NEPA is complete or underway, as described in Section II(B)(2)(b)(ii) (Environmental Approvals);
- The project is included in the relevant State, metropolitan, and local planning documents, or will be included, if applicable;
- The project expects to be ready to obligate all of the TIGER Discretionary Grant funds no later than September 30, 2013;
- Local matching funds of at least 20% are identified and committed (not a requirement for rural projects).

Several projects are analyzed for your Board's consideration in this document. It is recommended that only the top-ranked project should be submitted. To meet TIGER eligibility requirements, the project needs to be constructed on a Federal Aid Route and included in local planning documents. The projects proposed by staff are listed in the Regional Transportation Plan (RTP) action element or the Inyo County Collaborative Bikeways Plan.

The NEPA completion requirement is problematic. The County needs to either complete the NEPA document before submitting the application or demonstrate that it will be able to complete the project within the timeframe allowed. Public Works Department staff has only bringing forward projects that will require a Categorical Exclusion (CE) under NEPA. This is also tied in with the requirement to obligate funds on the project. There is not enough time available to propose a project that requires further environmental analysis. The County does not have projects ready to proceed with that required further environmental analysis. These projects will still likely require the completion of environmental studies to bring forward. It is uncertain how much these studies will cost.

The projects are also designed so the Public Works Department will complete the preliminary engineering and design phase of these projects. This may require a significant investment of staff time over a several month period.

Scoring Criteria

Priority will be given to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. Applications that demonstrate a likelihood of a significant long-term benefits in this criterion will not proceed in the evaluation process. The following types of long-term outcomes will be given priority:

- **State of Good Repair**: Improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize life-cycle costs.
- **Economic Competitiveness**: Contributing to the economic competitiveness of the United States over the medium- to long-term.
- **Livability**: Fostering livable communities through place-based policies and investments that increase transportation choices and access to transportation services for people in communities across the United States.
- **Sustainability**: Improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions and benefitting the environment.
- **Safety**: Improving the safety of U.S. transportation facilities and systems.
- **Job Creation & Near-Term Economic Activity**: While the TIGER Discretionary grant program is not a Recovery Act program, job creation and near-term economic activity remain a top priority of the Administration; therefore the Department of Transportation will give priority (as it did in the TIGER and TIGER II Discretionary Grant programs) to projects that are expected to quickly create and preserve jobs and promote rapid increases in economic activity, particularly jobs and activity that benefit economically distressed areas as defined by section 901 of the Public Works and Economic Development Act of 1965, as amended.
- Projects will also be evaluated based on the extent to which they include the following:
 - **Innovation**: Priority will be given to projects that use innovative strategies to pursue the long-term outcomes outlined above.
 - **Partnership**: The Department will give priority to projects that demonstrate strong collaboration among a broad range of participants and/or integration of transportation with other public service efforts.

Project Ranking

The County does not technically meet the NEPA completion requirement, though it may be granted an exception if the County can demonstrate that the project can meet the timelines. The County projects described below are chosen so that they will have as small of an impact as possible. In the case of Red Hill Road bicycle lanes, the project would disturb an area recently impacted by a road project funded by State Transportation

Improvement Program (STIP) funds. Below is a table summarizing potential candidates for this grant application and also an analysis of each project.

Project	Type of Project	Cost (1,000s)	Federal Aid Route Eligible	NEPA Status	Included in RTP	Ready to Construct	Ranking
Whitney Portal Rd	Rehab.	\$7,000	Yes	Studies required for CE	Yes	Difficult to demonstrate	1
South Lake Rd	Rehab.	\$3,800	Yes	Studies required for CE	Yes	Difficult to demonstrate	2
Old Spanish Trail	Rehab.	\$5,702	Yes	Studies required for CE	Yes	Difficult to demonstrate	3
Red Hill Road Bicycle Lanes	Add three to four foot wide bicycle lanes to both sides of the roadways.	\$1,000	Yes	Studies required for CE	Partial ¹	Difficult to demonstrate	4

Whitney Portal Road

Whitney Portal Road was ranked first because it provides access to nationally recognized recreational area. The County most recently submitted Whitney Portal Road for a National Forest Highways grant. That application was not successful. Letters regarding the project were received from the Bureau of Land Management, U.S. Forest Service, Caltrans, and Kern Council of Governments. This gives evidence of regional collaboration. The project is geared to have the least environmental impact, though the road requires a full reconstruction because of transverse cracks. The NEPA process will require environmental studies by professionally qualified staff. At a minimum, it is expected the County will need to hire a contractor for archaeological and biological surveys. The site specific situation will dictate the extent of the environmental studies. The project will likely require substantial amounts of preliminary engineering and design work by the Public Works Department. Caltrans staff has indicated that roadway reconstruction projects will probably not be competitive for these funds.

To try and show inter-agency collaboration, staff would like to at least one interpretive facility on both BLM and Inyo National Forest land. It is not clear if the County will be able to get approval from these agencies in advance of the submittal deadline for this project.

South Lake Road

The County previously submitted a TIGER grant application for this road. That grant application was unsuccessful. Letters generally in support of this project were received from the U.S. Forest Service and the Inyo County Local Transportation Commission. The NEPA process will require environmental studies by professionally qualified staff. At a minimum, it is expected the County will need to hire a contractor for archaeological and biological surveys. The site specific situation will dictate the extent of the environmental studies. The project will likely require substantial amounts of preliminary engineering and design work by the Public Works Department.

Old Spanish Trail Highway

This project was tentatively selected by Inyo County for the second round of stimulus bill funding known as Jobs for Main Street. This funding source never materialized. The project would involve constructing a pavement overlay on app. 27 miles of roadway. Staff initiated, but did not complete, the NEPA process for this project. There has been more work completed on this project, but there may still be Desert Tortoise related issues. There is also a high likelihood for significant archaeological resources because of the historic "Old Spanish Trail." At a minimum, it is expected the County will need to hire a contractor for archaeological and

¹ Red Hill Road is listed as a High Priority Project in the Inyo County Collaborative Bikeways Plan.

biological surveys. The site specific situation will dictate the extent of the environmental studies. The project will likely require substantial amounts of preliminary engineering and design work by the Public Works Dept.

Red Hill Road Bicycle Lanes Project

The County submitted this project along with Ed Powers Road for Transportation Enhancement funding in the 2011 call for projects. The project scope was reduced because of a lack in the availability in total funds and in the interest of equity with the amount programmed to the City of Bishop. The County also submitted this as a Bicycle Transportation Account (BTA) application last year. Caltrans staff has indicated that this application was unsuccessful. The BTA application included letters of support from Cerro Coso Community College, Aerohead Cycles, the California Highway Patrol, Inyo County Sheriff, and the Inyo County Superintendent of Schools. The total project cost is smaller which may be advantageous. Additionally, being a multi-modal project may give the project a higher score. The NEPA process will require environmental studies by professionally qualified staff. The previous work on the roadways should mean that the preliminary engineering and environmental may not be too costly, though the bicycle lanes will expand the paved surface. At a minimum, it is expected the County will need to hire a contractor for archaeological and biological surveys. The site specific situation will dictate how extensive the environmental studies will be. The project will likely require substantial amounts of preliminary engineering and design work by the Public Works Dept. This project is a strong candidate for Transportation Enhancement (TE) funding part of a future call for projects.

ALTERNATIVES:

- 1) The Board could choose to not submit an application for this round of grant funding. The past three rounds of TIGER discretionary grants have been highly competitive and there is a relatively low possibility that this grant will be awarded to Inyo County - roadway rehabilitate or reconstruct projects on existing roadway do not score well.
- 2) The Board could direct staff to bring forward one of the alternative projects described above or another project.

OTHER AGENCY INVOLVEMENT:

- (1) California Department of Transportation Evaluates Grant Submittals.
- (2) Caltrans District 9 Local Assistance Office oversees the reimbursement of county funds expended.

FINANCING:

For rural areas, no local match is required. However the County will need to provide costs to complete the NEPA document which includes preliminary engineering in advance of receiving funding.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the board clerk.) <div style="text-align: right;">Approved: _____ Date _____</div>
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.) <div style="text-align: right;">Approved: _____ Date _____</div>
PERSONNEL DIRECTOR	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) <div style="text-align: right;">Approved: _____ Date _____</div>

DEPARTMENT HEAD SIGNATURE:
 (Not to be signed until all approvals are received)



Date: 2-15-12



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

19

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Public Works

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: Contract for Trash Disposal Services at County Buildings and Facilities

DEPARTMENTAL RECOMMENDATION:

1. That your Board award the bid to and approve the Contract for a three (3) year term to Madera Disposal Systems (dba Bishop Waste Disposal, Inc.) for providing trash disposal and recycling services at County Buildings and Facilities, in an amount not to exceed \$107,575.56 contingent on the Board's adoption of future budgets;
2. Authorize the Chairperson to sign the Contract contingent upon obtaining the appropriate signatures; and,
3. Authorize the payment of \$2,988.21 monthly to Madera Disposal Systems (dba Bishop Waste Disposal, Inc. for the provision of these services.

CAO RECOMMENDATIONS:

SUMMARY DISCUSSION:

The County has recently concluded (on November 30, 2011) a three (3)-year contract with Bishop Waste Disposal, Inc., for trash disposal services at thirty (30) County facilities in the Bishop, Big Pine, Independence, and Lone Pine areas. This contract was with Bishop Waste Disposal, Inc.. Due to time constraints regarding this expiring contract, the County recently entered into a temporary three (3) month Purchase Order with Preferred Septic Disposal to provide trash disposal services at these same facilities. This contract is expiring February 29, 2012. Public Works recently issued an RFP for trash disposal services at the same thirty (30) County facilities and received proposals from two (2) local waste hauling companies: Preferred Septic and Disposal; and, Madera Disposal Systems (dba Bishop Waste Disposal, Inc.). A three (3) person panel from Public Works performed the review and evaluation of the two (2) proposals. Both respondents qualified for the local business preference, both took no exceptions to entering into Inyo County Standard Contract No. 113, and both had identical monthly cost proposals of \$2,988.21. The requested Recycling Component/Element was determined to be the deciding factor in recommending the award. The following listing was included in the Madera Disposal Systems proposal for materials accepted for recycling:

- a. Mixed Paper
- b. Glass
- c. Plastic
- d. Aluminum

- e. Metal/Tin Cans
- f. Cardboard
- g. Printer Cartridges
- h. Household Batteries

In contrast, the Preferred Septic and Disposal proposal contained the following list for accepted recyclable materials:

- a. Cardboard
- b. Glass (bottles etc.) CRV
- c. Plastic (bottles etc.) CRV
- d. Aluminum (cans) CRV

Although both proposal dollar amounts were equal (at the established floor amounts per Resolution No. 2011-18), after review and evaluation by the three (3) person panel at Public Works, Madera Disposal Systems (dba Bishop Waste Disposal, Inc.) was determined to have the best proposal. This was solely based on the Recycling Component/Element of the proposal and the more extensive list of recyclable materials that Madera Disposal Systems (dba Bishop Waste Disposal, Inc.) would accept.

ALTERNATIVES:

1. Your Board could elect to not award the contract and direct the Public Works Department to re-solicit proposals for this service. This is not recommended, as the prices shown are the lowest allowed by Board Resolution, are competitive and reflect the true cost for providing these services; or,
2. Your Board could shorten the term of the Contract to one (1) year. This is not recommended, as all of our personal service contracts for this type of service are multi-term, which reduces the cost and workload on Public Works staff because they do not have to advertise and re-bid the contract annually.
3. Should your Board elect to not award this Contract, we would then need to request Board approval to extend the current 3-month Purchase Order with Preferred Septic and Disposal for an additional one (1) month service (an amount of \$2,929.52).

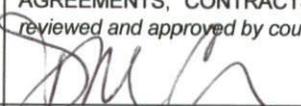
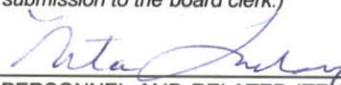
OTHER DEPARTMENT INVOLVEMENT:

The Public Works Department will oversee the terms of the Contract. County Counsel for the review the Contract and this Agenda Item. Auditor for the payment(s) of invoice(s).

FINANCING:

The funds for this Contract will be provided through the County's Public Works Department, Building & Maintenance of Ground Division budget 011100, Object Code 5265, and other County Departments that require this service. Any required Departmental budget adjustments will be made during 3rd Quarter budget revisions.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: <u>Yes</u> Date <u>2/23/12</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <u>Yes</u> Date <u>2/23/12</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)  Date: 2-22-12
(The Original plus 20 copies of this document are required)

AGREEMENT BETWEEN COUNTY OF INYO
AND Madera Disposal Systems (dba Bishop Waste Disposal, Inc.)
FOR THE PROVISION OF Waste Disposal and Recycling **SERVICES**

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") has the need for the Waste Disposal and Recycling services of Madera Disposal Services of Bishop, CA (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK.

The Contractor shall furnish to the County those services and work set forth in Attachment A, attached hereto and by reference incorporated herein.

Services and work provided by the Contractor at the County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

2. TERM.

The term of this Agreement shall be from March 1, 2012 to February 28, 2015, unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. County shall pay to Contractor the sum of \$2,988.21 Dollars per month for performance of all of the services and completion of all of the work described in Attachment A on a monthly basis.

B. Travel and per diem. Contractor will not be paid or reimbursed for the travel expenses or per diem which Contractor incurs in providing services and work under this Agreement.

C. No additional consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed one-hundred seven thousand five-hundred seventy-five & 56/100 Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all services and work performed by Contractor pursuant to this Agreement. This statement will be submitted to the County not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor on the last day of the month.

F. Federal and State taxes.

- (1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Contractor under the terms and conditions of this Agreement.
- (2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety nine dollars (\$1,499.00).
- (3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.
- (4) The total amounts paid by County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Contractor shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9, attached hereto as Attachment B, upon executing this Agreement.

4. WORK SCHEDULE.

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with County to insure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.

A. Any licenses, certificates, or permits required by the federal, state, county, or municipal governments for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon

execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

B. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration available at: <http://www.epls.gov>.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in Attachment A to this Agreement. County is not obligated to reimburse or pay Contractor, for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

7. COUNTY PROPERTY.

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Contractor by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

8. WORKERS' COMPENSATION.

Contractor shall provide Statutory California Worker's Compensation coverage and Employer's Liability coverage for not less than \$1,000,000 per occurrence for all employees engaged in services or operations under this Agreement. The County of Inyo, its agents, officers and employees shall be named as additional insured or a waiver of subrogation shall be provided.

9. INSURANCE.

For the duration of this Agreement Contractor shall procure and maintain insurance of the scope and amount specified in Attachment C and with the provisions specified in that attachment.

10. STATUS OF CONTRACTOR.

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of

County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Attachment A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor shall determine the method, details, and means of performing the work and services to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of County.

11. DEFENSE AND INDEMNIFICATION.

Contractor shall defend, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Contractor, or Contractor's agents, officers, or employees. Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the Contractor, its agents, employees, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

To the extent permitted by law, County shall defend, indemnify, and hold harmless Contractor, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, or resulting from, the active negligence, or wrongful acts of County, its officers, or employees.

12. RECORDS AND AUDIT.

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, and municipal law, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

13. NONDISCRIMINATION.

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

14. CANCELLATION.

This Agreement may be canceled by County without cause, and at will, for any reason by giving to Contractor thirty (30) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving thirty (30) days written notice of such intent to cancel to County.

15. ASSIGNMENT.

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

16. DEFAULT.

If the Contractor abandons the work, or fails to proceed with the work and services requested by County in a timely manner, or fails in any way as required to conduct the work and services as required by County, County may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

17. WAIVER OF DEFAULT.

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-four (24) below.

18. CONFIDENTIALITY.

Contractor agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Contractor only with the express written consent of the County.

19. CONFLICTS.

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

20. POST AGREEMENT COVENANT.

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

21. SEVERABILITY.

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

22. FUNDING LIMITATION.

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Contractor of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-four (24) (Amendment).

23. ATTORNEY'S FEES.

If either of the parties hereto brings an action or proceeding against the other, including, but not limited to, an action to enforce or declare the cancellation, termination, or revision of the Agreement, the prevailing party in such action or proceeding shall be entitled to receive from the other party all reasonable attorney's fees and costs incurred in connection therewith.

24. AMENDMENT.

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

25. NOTICE.

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Contractor or County shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

County of Inyo:	
Public Works Department	Name
_____	Street
P.O. Drawer Q	City and State

Independence, CA 93526	

Contractor:
Madera Disposal Systems _____ Name
100 Sunland Indian Reservation Rd. _____ Street
Bishop, CA 93514 _____ City and State

26. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

AGREEMENT BETWEEN COUNTY OF INYO
AND Madera Disposal Systems (dba Bishop Waste Disposal, Inc.)
FOR THE PROVISION OF Waste Disposal and Recycling **SERVICES**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS
____ DAY OF _____, _____.

COUNTY OF INYO

CONTRACTOR

By: _____

By: _____
Signature

Type or Print Name

Dated: _____

Dated: _____

APPROVED AS TO FORM AND LEGALITY:

County Counsel

APPROVED AS TO ACCOUNTING FORM:

County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

County Risk Manager

ATTACHMENT A

AGREEMENT BETWEEN COUNTY OF INYO
AND Madera Disposal Systems (dba Bishop Waste Disposal, Inc.)
FOR THE PROVISION OF Waste Disposal and Recycling **SERVICES**

TERM:

FROM: March 1, 2012 **TO:** February 28, 2015

SCOPE OF WORK:
(SEE ATTACHED EXHIBIT A)



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

20

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: U. S. Forest Service Land Management Planning Rule

RECOMMENDATION: Review draft correspondence regarding the Forest Service Planning Rule, provide input, and authorize the Chair to sign.

SUMMARY DISCUSSION: The U.S. Forest Service has been working on updating the Forest Planning Rule¹, regarding which the Board has participated extensively (refer to Attachment 2 for previous Board correspondence). A Final Programmatic Environmental Impact Statement (PEIS) and Preferred Alternative were released in January, and a Record of Decision will be issued no less than 30 days following publication of the Final PEIS; staff estimates that the 30-day period will terminate on or around March 5, 2012. The Board conducted a workshop regarding the Rule and the Preferred Alternative on February 14, 2012, and directed staff to prepare draft correspondence for the Board's consideration, which is attached.

OTHER AGENCY INVOLVEMENT:

Department of Agriculture, U.S. Forest Service

FINANCING:

Resources from the general fund are utilized to monitor federal activities.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i>

¹ Refer to <http://www.fs.usda.gov/planningrule> for more information regarding the Planning Rule update process and the proposed Rule.

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)

A handwritten signature in blue ink, appearing to be "Johnnie A. [unclear]", written over a horizontal line.

Date: 2-22-12

Attachments:

1. Draft Correspondence
2. Previous Correspondence

February 28, 2012

Tom Tidewell, Chief
USDA Forest Service
1400 Independence Avenue, SW
Washington, D.C. 20250

**Re: Final Environmental Impact Statement
Proposed U.S. Forest Service Land Management Planning Rule**

Dear Mr. Tidewell:

On behalf of the Inyo County Board of Supervisors, I wish to convey to you our appreciation of your staff's admirable efforts to update the Forest Planning Rule. The present attempt to update the Rule has been ongoing for several years, and the Forest Service has been balancing a variety of viewpoints and interests in crafting the new Rule.

The Inyo County Board of Supervisors and the citizenry of Inyo County have participated extensively in the update process. We have provided input into the proposed Rule, particularly in regards to the Rule's direction that the Forest Service coordinate with local governments when updating and amending individual forest plans. This input has been partially incorporated into the Preferred Alternative, and we appreciate that our voices were heard in this important planning process. We request that our input continues to be carried forward into the adopted Rule.

We look forward to working with the Forest Service during implementation of the Forest Planning Rule in the coming years. If you have any questions, please contact the County's Administrative Officer, Kevin Carunchio, at (760) 878-0292 or kcarunchio@inyocounty.us. Thank you for your attention.

Sincerely,

Marty Fortney, Chair
Inyo County Board of Supervisors

cc: Board of Supervisors
Kevin Carunchio, CAO
Randy Keller, County Counsel
Joshua Hart, Planning Director
Doug Wilson, Willdan
Regional Council of Rural Counties
California State Association of Counties
National Association of Counties
Ed Armenta, Inyo National Forest
Randy Moore, Pacific Southwest Regional Forester, Forest Service
Secretary Vilsak, USDA
Sustainable Forest Action Coalition



BOARD OF SUPERVISORS COUNTY OF INYO

P. O. BOX N • INDEPENDENCE, CALIFORNIA 93526
TELEPHONE (760) 878-0373 • FAX (760) 878-2241
e-mail: pgunsolley@inyocounty.us

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RICHARD CERVANTES

KEVIN D. CARUNCHIO
Clerk of the Board

PATRICIA GUNSOLLEY
Assistant Clerk of the Board

May 3, 2011

Tom Tidwell, Chief
USDA Forest Service
1400 Independence Ave., SW
Washington, D.C. 20250

**Re: Draft Environmental Impact Statement
Proposed U.S. Forest Service Land Management Planning Rule**

Dear Mr. Tidwell:

On behalf of the Inyo County Board of Supervisors, I wish to thank you for your continued efforts to include the local communities that will be most impacted by the U.S. Forest Service (USFS) in its future planning. In a County such as ours where less than two percent of the land is privately held, the actions of the Forest Service have tremendous impacts.

Since the Planning Rule update currently in process will guide many of the most important decisions in the Inyo National Forest that directly impact us, the Board has been following the update process closely. Individual Supervisors and County representatives attended public meetings on April 6, 2010 in Sacramento and Bishop. The Board participated in a conference call with the Regional Forester and other Forest Service staff on April 22, 2010, and County representatives attended the National Forums in August 2010 and March 2011. Attached is correspondence previously submitted by the Board regarding the update effort.

With this extensive participation in mind, we offer the following comments regarding the proposed Rule and Draft Environmental Impact Statement (DEIS).

1. Actions of the Forest Service have tangible direct, indirect, and cumulative impacts on the communities in the vicinity of the Forests. In Inyo County, these impacts are significant due to the proportional size of the Forest to the local population and privately held land base. Many in our communities rely on the Forest for their livelihood, as well as hold deep spiritual and cultural links to the Forest. Unfortunately, we note that that in many places the proposed Rule to the contrary indicates that the Forest Service has limited influence outside of the Forests. For example, on page 8491 of the Federal Register Notice, it states "...the Agency has more influence over the factors that impact ecological sustainability on NFS lands...than it does for social and economic sustainability...". In Inyo County and many other rural areas these statements are just not true. In our County for example, many communities are stagnant or shrinking due to past efforts to limit access to the Forest.

2. We are concerned that the proposed Rule elevates ecology and science above other considerations. While we support the proper role of science in planning, we encourage the Forest to engage in a comprehensive planning approach that balances ecosystem conservation with social and economic needs. We believe the Rule's emphasis on special status species will further distort the planning process. We strongly believe that through careful balancing of these important objectives, overall environmental benefits can be maximized.

3. We are encouraged that our previous input regarding coordination has been partially incorporated into the Rule at 219.4(b). However, we are concerned that the proposed Rule does not adequately encompass the obligation to coordinate Forest and local plans. Specifically, Inyo County has the following concerns:

a. The proposed language suggests that coordination with local government will be accomplished "to the extent practical and appropriate." The County believes that coordination is a mandate, and therefore is always appropriate and required. (See 16 U.S.C. § 1604(a), *Calif. Resources Agency v. United States Dept of Agriculture*, Slip Copy, 2009 WL 6006102 (N.D.Cal. 2009).) It is understood that the depth and nature of coordination may change with the situation, but the language as proposed would mean that there may be times when it would not be appropriate to coordinate with local government. The County believes that failure to coordinate is not a lawful option.

b. The proposed language states: "nor will the responsible official conform management to meet non-Forest Service objectives or policies". This statement contradicts the purpose of coordinating with local government, which is to attempt to conform USFS and local management plans to meet each other's objectives (within the legal parameters applicable to each agency). Utilizing federal planning to help achieve local government priorities should be a primary objective of coordinated planning and should not be ruled out from the beginning. At the very least, federal plans should not contradict local plans. Otherwise, coordination becomes nothing more than a paper exercise.

c. A primary goal of coordination should be achieving consistency between federal and local plans within the legal mandates applicable to all entities. This would minimally involve ensuring that USFS plans do not contradict local plans. The attempt to achieve consistency should be an iterative process between the local agency and the USFS. This goal has long been recognized in Bureau of Land Management rules regarding coordination with local government in planning activities. (See 43 CFR 1610.3-1) The 1982 Forest Planning Rule (36 CFR 219.7) was weak in this area and the proposed rule is weaker still. Achieving consistency between plans is inherent in the concept of "coordination." Two inconsistent plans could hardly be considered coordinated planning.

4. The DEIS' economic impact analysis is deficient in that it does not include any analysis of the Forests' negative economic impacts on communities around them. We agree that the Forests have great economic benefits, but we believe that the adverse impacts of the Forest to our community have been minimized in the DEIS. In Inyo County, forest planning practices have resulted in significant socioeconomic impacts to our communities. For example, packing and grazing were eliminated from certain areas of the Inyo National Forest, destroying industries that had existed for generations and significantly altering local society and culture, thereby eliminating the livelihoods of hard working people and decimating our towns. We therefore request that the Rule include a requirement that Forest Plans, revisions, and amendments evaluate and minimize negative socioeconomic impacts to local communities. Multiple uses should be encouraged by the Rule to create vibrant rural economies. Furthermore, we are concerned that the modeling undertaken for the Rule is proprietary, and we cannot access the basic assumptions and inputs in the model for verification. As discussed previously, the Rule's emphasis on ecosystems and special status species will result in adverse socioeconomic impacts, which are not addressed in the DEIS.

5. Based on our participation in the scoping process, we had understood that recreation would be given greater emphasis in the proposed Rule. This has not been the case, and the Rule's recreational components seem focused on minimizing recreational opportunities for purposes of sustainability. Recreation is one of the Forests' greatest contributions to society, especially so in our community, and to minimize recreation's role in the Rule is non-responsive to previous input and contrary to common sense. Recreation should not be a minor issue in Forest planning, but to the contrary, should be one of the central goals to create vibrant

Tom Tidwell, Chief
USDA Forest Service
May 3, 2011
Page THREE

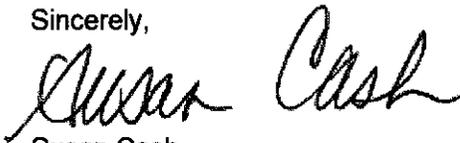
rural economies. Although we agree that the potential adverse impacts of recreation should be addressed in the planning process, the proposed Rule's emphasis on sustainability is misguided; to the contrary, providing accessibility to the Forests should be a primary goal, with objectives to minimize recreational impacts secondary. We are particularly concerned that the potential benefits of motorized access to the Forests is ignored, when in fact, few Forests are easily accessed by other means. Again, the Rule should encourage multiple uses to create vibrant rural economies.

6. The proposed Rule's dependency on adaptive management could result in constant revisions to Forest Plans, thereby creating an environment of uncertainty and potentially adversely impacting local economies. We therefore request that a limit on the number of Plan revisions per a unit of time (or other limitation) be included in the Rule to provide greater assurances that Forest plans will be implemented.

7. We are concerned that the definition of restoration appears to depend on a process that has not concluded (refer to Notice page 8503). Any future alterations to the definition of restoration in the Rule should be properly vetted.

Thank you for your consideration and efforts to create a Rule that will benefit the many communities in and around the Forests, including Inyo County. If you have any questions, please contact the County's Administrator, Kevin Carunchio, at (760) 878-0292 or by email at kcarunchio@inyocounty.us.

Sincerely,



Susan Cash
Chairperson, Inyo County Board of Supervisors

Enclosures

cc: Board of Supervisors
Kevin Carunchio, CAO
Randy Keller, County Counsel
Doug Wilson, Willdan
Regional Council of Rural Counties
California State Association of Counties
National Association of Counties
Bear West Company
Ed Armenta, Inyo National Forest
Randy Moore, Pacific Southwest Regional Forester, Forest Service
Secretary Vilsak, USDA
Sustainable Forest Action Coalition



BOARD OF SUPERVISORS COUNTY OF INYO

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RICHARD CERVANTES

KEVIN D. CARUNCHIO
Clerk of the Board

PATRICIA GUNSOLLEY
Assistant Clerk of the Board

April 22, 2010

Mr. Tom Tidwell, Chief
USDA Forest Service
1400 Independence Ave., SW
Washington, D.C. 20250

RE: National Forest System Land Management Planning Rule

Dear Mr. Tidwell:

On behalf of the Inyo County Board of Supervisors, I wish to relay our appreciation that additional outreach to locally elected officials took place on April 22, 2010, regarding the update to the Forest System Land Management Rule. While we were discouraged that the Regional Roundtables were scheduled at a time when most Boards of Supervisors in California conduct their regularly scheduled meetings, it was heartening that our concern was heard and that the conference call was scheduled for April 22nd.

The Inyo County Board of Supervisors cares deeply about the Planning Rule update, and has submitted correspondence in response to the Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the National Forest System Land Management Planning Rule (see attached). Individual Board members also attended the Regional Roundtables on April 6 to make our constituents' voices heard. To summarize, the following points are extremely important to us and need to be considered throughout and, hopefully, incorporated in the update process.

- Federal ownership of land area is concentrated in the western states, including Inyo County where an outstanding 92% of the land area is federally administered on behalf of the American public.
- The development of Inyo County was made possible through the active utilization of federally-administered, publicly-owned lands for mineral extraction, raising livestock, farming, harvesting timber, water storage and conveyance, energy generation, wildlife habitat, and recreational activities.
- Through the years, the use of the federally administered, publicly-owned lands has been constrained by the designation of Wilderness Areas, monuments, roadless areas, and park areas, which has severely reduced the availability of these lands for active utilization.

- Recreation is the only permissible use in many of these designated areas, and the types of recreation allowed are also restricted.
- Other uses that should be considered include mining, logging, grazing, energy development, and water storage. It appears that maintaining the local communities, culture and economy were not considered when making these designations.
- Recreation is an important and vital use in the Forest, and should be given greater importance in the principles or as a standalone principle.
- Similarly, the concept of continued active utilization of the Forest – for mining, timber harvesting, grazing, water storage, and energy production needs to be embodied in the principles or as a standalone principle.
- Restoration needs to be defined, since the term has different meaning to different people. To what level or standard will the Forest be “restored?” Pre-man? Pre-European contact? 19th Century? 18th Century? 17th Century? 16th Century? 15th Century? What does this look like?
- A role for locally elected officials needs to be included in the Forest Planning Rule and the update process. At a time the Forest Service professes to want help in gaining local input, it needs to recognize that locally elected officials represent the broadest spectrum of citizens in a jurisdiction, and have been elected to represent the population of the local jurisdiction.
- This rulemaking is extremely important to the concept of local involvement in forest planning. This rulemaking will essentially define what involvement local government will have in forest planning.
- “Coordination” is not a NEPA term and is not constrained by the NEPA process. It is a separate mandate in the forest planning statutes and regulations. Cooperating agency status is a NEPA concept, and while it may overlap with coordination responsibilities, it does not replace them. There is no requirement for a federal agency to attempt to reconcile its plans with those of a cooperating agency. “Coordination”, whatever it is defined to be, should not be allowed to be co-opted by the NEPA process. It is separate and greater than NEPA, even though NEPA is a good platform to fulfill coordination responsibilities.

- Local governments provide a function that no other governmental or “stakeholding” entity can provide. Counties in particular are the smallest level of government that represents all sides to these land use issues and are in the best position to achieve the democratic compromises that can lead to public acceptance of federal land use plans. Only at the county level do neighbors engage neighbors in these contentious decisions. No higher level of government has the ability to engage all segments of the community in the debate and attempt to achieve a consensus. Federal agencies have done a disservice to themselves and the local communities by ignoring the input of local government. Federal agencies actually undercut the democratic function when minority groups at the local level can achieve their objectives by organizing and lobbying at the federal level to achieve their objectives, without having to convince their neighbors and the general community that they are correct. More engagement at the local level should be encouraged, rather than less. The only way to do this is to provide local government a strong voice in planning decisions in their jurisdictions, so that communities within the jurisdiction have reason to engage at the local level.
- The 1982 Forest Planning Rule, as it defines coordination, is insufficient. It allows a federal officer to determine what local plans are applicable to a proposed Forest Plan and allows the federal officer to determine if the proposed Forest Plan is consistent with the local plan. It should be the *local government* that identifies which of its planning rules are relevant to the proposed Forest Plan and it should be the *local government* that determines if the proposed Forest Plan is consistent with local plans. Furthermore, as in the BLM regulations, there should be a requirement that the Forest Plans be consistent with local plans, unless federal law or regulations prohibit such consistency. Additionally, if consistency is not achieved, the decision document should explain why consistency could not be achieved.
- It is critical that future land use planning for the federally owned land consider the impacts on the culture and economy of the surrounding communities (e.g. whole lands approach). The analysis should accurately consider the impacts on individual communities. The stated principle that “the sustainable use of public lands to support vibrant communities” is critical. Inyo County believes that coordination with counties is critical to meeting this principle – Inyo County should have influence, not just input. The following elements are necessary for successful coordination:
 - Forest plans must be consistent with local land use plans to the maximum extent practicable, consistent with federal law.
 - Coordination with local government should commence at the earliest possible time. Ideally, local land use plans will be consulted prior to developing a proposed forest plan, and the local government consulted prior to the proposed plan being released to the public and prior to issuance of a Notice of Intent to prepare an EIS or other procedure required by the National Environmental Policy Act.

- The Forest needs to recognize that local government is the expert on the meaning and application of its local plans. The Forest should solicit the views of local government to determine if the proposed forest plan is consistent with local plans, as interpreted by the local government. Local governments should be given sufficient time to review proposed plans and comment in writing to the Forest official.
 - Where inconsistencies are identified by the local government, forest officers should meet with local government officers to achieve consistency. The forest service should create a joint task force with the local government or governments to work toward consistency in their plans.
 - The EIS for an individual forest plan should reflect consideration of the objectives of local government plans and policies, an assessment of the interrelated impacts of these plans and policies, a determination of how each forest plan should deal with the impacts identified, and consideration of alternatives to resolve conflicts among the plans.
 - Where a forest plan may not be made consistent with the local plan, the EIS prepared for the plan should explain how and why its plan is not consistent with local plans, as determined by local authorities, and explain why its plan cannot be made consistent with local plans.
- In the furtherance of these goals, Inyo County has adopted a Government Element of its General plan that enunciates its land use philosophies and policies for the use of the federally owned lands, and the interrelationship between Inyo County and other levels of government.
 - The EIS should include, at a minimum, an analysis of how the Proposed Forest Planning Rule addresses these principles.
 - If an "All Lands" approach is to be embodied in the new Planning Rule, it must be constructed in such a manner so as Forest land use plans are responsive to and yield to adjacent and nearby land uses rather than attempting to impose Forest Service values and policies and neighboring private and public land owners.
-

Mr. Tom Tidwell
April 22, 2010
Page FIVE

Thank you. We will continue to monitor the progress of the Planning Rule Update, and anticipate providing additional input. If you have any questions regarding these matters, please contact the County's Administrative Officer, Kevin Carunchio, at (760) 878-0292.

Sincerely,



Supervisor Richard Cervantes, Chairperson
Inyo County Board of Supervisors

Attachment

cc: Board of Supervisors
Kevin Carunchio, CAO
Randy Keller, County Counsel
Doug Wilson, Willdan
Regional Council of Rural Counties
California State Association of Counties
National Association of Counties
Bear West Company
Randy Moore, Pacific Southwest Regional Forester, Forest Service
Secretary Vilsak, USDA



**BOARD OF SUPERVISORS
COUNTY OF INYO**

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RICHARD CERVANTES

KEVIN D. CARUNCHIO
Clerk of the Board

PATRICIA GUNSOLLEY
Assistant Clerk of the Board

January 26, 2010

Forest Service Planning NOI
C/O Bear West Company
172 E 500 S.
Bountiful, UT 84010

RE: Notice of Intent to Prepare an Environmental Impact Statement for the National Forest System Land Management Planning Rule

To Whom It May Concern:

Inyo County appreciates the opportunity to participate in developing the new Planning Rule to guide planning efforts for national forest land. On behalf of the Board of Supervisors, please consider the comments in this correspondence in crafting the new Rule, alternatives for analysis in the Environmental Impact Statement (EIS), and the environmental analysis in the EIS.

Planning efforts for federal land have tremendous impacts on the communities that are surrounded by these lands. A county such as ours, which is 95% federal land, is a prime example. When so much of the environment in which a community exists is controlled by federal land use planning, the culture, way-of-life, and very existence of the community relies on the use allowed of those lands. It can serve no national purpose to plan for the use of federal lands in such a way that symbiotic communities lose their identity as a result.

Inyo County is therefore pleased to observe that an important principle of the new planning rule is "the sustainable use of public lands to support vibrant communities." There can be no better means to achieve this goal than to provide a strong role for local communities in the development of national forest plans. Congress recognized and protected a strong role for local communities when it created mandates for federal officers to coordinate with local governments in the creation of forest plans.

Coordination with county government is particularly important. County government is the one level of government that represents the citizens who are directly affected by federal land use plans. It is county government that is the spokesperson for local populations and which, ideally, can create a consensus around the balanced use of federal lands. A coordinated planning process can strengthen forest plans and the communities that are so dependent on those lands for their economic, social and cultural health.

Recent planning rules, in our estimation, have not sufficiently protected the obligation to coordinate planning efforts with local land use plans. To an important extent, this has led to the disenfranchisement of local governments and the communities they represent in the federal planning process. Inyo County supports collaboration. But, while collaboration is a valuable exercise in public participation, it seldom involves more than a series of bargains struck between various interest groups, none of which represent more than a segment of the population, and the most successful of which are the best organized or best funded rather than best representative of the citizenry.

Collaboration is not governing, and must not replace or overshadow the viewpoints of a local government that represents the variety of groups and points-of-view which comprise an organic and living community. Local governments are not "stakeholders" in a collaborative planning process, they are the voice of the community. Only a governmental entity, elected by the people and responsive to it, is able to incorporate and legitimize the compromises necessary to the common good and only a governmental entity can truly represent its constituents. And only the most local of governments, counties, can speak for the communities that live adjacent to the forest.

Inyo County recognizes that there are interests in federal lands beyond those of its population, but believes Congress has correctly determined that citizens should have extraordinary input into forest plans that directly affect them. It is a matter of providing communities the right of self-determination and the ability to influence, if not control, their destinies.

Inyo County therefore petitions the Department of Agriculture and the National Forest Service to strengthen the coordination mandate in the new Planning Rule, with the objective of providing local populations an effective voice in planning for the national forests. We propose the following principles for effective coordination:

1. Forest plans should be consistent with local land use plans to the maximum extent possible, consistent with federal law.
2. Coordination with local government should commence at the earliest possible time. Ideally, local land use plans will be consulted prior to developing a proposed forest plan, and the local government consulted prior to the proposed plan being released to the public and prior to the issuance of a Notice of Intent to prepare an EIS or other procedure required by the National Environmental Policy Act.
3. The Forest should recognize that local government is the expert on the meaning and application of its local plans. The Forest should solicit the views of local government to determine if the proposed forest plan is consistent with local plans, as interpreted

by the local government. Local governments should be given sufficient time to review proposed plans and comment in writing to the Forest official.

4. Where inconsistencies exist, forest officers should meet with local government officers to achieve consistency. The forest should create a joint task force with the local government or governments to work toward consistency in their plans.
5. The EIS for an individual forest plan should reflect consideration of the objectives of local government plans and policies, an assessment of the interrelated impacts of these plans and policies, a determination of how each forest plan should deal with the impacts identified, and consideration of alternatives to resolve conflicts among the plans.
6. Where a forest plan may not be made consistent with the local plan, the EIS prepared for the plan should justify why its plan is not consistent with local plans, as determined by local authorities, and explain why its plan cannot be made consistent with local plans.

If these principles for coordination are not incorporated into the Planning Rule, then the EIS for the Planning Rule should include alternatives that do. Furthermore, the EIS should evaluate the potential social, economic, and environmental justice implications of any alternatives that do not provide effective coordination with local government.

The proposed principles do not sufficiently address two important characteristics of the forests, and should be expanded. First, founding purposes of the forests are for grazing, timber, mining, and other economic factors. Management of the forests' resources to promote sustained yields should be paramount in the principles. However, these topics are glossed over, despite their relevance, especially to working landscapes in rural communities. It is therefore recommended that a new principle and associated questions be added in regards to managing natural resources to serve the American people and local economies in a sustainable manner.

Secondly, the forests provide opportunities for recreation that are of utmost importance to visitors and local economies alike. Indeed, most forest visitors' purpose is recreation, and the local communities in the vicinity of the forests depend on these visitors for their livelihood. The principles proposed seem to delegate this reality to secondary consideration. Therefore, it is recommended that another new principle and associated questions be crafted to promote diverse recreational opportunities, including but not limited to hiking, camping, off-road vehicle use, and dispersed recreation.

In addition to coordination issues, the following concepts should be included in the guiding principles when crafting the new Rule:

- Founding purposes of the forests are for grazing, timber, mining, and other economic factors. These topics should be taken into account to a greater degree, and are integral components to creating vibrant, working, rural communities.
- Permitting processes should be streamlined.
- The financial and economic burden of Forest Service bureaucracy should be reduced.

- Restoration and conservation do not necessarily enhance the resilience of ecosystems.
- Flexibility should be allowed for land managers to address actual observed impacts, rather than speculative issues such as climate change, if not applicable.
- Water supply issues should be more focused on forest lands.
- Alternative and hydroelectric energy siting and transmission should be specifically evaluated and included in the analysis.

Thank you. If you have any questions regarding these matters, please contact the County's Planning Department staff at (760) 878-0263.

Sincerely,



Richard Cervantes, Chairperson
Inyo County Board of Supervisors

cc: Board of Supervisors
Kevin Carunchio, CAO
Randy Keller, County Counsel
Doug Wilson, Willdan
Regional Council of Rural Counties
California State Association of Counties
National Association of Counties



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
22-
23-24

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: COUNTY COUNSEL

FOR THE BOARD MEETING OF: February 28, 2012

SUBJECT: ISSUES TO BE DISCUSSED IN CLOSED SESSION

DEPARTMENTAL RECOMMENDATION:

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Deputy Sheriff's Association (DSA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.

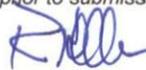
CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Probation Peace Officers Association (ICPPOA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Law Enforcement Administrators' Association (LEAA) - Negotiators: CAO Kevin Carunchio and Labor Relations Administrator Sue Dishion.

APPROVALS

COUNTY COUNSEL:

AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS *(Must be reviewed and approved by county counsel prior to submission to the board clerk.)*

 Approved: _____ Date 2.22.12

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

(The Original plus 20 copies of this document are required)

 Date: 2.22.12